

MIRANT COMMUNITY MONITORING GROUP (MCMG) MEETING



AGENDA

Thursday, February 10, 2005
Room 2000, City Hall, 301 King Street
7:00 P.M.

- 7:00 INTRODUCTION OF MCMG MEMBERS AND ATTENDEES
- 7:10 UPDATE ON THE PROPOSED STATE LEGISLATIONS, PROPOSED
AMENDMENTS AND COMMITTEE ACTION
UPDATE ON FEDERAL REGULATORY ACTIONS
William Skrabak, Chief Environmental Quality and Ignacio Pessoa, City Attorney
- 7:25 LAWSUIT BY MIRANT AND CITY POSITION
Ignacio Pessoa, and Richard Baier
- 7:45 FACILITY AUDITS
Update by Richard Baier, and William Skrabak
- 8:00 MIRANT ISSUES TRACKING (Including Status of Downwash Study/Protocols)
Update by William Skrabak
- 8:20 PRESENTATION BY MIRANT STAFF

Handouts:

Proposed Legislation and Amendments
Federal Legislation /EPA Rule
PM2.5 Designation (Time line) and CFR (excerpts)
City News Release regarding Mirant Lawsuit
News Articles

14
2-8-05

City of Alexandria

MEMORANDUM

DATE: FEBRUARY 7, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER 

FROM: BERNARD CATON, LEGISLATIVE DIRECTOR 

SUBJECT: RECOMMENDATIONS AND STATUS REPORT (NO. 2) ON LEGISLATION INTRODUCED AT THE 2005 GENERAL ASSEMBLY SESSION

ISSUE: Recommendations and status report (No. 2) on legislation introduced at the 2005 General Assembly Session.

RECOMMENDATION: That City Council approve the legislative positions included in Attachment 1 (Recommended Positions on Bills of Importance to the City) as recommended by City Council's Legislative Subcommittee (Mayor Euille and Councilwoman Woodson).

DISCUSSION: The 2005 General Assembly Session began on January 12, and has reached its halfway point. Beginning on Wednesday (February 9), except for the budget, the House may consider only Senate bills and the Senate may consider only House bills. Each house is scheduled to approve its proposed amendments to the state budget on Thursday, February 10. During the last days of Session, which is scheduled to adjourn on February 26, the House and Senate will seek to reconcile any differences they have over the bills they have passed, including the budget bill.

City Package. The following actions have been taken on bills from the City's legislative package (Attachment 2 is a summary status report on these bills):

- HB 578, which seeks to grant localities the authority to allow video or audio commitment hearings for involuntary psychiatric patients who have been detained at facilities outside the City, passed the House unanimously and is now awaiting action by the Senate Courts of Justice Committee.
- HB 2546 would have required coal-fired electric generating facilities in severe non-attainment areas like Northern Virginia to either (1) establish a schedule by which they will significantly reduce by specific amounts their emissions of oxides of nitrogen, sulfur

dioxide, and particulates; or (2) cease operation by a given date in lieu of reducing their emissions. It was introduced by Delegate Van Lanningham on behalf of the City, but was carried by Delegate Moran in Delegate Van Lanningham's absence. The House Committee on Agriculture, Chesapeake and Natural Resources defeated this bill. Among the arguments that were made against it were the following:

- the federal government (EPA) should enact air quality regulations of this type, so that these regulations do not vary from state to state or region to region;
- this legislation would create air quality regulations that would affect only one region of the state, but regulations should be the same statewide;
- this legislation is aimed unfairly at only one power plant;
- the power plant that this would affect has already agreed to reduce its emissions significantly through a consent decree with EPA and the State; and
- closing down this power plant would be detrimental to Virginia coal, which is used at the plant.

Delegate Jack Reid's Clean Smokestacks legislation (HB 2742), which would have applied statewide but included less stringent emission requirements than Delegate Van Lanningham's HB 2546, was also overwhelmingly defeated by the House Committee on Agriculture, Chesapeake, and Natural Resources. It was strongly opposed by Dominion Virginia Power and other electric power companies.

- An amended version of HB 2802, which seeks to protect the confidentiality of communications between victims of sexual assault or domestic violence and their advocates, was approved by the House Courts Committee on a very close (8-7) vote. While the amended legislation does not offer the same degree of protection as the bill that was originally introduced (confidentiality protections are more limited under the revised bill), staff believes that it is an improvement over current law. This bill now awaits action by the full House.
- SB 1079 seeks to amend the Virginia Code to toll (or suspend) the statute of limitations on private rights of action under Virginia law until a local human rights commission has acted on a case. This will allow victims of unlawful discrimination to file suit raising state law claims in state court once it is clear that there is no federal jurisdiction in the matter, and avoid unknowingly missing statutory filing deadlines. This bill was approved unanimously by the Senate and now awaits action in the House.
- House Bill 2675 would authorize localities that can charge admissions taxes to limit these taxes to movie theater admissions. This bill was defeated by the House Finance Committee. Legislators opposing it believed it would make it easier for localities to enact a new tax (those like Alexandria that would rather not tax all admissions could limit the tax to movies). One Committee member also observed that a tax only on movies would have a greater effect on lower income residents, who are more likely to attend movies than

2005 SESSION

INTRODUCED

057126528

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

HOUSE BILL NO. 2546

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 13 of Title 10.1 a section numbered 10.1-1322.5, relating to air emissions reductions in severe nonattainment areas.

Patron—Van Landingham

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 13 of Title 10.1 a section numbered 10.1-1322.5 as follows:

§ 10.1-1322.5. Emissions reductions in severe nonattainment areas.

A. Beginning with 2009 calendar year emissions, any coal electric generating unit with a generating capacity greater than 25 MW that was in operation as of January 1, 1997, and is located in an area designated by the U.S. Environmental Protection Agency, pursuant to the federal Clean Air Act, as severe nonattainment for ozone as of January 1, 2004, shall meet the following emissions reduction requirements, which shall be in addition to any other permit requirements:

1. Aggregate sulfur dioxide emissions shall be reduced by no less than 75 percent from levels allowed under full implementation of the Phase II sulfur dioxide requirements under Title IV of the federal Clean Air Act, acid deposition control;

2. Oxides of nitrogen (Nox) may be emitted on an annual basis in an amount no greater than 25 percent of the unit's actual 1997 Nox emissions; and

3. Ninety-nine percent of particulate matter PM10 (10 microns) and smaller shall be removed from emissions as compared to the unit's emissions without environmental controls.

B. The emissions reductions required by this section shall not be reduced in any way by the electric generating facility's participation in any emissions trading program, except that emissions among generating units within the same generating facility may be averaged to meet this section's requirements.

C. No electric generating unit may continue to operate after January 1, 2009, without meeting the requirements of this section unless the owner or operator of that unit has by that date entered into a consent order, enforceable under state law with the Board or the Board's designee, obligating the unit to cease operating permanently by January 1, 2014.

INTRODUCED

HB2546

PROPOSED AMENDMENT TO HB 2546:

Line 24: After "3." strike

~~Ninety-nine percent of particulate matter PM10 (10 microns) and smaller shall be removed from emissions as compared to the units emissions without environmental controls:~~

and insert

Emissions of particulate matter PM10 and PM2.5 (10 microns and 2.5 microns) shall be reduced to levels equivalent to the level achieved by Best Available Control Technology (BACT) available July 1, 2005, or by BACT available at the time of installation, if a greater reduction would result.

4. Emissions of mercury and mercury compounds shall be emitted in an amount no greater than 10 percent of the unit's actual 2004 emissions.

052087488

HOUSE BILL NO. 2742

Offered January 12, 2005

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 10.1 an article numbered 3, consisting of sections numbered 10.1-1327 through 10.1-1330, relating to the reduction of smokestack emissions.

Patron—Reid

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 10.1 an article numbered 3, consisting of sections numbered 10.1-1327 through 10.1-1330 as follows:

Article 3.

Virginia Clean Smokestack Act.

§ 10.1-1327. Statement of Policy.

It is the intent of the General Assembly that the Commonwealth use all available resources and means, including negotiation, participation in interstate compacts and interagency agreements, petitions pursuant to 42 U.S.C. § 7426, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx), sulfur dioxide (SO2), and mercury comparable to those required under this article in order to improve and protect the air quality of the Commonwealth. The Commonwealth may give particular attention to those states and entities whose emissions negatively impact air quality in the Commonwealth or whose failure to achieve comparable reductions would place Virginia businesses that are undertaking efforts to improve air quality at a competitive disadvantage.

§ 10.1-1328. Definitions.

For the purposes of this article, unless the context requires a different meaning:

"BTU" means a British thermal unit of heat input.

"Electric generating system" means all solid fossil fuel fired electric generating units that generate more than 25 megawatts of electricity, are owned or controlled by the same person, and are located within the Commonwealth. An electric generating system may include solid fossil fuel fired electric generating units located in Maryland or West Virginia that have been identified as part of an electric generating system in a federal consent decree approved by the United States Environmental Protection Agency and the Commonwealth and lodged in a United States District Court as of January 1, 2005.

"Electric generating systemwide 30-day rolling average emission rate" shall be determined by dividing the total pounds of the pollutant in question emitted from each solid fossil fuel fired electric generating unit that is part of an electric generating system by the total heat input of all solid fossil fuel fired electric generating units within the electric generating system for the current operating day and the previous 29 operating days. A new electric generating systemwide 30-day rolling average emission rate shall be calculated for each new operating day. Each electric generating system-wide 30-day rolling average emission rate shall include NOx and SO2 emissions and BTUs that occur during all periods of startup and shutdown of electric generating units within an operating day, but excludes emissions of NOx and SO2 occurring during any period of malfunction.

"Electric generating unit" means a unit that combusts fossil fuel and has the capacity to generate 25 megawatts of electricity or more.

"Electric generating unit 30-day rolling average emission rate" shall be determined by dividing the total pounds of the pollutant in question emitted from the electric generating unit by the total heat input of the electric generating unit 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 SO2 and NOx emissions and BTUs that occur during all periods of startup and shutdown of the electric generating unit within an operating day, but excludes emissions of SO2 and NOx occurring during any period of malfunction.

"Emission rate" means the number of pounds of pollutant emitted per million BTUs of heat input.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Operating day" means any calendar day on which an electric generating unit combusts fossil fuel.

"PM2.5" means particles that are less than or equal to 2.5 micrometers in diameter.

INTRODUCED

HB2742

59 § 10.1-1329. Emissions Rates and Limitations

60 A. Beginning on May 1, 2011, no electric generating unit shall emit NOx in excess of a 30-day
61 rolling average emission rate of 0.3 pounds per million BTU.62 B. Beginning on May 1, 2011, no electric generating unit shall emit SO2 in excess of a 30-day
63 rolling average emission rate of 0.54 pounds per million BTU.64 C. Beginning on May 1, 2011, no electric generating system shall emit NOx in excess of an electric
65 generating system-wide 30-day rolling average emission rate of 0.15 pounds per million BTU.66 D. Beginning on May 1, 2011, no electric generating system shall emit SO2 in excess of an electric
67 generating systemwide 30-day rolling average emission rate of 0.13 pounds per million BTU.68 E. Compliance with the emission rates in subsections A through D does not alter the obligation of
69 any electric generating unit or electric generating system to comply with any other federal or state law,
70 regulation, limitation, or rule related to air quality or visibility. This section shall not be construed to
71 limit the authority of the Board to establish pollution control requirements or impose specific limitations
72 on the emissions of NOx and SO2 from an individual electric generating unit.

