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May 16, 2008

VIA EMAIL AND COURIER DELIVERY

Dominion Virginia City Hybrid Energy Center
c/o Cindy M. Berndt
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

Re: Supplemental Comments of Southern Environmental Law Center, Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Southern Appalachian Mountain Stewards, Regarding the Draft MACT and BACT/PSD Permits for the Proposed Virginia City Hybrid Energy Center

Dear Ms. Berndt:

Please find attached the comments and exhibits of the Southern Environmental Law Center, Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Southern Appalachian Mountain Stewards, for filing in the supplemental comment period on both the MACT and PSD/BACT draft permits for the proposed Virginia City Hybrid Energy Center.

A copy of these comments (not including exhibits) is being submitted to you and members of the State Air Pollution Control Board via email. A hard copy of the comments, along with all exhibits, is being delivered the Richmond headquarters of DEQ via courier. Please date stamp a copy of this cover letter and return it to the courier.

If there are any questions or concerns, please contact my assistant, Lydia Gaya. Her direct dial is 434-244-5367.

Sincerely,

Cale Jaffe

ATTACHMENT 1

Southern Environmental Law Center

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Re: Supplemental Comments of Southern Environmental Law Center, Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Southern Appalachian Mountain Stewards, Regarding the Draft MACT and BACT/PSD Permits for the Proposed Virginia City Hybrid Energy Center

Dear Ms. Berndt and Members of the State Air Pollution Control Board:

The Southern Environmental Law Center (SELC), on behalf of itself, Appalachian Voices, Chesapeake Climate Action Network, Sierra Club, and Southern Appalachian Mountain Stewards, respectfully submits the following comments in response to the documents prepared by individual Board members regarding the draft case-by-case Maximum Achievable Control Technology (MACT) and Prevention of Significant Deterioration (PSD) permits for the Virginia City Hybrid Energy Center (VCHEC).

At the outset, we note our agreement with the statement of Ms. Vivian Thomson, in her Memorandum regarding the proposed VCHEC, that the "BACT and MACT

determinations cannot be made separately. So the BACT determination for this facility cannot be finalized until DEQ has received the MACT comments and has incorporated those comments into a combined BACT/MACT determination." Memorandum of Vivian Thomson, Vice Chair, Air Pollution Control Board, to David Paylor, Director, Department of Environmental Quality, (April 14, 2008). Likewise, we stated in our Petition for Extension of the Comment Periods, filed on March 10, 2008:

> The case-by-case MACT requirements of § 112(g) require new coal-fired power plants to implement the maximum level of pollution control technology achievable. The BACT determinations, in contrast, are more sensitive to cost considerations, potentially allowing for the elimination of control technologies that might be required under MACT. Accordingly, the PSD permitting process cannot be allowed to proceed in advance of the case-by-case MACT analysis. To do so would threaten to unlawfully foreclose consideration of all required options under a proper MACT review.

Accordingly, it is imperative to clarify that the comments we are submitting today, as well as all other documents filed in relation to this comment period (whether by other public commenters, the Applicant, DEQ staff, or Board members) are part of the administrative record for both the MACT and PSD permit proceedings. We note this fact in response to statements on the DEQ website suggesting that the MACT and PSD comment periods have closed. The issues on which the Board has asked for supplemental comments relate specifically and explicitly to both the MACT and PSD permit applications. Inclusion of all comments, documents, and memoranda in the administrative record is part of the Department's obligation in managing the permit application process. Accordingly, there can be no doubt that these comments, along with other submissions, are part of the administrative record for both permits.

I. DEQ and Dominion May Not Exclude Fuels From Outside the Commonwealth in Performing the BACT and MACT Analyses.

Judge Hullihen Williams Moore has raised questions regarding the quality of coal available in Virginia, and the quality of the coal used by Virginia electricity generating units (EGUs). Dominion, in repeated statements before the Board and DEQ, has suggested that the VCHEC's environmental performance is inherently impaired by Virginia Code § 56-585.1.A.6., which requires Dominion to "utilize[] Virginia coal," and allows it to apply for rate recovery from the State Corporation Commission before the expiration of capped rates.

As a preliminary matter, we stress that VCHEC's environmental performance could be greatly improved through the use of far cleaner Virginia coals than those Dominion proposes to use. As we stated in our April 18, 2008 comments on the draft MACT permit for the proposed Wise County plant, Dominion's Clover facility uses Wise County, Virginia coal that has a far higher Btu value and far lower mercury content than the fuel proposed for VCHEC. A U.S. Geological Survey spreadsheet of the mercury value of Virginia bituminous coal (attached as Exhibit 1), obtained from DEQ, indicates that the average mercury value of Virginia bituminous coal is 0.122 ppm, and that coal with a mercury content as low as 0.010 ppm is available in the state. Dominion does not need to burn coal with a mercury level of 0.3511 ppm in order to comply with a requirement to burn "Virginia coal."

Even more, as we explained in our comments filed on March 12, 2008, the Supremacy Clause of the United States Constitution[1] requires that federal law pre-empt

[1] U.S. Const. art. VI, § 2, states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United

an inconsistent state law "when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *International Paper Co. v. Ouellette,* 479 U.S. 481, 491-92 (1987) (internal citations omitted) (finding that federal Clean Water Act pre-empts nuisance lawsuit premised on state law). *See also Geier v. American Honda Motor Co.,* 529 U.S. 861, 871-72 (2000) (application of state law "would take from those who would enforce a federal law the very ability to achieve the law's congressionally mandated objectives that the Constitution, through the operation of ordinary pre-emption principles, seeks to protect."). Thus, in this case, an overly zealous application of any state law requirement to "utilize Virginia coal" is pre-empted by the Clean Air Act, which requires DEQ and Dominion to complete full and rigorous BACT and MACT analyses.

II. Fuel Washing Is Required As Part of the BACT and MACT Analyses, and The Board May Require Analysis of Fuel Washing in Developing the Permits.

The proposed VCHEC would have exceedingly high emissions of conventional pollutants and toxics – sulfur dioxide, $PM_{2.5}$, and mercury, among others. On mercury alone, VCHEC would emit up to 72 pounds of mercury per year. In contrast, Reliant Energy's 521-megawatt CFB facility in Seward, Pennsylvania emits just 1 pound of mercury per year. The Reliant facility, which came online in 2004, burns exclusively waste coal. The poor comparison of VCHEC to Reliant-Seward and other facilities (mercury emissions *seventy* times what comparable facilities have achieved) is nothing less than shocking.

