



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech.
Secretary of Natural Resources

David K. Paylor
Director

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May 12, 2010

CERTIFIED MAIL
Return Receipt Requested

Mr. Charles Oliver
Plant Manager
Mirant Potomac River Generating Station
1400 North Royal Street
Alexandria, Virginia 22314

NOTICE OF VIOLATION

RE: Mirant Potomac River Generating Station, Registration No. 70228

Dear Mr. Oliver:

This letter notifies you of information upon which the Department of Environmental Quality ("Department" or "DEQ") may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that the Mirant Potomac River Generating Station may be in violation of the Air Pollution Control Law and Regulations.

This letter addresses conditions at the facility named above, and also cites compliance requirements of the Air Pollution Control Law and Regulations. Pursuant to Va. Code § 10.1-1309(A)(vi), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* The Department requests that you respond **within 10 Business days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

Mirant Potomac River, LLC, (Mirant) was issued a Stationary Source Permit to Operate an electric generating facility on July 31, 2008 (Permit).

On March 8, 2010, the Northern Regional Office (NRO) of the DEQ, received electronic correspondence from facility personnel (Mr. David Ciotti-Environmental Analyst) which included data from the Continuous Opacity Monitoring System (COMS), the Sulfur Dioxide Continuous Emissions Monitoring System (CEMS), and operational load data for the time period of February 26, 2010, through March 4, 2010.

Subsequent to the Department's initial review of the data provided, on March 8, 2010, the Department requested additional information regarding several opacity data points in the report. On March 12, 2010, additional information was provided by Mirant officials.

On March 15, 2010, the Department requested additional information and on March 19, 2010, additional information was provided by Mirant officials. The following describes DEQ staff observations and identifies applicable legal requirements.

Observation: *Electronic correspondence received by DEQ on March 8, 2010, March 12, 2010, and March 19, 2010, contains data which provides details of four (4), six -minute average periods that occurred in a one hour period where the opacity readings from the Merged Stack 4 (MS4) COMS were greater than 20%. Review of correspondence provided by Mirant officials revealed that around 11:00 a.m. on February 26, 2010, the level of ash in several of the Fly Ash Hoppers became high enough to cause Electrostatic Precipitator fields on Unit #3 and Unit #4 to trip, which resulted in the opacity excursions. According to the March 19, 2010, correspondence, if the units remain at high levels of generation for extended periods of time or when there are operational limitations due to maintenance downtime, fly ash can accumulate to high levels in the hoppers. When fly ash in the ash hoppers reaches near capacity, it can cause Electrostatic Precipitator malfunctions to occur. The March 19, 2010, correspondence also stated that the high ash level alarms on the Ash Hoppers alerted the operators of the accumulating ash, but there is no documentation to support the reduction of unit power generation to slow the accumulation of ash in the hoppers until after the Electrostatic Precipitator fields tripped.*

Legal Requirements:

9 VAC 5-40-20(E.) states,

“At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

DEQ cited Mirant previously for failing to comply with the requirements of 9 VAC 5-40-20(E) as reflected in the following documents: Warning Letter, October 19, 2006, Notice of Violation, March 23, 2007, Notice of Violation, March 28, 2008, Warning Letter, June 17, 2008, Notice of Violation, December 18, 2008, and Notice of Violation, April 6, 2010. These multiple citations support a finding of recalcitrant behavior.

Observation: *Review of the COMS data provided by the source for stack MS4, indicated that the four (4) 6-minute average opacity readings were 20.9%, 31.3%, 21.1%, and 23.4% at 11:00 a.m., 11:06 a.m., 11:24 a.m., and 11:30 a.m. respectively on February 26, 2010. The explanations provided by Mirant in the electronic correspondence dated March 8, 2010, March 12, 2010, and March 19, 2010, did not appear to indicate that the opacity events which occurred are exempt events due to startup, shutdown, or malfunctions.*

Legal Requirements:

In accordance with 9 VAC 5-80-850 and 9 VAC 5-40-80, Condition 33. of the facility's current Virginia Stationary Source Permit to Operate, dated July 31, 2008, states,