73 §10.1-1330. Assessment of Local Air Quality Impacts

74 Each electric generating unit that is located within 1,000 feet of an occupied dwelling or within
75 1,000 feet of a body of water shall complete a refined modeling analysis to assess the effects of
76 emissions from their facility on ambient concentrations of PM2.5, gaseous SO2, and mercury in the area
77 immediately surrounding the facility. The results shall be compared to the applicable ambient air quality
78 standards or standards of performance for toxic pollutants established by the Board and the United
79 States Environmental Protection Agency. For existing facilities, the results shall be submitted to the
80 Department on or before December 1, 2005. For all other facilities, such a study shall be completed
81 within one year after they begin operation.82 **2. That the Department of Environmental Quality shall develop for implementation a strategy to**
83 **achieve significant reductions in mercury emissions from electric generating units and other**
84 **sources. In developing this strategy, the Department shall evaluate the sources of mercury**
85 **emissions in the Commonwealth, the development of regulations by the United States**
86 **Environmental Protection Agency for the control of mercury emissions, the mercury reductions**
87 **likely to be achieved by implementation of the provisions of this Act, the effectiveness and cost of**
88 **available control technologies, the extent to which mercury has been found in the waters of the**
89 **Commonwealth and aquatic life, and the impacts of mercury pollution on human health. When**
90 **developing this strategy, there shall be no assumption that controls that will be implemented under**
91 **federal rules or co-benefits to be realized from pollution control measures installed to comply with**
92 **§ 10.1-1329 shall be adequate to achieve significant mercury reductions. The Department's**
93 **mercury reduction strategy shall be submitted to the Governor, the House Committee on**
94 **Agriculture, Chesapeake and Natural Resources, the Senate Committee on Agriculture,**
95 **Conservation and Natural Resources, and the State Air Pollution Control Board by July 1, 2006.**
96 **3. That the Department of Environmental Quality shall conduct an analysis of the issues related to**
97 **the development and implementation of standards and programs to control emissions of carbon**
98 **dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution. The**
99 **Department shall evaluate available control technologies and shall estimate the benefits and costs**
100 **of alternative strategies to reduce emissions of CO2. The Department shall report its findings and**
101 **recommendations to the House Committee on Agriculture, Chesapeake and Natural Resources and**
102 **the Senate Committee on Agriculture, Conservation and Natural Resources by July 1, 2008.**

CITY STAFF SUGGESTIONS ON REID'S BILL #HB2742

Suggested amendments to Reid's Bill:

- * Definition of "electric generating system" Strike 2nd sentence of the definition (starting line 30 to line 33). This will limit the system to VA facilities only. Otherwise it effectively allows for trading outside of VA and provides for no additional reductions of NOx to Northern Virginia facilities.
- * Line 60.....The compliance date be changed to 2010. This will make it consistent with the attainment date for ambient PM2.5 and ozone 8 hr. standard.
- * Line 62.....The compliance date be changed to 2010.
- * Line 64.....The compliance date be changed to 2010.
- * Line 66.....The compliance date be changed to 2010.
- * Alternative to #2 (mercury related provision) require the following:
By May 1, 2010, emissions of mercury and mercury compounds shall be limited to an amount no greater than This compliance date allows for coordination and implementation of a multi pollutant strategy on part of the utilities.
- * Suggest adding of particulate related provision:
By May 1, 2010, emissions of particulate matter PM10 and PM2.5 (10 microns and 2.5 microns) shall be reduced to levels equivalent to the level achieved by Best Available Control Technology (BACT) available on July 1, 2005, or by BACT available at the time of installation, if a greater reduction would result.
- * Change the 10.1 – 1330 Assessment of Local Air Quality Impacts as follows:

Each electrical generating unit facility shall complete a refined modeling analysis to assess the effects of emissions from their facility on ambient concentrations of PM2.5, PM10, gaseous SO2, NOx, mercury, and other toxic pollutants (listed under VA Air Toxics Regulations) at all locations adjacent to the facility where impacts are significant. The results shall be compared to the applicable ambient air quality standards or standards for performance for toxic pollutants established by the Board and the United States Environmental Protection Agency. If its impacts contribute to a violation of the ambient air quality standards or standards for performance, the facility will prepare and submit within the emissions reduction plan defined in § 10.1 – 1329 (G) a schedule and means for demonstrating compliance with the ambient air quality standards and standards for performance.. For existing facilities, the results shall be submitted to the Department on or before December 1, 2005. For all other facilities, such a study shall be completed within one year after they begin operation.

TOP REASONS WHY CITY SHOULD SUPPORT HOUSE BILL NO. 2546

- ▶ The HB 2546 legislation provides carrot and stick approach. The controls required will be very tough to meet and they need to be met by 2009 (i.e. within 5 years). The carrot part is where Mirant can phase out their operations by 2014 (10 years from now) and will not be required to put additional controls. This is a very important provision of the legislation and goes to the core of the City's long term and short term goals. As you may recall the City's short term goal is to have a cleanest possible plant and long term goal being phase out of the plant. This piece of legislation is completely consistent with City's short term and long term goals.

- ▶ Selection of Base Year

Below is the table that lists annual emissions from the Mirant Power Plant for the years 1997, and the more recent 2002 and 2003.

EMISSIONS COMPARISON FOR THE BASE YEAR/LEGISLATION									
Pollutant	1997	1998	1999	2000	2001	2002	2003	2009, HB 2546, Van Landingham	2011, HB 2742 Reid
NOx (Tons)	4998	5920	6892	5693	5917	5725	5749	1250 (75% reduction) ----- This compares to a rate of 0.11 lb/mmBtu plant basis -----	----- Establishes a rate of 0.30 lb/mmbtu per unit basis ----- Establishes a rate of 0.15 Lb/mmbtu systemwide

EMISSIONS COMPARISON FOR THE BASE YEAR/LEGISLATION									
SO2 (Tons)	11816	15026	17627	13947	15162	16120	15140	2954 (75% reduction)	
								----- This compares to a rate of 0.26 lb/mmbtu on plant basis -----	----- Establishes a rate of 0.54 lb/mmbtu per unit basis ----- Establishes rate of 0.13 Lb/mmbtu systemwide

The proposed legislation requires a 75% reduction in the annual NOx and SO2 emissions. A review of the table above will indicate that in order to have the legislation be most restrictive, selection of year 1997 is the most logical choice.

- ▶ Further, the legislation requires that power companies must reduce their emissions year round, not just during ozone season, as required under federal regulations. For example, the proposed limits will result in the emission rate of 0.11 lb/mmbtu of Nox which is far lower than any called for by any federal or state legislation. The SIP call requires 0.15 lb/mmbtu summertime emission limit on air shed basis. The limit proposed will without a doubt will be a tough one for Mirant to meet.
- ▶ The legislation requires control of SO2 in addition to NOx. SO2 is the main cause of PM2.5 pollution (secondary PM2.5). The legislation will drastically reduce the amount of SO2 emissions. Again, you will see that choice of 1997 for SO2 is the most restrictive.
- ▶ This legislation does not allow for any trading, systemwide or otherwise. This is much more restrictive than either the consent decree or any existing federal or state regs.
- ▶ The City staff had originally recommended that language be inserted in the legislation regarding BACT for PM10 and PM 2.5. The state VADEQ had apparently marked up the legislation in its existing form regarding provisions related to 99% removal requirement for PM 10 and smaller particulates.

Act / Rule	Status	Applicability	Estimated Emission Reductions [§]
Clean Power Act	Introduced in Congress by Sens. Jeffords, Collins and Lieberman in Jan. 2005 (S. 150)	<p>All power generating units greater than 15 MW Applies to SO₂, NO_x, CO₂ and Mercury Cap-and-trade for SO₂, NO_x and CO₂</p> <p>Most allowances for cap-and-trade program will be given to electricity consumers, i.e., households. Next largest allocation will be to renewable energy and cleaner energy sources.</p>	<p>SO₂ – 81%* NO_x – 71%* CO₂ – 21%* Mercury – 90%**</p> <p>* over 2000 levels ** over 1999 levels</p>
Clear Skies Act	Announced by President Bush in Feb. 2002 Introduced in Congress in Jul. 2002 Re-introduced in Congress in Feb. 2003 Re-introduced in Congress in Jan. 2005 (S. 131)	<p>All power generating units greater than 25 MW Does not apply to cogeneration units Cap-and-trade program Applies to SO₂, NO_x and Mercury</p> <p>Will replace or amend New Source Review, Utility MACT, Acid Rain, and NO_x SIP Call rules.</p>	<p>SO₂ – 73%* NO_x – 67%* Mercury – 69%*</p> <p>* over 2000 levels</p>
Clean Air Interstate Rule	Proposed by EPA in Jan. 2004 Supplemental proposal in May 2004 Public hearing held in Alexandria on June 3, 2004	<p>All SO₂ and NO_x Sources Cap-and-trade program for power plants States can control sources other than power plants</p>	<p>SO₂ – 70%* NO_x – 65%*</p> <p>* over current levels</p>
Utility Mercury Reductions Rule	Proposed by EPA in Jan. 2004 Supplemental proposal in Feb. 2004 Internal EPA document (Feb. 2005) suggests that further analysis is necessary before this rule can be finalized.	<p>All coal-fired power plants Two proposed alternatives for Mercury reductions</p> <ul style="list-style-type: none"> - Maximum Achievable Control Technology (MACT) - Cap-and-trade program (two phases) 	<p>MACT – 30%*[†] Cap-and-trade – 70%*</p> <p>* over current levels [†] EPA internal document (Feb. 2005) disputes the basis for the estimated 30% reduction from MACT.</p>

[§] Reductions in secondary PM-2.5 formation can also be expected based on reductions of SO₂ and NO_x emissions.



Federal Register

Wednesday,
January 5, 2005

Part II

Environmental Protection Agency

**40 CFR Part 81
Air Quality Designations and
Classifications for the Fine Particles
(PM_{2.5}) National Ambient Air Quality
Standards; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[OAR-2003-0061; FRL-7856-1]

RIN-2060-AM04

Air Quality Designations and Classifications for the Fine Particles (PM_{2.5}) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule sets forth the initial air quality designations and classifications for all areas in the United States, including Indian country, for the fine particles (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The EPA is issuing this rule so that citizens will know whether the air quality where they live and work is healthful or unhealthful. Health studies have shown significant associations between exposure to PM_{2.5} and premature death from heart or lung disease. Fine particles can also aggravate heart and lung diseases and have been linked to effects such as cardiovascular symptoms, cardiac arrhythmias, heart attacks, respiratory symptoms, asthma attacks, and bronchitis. These effects can result in increased hospital emissions, emergency room visits, absences from school or work, and restricted activity days.

Individuals that may be particularly sensitive to PM_{2.5} exposure include people with heart or lung disease, older adults, and children. This rule establishes the boundaries for areas designated as nonattainment, unclassifiable, or attainment/unclassifiable. This rule does not establish or address State and Tribal obligations for planning and control requirements that apply to

nonattainment areas for the PM_{2.5} standards. The EPA will publish a separate rule which will set forth the planning and control requirements that apply to nonattainment areas for the PM_{2.5} standards.

DATES: The effective date of this rule is April 5, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID NO. OAR-2003-0061. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: <http://www.epa.gov/oar/oaqps/particles/designations/index.htm> and on the Tribal Web site at: [http://www/epa.gov/air/tribal](http://www.epa.gov/air/tribal).

FOR FURTHER INFORMATION CONTACT: Designations: Mr. Rich Damberg, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504-02, Research Triangle Park, NC 27711, phone number (919) 541-5592 or by e-mail at: damberg.rich@epa.gov.

Designations and Part 81 Code of Federal Regulations: Dr. Larry D. Wallace, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504-02, Research Triangle Park, NC 27711, phone number (919) 541-0906 or by e-mail at: wallace.larry@epa.gov. Technical Issues Related to Designations: Mr. Thomas Rosendahl, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504-02, Research Triangle Park, NC 27711, phone number (919) 541-5314 or by e-mail at: rosendahl.tom@epa.gov.

PM_{2.5} Air Quality Data Issues: Mr. Mark Schmidt, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304-01, Research Triangle Park, NC 27711, phone number (919) 541-5314 or by e-mail at: schmidt.mark@epa.gov.

Regional Office Contacts:

Region I—Alison Simcox (617) 918-1684,
Region II—Kenneth Fradkin (212) 637-3702,
Region III—Denny Lohman (215) 814-2191,
Region IV—Steve Scofield (404) 562-9034,
Region V—John Summerhays (312) 886-6067,
Region VI—Joe Kordzi (214) 665-7186,
Region VII—Amy Algoe-Eakin (913) 551-7942,
Region VIII—Libby Faulk (303) 312-6083,
Region IX—Eleanor Kaplan (415) 744-1286,
Region X—Keith Rose (206) 553-1949.

SUPPLEMENTARY INFORMATION: The public may inspect the rule and the technical support information at the following locations:

Regional offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, (617) 918-1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4249.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187, (215) 814-2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562-9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886-4447.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Donna Ascenzi, Acting Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-2725.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101-2907, (913) 551-7606.	Iowa, Kansas, Missouri, and Nebraska.

Regional offices	States
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th, Suite 300, Denver, CO 80202, (303) 312-6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Steven Barhite, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3980.	Arizona, California, Guam, Hawaii, and Nevada.
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-6985.	Alaska, Idaho, Oregon, and Washington.

Table of Contents

The following is an outline of the Preamble.