States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Several Board members have cited to Dominion's reliance on unprocessed, run-of-mine (ROM) coal as the likely cause of VCHEC's poor performance. As a result, Mr. Buckheit, in his April 14th Memorandum, has asked whether it would be beyond its authority for the Board to direct Dominion to alter its "choice of fuels" from ROM coal and gob to washed and processed coal (as Dominion phrased the issue), or whether coal cleaning is merely a "control technique" that the Department may or must require. The simple answer is that DEQ unquestionably may require the use of cleaner fuel as a control technique. The implementing regulations for CAA § 112(g) define control technology as *including* fuel substitutions. See 40 CFR 63.40 (defining "control technology" to include all "measures, processes, methods, systems or techniques to limit the emission of hazardous air pollutants through process changes, *substitution of materials*, or other modifications.") (emphasis added).

But in practice, it does not matter whether one considers using processed coal a switch in fuels or the order to impose a control technique. As we explained in our comments of April 18, 2008 on the draft MACT permit for VCHEC, once the MACT floor is identified, the applicant must find a way to meet that floor, regardless of cost, *National Lime Association*, 233 F.3d at 629, and *regardless of the need for major design changes*. *See Sierra Club v. EPA*, 479 F.3d at 882-83 (D.C. Cir. 2007) (rejecting EPA's reliance on "a concern that floors based on clean [inputs] would be unachievable because of the inability of [sources] to switch [inputs]" as a reason for deviating from the MACT floor requirements of the Clean Air Act (CAA)). To reiterate: if switching fuels is required to meet MACT, then it must be done.

III. Mercury Emission Limits for the Proposed VCHEC Fail To Meet Minimum CAA Standards.

Mr. Buckheit, on page 13 of his April 14th Memorandum, has asked that "[d]ata for operations at Seward Station, which is in the same size class and employs similar technology and proposed feedstocks" as the proposed Wise County plant "be obtained if possible." Similarly, Ms. Thomson has also requested specific information on what would be an appropriate MACT standard for mercury, asking whether the levels recommended in the 2005 STAPPA/ALAPCO model rule on MACT provide an appropriate guidepost.

As we observed in our comments filed on April 18, 2008, the case-by-case MACT analysis contains two essential steps: (1) determination of the emissions control level achieved by the "best controlled similar source" for each of the hazardous air pollutants (HAPs) that the source will emit (determination of the MACT "floor"); and (2) review of more stringent control levels for each HAP, considering cost, feasibility, and other related issues (the "beyond the floor" analysis). In this case, DEQ has failed to even complete step one—assessment of the MACT floor.

Determination of the MACT floor is a complex process, which begins with a consideration of the emissions limits *actually* achieved at the best controlled similar source. DEQ and Dominion failed to do this. Dominion proposed, and DEQ accepted, that Eastern Kentucky Cooperative's Spurlock Power Station Unit #3, in Maysville, Kentucky was the best-controlled similar source. As the attached stack-test data for Spurlock and Reliant-Seward show (attached as Exhibits 2, and 3-a and 3-b, respectively) (obtained through a Freedom of Information Act (FOIA) request to DEQ), Spurlock emits more mercury than Reliant-Seward, and so it is *not* the best-controlled similar

source. It follows, in turn, that the mercury emissions limit in the draft permit is invalid because it depended on Spurlock as the "best-controlled similar source."

The Seward stack tests show that Seward's actual emissions of mercury in 2006 were 0.02 lbs per 10^{12} Btu. According to notes written on the document obtained from DEQ, this level amounts to an "avg. of 0.73 lb/yr [when] scaling up to Dominion['s] heat capacity of 6264 MM Btu/hr." *See* Reliant-Seward stack-test data, Exhibit 3-b. This is two full orders of magnitude lower than the 72 pounds per year that the MACT permit (through the "out clause") sets as the long-term limit, establishing definitively that the draft permit's choice for the MACT floor does not comply with the CAA's requirements.[2]

Mr. Buckheit has requested information on what annual mercury emissions from the Wise County plant would be if it were held to the mercury-reduction levels achieved by, for example, eight waste-coal electric generating units currently in operation. Undoubtedly, the mercury emissions reduction levels achieved by these plants, seven of which exceed 99%, show that the 98% mercury emissions reduction level that Dominion and DEQ say represents MACT is not the highest percentage reduction that has been achieved in practice. This is an important point, insofar as it is one way of establishing that the draft permit falls far short of requiring that the proposed Wise County plant use the maximum available control technology to control mercury emissions.

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[2] It is worth noting that Seward is not the only comparable facility that DEQ considered that had far better mercury figures. The Council Bluffs, Iowa plant operated by the MidAmerican Energy Company that obtained a MACT permit in June 2003, was limited in its MACT permit to 1.7×10^{-6} lb/mmBtu, or less than one eighth the proposed MACT level for VCHEC. Santee Cooper Cross in South Carolina, permitted in February 2004, was allowed to emit 3.6×10^{-6} lb/mmBtu, or less than one fourth the proposed MACT level for VCHEC. These case-by-case MACT permits, along with permits for plants in Florida and West Virginia, are attached as Exhibits 4-a, 4-b and 4-c, for comparison purposes.

However, we caution that the members of the Board should *not* accept even the highest percentage reduction that has been achieved by other coal-fired power plants as somehow representative of the MACT floor. As we explained in our April 18, 2008 comments, percentage reduction is not the only arbiter of the best performing source. Rather, percentage reductions must also be considered along with the lowest emission rate (expressed as pounds per mmBtu) that an EGU has actually achieved, whether through application of control technology, the use of cleaner burning fuels, or other strategies.

