

September 10, 2003

Ms. Debra Knight  
Environmental Coordinator  
Mirant Potomac River, LLC  
1400 North Royal Street  
Alexandria, VA 22314

**NOTICE OF VIOLATION**

RE: NOV  
Mirant Potomac River, LLC  
DEQ Reg.#: 70228

Dear Ms. Knight:

This letter notifies you of information upon which the Department of Environmental Quality (the Department) may rely to institute an administrative or judicial enforcement action. It is neither a case decision under the Virginia Administrative Process Act, Code § 9-6.14:1 *et seq.*, nor an adjudication. The Department requires that you respond to this letter within 10 days.

**FACTS AND LEGAL REQUIREMENTS**

1. Section 110 (a)(1) of the Federal Clean Air Act (CAA) requires that the Commonwealth of Virginia maintain a State Implementation Plan (SIP), approved by the U.S. Environmental Protection Agency (EPA), to provide for the attainment and enforcement of National Ambient Air Quality Standards (NAAQS).
2. The Potomac River Generating Station is located in Alexandria, VA, which has been designated by EPA as a severe ozone nonattainment area under the CAA. Alexandria's air quality, as well as that for the entire Northern Virginia, Washington, D.C., and suburban Maryland region, does not meet the NAAQS for ozone.
3. Consistent with the Virginia SIP, in accordance with 9 VAC 5-80-800 C.2.b, and as mandated by Section 110 (a)(2)(D)(1) of the CAA, the

Department issued a Virginia Stationary Source Permit to Operate to the Potomac River Generating Station on September 18, 2000 (the Permit) that limited facility-wide emissions of oxides of nitrogen (NOx) in order to help ensure that emissions from the station do not contribute significantly to exceedances of the NAAQS for ozone in the Northern Virginia, Washington, D.C., suburban Maryland severe ozone nonattainment area. The Permit was approved by EPA and has been incorporated into the Virginia SIP. 65 Fed. Reg. 78,1000 (December 14, 2000).

4. Condition 3 of the Permit limits the Potomac River Generating Station to emitting no more than 1,019 tons of NOx (measured as NO<sub>2</sub>) each year during the ozone season period of May 1 through September 30.
5. Condition 4 of the Permit requires the Potomac River Generating Station to comply with the NOx emissions limit contained in Condition 3 commencing in calendar year 2003.
6. On June 4, 2003, the Department requested from Mirant NOx emissions data for the Potomac River Generating Station for the purpose of assessing the station's compliance with the terms and conditions of the Permit, in particular Condition 3.
7. On August 26, 2003, Mirant's counsel informed DEQ by electronic mail that NOx emissions from the Potomac River Generating Station for the period of May 1, 2003, through July 31, 2003 were 1,174 tons. This total exceeds the emissions limit contained in Condition 3 of the Permit.
8. Upon information and belief, the Potomac River Generating Station has continued to emit additional, significant quantities of NOx during August and September 2003, thereby further exceeding the emissions limit contained in Condition 3 of the Permit.

#### **ENFORCEMENT AUTHORITY**

Code § 10.1-1316 of the Air Pollution Control Law provides for an injunction for any violation of the Law, the Air Board regulations, an order, or permit condition. The same statute provides for a civil penalty up to \$25,000 per day of violation of the Law, regulation, order, or permit condition. Code § 10.1-1307 authorizes the Board to issue orders, and Code § 10.1-1309 authorizes the Board to issue special orders to address such violations. In addition, Code § 10.1-1186

authorizes the Director of DEQ to issue special orders to any person to comply with the Air Law and regulations, and to impose a civil penalty of not more than \$10,000.

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

**FUTURE ACTIONS**

The staff must make a recommendation about how to proceed with this matter and whether to initiate an enforcement action based upon these facts. Before taking any further action, however, we would like to discuss this matter with you.

Your point of contact is Kelly Lease at (703) 583-3937. Please contact me within ten days of the date of this letter if you dispute any of the facts I have stated or if there is other information you believe the DEQ should consider. At the same time, please inform me of any corrective action you have instituted or plan to institute and the schedule for doing so.

A meeting to discuss resolution of this matter will be arranged when you talk with me. During this meeting, all aspects of the situation will be discussed. You may be asked to enter into a Consent Order with the Department to formalize your plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the payment of civil charges.

Sincerely,

Kelly E. Lease  
Environmental Inspector Senior

Cc: Compliance File  
Charles Forbes, ACM-NVRO  
John Bowden, DRD-NVRO  
Michael G. Dowd, DOE-CO