- I. Preamble Glossary of Terms and Acronyms
- II. What is the Purpose of this Document?
- III. What are Fine Particles?
- IV. What are the Health Concerns Addressed by the PM_{2.5} Standard?
- V. What is the Chronology of Events Leading Up to This Rule?
- VI. What are the Clean Air Act (CAA) Requirements for Air Quality Designations and What Action has EPA Taken to Meet These Requirements?
- VII. What Guidance Did EPA Issue and How Did EPA Apply the Statutory Requirements and Applicable Guidance To Determine Boundaries for the PM_{2.5} NAAQS?
- VIII. Has EPA Used 2004 Air Quality Data?
- IX. How Do Designations Affect Indian Country?
- X. Where Can I Find Information Forming the Basis for This Rule and Exchanges Between EPA, States, and Tribes Related to This Rule?
- XI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act (NTTAA)
 - J. Congressional Review Act
 - K. Judicial Review

I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

- CAA Clean Air Act
 CFR Code of Federal Regulations
 CMAQ Congestion Mitigation Air Quality
 CMSA Consolidated Metropolitan Statistical Area
 D.C. District of Columbia
 EPA Environmental Protection Agency
 FR Federal Register
 MPO Metropolitan Planning Organizations

- MSA Metropolitan Statistical Area
 NAAQS National Ambient Air Quality Standard
 NO_x Nitrogen Oxides
 NOA Notice of Availability
 NPR Notice of Proposed Rulemaking
 NSR New Source Review
 OMB Office of Management and Budget
 RTC Response to Comment
 SIP State Implementation Plan
 TAR Tribal Authority Rule
 TEA-21 Transportation Equity Act for the 21st Century
 TPY Tons Per Year
 TSD Technical Support Document
 U.S. United States
 VOC Volatile Organic Compounds

II. What Is the Purpose of This Document?

The purpose of this document is to announce and promulgate designations and boundaries for areas of the country with respect to the PM_{2.5} NAAQS in accordance with the requirements of the CAA. The list of areas in each State, the boundaries of each area, and the designation of each area, appear in the table at the end of this final rule. This rule was signed by the EPA Administrator, Mike Leavitt, on December 17, 2004. Several steps were taken to announce that this rule is available. We posted the notice on several EPA Web sites and provided a copy of the rule to States and Tribes.

III. What Are Fine Particles?

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include: sulfate (SO₄); nitrate (NO₃); ammonium (NH₄); elemental carbon; a great variety of organic compounds; water; and inorganic material (including metals, dust, sea salt, and other trace elements), which often is categorized as "crustal" material. Airborne particles with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter; 2.5 micrometers is less than about one-thirtieth the thickness of a human hair) are considered to be "fine particles," and are also known as PM_{2.5}. "Primary" particles are emitted directly into the air as a solid or liquid particle

(e.g., elemental carbon and organic particles from diesel engines or burning activities). "Secondary" particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical transformations of gaseous precursors such as sulfur dioxide (SO₂) and oxides of nitrogen (NO_x).

IV. What Are the Health Concerns Addressed by the PM_{2.5} Standard?

Epidemiological studies have shown a significant association between elevated PM_{2.5} levels and a number of serious health effects, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.

More information on the health effects of PM_{2.5} can be found at the following Web site: http://www.epa.gov/ttn/naaqs/pm/pm25_index.html.

V. What Is the Chronology of Events Leading Up to This Rule?

This section summarizes the relevant activities leading up to today's action, including promulgation of the PM_{2.5} NAAQS and litigation challenging that standard. The CAA establishes a process for air quality management through the establishment and implementation of the NAAQS. After the promulgation of a new or revised NAAQS, EPA is required to designate areas, pursuant to section 107(d)(1) of the CAA, as attainment, nonattainment, or unclassifiable.

On July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for PM_{2.5}, using PM_{2.5} as the indicator for the pollutant. The EPA established health-based (primary) annual and 24-hour standards for PM_{2.5} (62 FR 38652). The annual standard is a level of 15 micrograms per cubic meter, based on a 3-year average of annual mean PM_{2.5} concentrations. The

24-hour standard is a level 65 micrograms per cubic meter, based on a 3-year average of the 98th percentile of 24-hour concentrations. The EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The PM_{2.5} NAAQS were challenged by numerous litigants and in May 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision remanding, but not vacating, the standards. *American Trucking Assoc. v. EPA*, 175 F.3d 1027, 1047–48, *on rehearing* 195 F.3d 4 (D.C. Cir., 1999). The EPA sought review of two aspects of that decision in the U.S. Supreme Court. The Supreme Court upheld the PM_{2.5} standards. *EPA v. American Trucking Assoc.*, 531 U.S. 457 (2001). In March 2002, the D.C. Circuit rejected all remaining challenges to the PM_{2.5} standards, *American Trucking Assoc. v. EPA*, 283 F.3d 355 (D.C. Cir., 2002). Since final resolution of the litigation over the PM_{2.5} NAAQS, EPA has been acting to implement the standards.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. In June 1998, Congress adopted the Transportation Equity Act for the 21st Century (TEA–21). Section 6102(c)(1)(d) of TEA–21 amended section 107 of the CAA by extending the time period for EPA to initiate the designations process for the PM_{2.5} NAAQS until 3 calendar years of air quality data, measured at Federal Reference Method monitors, were gathered. The EPA and State air quality agencies initiated the monitoring process for the PM_{2.5} NAAQS in 1999, and deployed all air quality monitors by January 2001. The EPA is designating areas across the country for the PM_{2.5} NAAQS based upon air quality monitoring data from these monitors for calendar years 2001–2003.

VI. What Are the Clean Air Act (CAA) Requirements for Air Quality Designations and What Action has EPA Taken to Meet These Requirements?

This section summarizes the provisions of section 107(d)(1) of the CAA which governs the process that States and EPA must follow in order to recommend and promulgate designations. Following the promulgation of a new or revised standard, each State Governor or Tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for areas, to EPA. By no later than 120 days prior to promulgating designations,

EPA is required to notify States or Tribes of any intended modifications to their boundaries that EPA deems necessary. States and Tribes then have an opportunity to provide a demonstration as to why the proposed modification indicated by EPA is inappropriate. Whether or not a State or Tribe provides a recommendation, EPA must promulgate the designation that it deems appropriate.

In April 2003, EPA requested that States and Tribes submit their designation recommendations and supporting documentation to EPA by February 15, 2004. After receiving recommendations from the States and Tribes and carefully reviewing and evaluating each recommendation, EPA on June 28 and 29, 2004, provided a response to each State and Tribe indicating whether or not EPA intended to make modifications to the initial recommendations, and explaining EPA's reasons for making any such modifications. The EPA provided an opportunity for States and Tribes to respond to any proposed modifications to their initial boundary recommendations until September 1, 2004. In response to our June 28 and 29, 2004 letters, EPA received letters from many States and Tribes suggesting changes to EPA's modifications and providing additional information. The EPA evaluated each supplemental letter, and all of the timely technical support information provided, before arriving at the final designation decisions reflected in today's action. Some of the designations reflect our modifications to the State and Tribal recommendations. We have placed these State and Tribal letters, and our responses to the issues contained in them, in the EPA docket for this action.

Tribal designation activities are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes EPA to treat eligible Indian Tribes in the same manner as States. Pursuant to section 301(d)(2), we promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999. 63 FR 7254, codified at 40 CFR 49 (1999). This rule specifies those provisions of the CAA for which it is appropriate to treat Tribes as States. Under the TAR, Tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which Tribes may request from EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by EPA for treatment of

Tribes in the same manner as States. As authorized by the TAR, Tribes may request an opportunity to submit designation recommendations to us. In cases where Tribes do not make their own recommendations, EPA, in consultation with the Tribes, will promulgate the designation that EPA deems appropriate on their behalf. All Tribes were invited to submit recommendations concerning designations for PM_{2.5}.

The EPA worked with the Tribes that requested an opportunity to submit designation recommendations. Eligible Tribes were provided an opportunity to submit their own recommendations and supporting documentation. The EPA reviewed the recommendations made by Tribes and, in consultation with the Tribes, made modifications as deemed necessary and appropriate. Under the TAR, Tribes generally are not subject to the same submission schedules imposed by the CAA on States.

VII. What Guidance Did EPA Issue and How Did EPA Apply the Statutory Requirements and Applicable Guidance To Determine Boundaries for the PM_{2.5} NAAQS?

Section 107(d)(1)(A)(I) of the CAA defines a nonattainment area as an area that is violating an ambient standard or is contributing to air quality in a nearby area that is violating the standard. If an area meets either prong of this definition, then EPA is obligated to designate the area as nonattainment. Section 107(d)(1)(A)(iii) provides that any area which EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated unclassifiable.

In April 2003, EPA issued designation guidance concerning how to determine the boundaries for PM_{2.5} nonattainment areas.¹ The guidance provided that EPA would use the 3 most recent calendar years of monitoring data for PM_{2.5} to determine each county's designation. For today's PM_{2.5} designations, we are basing our decision on air quality monitoring data from calendar years 2001–2003. When evaluating individual areas, we started with the premise that data recorded by a PM_{2.5} monitor in most cases represents air quality throughout the area in which it is located. In addition, we considered the county boundary as the basic jurisdictional boundary for determining the extent of the area reflected by the PM_{2.5} monitor. As a result, if a PM_{2.5}

¹ See "Designations for the Fine Particle National Ambient Air Quality Standards." memorandum to Regional Administrators, Regions I–X, from Jeffrey R. Holmstead, Assistant Administrator, OAR, dated April 1, 2003.

monitor was violating the standard based on the 2001–2003 data, at a minimum we designated the entire county where that monitor is located as nonattainment. We made exceptions to this approach in a few very large western counties where a significant geographic feature such as a mountain range divided a county, resulting in different air quality in different parts of the county. In such cases, we considered designations of partial counties to be appropriate. After identifying the counties with violating monitors, we then proceeded to identify nearby counties that were potentially contributing to the violation(s) at the monitors.

In assessing whether nearby areas contributed to a violation, EPA started with the Consolidated Metropolitan Statistical Area (CMSA) and the Metropolitan Statistical Area (MSA) as the presumptive boundaries for PM_{2.5} nonattainment areas. A metropolitan area, as defined by the Office of Management and Budget (OMB) in 1999, consisted of a single MSA in some cases, or a CMSA in other cases. These metropolitan areas provide boundaries for the geographic extent of urban areas. We suggested the use of metropolitan area boundaries as the presumptive boundaries for urban nonattainment areas for air quality purposes, based upon evidence that violations of the PM_{2.5} air quality standards generally include a significant urban-scale contribution as well as a regional contribution. The actual size of each nonattainment area may be larger or smaller than the presumptive boundaries, depending upon the application of the nine factors contained in the April 2003 designations guidance for PM_{2.5}.

In June 2003, OMB released a new list of metropolitan area descriptions. Because we had already issued the April 2003 designations guidance which recommended use of the 1999 OMB metropolitan definitions as a starting point, and because States and Tribes were already actively using this guidance in their planning efforts, we decided that it would be disruptive to recommend the use of the 2003 OMB definitions as the presumptive boundaries. Instead, we issued a second guidance memorandum in February 2004, which indicated that we would continue to consider the 1999 MSA boundaries as the presumptive boundaries, but that States should nevertheless take into consideration the 2003 OMB revised MSA boundaries. We particularly urged consideration of the 2003 MSA boundaries for those counties that OMB added to an existing

metropolitan area due to growth, or because of a high degree of social and economic integration with the primary urban area.²

The April 2003 guidance memorandum described nine factors that EPA would take into consideration in determining appropriate nonattainment area boundaries, whether larger or smaller than the presumptive boundaries: (1) Emissions and air quality in adjacent areas (including adjacent CMSAs and MSAs), (2) air quality in potentially included versus excluded areas, (3) population density and degree of urbanization including commercial development in included versus excluded areas, (4) traffic and commuting patterns, (5) expected growth (including extent, pattern and rate of growth), (6) meteorology (weather/transport patterns), (7) geography/topography (*e.g.*, mountain ranges or other air basin boundaries), (8) jurisdictional boundaries (*e.g.*, counties, air districts, Reservations, etc.), and (9) level of existing controls on emission sources.

In assessing emissions under the first factor, we developed a “weighted emissions score” that valued the effect of direct emissions of PM_{2.5} and its precursors that contribute to “urban excess” PM_{2.5} concentrations at monitor sites. The “urban excess” concentrations for each PM_{2.5} component (direct or precursor emissions) are calculated from two PM_{2.5} speciation monitors by subtracting the regional concentration from the urban concentration for each component. The methodology we used to calculate urban excess concentration and the weighted emission score is explained in more detail in the technical support document (TSD).

We used this metric to compare the relative emissions contribution of different counties in and around each metropolitan area. Using this approach, we were able to take into consideration, in a single metric, the county-level emissions of carbonaceous particles, inorganic particles, SO₂, and NO_x (all of which contribute to PM_{2.5} formation) in the vicinity of each violating monitor. By comparing weighted emissions scores across counties in a metropolitan area, EPA was able to identify those counties having the highest estimated emissions contribution to the local nonattainment problem. In addition, by examining the data from the urban speciation monitors, we could draw

some conclusions concerning the likely sources of emissions contributing to the violation. Knowing the likely sources of the emissions, we could better evaluate which of the nearby counties had emissions likely to be contributing to the ambient concentrations at the violating monitor.

Evaluation of the weighted emissions score and speciation data was an important element in our nine factor analysis, and we believe that it provided a reasonable tool for evaluating the relative contribution of nearby areas to violations at a monitor, given the variety of precursors and sources that participate in the formation of PM_{2.5}. Further discussion of the weighted emissions score, and area-specific explanations of its application, appear in the TSD.

In some cases, considering the factors and additional information provided by the State, we determined that only part of a nearby county (*e.g.*, the part of the county that contained the significant sources of contributing emissions) should be considered as contributing to the violation at the monitor, and therefore included only a portion of that adjacent county in the nonattainment area. In other cases, we determined that the emissions from an identifiable large power plant in a county were contributing to the violations in a nearby area. In these cases, we concluded that it was appropriate to designate only the portion of the county where the source is located, even if that portion is not contiguous with the remainder of the nonattainment area. We adopted this approach where we determined, following the nine factor analysis, that it would be inappropriate to include other portions of a county, merely because those portions lay between the large stationary source and the remainder of the designated nonattainment area. We selected the boundaries for these noncontiguous portions of nonattainment areas by relying on legally recognized governmental boundaries (*e.g.*, townships, tax districts, or census blocks) in which the source is located.

We believe that the individual facts and circumstances of each area must be considered in determining whether to include a county as contributing to a particular nonattainment problem. Thus, our guidance does not establish bright lines or cut-points for how a particular factor is applied. For example, the guidance does not identify a set amount of a pollutant, or a specific level of commuting between counties, that would automatically require a county to be included in a nonattainment area as a contributing

² See “Additional Guidance on Defining Area Boundaries for PM–2.5 Designations,” memorandum to Air Division Directors, Regions I–X, from Lydia N. Wegman, Director, AQSSD, dated February 13, 2004.

county. We analyzed the information provided by each State or Tribe in its recommendation letter, subsequently submitted information, and any other pertinent information available to EPA, in order to determine whether a county should be designated nonattainment. We evaluated each State's or Tribe's designation recommendation in light of the nine factors, bringing to bear our best technical and policy judgement. If the result of the evaluation showed that a county, whether inside or outside of the CMSA or MSA contributes to the violation in a nearby area with a violating monitor, we designated the area as nonattainment.

In a small number of areas, EPA concluded that there was insufficient information to designate a given area as either nonattainment or attainment/unclassifiable. In these instances, we have designated the area as unclassifiable. In each instance, these areas had violating monitors for the years 2000–2002, but incomplete data or other data issues for the years 2001–2003. Further explanation of the unclassifiable designations may be found in the TSD for this action.

The EPA did not rely on planned or potential regional PM_{2.5} reduction strategies in making decisions regarding nonattainment designations, even if those strategies predict that an area may attain the standard in the future. We recognize that some areas with a violating monitor may be projected to come into attainment in the future without additional local emission controls because of State and/or national programs that will reduce transported emissions. However, the CAA requires EPA to make nonattainment designations based on current data. While we cannot consider projected future attainment in determining current designations, we intend to expedite the redesignation of areas to attainment once they monitor clean air quality. We also intend to apply our policy which streamlines the planning process for nonattainment areas that are meeting the NAAQS but are not yet redesignated to attainment.³

Today's designation action is a final rule which establishes designations for all areas of the country for the PM_{2.5} NAAQS. In this action, we have added regulatory text to provide for the amendment of 40 CFR part 81 to identify the designation of areas across the country for the PM_{2.5} standard.

³ See "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" memorandum to Air Division Directors, Regions I–X from Steve Page, Director, Office of Air Quality Planning and Standards, December 14, 2004.

VIII. Has EPA Used 2004 Air Quality Data?

The final PM_{2.5} designations announced in today's action are based upon air quality data for calendar years 2001 through 2003. Over the course of the designations process, a number of States have provided comments to EPA suggesting that the agency should delay designations in order to permit consideration of additional air quality data from 2004 as a part of the designation decision. As discussed above, EPA must by law make the designations by December 31, 2004. This statutory deadline and the practical difficulties of obtaining complete,⁴ quality assured, certified data for calendar year 2004 by December 31, 2004, have precluded EPA from using 2004 data for today's action. Under normal circumstances, we would not expect such data to be available for some time following the end of the calendar year, and under the applicable regulations States would not be required to have submitted such data until April 1, 2005, and would not be required to have certified such data until July 1, 2005. However, because we are promulgating the designations so near the end of calendar year 2004, and because complete, quality assured, certified 2004 data may become available for some areas quickly, we are interested in providing a process by which we could utilize 2004 data where possible in the designation process.

We have provided that the final PM_{2.5} designations announced in today's action will be effective on the date 90 days following the date of publication. If any State submits complete, quality assured, certified 2004 data to EPA by February 22, 2005, that suggest that a change of designation status is appropriate for any area within that State, and we agree that a change of designation status is appropriate, then we will withdraw the designation announced in today's action for such area and issue another designation that reflects the inclusion of 2004 data. We emphasize that we will conduct this process only for those States that submit the necessary complete, quality assured, certified data by the deadline and in those instances where we can complete the analysis and effect the change of designation status before the original effective date established by today's final action.

⁴ Fine particle monitoring data is to be determined as "complete" according to data handling regulations for the PM_{2.5} standards in 40 CFR Part 50, Appendix N (62 FR 138, July 18, 1997).

If inclusion of 2004 data causes an area to change from nonattainment to attainment, EPA will change the designation if every county in the area is neither monitoring a violation of the standards nor contributing to a violation of the standards in another nearby area. If inclusion of 2004 data results in nonattainment in an area that was designated attainment, we will evaluate the reasons for the violation in the area and determine the appropriate course of action, which could include redesignation of the area to nonattainment. Also, EPA commits to evaluate 2004 data for unclassifiable areas when it receives complete, quality assured, certified data from the State, which is due no later than July 2005. At that time, EPA will determine whether a change of designation for an unclassifiable area is appropriate.

IX. How Do Designations Affect Indian Country?

All counties, partial counties or Air Quality Control Regions listed in the table at the end of this document are designated as indicated, and include Indian Country geographically located within such areas, except as otherwise indicated in the table.

As mentioned earlier in this document, EPA's guidance for determining nonattainment area boundaries presumes that the CMSA or MSA monitor forms the presumptive boundary of the nonattainment areas but that the size of the area can be larger or smaller depending on contribution to the violation from nearby areas and other air quality-related technical factors. In general, and consistent with relevant air quality information, EPA intends to include Indian country encompassed within the presumptive CMSA or MSA boundaries as within the boundaries of the area for designation purposes, in order to protect public health and welfare. The EPA anticipates that in most cases, relevant air quality information will indicate that areas of Indian country located within CMSAs or MSAs should have the same designation as the surrounding area. However, based on the nine factors outlined in our guidance, there may be instances where a different designation is appropriate.

A State recommendation for a designation of an area that surrounds Indian country does not indicate the designation for Indian country. However, the conditions that support a State's designation recommendation, such as air quality data at the location of the sources, may indicate the likelihood that similar conditions exists for the Indian country located in that

area. States generally have neither the responsibility nor the authority for planning and regulatory activities under the CAA in Indian country.

X. Where Can I Find Information Forming the Basis for This Rule and Exchanges Between EPA, States, and Tribes Related to This Rule?

Information providing the basis for today's action and related decisions are provided in the TSD. The TSD, applicable EPA guidance memoranda, copies of correspondence regarding this process between EPA and the States, Tribes, and other parties, and EPA's responses to comments, are available for review at the EPA Docket Center listed above in the addresses section of this document and on our designation Web site at <http://www.epa.gov/oar/oaqps/particles/designations/index.htm>. State specific information is available at the EPA Regional Offices.

XI. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, EPA assigns designations to areas as required.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the

above factors apply. As such, this final rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1. The present final rule does not establish any new information collection apart from that required by law. Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the United States Small Business Administration (SBA) size standards (*See* 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3)

a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominate in its field.

The rule designating nonattainment areas for the PM_{2.5} NAAQS is not subject to RFA because it was not subject to notice and comment rulemaking requirements. *See* CAA section 107(d)(2)(B).

After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandate" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any 1 year by either State, local, or

Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the PM_{2.5} NAAQS (62 FR 38652; July 18, 1997), therefore, no UMRA analysis is needed. This rule establishes the application of the PM_{2.5} standard and the designation for each area of the country for the PM_{2.5} NAAQS. The CAA requires States to develop plans, including control measures, based on their designations and classifications.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to State Implementation Plans (SIPs). These rules apply to Federal agencies and Metropolitan Planning Organizations (MPOs) making conformity determinations. The EPA concludes that such conformity determinations will not cost \$100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate \$100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of \$100 million or more in the aggregate in any 1 year.

Nonetheless, EPA carried out consultation with government entities affected by this rule, including States, Tribal governments, and local air pollution control agencies.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA

establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the designation and classification of areas as attainment and nonattainment for the PM_{2.5} air quality standard. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The TAR provides Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the PM_{2.5} NAAQS, but it leaves to the discretion of the Tribe the decision of whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the PM_{2.5} NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA did outreach to Tribal leaders and environmental staff regarding the designations process. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designations and implementation process for the NAAQS, including the PM_{2.5} NAAQS. These discussions informed EPA about key

Tribal concerns regarding designations as the rule was under development and gave Tribes the opportunity to express concerns about designations to EPA. Furthermore, EPA sent individualized letters to all federally recognized Tribes about EPA's intention to designate areas for the PM_{2.5} standard and gave Tribal leaders the opportunity for consultation.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the PM_{2.5} NAAQS on children. The results of this risk assessment are contained in the NAAQS for PM_{2.5}, Final Rule (July 18, 1997, 62 FR 38652).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and the Implementation Framework for the PM_{2.5} NAAQS, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

I. National Technology Transfer Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 5, 2005.

K. Judicial Review

Section 307 (b) (1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or

effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule designating areas for the PM_{2.5} NAAQS is "nationally applicable" within the meaning of section 307(b)(1). This rule establishes designations for all areas of the United States for the PM_{2.5} NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated attainment/unclassifiable), EPA used a set of nine technical factors that it applied consistently across the United States.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 17, 2004.

Michael O. Leavitt,
EPA Administrator.

■ For the reasons set forth in the preamble, 40 CFR Part 81, Subpart C is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.300 is amended by revising paragraph (a) to read as follows:

§ 81.300 Scope.

(a) Attainment status designations as approved or designated by the Environmental Protection Agency (EPA) pursuant to section 107 of the CAA are listed in this subpart. Area designations are subject to revision whenever sufficient data becomes available to warrant a redesignation. Both the State and EPA can initiate changes to these designations, but any State redesignation must be submitted to EPA for concurrence. The EPA has replaced the national ambient air quality standards for particulate matter measured as total suspended particulate with standards measured as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). Accordingly, area designations for PM-10 are included in the lists in subpart C of this part. However, the TSP area designations will also remain in effect until the Administrator determines that the designations are no longer necessary for implementing the maximum allowable increases in concentrations of particulate matter pursuant to section 163(b) of the CAA, as explained in paragraph (b) of this section. The EPA has also added national ambient air quality standards for fine particulate matter measured as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). Accordingly, area designations for PM_{2.5} are included in the lists in subpart C of this part.

* * * * *

■ 2a. In § 81.301, the table entitled "Alabama—PM_{2.5}" is added to the end of the section to read as follows:

§ 81.301 Alabama.

* * * * *

UTAH.—PM2.5—Continued

Designated area	Designation ^a	
	Date ¹	Type
San Juan County	Unclassifiable/Attainment.
Sanpete County	Unclassifiable/Attainment.
Sevier County	Unclassifiable/Attainment.
Summit County	Unclassifiable/Attainment.
Uintah County	Unclassifiable/Attainment.
Wasatch County	Unclassifiable/Attainment.
Washington County	Unclassifiable/Attainment.
Wayne County	Unclassifiable/Attainment.

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ This date is 90 days after January 5, 2005, unless otherwise noted.