In other words, if the best controlled similar source reduces its emissions of mercury by 99.95%, it is not enough for the MACT floor analysis that the source being permitted also reduce emissions by 99.95%. Instead, the analysis must also consider the amount of mercury per mmBtu produced that the best controlled EGU emits, and limit the proposed Wise County plant to emitting that same amount per mmBtu. Similarly, at step two of the MACT analysis, it is not enough to show that the proposed facility is emitting 1 pound of mercury per year (if that has previously been determined to be the MACT floor). If the proposed source is achieving that 1 pound per year limit through the use of cleaner fuel, but is only capturing 60% of mercury emissions, then the step 2 analysis must consider additional reductions that might feasibly be achieved by increasing capture to, for example, 99.5%

As we said in our earlier comments, a facility that achieves the best percentage reduction of a HAP will not necessarily be the facility that achieves the best actual emissions performance *in practice*—especially if it uses high-HAPs fuel. That is, a new facility that matches a percentage reduction would not achieve that same emissions

performance if the fuel it planned on using had higher HAPs content than that used by the benchmark source. Thus, percentage reduction cannot establish MACT on its own. At the end of the day, the actual rate of mercury emissions per mmBtu must drive the analysis.

At a minimum, MACT for VCHEC must be at or below the actual emissions levels achieved at Reliant-Seward It is important to note, however, that SELC, *et al.* are not stating that the Seward plant establishes the MACT standard. Rather, we are stating that the fact that Seward emits so much less mercury than does Spurlock shows that Spurlock is not the best controlled similar source from which the MACT floor can be established. Looking at Seward's emissions is only the beginning of the analysis. The task of determining the best-controlled EGU in the country has not been, and remains to be, accomplished. When that source is found, it may be that the MACT floor is below even the Reliant-Seward emissions level. And, after completion of step-two of the MACT process, it may be that MACT will require mercury emission levels for VCHEC below that of the best controlled similar source.

IV. The MACT and BACT Draft Permits Contain Emissions Limits That Nonbinding and Therefore Illusory.

A. The Sulfur Dioxide Limit in the PSD/BACT Permit Allows The Applicant to Exceed the 1684 tons/year Limit and Emit 3292 tons/year.

Ms. Vivian Thomson, in her April 14th Memorandum, states that "Dominion has agreed to reduce SO_2 emissions by fifty percent from the originally proposed level." This statement is incorrect. As with the mercury limit, the sulfur dioxide limit is crafted in a way to make its perceived reductions illusory.

The sulfur dioxide limit in the PSD/BACT permit was set in the November 2007 draft permit at 3292.36 tons per year. The United States Forest Service, under its obligations as a Federal Land Manager, sent a letter noting that the Forest Service's "preliminary determination is that sulfur dioxide emissions from the proposed Virginia City Hybrid Energy Center may cause adverse impacts to the visibility and flora Air Quality Related Values at Linville Gorge Wilderness," meaning the plant would violate federal Clean Air Act requirements for Air Quality Related Values (AQRVs) in protected Class I areas. *See* Letter from Marisue Hilliard, Forest Supervisor, to Rob Feagins, DEQ (Dec. 4, 2007) (attached as Exhibit 5). *See also* CAA § 165(a)(5) (laying out requirements for Class I areas).

In response, Dominion and DEQ sought to revise the permit, which now reads:

> [T]he permittee shall on an annual basis use reasonable efforts to reduce sulfur dioxide emissions below 3,369 tons per year and mitigate the actual sulfur dioxide emissions impact from the facility above 1,684 tons per year ...

See Condition 41, Draft PSD Permit (January 2008). At first glance, this Condition might appear to address the Forest Service's concerns by requiring a fifty percent reduction in sulfur dioxide emissions. However, the language only requires the Applicant to use undefined "reasonable efforts" to meet the 1,684 tons per year limit, as opposed to absolutely mandating that the lower limit be achieved.

Furthermore, the Condition then outlines three levels of control strategies, the last of which allows DEQ to approve an "alternative mitigation plan" allowing the Company to purchase sulfur dioxide emission credits (at various ratios) from other, unrelated facilities in any one of twenty-seven states, plus the District of Columbia, that are participating in the Clean Air Interstate Rule. Thus, in lieu of actually reducing sulfur

dioxide emissions at VCHEC or at facilities proximate to the threatened Linville Gorge Wilderness, Dominion would be able to purchase credits from facilities as far away as Texas, Minnesota, New York, and Florida, regardless of whether those credits would have any impact on Class I areas in the vicinity of the power plant. This transforms the sulfur dioxide limit in the permit into a convoluted program that may do nothing to address AQRV concerns at Linville Gorge. Simply put, reducing sulfur emissions in Texas will do nothing to address the Forest Service's concerns as cited in the December 4, 2007 letter. Accordingly, Condition 41, because it may do nothing to remedy the adverse impacts caused by VCHEC to the visibility and flora Air Quality Related Values at Linville Gorge Wilderness, violates the Clean Air Act.

B. The Mercury Limit in the Case-by-Case MACT Permit Allows The Applicant to Exceed the 49.46 lb/year limit and emit up to 72 lb/year.

Ms. Thomson asks in her April 14th Memorandum how the proposed emissions limits for mercury (of 0.000014 lb/ MWh and 49.46 lb/yr) were deemed MACT. As explained in our earlier comments on the MACT permit, and as elucidated in more detail in Parts II and III above, the standard set in the draft permit falls far short of the minimum threshold requirements for the MACT analysis. Accordingly, on the numbers for mercury alone, the permit clearly violates the Clean Air Act. However, it is just as critical to note that the mercury limit of 49.46 lb/yr is wholly illusory.

The draft MACT permit contains an unlawful "out clause" that would allow Dominion to exceed the 49.46 lb/yr and 0.000014 lb/ MWh limits in the permit. Condition 33 of the case-by-case MACT determination states:

> [I]f the permittee [Dominion] reasonably demonstrates … that the lb/MWhr and/or the lb/yr limit are not achievable on a consistent basis under reasonably

> foreseeable conditions, then testing and evaluation shall be conducted to determine an appropriate adjusted maximum achievable annual emission limit…

In other words, if the Applicant determines—after the permit has been issued, after construction has been completed, and after the plant has come online—that it cannot meet the permit limit, the applicant is allowed to have the limit raised to some undetermined number that the Applicant is more comfortable achieving. Presumably, this would allow the Applicant to emit up to 72 pounds of mercury per year, which is the annual limit specified in the prior PSD/BACT draft permit.

Dominion's statements in the press confirm this reading of Condition 33. An article in the *Coalfield Progress* quoted a Dominion spokesman explaining, "What the clause they're [SELC, *et al.*] referring to says is that if we can't reach that level we will still be in compliance if we're between 49 and 72 pounds …. "*We're trying to do the best we can. If we can't reach the new, lower level, should we be punished for it*?" *See* "Deadline For Air permit Comments Is May 16," *Coalfield Progress* (April 22, 2008) (emphasis added) (attached as Exhibit 6). The answer, of course, is yes, the Company should be punished if it cannot meet the MACT standards, because that failure would be a plain violation of the Clean Air Act. The draft permit cannot be formulated in a way that allows the Company to exceed its permits limits because the Company is "trying to do the best [it] can." To have any meaning, the permit limits must be enforceable. An unenforceable limit jeopardizes the entire permit as unlawful.

V. The Fly-Ash From the Coal Plant Will Contain Unacceptably High Levels of Toxic Mercury That the Permits Unlawfully Fail to Address.

Mr. Buckheit, in his Memorandum of April 14, has asked how "ash generated by VCHEC operations" would be managed. Similarly, Ms. Vivian Thomson has noted that

the Coal Plant would produce 2.6 million tons of fly ash per year, approximately ten times the amount produced by a "typical" IGCC facility.

Because of the poor quality of unwashed, ROM coal that Dominion proposes to burn, the mercury content of the fly ash would be exceedingly high. The plan to dispose of this toxic waste is to landfill it at a site perilously close to the biologically diverse Clinch River. DEQ has undertaken no analysis on how to manage the mercury contamination that might corrupt local waterways, including the Clinch. DEQ has not considered ways to reduce the amount of mercury in the fly ash, ways to improve management of the fly ash specific to mercury contamination, or ways to monitor mercury contamination that might be found in run-off downstream from the proposed landfill.

In contrast, DEQ appears to have considered papering over its deficiencies on this point. In an email dated February 29, 2008, DEQ staff raised the issue:

> One other thing that will quite certainly come up at the briefing and hearing is ash disposal. It will be an issue that mercury is being taken out of the flue gas and concentrated in ash that will be landfilled and potentially be a problem.

See Email from Rob Feagins, DEQ, to Margaret Key, DEQ, "Subject: Ash", Feb. 29, 2008 (attached as Exhibit 7). Instead of substantively addressing the issue, however, staff dismissed it stating, "I don't know where or how, but maybe something could be worked into the EA [Engineering Analysis for the MACT permit] about this, *so it will at least appear that we have considered this*." *Id.* (emphasis added).

The failure to address these concerns must be remedied before any future draft permit is published for public comment.

VI. The VCHEC Coal Plant Is a Conventional Coal-Burning Facility And Is Not "Carbon Capture Capable" or "Carbon Capture Compatible."

Ms. Thomson, in her April 14, 2008 Memorandum, cited to the Resolution passed by the Wise County Board of Supervisors on January 11, 2008 (attached as Exhibit 8), specifically quoting the language from the resolution on carbon capture technology. The Resolution states, in relevant part:

> WHEREAS, Dominion has committed to utilize Carbon Capture Capable (CCC) equipment on the proposed facility to limit and reduce Green House Gases (GHG0 thereby either eliminating or reducing the 'carbon footprint of the state-of-the-art Virginia City Hybrid Energy Center; ...
>
> BE IT FURTHER RESOLVED that the Virginia City Hybrid Energy Center be used as a World Model of how CCC power plants can be developed in the 21st century to make significant impacts upon the reduction of GHG emissions thereby allowing this technology to be exported elsewhere and retrofitted upon existing coal-fired power plants already in operation.

Resolution of the Wise County Board of Supervisors, January 11, 2008. (It should be noted several other localities and municipalities around the regions have passed resolutions strongly opposed the proposed VCHEC. These include resolutions in opposition to the proposed facility from the Metropolitan Washington Council of Governments (attached as Exhibit 9-a), the Blacksburg Town Council (attached as Exhibit 9-b), the Charlottesville City Council (attached as Exhibit 9-c), and the Albemarle County Board of Supervisors (attached as Exhibit 9-d), among many others.

In response to the Wise County Board of Supervisors resolution, Ms. Thomson asked: "To DEQ staff's knowledge, has Dominion committed to eliminate or reduce its greenhouse gases at this facility? How can the proposed facility be viewed as a 'World Model' for control of greenhouse gas emissions, as anticipated by the Wise Supervisors' resolution?"

It is important to emphasize, as we stated in our March 12, 2008 comments on the draft PSD permit, that carbon dioxide is a pollutant regulated under the Clean Air Act. *See Massachusetts v. EPA,* 127 S.Ct. 1438, 1462 (2007). *See also* 42 U.S.C. § 7475(a)(4) ("No major emitting facility … may be constructed in any area to which this part applies unless … the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter…."); 42 U.S.C. § 7651k note ("Monitoring. The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 to require that all affected sources … shall also monitor carbon dioxide emissions…."). Therefore, DEQ and the Board cannot issue a permit to operate the proposed VCHEC unless the facility undergoes a BACT analysis for carbon dioxide.

Dominion, however, has no plan whatsoever to capture the carbon dioxide emissions, or other greenhouse gas pollutants, from VCHEC. Moreover, because of the plant's high heat rate and poor thermal efficiency, it is for all practical purposes economically *incompatible* with any future carbon capture technology.

A. The State Corporation Commission's Ruling Confirms that the Proposed VCHEC is a "Conventional Coal" Plant and is Not "Carbon Capture Compatible."

Virginia Code § 56-585.1.A.6 allows a utility to petition the State Corporation Commission (SCC) for an additional two percent added to the company's general rate of return if the utility constructs a power plant that is "Carbon capture compatible, clean-coal powered." On July 13, 2007, Dominion Power applied to the SCC for approval of a coal-fired power plant in Wise County, and also sought the additional two percent financial bonus for being "carbon capture compatible." During the course of the

proceedings before the SCC, overwhelming evidence presented by expert witnesses for the Southern Environmental Law Center, the Attorney General of Virginia, Division of Consumer Counsel, and the staff of the SCC, demonstrated that the plant was not "carbon capture compatible" under any common-sense understanding of the term. In the face of this evidence, *Dominion withdrew its request before the SCC on carbon capture.* Thus, on March 31, 2008, the SCC ruled that the plant was not "carbon capture compatible," but instead was a "'conventional coal' facility."

The Final Order from the State Corporation Commission states:

> We find that the construction costs projected by the Company to be incurred in connection with the proposed Coal Plant are reasonable and prudent at Virginia Power's currently projected level of $1.8 billion. …
>
> [W]e do not find that it is reasonable or prudent for the Company to incur *any* amount of costs above the cost estimates that comprise the projected level of $1.8 billion. We cannot approve in essence a blank check for Virginia Power to build the Coal Plant at *any cost* ...
>
> The finding of reasonableness and prudence herein does not extend to any costs associated with retrofitting, or other modifications to, the Coal Plant to make it carbon capture compatible. Accordingly, our approval herein is subject to the requirement that there shall be no recovery of any costs associated with future retrofitting, or other future modifications to, the Coal Plant to make it carbon capture compatible….
>
> [T]he Company has withdrawn its request for a finding that the Coal Plant is entitled to a 200 basis point adder as a 'carbon capture compatible, clean-coal powered' generation facility under § 56-585.1.A.6 of the Code. Accordingly, we make no finding herein as to whether the Coal Plant is a 'carbon capture compatible, clean-coal powered' generation facility. However, we find that there is evidence in this proceeding to establish that the Coal Plant is 'clean-coal powered.'"
>
> Since we do not determine herein whether the Coal Plant is 'carbon capture compatible,' we find that this coal-fired facility qualifies, at a minimum, as a 'conventional coal' facility under § 56.585.1.A.6 of the Code. … Accordingly, the Coal Plant shall receive an enhanced return of

> 100 basis points as prescribed for a 'conventional coal' plant by § 56-585.1.A.6 of the Code.

Virginia State Corporation Commission, Final Order, Case No. PUE-2007-00066 (March 31, 2008) (attached as Exhibit 10).

In short, the SCC ruling contains two critical observations: (1) of the $1.8 billion approved for construction of the facility, *not one penny* will go towards any future retrofits, modifications, or other improvements to prepare the plant for future carbon capture; and (2) one hundred percent of the construction costs are exclusively for building a conventional coal facility. Moreover, as shown below, the evidence before the SCC made it effectively impossible for the Commission to find the plant to be anything other than a conventional coal-burning facility with no plan to address its global warming pollution.

B. Dominion Has Selected A Coal-Burning Technology – CFB – That Is Poorly Suited For Future Carbon Capture.

Although carbon-capture technology is not yet commercially available, it is not being developed in a vacuum. It is understood that coal-burning technologies with the highest thermal efficiency will undoubtedly be more suitable for capturing carbon emissions than inefficient designs. Dominion's has proposed a sub-critical CFB plant that is woefully *ill-suited* to future retrofit of carbon capture equipment, primarily because of its poor thermal efficiency.

The widely respected MIT study on *The Future of Coal* emphasizes this point repeatedly. Accordingly, the MIT authors recommend:

> *New coal combustion units should be built with the highest thermal efficiency that is economically justifiable.* Any carbon charge will make the economics of higher efficiency coal plants more attractive than those of lower efficiency plants. In addition, continuous advances in R&D

> make it likely that further reductions in heat rates [which correspond to higher efficiency] will be possible. For pulverized coal plants this means super critical pulverized coal (SCPC) plants today and ultra-super critical pulverized coal (USCPC) soon. *A 500 MWe USCPC plant will emit about 100 tonnes per operating hour less than a sub-critical plant, avoiding about 21% of the CO_2 emissions.*

MIT, *Future of Coal,* at 96 (emphasis added) (attached as Exhibit 11). Consistent with the MIT report is the testimony before the SCC of Dr. Douglas H. Cortez, of Hensley Energy Consulting, who testified on behalf of the Southern Environmental Law Center, *et al.* Dr. Cortez explained, "The VEPCo CFB project operates at a lower efficiency than a PC plant or an IGCC plant. This means it will produce about 20 percent more CO_2 per kilowatt-hour of power produced. This is important since the cost of capturing CO_2 is far more costly than the cost of transporting it or storing it." Examination of Douglas Cortez, State Corporation Commission, Case No. PUE-2007-00066, at 937–38 (Feb. 6, 2008) (attached as Exhibit 12).

According to MIT, a CFB such as the Wise County plant will emit far more tons of CO_2 than a supercritical or ultra-supercritical coal plant with the same net output. Capturing those additional tons—or purchasing offsets for them—will be far more expensive for the Wise County CFB than for a supercritical facility, such as SCPC or Integrated Gasification Combined Cycle (IGCC). As the MIT report details, the cost of electricity (COE) in cents per KWh for a CFB with carbon capture is more expensive than the cost for a SCPC with capture. *See* MIT, Exhibit 11 at 19, Table 3.1. Similarly, MIT notes that the COE from a pulverized coal (PC) facility will escalate *by sixty percent* once carbon capture is added. For IGCC, carbon capture escalates COE by less than thirty percent. *See id.* at 36, Table 3.7. *See also* Pre-Filed Direct Testimony of Douglas Cortez, State Corporation Commission, Case No. PUE-2007-00066, at 15, Table 4 (Nov.

2, 2007) (attached as Exhibit 13). As a result, IGCC represents a dramatically cheaper option than sub-critical technologies like pulverized coal and CFB once carbon capture costs are factored in. *See* Examination of Douglas Cortez, Exhibit 12, at 936, lines 11–19 ("IGCC technology is uniquely suited to capture carbon dioxide prior to combustion of the fuel. The consensus of numerous studies show that this can be done at a lower cost compared to capturing CO_2 after combustion in an SCPC or CFB plant.").

The differences in carbon costs for different coal burning technologies underscores the fact that the proposed Wise County coal plant is an extraordinarily poor investment, given the inevitability of future carbon regulation. More critically, it emphasizes that Dominion has not planned for the eventuality of a carbon constrained economy. In choosing a coal-burning technology that is ill-suited for future carbon retrofit (due to significant cost penalties), Dominion has not designed a plant that is "carbon capture compatible." In fact, from the standpoint of economic feasibility, it is likely that the proposed Wise County CFB facility will never be compatible with future carbon capture technology.

