COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN VIRGINIA REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

~~Jeffery A. Steers~~
Regional Director

STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
MIRANT POTOMAC RIVER, LLC
FOR THE
MIRANT POTOMAC RIVER GENERATING STATION
Registration No. 70228

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1307(D), 10.1-1309, and 10.1-1316(C), between the State Air Pollution Control Board ("SAPCB") and Mirant Potomac River, LLC for the purpose of resolving certain violations of the Air Pollution Control Law and Regulations as specified in Section C of this Order.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in the Va. Code §§ 10.1-1301 and 10.1-1184.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Va. Code § 10.1-1183.

4. "Mirant" means Mirant Potomac River, LLC, a limited liability company certified to do business in Virginia.

5. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

6. "Order" means this document, also known as a Consent Order.

7. "Regulations" mean the Commonwealth of Virginia State Air Control Board Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC").

8. "Plant" means the Potomac River Generating Station owned and operated by Mirant, located at 1400 North Royal Street, Alexandria, Virginia, 22314. The Plant is a five unit, 482 megawatt coal-fired electric generating plant output rating.

9. "PJM" means PJM Interconnection, a regional transmission organization within the U.S. electric power system of which Mirant is a member.

SECTION C: Findings of Fact and Conclusions of Law

1. Mirant operates a coal fired power plant in Alexandria, Virginia, with a maximum capacity of approximately 482 megawatts. The Plant's operations are subject to the Virginia Air Pollution Control Laws and Regulations.

2. In 2007, the Plant was operating under the direction of PJM in accordance with DOE Order 202-05-03. During a scheduled outage of an electrical transmission line serving the Washington, D.C. area, which began on February 19, 2007, and ended on March 6, 2007, the Plant increased electrical generation and operated in a manner to compensate for the scheduled line outage.

3. On February 23, 2007, a fence-line ambient air monitor on Mirant's property detected increased levels of SO_2.

4. On March 14, 2007, DEQ staff interviewed personnel from the Plant and determined that Mirant did not have written procedures and training records that demonstrated the Plant operated in a manner consistent with minimizing air emissions on February 23, 2007.

5. DEQ staff further determined that Mirant lacked written operating, maintenance, and training procedures required for the proper operation and maintenance of the Plant and the Plant's associated air pollution control equipment while operating during a scheduled line outage situation under the DOE Order 202-05-03. In addition, Mirant officials and personnel were aware of the following prior to operation on February 23, 2007:

   a. Predictive computer modeling conducted on February 22, 2007, showed that the operating configuration of the Plant on February 23, 2007, may create elevated SO_2 concentrations;

b. On February 23, 2007, the Trona injection system could not provide sufficient control of the SO2 emissions, due to problems with both Unit 1 and Unit 5's trona injection system.

c. Plant personnel were aware that Plant operations were creating elevated SO_2 concentrations. The southeast ambient air monitor alerted the control room on February 22, 2007, at approximately 10:00 p.m., that SO_2 emissions were at 80 percent of the National Ambient Air Quality Standards ("NAAQS").

6. On March 23, 2007, the DEQ issued a Notice of Violation ("NOV") to Mirant, citing, in part, the following alleged violation: Failure to implement appropriate operating and maintenance procedures to minimize excess emissions while operating the Plant during transmission line outages under the DOE Order 202-05-03, as required by 9 VAC 5-40-20 E.

7. Mirant agrees that written procedures, protocols, and training of Plant personnel may provide for minimizing excess emissions. Development of such procedures has been incorporated as a requirement of this Order in Appendix A.

8. On January 30, 2008, DEQ staff conducted an unannounced site visit of the Mirant Plant.

9. The coal pile perimeter fencing with associated windscreens at the Plant were installed for the purpose of controlling wind erosion and dust suppression, serving as air pollution control equipment.

10. On January 30, 2008, DEQ staff observed that the windscreens on the coal pile fencing were not properly fastened at the bottom for approximately 17 sections of fence. Each fence section is about 10 feet long.

11. The DEQ staff reviewed the Plant records, which documented that portions of the windscreens had been in a state of disrepair dating back to December 8, 2007.

12. The detached and unsatisfactory condition of significant portions of the windscreens constituted a violation of the Plant's obligation to operate in accordance with air pollution control practices for minimizing air emissions, as required by 9 VAC 5-40-20 E.

13. Plant personnel advised DEQ staff that a work order for the repair of the coal pile fence and associated windscreens had been approved by Plant management on January 29, 2008.

14. Mirant failed to notify DEQ in a timely manner of the coal pile perimeter fencing malfunction, in violation of 9 VAC 5-20-180 C.