■ 47. In § 81.346, the table entitled **§ 81.346 Vermont.**
 "Vermont.—PM2.5" is added to the end * * * * *
 of the section to read as follows:

VERMONT.—PM2.5

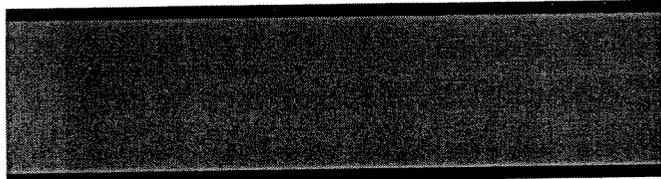
Designated area	Designation ^a	
	Date ¹	Type
Statewide:		
Addison County	Unclassifiable/Attainment.
Bennington County	Unclassifiable/Attainment.
Caledonia County	Unclassifiable/Attainment.
Chittenden County	Unclassifiable/Attainment.
Essex County	Unclassifiable/Attainment.
Franklin County	Unclassifiable/Attainment.
Grand Isle County	Unclassifiable/Attainment.
Lamoille County	Unclassifiable/Attainment.
Orange County	Unclassifiable/Attainment.
Orleans County	Unclassifiable/Attainment.
Rutland County	Unclassifiable/Attainment.
Washington County	Unclassifiable/Attainment.
Windham County	Unclassifiable/Attainment.
Windsor County	Unclassifiable/Attainment.

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ This date is 90 days after January 5, 2005, unless otherwise noted.

■ 48. In § 81.347, the table entitled **§ 81.347 Virginia.**
 "Virginia.—PM2.5" is added to the end * * * * *
 of the section to read as follows:

VIRGINIA.—PM2.5

Designated area	Designation ^a	
	Date ¹	Type
Washington, DC-MD-VA:		
Arlington County	Nonattainment.
Fairfax County	Nonattainment.
Loudoun County	Nonattainment.
Prince William County	Nonattainment.
Alexandria City	Nonattainment.
Fairfax City	Nonattainment.
Falls Church City	Nonattainment.
Manassas City	Nonattainment.
Manassas Park City	Nonattainment.
AQCR 207 Eastern Tennessee-SW Virginia Interstate (remainder of):		
Bland County	Unclassifiable/Attainment.
Buchanan County	Unclassifiable/Attainment.
Carroll County	Unclassifiable/Attainment.
Dickenson County	Unclassifiable/Attainment.
Grayson County	Unclassifiable/Attainment.
Lee County	Unclassifiable/Attainment.



Office of the City Manager

City of Alexandria, Virginia

Contact: Barbara J. Gordon, Public Information Officer, 703.838.4300



For Immediate Release

January 26, 2005

PIO 027-05/bg

City of Alexandria Maintains Position to Close Mirant Power Plant

Officials representing the Mirant Potomac River Generating Station have filed an action in the Alexandria Circuit Court challenging the Alexandria City Council's adoption of an ordinance in December, 2004, reclassifying the power plant as a nonconforming use, and revoking the special use permits under which the plant operates. The City's zoning actions would require the plant to close within seven years, unless a longer period were to be approved by the Council, or to modernize and obtain City approval to continue operating.

"We are prepared vigorously to defend the City's position in this case," said Alexandria Mayor William Euille.

Mirant alleges that the City's actions violate state zoning and environmental laws, and amount to an unconstitutional "taking" of Mirant's property. The suit seeks to have the City's actions declared invalid, to enjoin the City from enforcing the actions, and an award of "damages" for the taking of Mirant's property.

The Mirant Potomac River Generating Station, located on N. Royal Street, is one of the largest industrial facilities in Alexandria. It is a 50-year-old coal fired electric generating plant with a generating capacity of 482 megawatts, and primarily serves electricity consumed outside Virginia. The City Council and the community have expressed continuing concern about the impact on nearby residents of air pollutants and toxic materials known to be emitted by coal fired power plants of this age and design.

Prior to the zoning actions taken by City Council, the City retained an air quality expert to assist staff from the City's Department of Transportation and Environmental Services, and the City Attorney's Office and outside counsel, to review and evaluate the plant's impacts on City residents, and to represent the City's interests in the ongoing state and federal regulatory and enforcement proceedings against the plant, and in Mirant's pending bankruptcy reorganization. The City Council also authorized the City Manager to convene a "working group" of concerned and knowledgeable citizens to monitor the City's efforts. Vice Mayor Del Pepper and Councilman Paul Smedberg serve as Council's representatives on the working group.

#

Mirant Suit Targets Alexandria

Company Wants To Keep Plant Open

By JERRY MARKON
Washington Post Staff Writer

The dispute between Alexandria and the Mirant power plant has reached the courts, with Mirant filing a lawsuit against

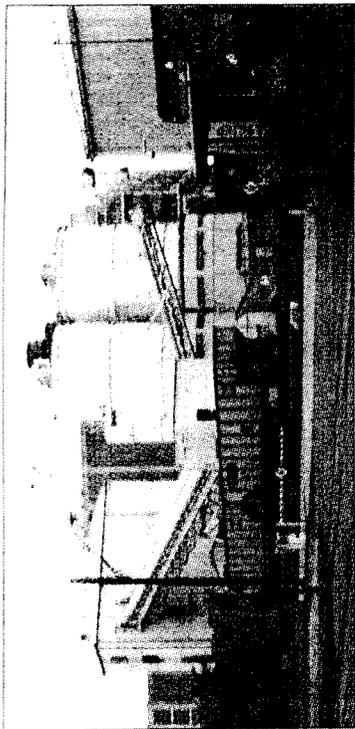
the city seeking to stop zoning changes designed to eventually close the aging coal-fired plant.

The lawsuit, filed last month in Alexandria Circuit Court, is the latest escalation of the long-running battle over the ash emissions produced by the plant. Residents and city officials contend the emissions are a health hazard, and Mirant officials insist the plant is in compliance with

environmental laws and have no intention of closing the facility.

In the lawsuit, Mirant says the plant's operators have been "good neighbors" and that it is a "fixture on the Alexandria waterfront" and a key power source for the Washington region. The suit says the city lacked legal authority for the zoning changes

See MIRANT, Page 9



2004 PHOTO BY LARRY MORRIS—THE WASHINGTON POST

A power plant overlooking the Potomac River has been the subject of a long-running feud between the Mirant Corp. and the City of Alexandria.

Mirant Files Lawsuit To Stop Zoning Changes

MIRANT, From Page 3

targeting the plant enacted late last year and seeks to have them declared unlawful.

"This is a good little plant," said Steven Arabia, a spokesman for Mirant. "It's a valuable asset to the regional electrical grid, and it's cleaner now than it's ever been. We would like to stay in business."

Alexandria City Attorney Ignacio B. Pessoa said the city intends to vigorously defend the lawsuit. "We believe we had a perfectly proper basis for our actions," he said. "One way or another, the city wants Mirant to either clean up or shut down."

But Pessoa made it clear that city officials would strongly prefer that Mirant leave. He framed the dispute as being about two fundamentally different visions of the Alexandria waterfront, which until several decades ago was dominated by industrial plants such as the Mirant facility.

"It's fair to say that the vision of the city is not to have this remnant of the mid-20th century industrial waterfront left on the river across from the nation's capital," Pessoa said. "Particularly a power plant which has all of these negative environmental impacts."

The plant—replete with smokestacks and coal heaps—sits on a prominent site in north Old Town overlooking the Potomac River and supplies power to the District and Maryland, but not Virginia. The only coal-fired power plant in Alexandria, it began operations in 1949 and currently employs about 120 people.

For years, some residents in the northern part of Old Town had wondered whether the plant was the source of an unusual dust that they said coated everything from cars to windowsills in the area. They described it as a chalky gray residue that quickly stuck to anything it touched.

In 2001, longtime Alexandria residents Poul Hertel and Elizabeth Chimento decided to investigate. The two eventually submitted a thick report to the city that concluded the plant is a potential danger. It cited several studies showing that a significant portion of the soot collected in the neighborhood was directly associated with the plant.

Motivated in part by the work of Hertel and Chimento, city offi-

ly, even though it lacked the necessary zoning permit required by a citywide rezoning that year. The council also revoked two special-use permits that the plant had been granted in 1989, when it expanded.

The effect was to make the plant's current operation illegal under city zoning ordinances. But although the city's long-term goal is for the plant to close, "that doesn't mean we were going to go and shut them down tomorrow," Pessoa said. "We wanted to give the plant the opportunity to get a new special-use permit, so we could get some regulations in place to modernize the plant, to clean up the things it is putting out in the environment."

"We wanted to give them an opportunity to come in and work with the city to protect the interests of the residents of the city."

But Arabia said Atlanta-based Mirant Corp. had little choice but to sue. "What the city said was that power plants are no longer compatible and so we are revoking all of your permits and changing the zoning, but we want you to come in and show that you are compatible and get a permit."

"It was a setup." The lawsuit, filed by two Mirant subsidiaries that own and operate the plant, argues that the city violated Mirant's rights and "lacked the authority to take these actions." City officials have until mid-February to file a response, and they expect the case to go to trial.

Along with the zoning crackdown, Alexandria has backed proposed "Clean Smokestacks" legislation in the General Assembly that would require coal-fired power plants in Northern Virginia to reduce certain emissions by 2009 or agree to cease operations by 2014.

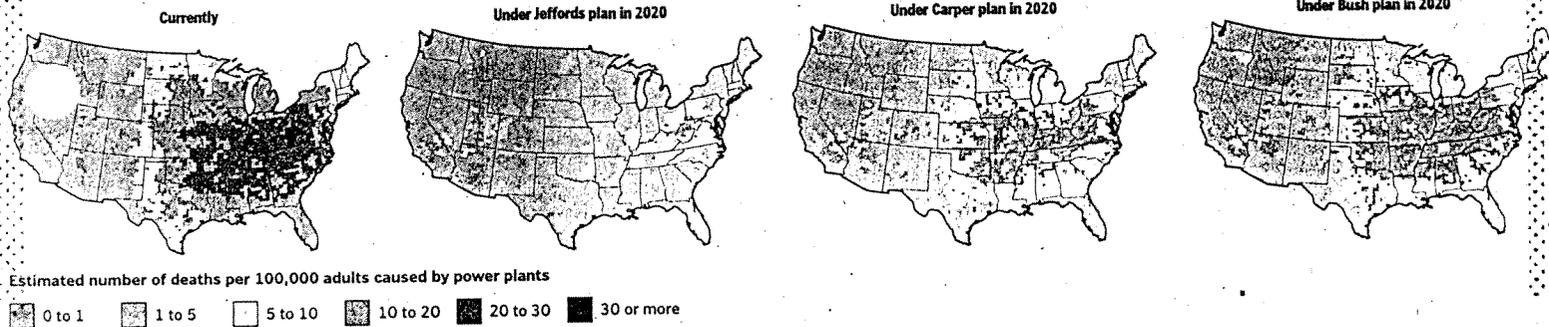
The legislation did not pass in 2004 and recently died in committee during the current session, city officials said.

Chimento, one of the residents whose report helped trigger the crackdown on Mirant, said she is not surprised by the lawsuit. Chimento said she is more interested in the results of an ongoing study to nail down precisely what—and how much—is being emitted from the plant and where it is landing in the nearby neighbor-

Pollution Deaths

President Bush, Sen. James M. Jeffords (I-Vt.) and Sen. Thomas R. Carper (D-Del.) have offered competing proposals to reduce pollution from power plants. An

analysis commissioned by the environmental group Clean the Air compares current deaths from power plant pollution with projected deaths under the three proposals.



SOURCES: Abi Associates, Clean the Air

BY GENE THOMP—THE WASHINGTON POST

U.S. Faces 'Pivotal Moment' on Clean-Air Regulations

By JULIET EILPERIN
Washington Post Staff Writer

After years of stalemate, Washington decision makers are poised this year to impose new federal requirements aimed at curbing air pollution from power plants that each year cuts short the lives of 24,000 Americans.

The question is how far and how fast the country should go.

The debate will be fully engaged this spring as the Senate takes up the president's proposal to rewrite national air pollution law, yesterday a Senate Environment and Public Works subcommittee held its first hearing of the year on the bill.

The Environmental Protection Agency, meanwhile, is pushing to complete work on two major regulations, due to be issued by mid-March, that would address mercury contamination from power plants and pollutant drifts from one state to another in the Midwest.

Last month, the EPA finalized new national air quality standards that will force non-adjacent states and localities to crack down on local sources of air pollution.

What emerges from all this will affect such things as an average family's monthly electric bill and whether the children in that household develop asthma.

"This is a pivotal moment," said James L. Connaughton, President Bush's top environmental adviser. "This is equal in significance to taking lead out of gasoline, or putting catalytic converters on cars."

Critics of the Bush administration, which has signaled that it will enact the changes this year either through legislation or regulation, say the White House is wasting a critical opportunity by not pushing for stricter standards that could further reduce harmful emissions of sulfur dioxide, nitrogen oxide and mercury.

During a Senate subcommittee hearing yesterday, Republicans touted Bush's "Clear Skies" legislation, which aims to reduce emissions of sulfur dioxide, nitrogen oxide and mercury by 70 percent—but not until after 2018. Subcommittee Chairman George V. Voinovich (R-Ohio) told reporters after the hearing that GOP leaders plan to press for a full committee vote as soon as mid-February so they can bring the bill to the floor. He added that if they cannot pass the bill in six months, they will consider it dead.

Democrats and public health advocates oppose the measure, saying it would do nothing to curb emissions linked to global warming and would undermine existing air quality standards and enforcement tools. Under the Clean Air Act, they argue, the administration could demand pollution cuts as steep as 90 percent by 2008, and the health benefits would far outweigh the costs to industry.

"You're telling us more than 20,000 premature deaths a year... and we're going to

reduce this pollution by 2 to 3 percent a year? That just doesn't make sense," said Eric Schaeffer, who resigned as head of the EPA's enforcement division in 2002 and now directs the Environmental Integrity Project, an advocacy group.

No one questions that the United States has dramatically improved the quality of its air since 1970, when Congress passed the Clean Air Act.

In 1990, the EPA evaluated the costs and benefits associated with air pollution controls over the preceding two decades, looking at health costs and lost productivity. Its studies concluded that if the government had not acted, 205,000 more Americans would have died early and millions more would have suffered from heart disease, chronic bronchitis, asthma and other respiratory illnesses.

The pollutants at issue harm people in various ways. The fine particles contained in sulfur dioxide and nitrogen oxide soot become embedded in the lungs and cause respiratory illness as well as heart disease. Mercury, toxic to immature brain cells, makes its way up the food chain from fish swimming in rivers and lakes, polluted by power plant emissions and hampers brain development in fetuses and young children.

Since 1970, the EPA concluded, cleaner air has saved the nation between \$6 trillion and \$50 trillion in health costs and lost pro-

ductivity, at a cost of \$523 billion. The ability to estimate these costs and benefits has greatly improved in recent years, as medical researchers have become better at measuring air pollution's impact.

"The Clean Air Act has been our nation's most successful, and controversial, environmental law," said Frank O'Donnell, president of the advocacy group Clean Air Watch. "Because of the Clean Air Act, Americans are healthier and living longer."

During the first two decades of this air quality push, a series of bipartisan compromises resulted in unleaded gasoline, cleaner cars and sulfur dioxide reductions through the acid rain program. While legislative efforts stalled after 1990, under President Bill Clinton officials administratively cut diesel emissions from trucks and tightened national smog and soot standards, while suing some of the dirtiest power companies for not cleaning up aging plants.

This flurry of activity inspired some utility executives to reach legal settlements with the Clinton administration and start "peace talks" with environmental groups about curbing several pollutants. But those efforts fell apart once Bush took office in 2001 and announced he opposed mandatory restrictions on carbon dioxide, wanted to relax requirements for upgrading old power plants and would take a different approach to regulating such pollutants as sulfur dioxide and

nitrogen oxide.

Striving to make emissions cuts while keeping energy costs low, the administration proposed a cap-and-trade system that would over time reduce pollution from power plants, which account for 67 percent of the nation's sulfur dioxide emissions, 41 percent of its mercury pollution, 39 percent of its carbon dioxide emissions and 22 percent of its nitrogen oxide pollution.

Much of that pollution comes from a small number of aging plants. Fewer than half of the country's coal-fired utilities account for more than 90 percent of the industry's sulfur dioxide, nitrogen oxide and mercury pollution, said Emily Figdor, a spokeswoman for the advocacy group Clear the Air, adding half of the dirtiest plants increased their pollution levels since 1995.

Industry supports the Bush plan, and administration officials say it would be more effective than suing companies to enforce existing law or enacting rules that utilities would fight in court. About one-third of all Americans breathe air that does not meet federal standards today; under the White House proposal, 20 million of them would be breathing air that meets the guidelines within 15 years. Administration officials also note that new rules it imposed, which will virtually eliminate sulfur dioxide from the emissions of off-road diesel engines, will avert 12,000 premature deaths a year when

fully phased in.

Thomas L. Sansonetti, assistant attorney general for the Justice Department's Environment and Natural Resources Division, calls the lawsuit-oriented approach his off has long pursued to enforce clean-air law "the slow boat to China."

"Clear Skies is a simple, cost-effective way of reducing air pollution over a broad interstate area," he said.

Under the cap-and-trade system, said utilities lobbyist Scott Segal, the dirtiest plants are also the most likely to clean quickly since they can reduce emissions significantly at a low cost.

But environmentalists and some state local officials say other provisions in Bush plan—such as suspending the stick the government uses to force clean-up of aging utilities and the right of states to neighboring states over pollution—make it impossible for localities to meet federal air quality standards for years.

"The provisions in Clear Skies are too little and too late," said John Paul, a Republican and the head of a regional air pollution agency in Dayton, Ohio, who testified before the Senate yesterday.

Two senators have competing proposals both of which include provisions to curb carbon dioxide and push for steeper pollution cuts. Sen. James M. Jeffords (I-Vt.) would reduce nitrogen oxide, sulfur dioxide and mercury between 72 and 90 percent by 2020 while limiting carbon dioxide emissions to 1990 levels, while Sen. Thomas R. Carper (D-Del.) calls for slightly more modest cuts for all four pollutants by four to six years.

The debate often comes down to "five jobs." Proponents of the Jeffords plan say that by 2020 it would save 100,000 jobs, while the administration's bill, White House counters the Jeffords measure would cost 272,000 jobs and drive electricity costs up 26 percent by 2025.

At the moment the Senate appears locked; Carper, the White House's most potential Democratic ally, says that administration continues its "my way or highway" approach, "you end up in a big traffic jam." But Connaughton said the president will lobby hard for his bill.

If it stalls, the White House will seek 1 percent sulfur dioxide and nitrogen oxide cuts through the Clean Air Interstate Rule, which applies to 28 eastern and midwestern states. EPA plans to issue that rule, with a separate one curbing mercury 1 percent, in mid-March.

But regulations can be blocked more easily in court, and both sides say the administration should use this moment to clean up the air as much as possible.

"Everybody has to think about some sort of compromise so we can get to an end and move on," said Robert M. Sussman, EPA deputy administrator under Clinton who heads the environmental practice at Latham & Watkins law firm in Washing-

Blair Urges Action Against Global Warming

By JULIET EILPERIN
Washington Post Staff Writer

The world's most powerful nations must act now to curb global warming, British Prime Minister Tony Blair told world leaders yesterday at the World Economic Forum in Davos, Switzerland.

Blair, who became president of the Group of Eight leading industrialized nations this month and will take the helm of the European Union in July, said he plans to use his two new posts to press for action on climate change and on alleviating poverty and political unrest in Africa.

"On both, there are differences that need to be reconciled," he said. "And if they could be reconciled or at least moved forward, it would make a huge difference to the prospects of international unity, as well as to people's lives and our future survival."

G-8 countries can use technology to cut emissions of carbon dioxide and other "greenhouse gases" and temper climate change, Blair said, by boosting energy efficiency and using more renewable energy.

Blair's call to address climate change came one day after an international panel

co-chaired by one of his closest political allies offered an alternative approach to the controversial Kyoto Protocol, which takes effect on Feb. 16 with at least 136 countries as signatories. The United States and Australia are the only two developed nations that have not ratified the treaty, which aims to reduce global greenhouse gas emissions by 5.2 percent from 1990 levels by 2012.

The panel, headed by Sen. Olympia J. Snowe (R-Maine) and Stephen Byers, a Labor member of Britain's Parliament, proposed that the United States and Australia could participate in a more flexible global framework as soon as they adopt their own cap-and-trade programs limiting carbon dioxide emissions. Developing countries could also enter the agreement over time.

Established by the U.S.-based Center for American Progress along with Britain's Institute for Public Policy Research and the Australia Institute, the international task force also calls for shifting agricultural subsidies from food crops to biofuels and making G-8 countries obtain 25 percent of their electricity from renewable sources by 2025, all to ensure Earth's average temperature does not

rise more than 3.6 degrees Fahrenheit above its pre-industrial level.

Snowe, who helps oversee U.S. climate policy as a member of the Senate commerce committee, said she will brief top White House officials on the task force's findings. The task force's report "could offer a pathway toward action on this most pivotal issue," Snowe said in an interview Tuesday, because it gives "realistic and doable" targets.

While President Bush has resisted mandatory curbs on carbon dioxide emissions, several politicians and activists said he may be pressed into action by Blair, his close ally.

John D. Podesta, president of the Center for American Progress, a progressive think tank, said Blair may use some of the political capital he gained by backing the U.S.-led invasion of Iraq to push for concessions from Bush.

"At some point, this is going to take a change of heart by the president and the administration," Podesta said. He added that Blair's advocacy, along with congressional support, could persuade the United States "to come back to the table and get involved with this huge challenge facing humanity."

Dirty Power?

Legislation would require two local coal-burning power plants to reduce harmful emissions.

BY BRIAN MCNEILL
THE CONNECTION

Residents living in Old Town Alexandria started noticing a few years ago that a thin film of grimy gray dust was sticking to their windows and coating surfaces inside their homes.

The source of the dust, they came to realize, was the nearby Potomac River Generating Station, a coal-burning power plant in Old Town nestled in a residential neighborhood amidst rowhouses and high-rise apartment buildings.

"This dust was constant," said Paul Smedberg, an Alexandria City Council Member. "It got really bad. It was getting inside our homes. It was really pretty shocking."

Smedberg and others knew that while the gray dust coating their windows was gross, inhaling the gray dust in the city's air could be deadly.

"This power plant has got some serious issues," he said. "The pollution coming from its smoke stacks is affecting Alexandria, and it's affecting the region."

Several of the region's elected officials are

said George Leventhal (D-at large), a member of Montgomery County Council.

"This one plant creates more pollution than all the registered cars and trucks in the county combined. That's more than 600,000 vehicles."

More than 250 deaths — including 60 in Maryland and 40 in Northern Virginia — can be directly attributed each year to the region's coal-burning power plants, according to a 2002 analysis conducted by researchers at Harvard University.

"For the region, this is a truly serious health concern," said Ana Prados, an air quality expert from the Sierra Club who lives in Springfield. "They're not doing nearly enough to protect people."

In the last five years, no other facility in Northern Virginia or Montgomery County was cited for more consecutive Clean Air Act violations than the two local coal-burning power plants, according to federal En-

"This one plant creates more pollution than all the registered cars and trucks in the county combined. That's more than 600,000 vehicles."

— George Leventhal, Montgomery County Council

Coal-Burning Power Plant Emissions

Nitrogen Oxide (NOx)

Nitrogen oxide is the generic term for a group of highly reactive gases, most of which are colorless and odorless. The primary manmade sources of NOx are motor vehicles and electric utilities, including coal-burning power plants.

NOx is one of the main ingredients in ground-level ozone, which can cause respiratory problems, damage to lung tissue, emphysema, bronchitis and premature death.

The gas contributes to the formation of acid rain and nutrient overload that deteriorates water quality and global warming.

Carbon Monoxide (CO)

Carbon monoxide is a colorless, odorless gas that is formed when carbon in fuel is not burned completely.

It is poisonous even to healthy people in areas with elevated levels. It can lead to central nervous system damage, vision problems, a reduced ability to work or learn, reduced manual dexterity and difficulty performing complex tasks. People with heart disease are particularly at risk.

Sulfur Dioxide (SO2)

Sulfur dioxide is prevalent in crude oil, coal and metallic ore. It forms when fuel containing sulfur — such as coal — is burned. More than 65 percent of the nation's sulfur dioxide pollution comes from electric utilities.

Sulfur dioxide contributes to respiratory illness, particularly in children and the elderly, and aggravates existing heart and lung diseases. People with asthma are especially

affected by breathing in the gas.

Sulfur dioxide also contributes to acid rain, plant and water deterioration and aesthetic damage to buildings and monuments.

Volatile Organic Compounds

When natural fuel is burned, it releases in a gaseous state the volatile organic compounds contained in the fuel. While VOCs are released by industrial facilities, it is also found in many common household cleaning supplies.