C. There Are Concrete Steps Dominion Could Have Taken, But Did Not, To Better Plan For Carbon Capture Technology.

Testifying on behalf of SELC, *et al.,* Dr. Cortez explained, "The way you design a carbon-capture ready plant is to actually design127 S.Ct. 1438and there is plenty of information available to do this. … I worked for 22 years with a company that owns this technology. … I am the one that bought the technology in 1989, when I as at Fluor. So you can design. I am not saying it is ready to scale up or we know how it is going to work at these huge scales but several small scales have been built. And so they have the

basic chemistry and process-design information to design these." *See* Examination of Douglas Cortez, Exhibit 12 at 944–45. Dr. Cortez further explained:

> In order to be truly carbon capture compatible, it would be necessary to develop a conceptual design of the carbon capture and CO_2 compression equipment and prepare an equipment arrangement drawing. This would require selecting a technology basis for this operation. Such a study would determine the changes in the design of the CFB plant that might be required to accommodate future addition of carbon capture equipment. The most effective carbon capture process requires integrating the power plant steam system with the CO_2 scrubbing and stripping equipment. A phase one engineering study of the carbon capture system would identify the investments that would be needed to accommodate a future retrofit of the plant for carbon capture. Simply leaving plot area for a hypothetical carbon capture and compression plant does not make the plant carbon capture compatible.

Pre-Filed Direct Testimony of Douglas Cortez, Exhibit 13 at 17.

Instead of proposing its CFB facility, Dominion could have selected other, higher-efficiency technologies, which would have been better suited for eventual carbon capture. As SELC witness Cortez testified, "IGCC technology is uniquely suited to capture carbon dioxide … The technology for capturing carbon in an IGCC plant is proven technology that is practiced today on a large scale in commercial hydrogen, ammonia and other petrochemical plants." *Id.* at 4–5.

Other utilities, such as American Electric Power (AEP), are making investments in carbon capture technology. AEP, in particular, is investing in and making commitments to use chilled ammonia carbon capture and oxy-coal processes. With regard to chilled ammonia, AEP states:

> We will install carbon capture on two coal-fired power plants, the first commercial use of technologies to significantly reduce carbon dioxide emissions from existing plants. The first carbon capture project, at the Mountaineer plant in West Virginia, is expected to complete its product validation phase in 2009 The second, at the Northeastern plant in Oklahoma, will begin commercial operation in 2012.

See Bruce Baine, Power Point Presentation, "AEP and Climate Legislation," (attached as Exhibit 14). And with regard to oxy-coal, "AEP will also demonstrate (10MWe) and then install oxy-coal CO_2 capture & storage at a commercial sized coal unit (about 200 MWe)—feasibility study to be completed in 2008." *See id.* Dominion, however, has no plans to install chilled ammonia carbon capture technology on the Wise County facility, and no plans to invest in oxy-coal. As Dominion's Vice President for Fossil and Hydro Technical Services, James K. Martin conceded on cross-examination, *"[T]here is nothing specific that we have decided on this facility."* *See* Cross-Examination of James K. Martin, State Corporation Commission, Case No. PUE-2007-00066, at 746–47 (Feb. 6, 2008) (emphasis added) (attached as Exhibit 15).

Even setting aside investments in amine scrubbing, ammonia chilling, oxy-coal, or other capture technologies, Dominion at least could have designed an "over-built" facility to prepare for future carbon capture. It failed to do this either. As was discussed frequently throughout the evidentiary hearing, application of carbon capture technology is likely to carry with it a significant "parasitic penalty," by 30% or more, of decrease in the net output of a facility. Thus, net output of a 600MW facility would be reduced by 200MW with the additional of carbon capture equipment. To plan for this enormous performance penalty, a utility that sought to be carbon-capture compatible in the future would logically overbuild the plant during initial construction. As Mr. David A. Schlissel[3], an expert witness testifying on behalf of SELC, *et al.,* explained, "So that if you have a 580 megawatt plant and you have got 30 megawatt of auxiliary loads, you are

[3] Mr. Schlissel has degrees in engineering and law from Stanford and M.I.T., and since 1983 has been retained by governmental bodies, publicly-owned utilities, and private organizations in 28 states to prepare expert testimony and analyses on engineering and economic issues related to electric utilities.

talking about a 550 net megawatt plant. With carbon capture, you are probably talking about a 450, 460 megawatt plant. If you want to get that same 550 or have the potential for the same 550 megawatts when you add the carbon-capture equipment, you build it bigger." Examination of David A. Schlissel, State Corporation Commission, Case No. PUE-2007-00066, at 904–05 (Feb. 6, 2008) (attached as Exhibit 16); *see also*, Pre-Filed Testimony of David A. Schlissel on Behalf of SELC, *et al.,* State Corporation Commission, Case No. PUE-2007-00066, (Nov. 2, 2008) (attached as Exhibit 17).

In sum, there are a wide array of steps Dominion could have taken: (1) select a coal-burning technology with a higher thermal efficiency, such as IGCC; (2) invest in carbon capture technologies like chilled ammonia; and (3) design the facility taking into account the parasitic load that would be required to run carbon capture equipment. Dominion has not proceeded down any of these avenues. Its proposed facility, therefore, cannot, under any common-sense understanding of the term, be termed "carbon capture compatible."

Furthermore, it is important to emphasize that this conclusion was supported by expert witnesses across the spectrum. Scott Norwood, on behalf of the Attorney General of Virginia, noted, "As a practical matter, it is not clear how the plant would be compatible with something that does not yet exist." Pre-Filed Testimony of Scott Norwood, on behalf of the Attorney General of Virginia, at 30 (Nov. 2, 2007) (attached as Exhibit 18). John A. Stevens, a Senior Utilities Engineer with the SCC Division of Energy Regulation, further elaborated:

> According to the Company's own testimony, carbon capture technology is not commercially viable or available at the present time. The Company also states that it is not currently feasible to construct a power plant with technology that can capture and store carbon emissions. In contrast, the

> only information that the Company provides supporting its position that the Plant is carbon capture compatible is that the future site has adequate space for the future deployment of anticipated carbon capture technology and that it is located in a region that is being studied as a location for future carbon sequestration. Under this standard, it would seem that virtually any facility that is located in the coalfield region of the state (or any other region that is considered a viable location for underground carbon sequestration), and has extra space available on its site, would qualify as carbon capture compatible.
>
> Essentially, it is the Company's position in this case that the proposed plant is compatible with technology that is, by its own admission, not commercially available or even feasible at this time. In the [SCC] Staff's view, this is not logical. As such, the Staff can not support this argument.

