



National Parks Conservation Association®
Protecting Our National Parks for Future Generations®

February 21, 2008

Richard D. Langford, Chairman
State Air Pollution Control Board
1106 Horseshoe Lane
Blacksburg, Virginia 24060

David K. Paylor, Director
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

**RE: Draft Prevention of Significant Deterioration Permit to Construct the
Virginia City Hybrid Energy Center in Wise County**

Dear Chairman Langford and Director Paylor;

It has come to the attention of the National Parks Conservation Association (NPCA)¹ that the Virginia Department of Environmental Quality (DEQ) has not completed analyses required under the Clean Air Act (CAA) or provided adequate opportunity for public comment in processing Virginia Electric Power Company's air permit for the proposed Virginia City Hybrid Energy Center in Wise County (VCHEC). Given the critical importance of these requirements, and their role in protecting public health, the environment and air quality in our National Parks, we hereby petition the State Air Pollution Control Board (Air Board) and the DEQ to suspend processing the VCHEC Plant application until the consultation and public notice required by law have occurred.

In order to obtain a prevention of significant deterioration (PSD) permit from the Air Board, an applicant such as Virginia Electric Power must establish that emissions from its proposed facility "will not cause, or contribute to, air pollution in excess of any... maximum allowable increase... for any pollutant." CAA §165 (a)(3). This requirement is among many designed "to preserve, protect, and enhance the air quality in national parks...." CAA §160(2).

The Air Board and DEQ must also allow interested parties to present "alternatives" to the proposed source," as well as "control technology requirements and other appropriate

¹ Since 1919, the nonpartisan, nonprofit National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. NPCA, its members, and partners work together to protect the park system and preserve our nation's natural, historical, and cultural heritage for generations to come. NPCA is headquartered in Washington, DC and has over 330,000 members nationwide, including nearly 12,000 in Virginia.

considerations” at a public hearing. CAA §165 (a)(2). Yet it has become apparent that, aside from Dominion Power, interested parties have not been given this opportunity.

At the October 2007 meeting of the Air Board, Catharine Gilliam, NPCA’s Virginia Program Manager, spoke during the public forum to bring to the board members’ attention the preliminary comments from the National Park Service (NPS), Policy, Planning and Permit Review Branch, with respect to the draft permit for the Virginia City Hybrid Energy Center. She was limited to 3 minutes. At the November 2007 meeting of the Air Board, representatives of Dominion Virginia Power were given an extensive amount of time to make a presentation responding to and elaborating on significant issues raised in the National Park Service preliminary comments. While Joy Oakes, NPCA Senior Mid-Atlantic Regional Director, was present at the November meeting, her comments were limited to the public forum, during which it was not possible to directly address issues on the agenda and for which there was again a 3-minute time limitation.

At the January 2008 meeting of the Air Board, Dominion was able to make, once again, an elaborate presentation to the Air Board in response to questions raised by the Board at prior meetings. Dominion and the members of the Air Board referred to an extensive written report submitted by Dominion, which was not made available to the public at the meeting. Don Shepherd, a staff member of the Policy, Planning and Permit Review Branch of the National Park Service, also made a detailed presentation to the Air Board. There was no similar opportunity for public comment and no public forum held at the January meeting, although it was followed by a public hearing on an unrelated permit.

In order to ensure that the PSD permitting program, including its substantive and procedural requirements, are carried out as intended, NPCA requests that the Air Board and DEQ suspend the permitting process until one or more public hearings are held before the Air Board and adequate consideration is given to the issues outlined below:

Specifically, NPCA is concerned that the application process for the VCHEC facility has not adequately met the requirements of CAA §§ 112, 165(a)(2), 165(a)(4), and 165(d) and corresponding public participation requirements, as follows:

1. Emission Limits Must Reflect Best Available Control Technology

As required by CAA §165(a)(4), the proposed facility is “subject to the best available control technology for each pollutant subject to regulation” under the Act. VCHEC as designed does not meet the best available control technology requirement. Even if the circulating fluidized bed boiler for VCHEC’s coal-burning power plant is permitted, technology is available that would result in significantly lower emissions, which would reduce the harm to Virginia’s environment, the public health and to the fragile ecosystem of the Great Smoky Mountains National Park and other Class I areas.

NPCA has not had an adequate opportunity to present DEQ and the Air Board with important information concerning the utilization of the best available pollution control technologies at the VCHEC facility. The 3-minute statement afforded to NPCA and other interested members of the public was inadequate to address related complex and critical issues, and when compared to the amount of time allocated to Dominion, reflects a disproportionate allocation of time for the public to express meaningful comment to assist

the agency and the Air Board in the permitting process. We therefore request additional public hearings be scheduled to provide the public with a full opportunity to present the Air Board and the agency with additional information related to BACT.

2. The Public Must be Given an Adequate Opportunity to Present Alternatives to the VCHEC Technology

Under CAA §165 (a)(2), interested parties should be allowed to present “alternatives” to the proposed source,” “control technology requirements and other appropriate considerations” at a public hearing. It should be underlined that this is a separate requirement from the requirement that the Air Board order the adoption of the best available control technology. As Judge Richard Posner stated in *Sierra Club v. United States EPA*, 499 F.3d 653 (7th Cir. 2007), “...[a]nother provision of the Act, distinct from the one requiring adoption of the best available control technology, directs the EPA to consider ‘alternatives’ suggested by persons interested [] to a proposed facility.” *Id.* at 654-655 (referring to CAA §165(a)(2)).

“Traditionally, EPA does not require a .. [permit] applicant to change the fundamental scope of its project,” *In re Old Dominion Electric Cooperative*, 3 E.A.D. 779, 793 n. 38 (EPA Adm’r 1992) “unless the applicant intentionally designs the plant in a way calculated to make measures for limiting the emission of pollutants ineffectual.” *Sierra Club v. United States EPA*, *supra* at 654. But this is what Virginia Electric Power has done in this case.

Virginia Power has emphasized in its several presentations, advertisements and other public statements that the constraints on the design and technology options for the VCHEC facility are due to the location of the plant. The Clean Air Act does not allow an applicant to avoid statutory requirements because of company-imposed geographic constraints. NPCA believes that, beyond the search for best available control technology, alternative technology designs and alternative sources in Wise County are available and should be carefully reviewed prior to any permit issuance for a new facility. But neither NPCA nor other interested members of the public have had an adequate opportunity to present alternatives to the proposed facility as CAA §165(a)(2) requires. We therefore request that a public hearing be scheduled and that ample time made available for members of the public to comment so that the Air Board will be better equipped to consider available data and analysis. In addition, we request that the agency conduct a thorough analysis to ascertain whether the proposed plant design itself limits pollution control measures that would be otherwise available.

3. Impacts of VCHEC on Class I Areas Must be Adequately Analyzed

The proposed site for this facility is near several areas classified as Class I areas in which deterioration of air quality must be strictly limited, *see* CAA § 162(a), and which federal land managers are given an “affirmative responsibility to protect,” *id.* at §165(d)(2)(B), including The Great Smoky Mountains National Park. In light of the preliminary comments of the National Park Service, NPCA is concerned that the impacts to Class I Areas in areas surrounding the Wise County—including but not limited to Great Smoky Mountains National Park—have not been adequately assessed, and that mitigation measures have not been adequately incorporated into the facility’s emission limits. Therefore, we request new or additional analyses that will more accurately identify the air quality, visibility, deposition and air toxics that may impact the Great Smoky Mountains National Park and other nearby Class I areas.

4. Maximum Achievable Control Technologies are Required for Emissions of Hazardous Air Pollutants

Section 112 of the Clean Air Act subjects hazardous air pollutants from coal-fired power plants to emission limits that correspond to the maximum achievable control technologies (MACT) for that pollutant. 42 U.S.C. § 7412. On February 8, 2008 the United States Court of Appeals for the District of Columbia Circuit struck down a 2005 EPA rule that removed coal-fired power plants from the list of sources regulated under Section 112 of the Clean Air Act. *New Jersey v. U.S. Environmental Protection Agency*, D.C. Cir. Case No. 05-1162 (D.C. Cir. February 8, 2008) (attached). The permitting agency is therefore required to conduct a case-by-case MACT analysis to determine appropriate limits for the emissions of hazardous air pollutants, including mercury.

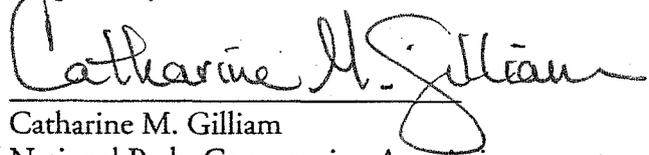
According to CAA § 165(a)(3)(c), VCHEC cannot receive a PSD permit until *all* applicable emissions requirements have been addressed. We therefore request that the permitting process be suspended until a case-by-case MACT analysis is properly conducted for the proposed VCHEC facility.

In conclusion, in order to ensure the integrity of the PSD permitting program and protect public health, the environment and Class I Areas, the DEQ must suspend the VCHEC permitting process until all substantive and procedural Clean Air Act requirements are complied with. In particular, the DEQ must: (1) require new analyses that will more accurately identify the best available control technologies for each proposed pollutant; (2) give the public an adequate opportunity to provide information on alternative sources, control technologies and other appropriate considerations; (3) require new analyses that will more accurately identify the air quality, visibility, deposition and air toxics impacts of the proposed plant on nearby Class I areas; (4) require a case-by-case MACT analysis for emissions of hazardous air pollutants, including mercury, and (5) schedule one or more public hearings to provide the public with an adequate opportunity to comment on the aforementioned issues.

NPCA requests that the hearings be scheduled and conducted in order to give NPCA, and other interested parties, and experts retained to analyze the permit, an adequate opportunity to make presentations and fully address these issues before the Air Board.

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Respectfully Submitted,



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