VOCs can lead to conjunctival irritation, nose and throat discomfort, headache, allergic skin reaction, decline in nerve transmission, nausea, fatigue and dizziness. When coupled with NOx, volatile organic compounds can create smog — which can lead to eye irritation and a decrease in lung function in healthy individuals.

Mercury (Hg)

Mercury is a naturally occurring neurotoxin found in the earth's crust, air and water. Coal-fired power plants contribute to 41 percent of the nation's mercury pollution.

As mercury leaves power plant smoke stacks, it falls into lakes and streams, polluting the water and aquatic life, including fish. Fish consumption leads to elevated levels of mercury in humans.

Unsafe levels of mercury can lead to brain development problems and damage to the central nervous system in fetuses and young children.

Source: Environmental Protection Agency, Fairfax County Health Department

Environmental Protection Agency records.

During 2003, smoke stacks at the two plants pumped roughly 75,500 tons of sulfur dioxide, 11,200 tons of nitrogen oxide, 600 tons of carbon monoxide and 73 tons of volatile organic compounds into the region's environment, according to state environmental agencies.

These pollutants are direct contributors to acid rain, global warming, regional smog, and deterioration in water quality, and can cause trees, lakes and streams to become dangerously acidic.

IN HUMANS, coal-burning power plant emissions can lead to respiratory illness, aggravate heart and lung disease, cause eye irritation and decrease lung capacity. Decreased lung function may be accompanied by coughing, nausea, chest pain and pulmonary congestion, according to the EPA.

Senior citizens, infants and children — particularly those with asthma — are especially susceptible to the harmful effects of power plant emissions.

Coal-fired power plants are also the biggest single contributor of airborne mercury pollution. A new nation-wide study by researchers at the University of North Carolina found that many women of child-bearing age had dangerously high levels of mercury in their system, worrisome for developing fetuses. Mercury has been found to cause brain disorders in fetuses and young children.

The Old Town Alexandria plant alone emitted at least 72 pounds of mercury into the air in 2003, according to the Virginia Department of Environmental Quality.

MIRANT SPOKESMAN Steven Arabia

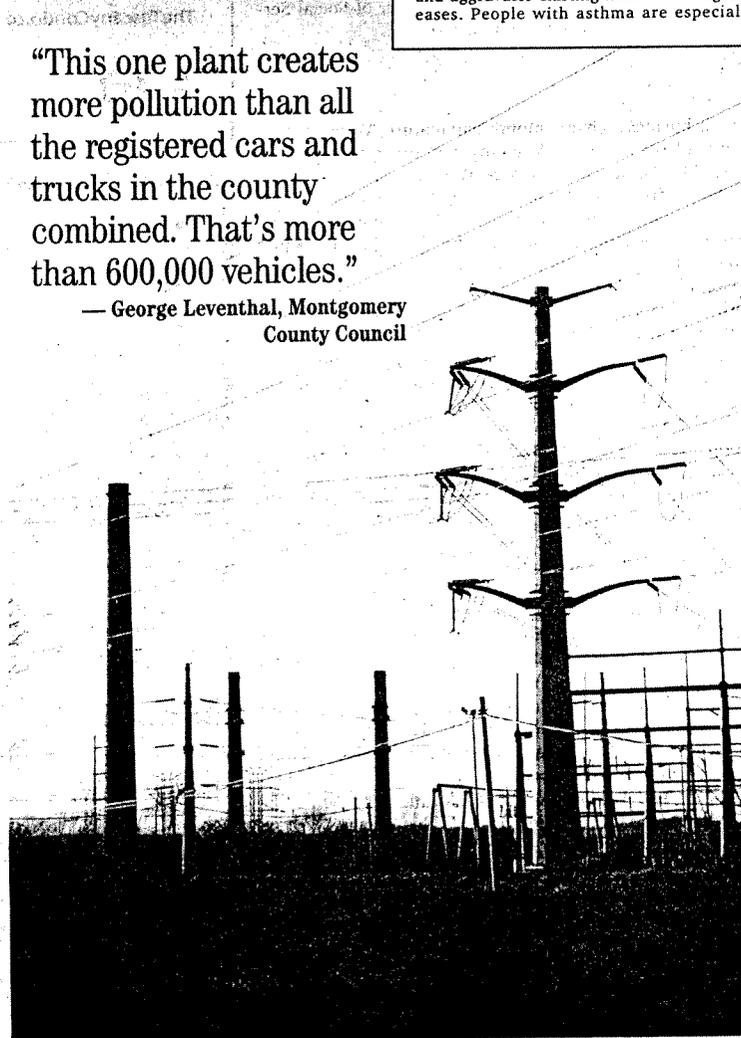
Coal-burning power plants cause 40 deaths in Northern Virginia, 60 deaths in Maryland each year.

starting to take a stand against local coal-burning power plants, introducing legislation in both Virginia and Maryland that would require the plants to dramatically reduce their dangerous emissions.

THE POTOMAC RIVER Generating Station is one of two coal-fired power plants in the region. The other plant is located further up the Potomac River in Dickerson, Md., a rural area in Montgomery County, Md., just across the river from Loudoun County.

Both plants are operated by Mirant, an Atlanta-based energy generation company. Mirant produces power for any Virginia residents, but both are considered among the region's biggest polluters.

"The Dickerson plant is the biggest source of pollution in Montgomery County by far,"



Emissions from Mirant's Dickerson, Md. power plant would be made cleaner under proposed state legislation.

PHOTOS BY BRIAN MCNEILL/THE CONNECTION

Dirty Power?

FROM PAGE 48

said the company is taking steps to reduce nitrogen oxide emissions from its coal-burning plants in the region by 65 percent over the next six years.

Mirant agreed to reduce its emissions as part of an agreement with federal and state environmental agencies after it was found in 2003 to be emitting more than 1,000 tons over the legal limit of nitrogen oxide.

"Air quality is a regional issue," Arabia said. "This agreement will require us to have a region-wide reduction in NOx."

By reducing nitrogen oxide emissions from Mirant's smoke stacks, other pollutants will also be reduced, Arabia said. The "scrubbing" technology that cleans up the emissions before they leave the power plant will also clean up other harmful substances.

Local coal-burning power plants are only one piece of the region's air quality problems, said Arabia. Cars, trucks, boats, machinery and power plants in other states are also contributors.

The EPA says the Washington, D.C. region has poor air quality, with Alexandria, Fairfax, Loudoun, Arlington and Montgomery all specifically listed as having unhealthy air.

Local health department officials in the community said air quality is improving and is much healthier than it was 10 years ago.

Arabia said Mirant would agree to more regulation, but only if it comes from the federal government and includes coal-burning power plants across the country. If state legislation requires Mirant to install expensive equipment to reduce emissions, it would put the company at a competitive disadvantage with energy providers in other parts of the nation.

"It would be a nightmare," Arabia said.

BUT SOME STATE and local elected officials are saying Mirant's efforts to reduce nitrogen oxide do not go far enough.

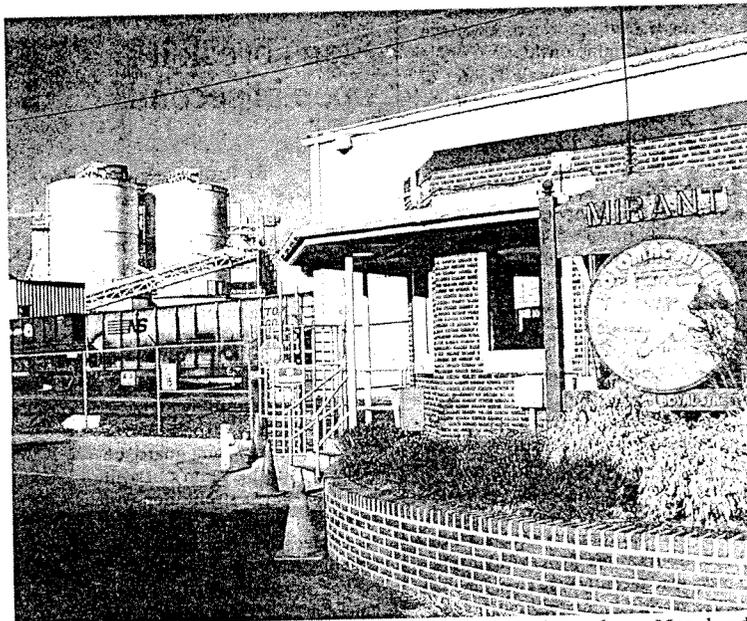
"There's a general and reasonable concern by citizens that this is horrible for their health," said Del. Brian Moran (D-Alexandria).

Moran has introduced a bill in the General Assembly that would require Mirant to reduce its total emissions even further.

In Maryland, Del. James W. Hubbard (D-Prince George's) has introduced a bill that would make Maryland power plants install equipment that would reduce total emissions by 90 percent over the next eight years. Montgomery County's government considers tighter pollution controls on coal-burning power plants to be its top legislative priority.

Despite Mirant's existing efforts region-wide, there may be little reduction of emissions at its Alexandria and Dickerson plants,

Cleaning up the region's coal-burning power plants, including the Alexandria and Dickerson plants, could save as many as 270 lives each year, according to a 2002 Harvard study.



Coal-burning power plants in Northern Virginia and Southern Maryland affect the region's environment and public health.

both of which have been operating for more than four decades; both plants are exempt from modern pollution control laws.

Under the agreement, Mirant can cut

emissions at other plants, while leaving the two older plants largely untouched.

"We're not satisfied," said William Skrabak, Alexandria's environmental quality director. "The city's position is that we won't be satisfied until that plant is shut down."

Fairfax County has also been lobbying for tighter federal and state controls on local coal-burning power plants.

"Trying to comply with clean air laws is challenging enough," said Sharon Bulova (D-Braddock), of the Fairfax County Board of Supervisors. "These plants cause us to not comply. We're doing what we can, but we need help."

Loudoun County Health Director David Goodfriend said he has not heard many complaints about asthma, respiratory illness and breathing trouble, but he also said most Loudoun residents are unaware there is a coal-fired power plant just across the Potomac River.

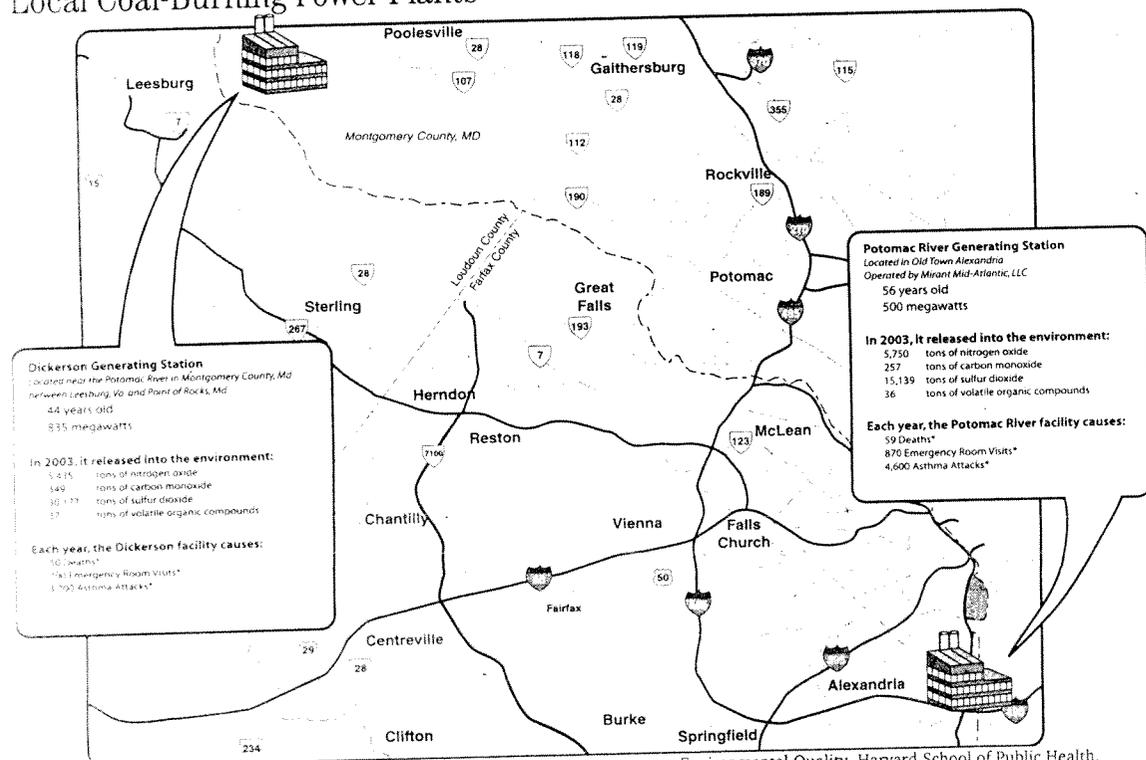
IF MORE STATE regulation is approved, Mirant would be forced to install equipment costing so much the plants would probably have to close, Arabia said.