See Pre-Filed Testimony of John A. Stevens, SCC Staff, at 33 (Nov. 28, 2007) (attached as Exhibit 19).

D. The Cost Per Ton of CO_2 Emissions Would Exceed $100 million per Year For the Proposed VCHEC.

Ms. Thomson has asked "What is the estimated $/tonne of CO_2 avoided for circulating fluidized bed technology with carbon capture? As explained above, the VCHEC is economically incompatible with carbon capture technologies under development, and as a result is unlikely ever to be retrofitted with controls to reduce its greenhouse gas emissions. Instead, under a mandatory federal cap-and-trade program to reduce carbon dioxide, Dominion would likely purchase credits from other facilities. During the SCC proceedings, SELC, *et al.* submitted testimony from David A. Schlissel, an expert with Synapse Energy Economics. With regard to VCHEC, he observed:

> The Company has projected that the Wise County Plant will emit 5,368,678 tons of CO_2 annually. … The range of the … cost to the Company and its ratepayers from greenhouse gas regulations would be:
>
> Synapse Low CO_2 Case:
> 5.37 million tons of CO_2 $8 .23/ton = $44 million
>
> Synapse Mid CO_2 Case:

5.37 million tons of CO_2 \$19.83/ton = \$106 million

Synapse High CO_2 Case:
5.37 million tons of CO_2 \$31 .43/ton =\$169 million

Pre-Filed Testimony of David A. Schlissel, Exhibit 17, at 43. The Office of the Virginia Attorney General (OAG), Division of Consumer Counsel, provided testimony that amply buttressed Mr. Schlissel's analysis. OAG witness Scott Norwood's review agreed with the \$106 million Synapse "mid-case" estimate, *but found costs could easily rise to as much as \$265 million per year for every year the plant is in operation.* Pre-Filed Direct Testimony of Scott Norwood, at 18, lines 2–7 (Nov. 2, 2007) (attached as Exhibit 18).

These analyses receive additional support from the MIT report, *The Future of Coal,* which estimates the cost of future carbon capture and storage at \$30 per ton. *See* MIT, *Future of Coal,* Exhibit 11 at *xi*. Of that, \$25 is allocated to "CO_2 capture and pressurization" at the facility and \$5 to "transportation and storage." *Id.* At this price, carbon offsets for the VCHEC would total \$161.1 million per year.

VII. The Devastating Impacts Associated With Mountaintop Removal Coal Mining Mandate Denial of the PSD and MACT Permits.

Ms. Thompson, in the April 14 Memorandum, notes that 9 VAC 5-80-1755 ("Additional Impact Analyses") requires permit applicants to "provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification." Pursuant to this requirement, the Board is obligated to consider the additional impacts of the plant related to mountain top removal coal mining and other similarly destructive practices.

As we highlighted in our comments on the PSD permit (filed March 12, 2008), the Virginia DEQ and the Air Board must consider the impacts of mountaintop removal mining and valley fill when determining BACT for sulfur emissions. *See* 42 U.S.C. § 7479(3) (2007).

A. Dominion's Proposed Power Plant Would Burn Coal Mined Using Mountaintop Removal/Valley Fill and Similarly Destructive Techniques.

To date, mountaintop removal coal mining has permanently erased more than 470 peaks from the Appalachian skyline and buried or polluted more than 1,200 miles of Appalachian streams. Mountaintop removal coal mining has also destroyed more than 800 square miles of biologically diverse forest ecosystem and is expected to destroy an area the size of Delaware by the end of the decade.

According to the U.S. Department of Energy, approximately 37% of all coal that is mined in Virginia is from mountaintop removal mines. USDOE Energy Information Agency, Coal Production and Number of Mines by State, County, and Mine Type, 2006 http://www.eia.doe.gov/cneaf/coal/page/acr/table2.pdf (attached as Exhibit 20). In 2006, Virginia had 51 operating surface coal mines that produced 11,059,000 short tons of coal, including 6,459,000 tons from Wise County alone, where the Dominion plant would be located. *Id.* Given Dominion's history and practice of purchasing mountaintop removal coal mined in Virginia, and given that more than a third of Virginia coal is mined using mountaintop removal techniques, it is reasonable to assume that a significant portion of the coal for the proposed Dominion power plant would be sourced from mountaintop removal mines.

B. There are Numerous, Significant Environmental Impacts Caused by Mountaintop Removal Mining and Valley Fills that would be Avoided if Dominion Used Powder River Basin Coal Instead of Virginia Coal.

The negative environmental effects of mountaintop removal mining and valley fills are massive. Impacts on streams from mountaintop removal mining and valley fills, for example, include the increase in discharge of harmful chemicals that are carried downstream, thereby reducing aquatic biodiversity. *Ohio Valley Envtl. Coalition v. U.S. Army Corps of Engineers*, 479 F.Supp.2d 607, 637 (S.D. W.VA 2007). Stream chemistry monitoring has shown significant increases in conductivity, hardness, sulfate, and sedimentation concentrations downstream of strip mining operations. United States Environmental Protection Agency, *Mid-Atlantic Mountaintop Mining Draft Programmatic Environmental Impact Statement* (EPA DPEIS), 2003 at III.D-9 (attached as Exhibit 21).

Further, mitigation measures required for mountaintop removal sites are wholly inadequate and should not be considered as compensating for the loss of stream species and functions. Federal regulations generally require the creation of new streams to "offset" the loss of existing ones. However, it is nearly impossible to reconstruct free flowing streams at mountaintop removal and valley fill sites because it is difficult to intercept groundwater flow that keeps natural streams flowing. Further, there is no evidence that re-created streams carry out any of the functions that natural streams are known to provide. Thus, mitigation measures such as reclamation and reconstruction of streams does not lessen the environmental impacts associated with filling natural streams.

Dr. Margaret Palmer, a nationally renowned stream restoration ecologist, describes the existing state of the science on stream creation:

> [T]here is not a single study in the peer reviewed scientific literature that evaluated the functional effectiveness of building streams *de novo*. The very concept of creating a stream that has comparable levels of ecological functioning to natural channels remains untested and is scientifically implausible.
>
> [T]he basic premise that enhancing or restoring impacted streams will fully replace streams that are lost to valley fills is not based on any scientifically credible evidence.