15. On February 13, 2008, DEQ staff conducted an additional unannounced site visit to inspect the condition of the coal pile fence and associated windscreens. DEQ staff found that the fence was still in disrepair.

16. On February 16, 2008, Mirant personnel contacted DEQ to inform the agency that repairs to the windscreens on the coal pile fencing had been completed.

17. On March 12, 2008, DEQ issued an NOV to Mirant, citing the following alleged violations:

    a. Failure to maintain and operate the Plant and associated air pollution control equipment, at all times, including periods of malfunction, in a manner consistent with air pollution control practices for minimizing air emissions, as stated in 9 VAC 5-40-20 E.

    b. Failure to notify the Board no later than four daytime business hours after a malfunction is discovered, which may cause excess emissions for more than one hour and for also failing to provide a written statement to the Board within two weeks giving all pertinent facts, including an estimate of the duration of the breakdown, as stated in 9 VAC 5-20-180 C.

    c. Failure to submit a written report to the Board when the breakdown was expected to exist for 30 days or more, as stated in 9 VAC 5-20-180 C.

18. The development of written operating and maintenance procedures and training of plant personnel, as required in Appendix A of this Order, will help ensure that pollution control equipment will be maintained and function in a manner consistent with 9 VAC 5-40-20.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§ 10.1-1307(D), 10.1-1309, and 10.1-1316(C), the Board orders Mirant Potomac River, LLC, and Mirant Potomac River, LLC agrees to perform the actions described in Appendix A of this Order.

In addition, the Board orders Mirant Potomac River, LLC, and Mirant Potomac River, LLC voluntarily agrees to pay a civil charge of $52,000 within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Mirant shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Mirant.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mirant Potomac River, LLC, for good cause shown by Mirant Potomac River, LLC, or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves only those alleged violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Mirant Potomac River, LLC on March 23, 2007, and March 12, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Plant; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts, for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Mirant Potomac River, LLC admits the jurisdictional allegations, but neither admits nor denies the factual findings and conclusions of law contained herein.

4. Mirant Potomac River, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Mirant Potomac River, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Mirant Potomac River, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Mirant Potomac River, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such circumstances. Mirant Potomac River, LLC must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Mirant Potomac River, LLC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. The reasons for the delay or noncompliance;

   b. The projected duration of any such delay or noncompliance;

   c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Director of the Regional Office in writing within 24 hours of learning of any condition above, which Mirant Potomac River, LLC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. Any plans, reports, schedules, or specifications attached hereto or submitted by Mirant Potomac River, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

11. This Order shall become effective upon execution by both the Director or his designee and Mirant Potomac River, LLC.

12. This Order shall continue in effect until:

   a. Mirant Potomac River, LLC petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

   b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mirant Potomac River, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mirant Potomac River, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Mirant Potomac River, LLC voluntarily agrees to the issuance of this Order.

14. The undersigned representative of Mirant Potomac River, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Mirant Potomac River, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mirant Potomac River, LLC.

And it is so ORDERED this 2nd day of July, 2008.

Thomas A. Faha

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Mirant Potomac River, LLC voluntarily agrees to the issuance of this Order.

By: Robert Driscoll

Title: PRESIDENT

Date: June 25, 2008

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this 25 day of June, 2008, by Robert Driscoll (Name), who is President (Title) of Mirant Potomac River, LLC, on behalf of the Corporation.

Notary Public

My commission expires: September 30, 2012.

APPENDIX A

In order to comply with the provisions of the State Air Pollution Control Law and Regulations, the Board orders Mirant to undertake, and Mirant agrees to implement, the following terms and conditions of this Appendix:

1. Within 90 days of the effective date of this Order, develop and submit to DEQ for review and comment, written procedures and protocols that Mirant implements or will implement and follow outlining Plant operations that are designed to minimize air emissions consistent with 9 VAC 5-40-20.E.

2. Within 90 days of the effective date of this Order, develop and submit to DEQ for review and comment, written procedures and protocols that Mirant implements or will implement and follow outlining Plant operations designed to properly operate and maintain pollution control equipment that is consistent with 9 VAC 5-40-20.E.

3. Develop and implement a training program within 90 days of DEQ comment on the documents prepared in compliance with Paragraphs 1 and 2 for all Mirant employees involved in Plant operations in order to instruct the appropriate personnel of those procedures that are or will be used to minimize air emissions while operating the Plant. Initial and subsequent records of employee attendance of the required training shall be maintained on-site and available for DEQ evaluation.

4. All correspondence required by this Order, with the exception of the civil charge as listed in Section D, shall be submitted to the NRO mailing address:

Department of Environmental Quality
Attn: NRO Air Compliance Manager
13901 Crown Court
Woodbridge, VA 22193