"These regulations would cost hundreds of millions of dollars to comply with," he said. "Already, emissions from our plants have gotten cleaner and cleaner over the years. And they'll continue to get cleaner. That's a fact."

Hundreds of millions of dollars is a small price to pay to save lives and keep the environment free from toxins, Moran said.

"We have to ensure that our community's air and water are clean," he said. "That's good for the environment and that's good for the public."

Local Coal-Burning Power Plants



Sources: Maryland Department of the Environment, Virginia Department on Environmental Quality, Harvard School of Public Health.

* This data was calculated in a 2002 study by researchers at the Harvard School of Public Health using computer mapping technology, census data, health statistics and coal-burning power plant emissions information.

MIRANT ISSUES TRACKING MATRIX

Area	Actions to be Undertaken	City Role and Responsibility	Status
1. Land Use Regulations	Revoking Special Use Permit No. 2296 granted in 1989.	City Attorney's Office and Planning and Zoning Department to undertake necessary actions.	Revoked by City Council December 18, 2004; lawsuit filed by Mirant January 18, 2005.
	Revocation of Special Use Permit No. 2297 granted in to Mirant predecessor in 1989.	City Attorney's Office and Planning and Zoning Department to undertake necessary actions.	Revoked by City Council December 18, 2004; lawsuit filed by Mirant January 18, 2005.
	Revocation of the noncomplying use status of the Potomac River plant and making it a nonconforming use.	City Attorney's Office and Planning and Zoning Department to undertake necessary actions.	Revoked by City Council December 18, 2004; lawsuit filed by Mirant January 18, 2005.

Area	Actions to be Undertaken	City Role and Responsibility	Status
<p>2. NOX Reduction</p>	<p>Comments on the NOx Consent Decree filed in federal court on September 27, 2004, that requires Mirant to undertake several measures to address NOx and other emissions at Alexandria plant.</p>	<p>T&ES and City consultants preparing comments on proposed NOx consent decree.</p>	<p>Proposed comments on NOx consent decree were considered by the City Council on October 26 meeting. City comments were submitted to DOJ on November 8, 2004.</p> <p>Comment period was extended and is now closed.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
NOx reductions (continued)	Comments on the amendments to Virginia DEQ operating permit for Potomac River plant that have been proposed based on the NOx Consent Decree.	T&ES and City consultants will prepare comments on proposed amendments.	<p>City comments on amendments have been docketed for Council consideration at October 26 meeting and were submitted to State on October 28, 2004.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>
	Under the NOx consent decree, Mirant is required to install Separate Over Fired Air (SOFA) and low NOx burners on Units 3, 4, and 5.	If NOx Consent decree is approved, T&ES and City consultants will track progress on installation of this equipment. (This will also be one of the tracking items for the facility audit)	<p>Installation of this equipment is required by May 2005.</p> <p>Mirant completed this work in May 2004.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
NOx reductions (continued)	Outside of the NOx consent decree, Mirant is pursuing the installation of low NOx burners (LNB) on Units 1 and 2.	T&ES, City Attorney and the consultants will track progress on installation of this equipment. (This will be one of the tracking items for the facility audit.)	<p>Installation of this equipment to be completed by December 2005.</p> <p>Mirant completed this work in November 2004.</p>
	Under the consent NOx consent decree, maximum ozone season NOX caps are imposed on the Potomac River plant and the other regional Mirant facilities.	T&ES and City consultants will track compliance with these caps. (This will be one of the tracking items for the facility audit.)	<p>Potomac Plant emissions on declining schedule to 1,475 tons by 2010.</p> <p>Mirant system-wide ozone season emissions are on a declining schedule to 5,200 tons by 2010.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
NOx reductions (continued)	Under the NOx consent decree, a maximum annual NOx cap is imposed on the system (comprised of four Mirant regional facilities).	T&ES and City consultants will track compliance with these caps. (This will be one of the tracking items for the facility audit.)	<p>Mirant system-wide annual emissions are on a declining schedule to 16,000 tons by 2010.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>
	Under the NOx consent decree, a maximum ozone season NOx cap is imposed on the system (comprising of four Mirant regional facilities).	T&ES and City consultants will track compliance with these caps. (This will also be one of the tracking items for the facility audit.)	<p>By 2008, Mirant system-wide is to be at an ozone season emissions rate of 0.15 lb/mmBTU.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
<p>3. Fine Particulates (including PM2.5 and PM10)</p>	<p>Under NOx consent decree, as a Supplement Environmental Project (SEP), Mirant is required to install bottom ash and fly ash silo secondary filtration system using secondary bag houses.</p>	<p>T&ES and City consultants will track progress on the installation of this equipment. (This will be one of the tracking items for the facility audit.)</p>	<p>Mirant is to submit plans for this equipment to VADEQ within 90 days after the entry of the NOx consent decree. The NOx consent decree requires the installation of this equipment by September 2005.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
<p>Fine Particulates (continued)</p>	<p>Under NOx consent decree, as a SEP, Mirant is required to install an upgrade to the ash loading equipment (pug mill style ash loader on 3rd ash silo).</p>	<p>T&ES and City consultants will track progress on the installation of this equipment. (This will be one of the tracking items for the facility audit.)</p>	<p>Mirant is to submit plans for this equipment to VADEQ within 90 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires the installation of this equipment by June 2006.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Fine Particulates (continued)	Under NOx consent decree, as a SEP, Mirant is required to equip ash loading system with dust suppression system.	T&ES and City consultants will to track progress on the installation of this equipment. (This will be one of the tracking items for the facility audit.)	<p>Mirant is to submit plans for this equipment to VADEQ within 90 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires its installation no later than June 2005.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree .</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Fine Particulates (Continued)	Under the NOx consent decree, as a SEP, Mirant is required to install a truck washing facility.	T&ES and City consultants will track progress on the installation of this facility. (This will be one of the tracking items for the facility audit.)	<p>Mirant is to submit plans for this facility to VADEQ within 90 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires its installation no later than June 2005.</p> <p>Truck wash was installed in June 2004 and is currently operating as test.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
<p>4. Coarse Particulate (including particulates >PM10)</p>	<p>Under the NOx consent decree, as a SEP, Mirant is required to install a coal pile wind erosion and dust suppression system.</p>	<p>T&ES and City consultants will track progress on the installation of this system. (This will also be one of the tracking items for the facility audit.)</p>	<p>Mirant is to submit plans for this system to VADEQ within 30 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires its installation by April 2005.</p> <p>The dust suppression system was installed in May 2004. Mirant is planning to install a wind erosion suppression system by the end of 2004 after seeking provisional approval from VADEQ.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Coarse Particulates (continued)	Under the NOx consent decree, as a SEP, Mirant is required to install a coal conveyor dust suppression system.	T&ES and City consultants will track progress on the installation of this system. (This will also be one of the tracking items for the facility audit.)	<p>Mirant is to submit plans for this system to VADEQ within 30 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires this system to be installed by December 2004.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Coarse Particulate (Continued)	Under the NOx consent decree, as a SEP, Mirant is to install a coal rail car unloading dust suppression system.	T&ES and City consultants will track progress on the installation of this system. (This will also be one of the tracking items for the facility audit.)	<p>Mirant to submit plans for this system to VADEQ within 90 days after the entry of the NOx consent decree.</p> <p>The NOx consent decree requires this project to be completed by June 2006.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Coarse Particulates (continued)	Under the NOx consent decree, as a SEP, Mirant is required to conduct a settled dust study.	T&ES and City consultants will track progress on this study and evaluate its findings and results. (This will be one of the tracking items for the facility audit.)	<p>Mirant to submit plans for this study to VADEQ within 60 days after the entry of the NOx consent decree.</p> <p>The study is to begin no later than November 2004 and be completed within 6 months.</p> <p>Mirant conducted preliminary sampling in 2004 and is planning to conduct the study in March 2005 subject to appropriate approvals.</p> <p>Parties claiming financial interests in Mirant's Morgantown, WV and Dickerson, Md plants have sought to intervene and oppose the consent decree</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
<p>5. Downwash Study Consent Order</p>	<p>The Downwash Study consent order between VADEQ and Mirant requires Mirant to prepare protocols that define, and to undertake, a refined modeling analysis to assess the effects of “down-wash” from the Potomac River plant on ambient concentrations of SO₂, NO₂, CO, and PM10, and Mercury in Alexandria.</p>	<p>T&ES will ensure that the community is able to review on the protocols that Mirant has prepared for this study.</p> <p>T&ES and City consultants will review and comment on adequacy of the protocols. Based on this review, City may determine to undertake its own “downwash” modeling study.</p>	<p>The protocols were discussed with members of Mirant Community Monitoring Group on December 2, 2004.</p> <p>After input from community and City consultants, the final comments will were forwarded to VADEQ on December 30, 2004.</p> <p>Staff continues to followup with VADEQ, latest on Feb 8, 2005. VA DEQ is in process of finalizing their response to Mirant and expects to have it sent within a week.</p>
	<p>VADEQ will undertake its own modeling analysis to assess the effects of “downwash” from the plant on ambient concentrations of other toxic pollutants, in Alexandria.</p>	<p>This is <u>not</u> specifically in the Downwash Study consent order, but, VADEQ staff has assured City of their plans to conduct this analysis independently.</p> <p>T&ES and City consultants will work with VADEQ on this analysis. Based on review of DEQ’s analysis, City may determine to undertake its own modeling analysand study.</p>	<p>All analysis to be performed will be coordinated with VADEQ.</p>

Area	Actions to be Undertaken	City Role and Responsibility	Status
Downwash Study (continued)	Under the Downwash Study consent order, Mirant is to propose and implement a correct action plan to address any exceedances of the applicable ambient air standards.	Staff and City consultants will monitor, evaluate and provide comments to DEQ when the action plan is proposed.	The Downwash Study consent order requires Mirant to submit the corrective action plan within 90 days of submitting the results of its modeling study.
6. Independent Facility Audit funded by Mirant	A memorandum of understanding between City and Mirant will be prepared regarding regular, periodic performance audits of Potomac River plant by an independent firm, to be funded by Mirant.	T&ES will work with Mirant to finalize MOU on scope, frequency, and other related issues related to audit.	Mirant has agreed to the concept of a regular plant audit. City is in discussion with Mirant to the exact scope of this audit.
7. Virginia Legislation	City will support passage of the Virginia Clean Smoke Stacks bill during 2005 session of General Assembly.	Bernard Caton, T&ES and City Attorney's will provide input in the legislative process.	HB 2546 (Van Landingham) was defeated in the House Committee on Agriculture, Chesapeake and Natural Resources. HB 2742 (Jack Reid) was also defeated in the House Committee on Agriculture, Chesapeake and Natural Resources.

Area	Actions to be Undertaken	City Role and Responsibility	Status
8. Potential litigation Options	City will consider, when appropriate, pursuing litigation against the Potomac River plant under various statutory and common law theories.	City Attorney's Office and its consultants will evaluate the litigation options.	City Attorney's Office currently working on this issue.
9. Representation in Bankruptcy Court	City will consider entering appearance in Mirant bankruptcy proceeding.	City Attorney's Office and its consultants will evaluate this issue.	City Attorney's Office currently working on this issue

Area	Actions to be Undertaken	City Role and Responsibility	Status
10. New Federal Air Quality Regulatory Actions	<p>Three federal air quality actions are underway:</p> <p>(1) PM2.5 designations</p> <p>(2) implementation of new 8 hour standard for ozone, and</p> <p>(3) New limits mercury emissions from power plants.</p>	<p>T&ES, City Attorney and City consultants will track these new federal regulations and their impacts on the City.</p>	<p>PM2.5 designations occurred in December 2004.</p> <p>EPA to propose implementation rule in February 2005 and finalize the rules in Early 2006.</p> <p>Staff continues to track Clean Power Act, Clear Skies Act, Clean Air Interstate Rule, Utility Mercury reduction rule.</p> <p>The region's deadline to achieve compliance with 8-hr Ozone and the PM2.5 standard in 2010.</p> <p>Mercury rules are likely to be promulgated by EPA in March 2005.</p>
11. Purchase of Clean Power	<p>City will consider options for purchase of clean or green power.</p>	<p>General Services and Purchasing will evaluate options.</p>	<p>General Services and Purchasing are working on this issue.</p>

Updated: 02-10-2005

Bold formatting has been used in "Status" column to indicate the most recent updates.