Expert Report of Margaret A. Palmer in *OVEC v. Army Corps of Engineers*, Civil Action No. 3:05-0784, at 10–12, May 16, 2006 (attached as Exhibit 22).

Valley fills also harm water quality in ways that can hurt human health and animal life. Studies have shown that valley fills significantly affect downstream water chemistry. A water chemistry study found that the concentration of the following chemicals at filled sites exceeded the concentration of the same chemicals at unmined sites by the following ratios: sulfate, 41:1; calcium, magnesium and hardness, 21:1; total dissolved solids, 16:1; manganese and conductivity, 8:1; selenium, 7.8:1; alkalinity, 7.5:1. Gary Bryant & Hope Childers, *A Survey of the Water Quality of Streams in the Primary Region of Mountaintop / Valley Fill Coal Mining* (2002) at 25 (attached as Exhibit 23).

The impact that mining and valley fills will have on wildlife and biodiversity must also be analyzed. The region where southern Appalachian coal is mined, which includes southwest Virginia, is the most biologically diverse ecosystem in the southeastern United States – a biological hotspot containing numerous unique species of plants, invertebrates, salamanders, crayfishes, freshwater mussels, and fishes. EPA DPEIS, Exhibit 21 at III.F-2. It is estimated that "as many as 14 vertebrate species may be found in the [Appalachian coalfields] that are not found anywhere else in the world."

Id. at III.F-6. One study in West Virginia showed that mixed mesophytic hardwood forest contained 124 species of birds, while recently mined land contained only 24 species and planted grass land (such as occurs with post-mining reclamation) contained only 11 species. EPA Landscape Scale Cumulative Impact Study at 88 (attached as Exhibit 24).

C. Dominion Must Consider the Negative Economic Impacts of Building the Proposed VCHEC.

The negative economic impacts from mountaintop removal and similar mining practices on local families and communities can be devastating. Dominion must analyze these impacts in its BACT analysis.

The economic impacts on communities from the effects of coal slurry impoundments used in mountaintop removal mining, for example, must be considered. Coal slurry—the waste sludge left behind after washing coal to remove impurities so the coal easier to burn—is stored in large waste pits behind earthen dams known as impoundments. These impoundments threaten local communities and impose economic costs on residents. Toxic chemicals in the coal slurry, including chlorine, lead, nickel, selenium, arsenic and mercury, Appalachian Voices, "*Myths and Facts about Mountaintop Removal Mining*," available online at http://www.appvoices.org/index.php?/mtr/myths_and_facts (accessed on September 26, 2007), can leak from the impoundments, turning nearby streams black and tainting local water supplies.

Coal impoundments can also fail, sending coal waste barreling down valleys, destroying property and lives in its path. In 2000, a 72-acre impoundment in Martin County, Kentucky breached, spilling 250 million gallons of coal waste into the local watershed, killing fish and aquatic life and disrupting public drinking water supplies.

Kentucky Environmental Quality Commission, *Resolution Regarding the Martin County Coal Corporation October 11, 2000 Coal Mine Surface Impoundment Spill* (attached as Exhibit 25). In 1972, an impoundment in West Virginia failed, releasing 132 million gallons of waste water down into Buffalo Creek hollow, killing 125 people and leaving thousands homeless. West Virginia Division of Culture and History, *Buffalo Creek Archives*, available online at http://www.wvculture.org/history/buffcreek/buff1.html (accessed September 26, 2007). In West Virginia, an estimated one-third of impoundments built in the state since 1972 have failed. Michael Shnayerson, "*The Rape of Appalachia*," Vanity Fair, May 2006 (attached as Exhibit 26). There are approximately 500 of these impoundments in Appalachia today. John Mitchell, "*When Mountains Move*," National Geographic, March 2006 (attached as Exhibit 27). The economic consequences of failed impoundments are huge in terms of lost property and clean-up costs, not to mention medical costs due to injuries. Opening new mines to feed new coal-fired power plants would require that more impoundments be built, thereby endangering local communities and placing unacceptable economic risks on them.

Finally, the proposed VCHEC would also negatively impact the economy through dramatically increased electricity rates, resulting in net job losses throughout the Commonwealth. The SCC staff determined that if the plant is built, higher electricity rates will have a net negative impact on the Virginia economy, with a loss of 1,474 jobs. *See* Testimony of Mark K. Carsley, Division of Economics and Finance, State Corporation Commission (attached as Exhibit 28). As "electricity rates increase," the staff explained, consumers will have "less income to spend on other goods and services." And Dominion's construction costs are rising—by $200 million since the SCC analysis

was done and at least $800 million since May 2006—meaning even higher electricity rates and more job loss. *Id.*

VIII. DEQ and the Board Must Take The Necessary Time To Carefully Consider and Analyze Dominion's MACT and PSD Applications.

Mr. Buckheit, in his April 14th Memorandum, states:

> For business reasons Dominion has requested that the Board complete its deliberations as soon as practicable and, if at all possible before July 1, 2008. I assume that the commenters agree with this request and note that prompt consideration of permits is good public policy and consistent with recent legislation regarding permits issued by the Board.

Dominion, of course, cannot lawfully commence construction of the proposed facility until completion of properly conducted MACT and BACT analyses and issuance of valid MACT and BACT determinations. As noted throughout our earlier comments, these analyses either have not been conducted at all, or have been conducted in such a cursory manner as to fail to meet the minimum standards of the Clean Air Act.

Thus, while we agree with Mr. Buckheit that prompt consideration of permit applications is always good public policy, given the significant failures in the draft permits to date, we do *not* agree that the permit process can be driven by Dominion's internal deadline of July 1, 2008.

DEQ and the Board have ample time under Virginia's existing regulations to conduct the proper analyses in this case. The PSD regulations, for example, provide that "Within one year after receipt of a complete application, the board will make a final determination on the application." *See* 9 V.A.C. 5-80-1775(F). The PSD application in this case was deemed complete on January 2, 2008. Thus, under the regulations, the Department has until January 2, 2009 to make a final determination on whether to grant

or deny the permit. There is clearly sufficient time to proceed cautiously and ensure that both the BACT and MACT analyses are properly completed.

In short, while timely resolution of permit applications is an important goal, meeting the standards of applicable state and federal laws are ultimately the most critical requirements.

Respectfully Submitted,

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