"Visible Emission Limit - Visible emissions from MS1 and MS4 shall not exceed 20% opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60% opacity as determined by the EPA Reference Method 9 (reference 40 CFR Part 60, Appendix A). The COMS may be used to satisfy the visible emission evaluation requirement in lieu of 40 CFR Part 60, Appendix A, Method 9. In the event that the COMS are used in lieu of a 40 CFR Part 60, Appendix A, Method 9 evaluation, the reported data shall include averages of all six-minute continuous periods within the reported period and within the duration of any mass emission performance tests being conducted. It is the responsibility of the permittee to demonstrate that the monitoring system meets the requirements of the applicable performance specification defined in 40 CFR Part 60, Appendix B, that the monitoring system is properly maintained and operated, and that the resulting data has not been altered in any way. In the event that the COMS data indicate compliance for a time period during which Method 9 data indicates non-compliance, the Method 9 data may be used to determine compliance with the visible emission limit. This condition applies at all times except during startup, shutdown, and malfunction."

In accordance with 9 VAC 5-80-890, 9 VAC 5-40-40, and 9 VAC 5-40-20 A.3., Condition 16. of the facility's current Virginia Stationary Source Permit to Operate, dated July 31, 2008, states,

"Monitoring - Continuous Opacity Monitoring Systems (COMS) - Continuous Opacity Monitoring Systems meeting the design specifications of 40 CFR Part 60, Appendix B, shall be installed and maintained to measure and record the opacity of emissions from MS1 and MS4. Except where otherwise indicated in this

permit, the COMS shall be installed, calibrated, maintained, and operated in accordance with the requirements of 40 CFR 60.13 and Appendix B or DEQ-approved procedures which are equivalent to the requirements of 40 CFR 60.13 and Appendix B. Data shall be reduced to six-minute averages. The COMS may be used to satisfy the visible emission evaluation requirement in lieu of 40 CFR Part 60, Appendix A, Method 9. In the event that the COMS are used in lieu of a 40 CFR Part 60, Appendix A, Method 9 evaluation, the reported data shall include averages of all six-minute continuous periods within the reported time frame and within the duration of any mass emission performance tests being conducted. It is the responsibility of the permittee to demonstrate that the monitoring system meets the requirements of the applicable performance specification defined in 40 CFR Part 60, Appendix B, that the monitoring system is properly maintained and operated, and that the resulting data have not been altered in any way. In the event that the COMS data indicate compliance for a period during which Method 9 data indicates non-compliance, the Method 9 data may be used to determine compliance with the visible emission limit.”

§ 10.1-1307.3(B.) of the Code of Virginia states,

“The Executive Director or his duly authorized representative may pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted pursuant to methods approved by the U.S. Environmental Protection Agency, (ii) data from certified continuous opacity monitors, or (iii) other methods approved by the U.S. Environmental Protection Agency.”

9 VAC 5-40-20(A.)(3.) states,

“Compliance with opacity standards in this chapter may be determined by one or more of the following means:

a. Conducting observations in accordance with Reference Method 9 or any alternative method approved by EPA. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

b. Evaluation of data resulting from use of continuous monitoring by transmissometer, provided the instrument used meets Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and that the resulting data have not been altered in any way.

c. Use of any other method approved by EPA.”

****9 VAC 5-170-160 (A) – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part:***

“The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”

****Va. Code § 10.1322 (A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.***

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1316 of the Air Pollution Control Law provides for an injunction for any violation of the Air Pollution Control Law, the Air Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Air Pollution Control Law, regulation, order, or permit condition. In addition, Va. Code §§ 10.1-1307 and 10.1-1309 authorizes the Air Pollution Control Board to issue orders to any person to comply with the Air Pollution Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Air Pollution Control Law and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1320 and 10.1-1309.1 provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, Mirant Potomac River Generating Station may be asked to enter into a Consent

Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at: http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Dispute_Resolution_8260532.pdf or ask the DEQ contact listed below.

Please contact Ms. Sarah Baker, Regional Enforcement Manager, at (703)583-3850 or by e-mail at Sarah.Baker@deq.virginia.gov **within 10 Business days of the date of this letter** to discuss this matter and arrange a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "R. David Hartshorn". The signature is fluid and cursive, with a large initial "R" and "D".

R. David Hartshorn
Regional Air Compliance Manager