COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and GenOn Potomac River, LLC, regarding the Potomac River Generating Station, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.

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

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" or "Plant" means the Potomac River Generating Station, owned and operated by GenOn, located at 1400 North Royal Street, Alexandria, VA 22314.

5. "FCE" means a Full Compliance Evaluation by DEQ staff.

6. "GenOn" means GenOn Potomac River, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. GenOn is a "person" within the meaning of Va. Code § 10.1-1300.

7. "Mirant" means Mirant Potomac River, LLC, a limited liability company which on December 3, 2010, changed its name to GenOn.

8. "MS4" means combined stack 4.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

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

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

12. "Permit" means a State Operating Permit to operate an electric generating facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Mirant Potomac River, LLC on July 31, 2008.

13. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

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

15. "VAC" means the Virginia Administrative Code.

16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. GenOn owns and operates the Facility in the Alexandria, Virginia. The Facility, which is the subject of the Permit, is a five unit, 482 megawatt coal-fired electric generating plant.

2. On July 12, 2011, Department staff conducted a FCE at the Facility to determine compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

    a. No water fogging system was installed within the enclosure for the bottom ash silo.

3. Permit Condition 10 requires GenOn to control fugitive particulate emissions from the bottom ash transfer from the ash silos to trucks or rail cars with a water fogging system within the enclosure.

4. On July 15, 2011, GenOn submitted 30-day rolling NOx averages for MS4 for the time period of September 1, 2010, through July 11, 2011. On August 3, 2011, GenOn submitted 30-day rolling NOx averages for MS4 for the time period of April 1, 2011, through July 29, 2011. Department staff conducted a review of this documentation to determine compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation, and follow-up information, Department staff made the following observations:

   a. The data submitted indicated that the NOx 30-day average for the periods ending on June 28, 2011, July 12, 2011, July 13, 2011, July 14, 2011, July 17, 2011, and July 18, 2011 were each 0.28 lb/MMBtu.
   b. The data provided and associated exceedances of permitted emission limits, indicated that GenOn failed to properly operate the Facility in a manner consistent with minimizing emissions.

5. Permit Condition 28 limits the 30-day rolling average for NOx on MS4 to 0.27 lb/MMBtu.

6. 9 VAC 5-40-20(E) requires GenOn, at all times, to maintain and operate the Facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions.

7. On August 30, 2011, based on the evaluations and follow-up information, the Department issued a Notice of Violation to GenOn for the violations described in paragraphs C(2) through C(6), above.

8. On September 14, 2011, GenOn submitted a written response to the NOV.

9. Based on the results of the July 12, 2011, evaluation, and the documentation submitted on September 14, 2011, the Board concludes that GenOn has violated Permit conditions 10 and 28, and 9 VAC 5-40-20(E) as described in paragraphs C(2) through C(8), above.

10. GenOn has submitted documentation that indicates that the violations described in paragraphs C(2) and C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders GenOn, and GenOn agrees to:

Pay a civil charge of $280,704.00 within 30 days of the effective date of the Order in settlement of the 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," and delivered to:

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

GenOn shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of GenOn for good cause shown by GenOn, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified or referenced in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, GenOn admits the jurisdictional allegations and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law contained herein.

4. GenOn 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. GenOn declares it has received fair and due process under the Administrative Process Act and the Virginia 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 GenOn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive 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. GenOn 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 such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. GenOn shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GenOn shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the 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 Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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

10. This Order shall become effective upon execution by both the Director or his designee and GenOn. Nevertheless, GenOn agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after GenOn has completed all of the requirements of the Order;

b. GenOn 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

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to GenOn.

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by GenOn 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.

13. The undersigned representative of GenOn 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 GenOn to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of GenOn.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, GenOn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of February, 2012.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

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

Date: 2-6-2012 By: Misty Allen, President
(Person) (Title)
GenOn Potomac River, LLC

~~Commonwealth of Virginia~~
~~City~~/County of St. Marys State of Maryland

The foregoing document was signed and acknowledged before me this 6 day of February, 2012, by Misty Allen who is President of GenOn Potomac River, LLC, on behalf of the company.

Notary Public

N/A
Registration No.

My commission expires: Nov. 9, 2015

Notary seal: