IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA AND THE STATE OF MARYLAND Plaintiffs, and ROBERT G. BURNLEY, DIRECTOR, COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiff-Intervenor v. MIRANT POTOMAC RIVER, LLC AND MIRANT MID-ATLANTIC, LLC, Defendants.	)	Civil Action No:

CONSENT DECREE

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WHEREAS, on January 22, 2004, The United States Environmental Protection Agency ("EPA") issued a Notice of Violation ("NOV") to Mirant Corporation with respect to permit violations at its Potomac River Generating Station in Alexandria, Virginia ("Potomac River Plant") that occurred in 2003;

WHEREAS, EPA and the Commonwealth of Virginia's Department of Environmental Quality ("Virginia DEQ" or "DEQ") have worked together jointly and cooperatively in their efforts to address the Potomac River Plant's alleged exceedance of the NO_x emission limit for the 2003 Ozone Season;

WHEREAS, on September 18, 2000, the Virginia DEQ issued a Stationary Source Permit to Operate, registration number 70228 ("the Permit"), to Potomac Electric Power Company ("PEPCO") for the Potomac River Plant. The Permit was approved by EPA and has been incorporated into the Commonwealth of Virginia's State Implementation Plan ("SIP") at 40 C.F.R. 52.2420(d);

WHEREAS, PEPCO later sold the Potomac River Plant to a Mirant affiliate, and sold the Dickerson Plant in Montgomery County, Maryland, the Chalk Point Plant in Prince George's County, Maryland and the Morgantown Plant in Charles County, Maryland to other Mirant affiliates;

WHEREAS, as of the date of execution of this Consent Decree, the Potomac River Plant is owned by Mirant Potomac River, LLC, the Dickerson and Morgantown Plants are owned by Mirant Mid-Atlantic, LLC, the Chalk Point Plant is owned by Mirant Chalk Point, LLC, and all are operated by Mirant Mid-Atlantic, LLC;

WHEREAS, according to data generated by continuous emission monitors ("CEMs") provided to DEQ by Mirant, the Potomac River Plant's emissions exceeded the 2003 Ozone Season NO_x emissions limit specified in the Permit on or about July 24, 2003. DEQ issued a Notice of Violation to

Mirant on September 10, 2003, alleging an exceedance of the Permit's Ozone Season NO_x emission limit shortly after DEQ received Mirant's CEMs data indicating that the limit had been exceeded;

WHEREAS, CEMs data provided to DEQ by Mirant covering the entire 2003 ozone season indicated that the Potomac River Plant emitted 2,139 tons of NO_x between May 1 and September 30, 2003, thereby exceeding its 2003 Ozone Season NO_x emissions limit by 1,117 tons. DEQ issued a revised NOV to Mirant on October 20, 2003, which alleged the precise number of excess tons of NO_x emitted by the Potomac River Plant during the 2003 Ozone Season;

WHEREAS, Plaintiffs, the United States of America ("the United States"), on behalf of EPA, and the State of Maryland ("Maryland"), have filed a joint Complaint against Mirant for injunctive relief and civil penalties pursuant to Sections 113(a) and (b) of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(a) and (b), alleging such permit violations at its Potomac River Plant;

WHEREAS, the United States provided Mirant and the Commonwealth of Virginia ("Virginia") with notice of Mirant's alleged violations on or about January 22, 2004, and therefore provided Mirant and Virginia with at least 30 days notice prior to the filing of its claims, as required under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1);

WHEREAS, Maryland provided notice of the same alleged violations as stated in the United States' Notice of Violation, as required under Section 304(b) of the Act, 42 U.S.C. § 7604(b), prior to the filing of a complaint by Maryland;

WHEREAS, Section 10.1-1186.4 of the Code of Virginia specifically authorizes the Attorney General of Virginia to seek to intervene, on behalf of the Director of the Virginia DEQ, in pending federal enforcement actions such as this one brought by the United States, on behalf of EPA, and

Maryland;

WHEREAS, the Director of the Virginia DEQ, pursuant to Section 10.1-1307.3 of the Code of Virginia, enforces the provisions of the Virginia Air Pollution Control Law ("VAPCL"), Code of Virginia Section 10.1-1300 *et seq.*, and is authorized to seek civil penalties and injunctive relief, as provided by Sections 10.1-1316.A and 10.1-1316.B of the Code of Virginia;

WHEREAS, the Director of the Virginia DEQ has filed a Motion for Leave to Intervene and a Complaint in Intervention seeking civil penalties and injunctive relief and alleging that Mirant has violated Virginia law by failing to comply with a condition of a valid permit, issued to it by the Virginia DEQ on behalf of the State Air Pollution Control Board, which condition established a limit on the emissions of oxides of nitrogen from Mirant's Potomac River Plant to 1,019 tons from May 1, 2003 through September 30, 2003;

WHEREAS, the Director of the Virginia DEQ has a significant interest in this litigation by reason of its aforesaid Complaint in Intervention, as well as by reason of: (a) the fact that a significant portion of the relief provided by this Decree will involve Mirant's Potomac River Plant located within Virginia and regulated by the Commonwealth and no other State and will provide other environmentally beneficial relief within the geographic jurisdiction of the Commonwealth, (b) the fact that such relief will directly impact the issuance, for the affected plant, of permits under the Commonwealth's program approved pursuant to Title V of the Clean Air Act and the Commonwealth's State Operating Permits program, 9 VAC 5-80-800 *et seq.*, and (c) the fact that the permit condition allegedly violated is contained within a permit included in the Virginia SIP as a control measure to achieve the required air quality for the Washington, D.C. metropolitan statistical area one-hour ozone nonattainment area and

was approved by EPA as a source-specific requirement of Virginia's SIP on December 14, 2000;

WHEREAS, the United States, Maryland, and Mirant consent to intervention by the Director of the Virginia DEQ;

WHEREAS, Plaintiffs the United States and Maryland allege that their Complaint states claims upon which relief can be granted against Mirant under sections 113 and 304 of the Act, 42 U.S.C. §§ 7413 and 7604;

WHEREAS, Mirant has not answered or otherwise responded to these Complaints in light of the settlement memorialized in this Consent Decree;

WHEREAS, Mirant has denied and continues to deny the violations alleged in the Complaints, maintains that it is not liable for civil penalties, fines, or injunctive relief, and states that it is agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation and to reduce its emissions;

WHEREAS, the United States, Maryland, the Director of the Virginia DEQ, and Mirant (collectively, "the Parties") have agreed that settlement of these actions is in the best interest of the Parties and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and in best interest of the Parties and the public;

WHEREAS, the Parties have consented to entry of this Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, Sections 113 and 304 of the Act, 42 U.S.C. §§ 7413, 7604, and pursuant to Fed. R. Civ. Pro. 24(a)(2) and 24(b)(2). Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). For the purpose of this Consent Decree and the underlying Complaints, Mirant waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over Mirant, and to venue in this District. Mirant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Complaints filed by the Plaintiffs in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Consent Decree, Mirant waives any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the Parties to this Consent Decree. Except as provided in Section XXIII (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and Mirant and their successors and assigns, and upon Mirant's officers, employees

and agents solely in their capacities as such.

3. Mirant shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by Sections IV (NO_x Emission Reductions and Controls) and VI (Environmental Projects) of this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Mirant shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Mirant shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

4. A "30-Day Rolling Average Emission Rate" for a Unit shall be expressed as lb/mmBTU and shall be determined by calculating an arithmetic average of all hourly emission rates in lb/mmBTU for the current Operating Day and the previous 29 Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall include NO_x emissions and BTUs that occur during all periods of startup and shutdown of the Unit within an Operating Day, but excludes emissions of NO_x and BTUs occurring during any period of malfunction (as defined at 40 C.F.R. 60.2) of an SCR.

5. "Approved Plant Specific Obligations" means the requirements specific to each plant in the Mirant System and the allocation of the system-wide obligations among the plants, as set forth

in Appendix B. As set forth more fully in Section XVII (Sales or Transfers of Ownership Interests), these Approved Plant Specific Obligations shall have no bearing on the duties and obligations set forth in this Consent Decree unless and until some or all of the Ownership Interests are transferred to a Third Party Transferee.

6. "CEMs" or "Continuous Emission Monitors," means the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

7. "Chalk Point Plant" means, collectively, the two coal-fired units at the Chalk Point Generating Station, located in Prince George's County, Maryland: Unit 1 (355 MW) and Unit 2 (355 MW).

8. "Clean Air Act" or "Act" means the federal Clean Air Act, 42 U.S.C. §§7401-7671q, and its implementing regulations.

9. "Consent Decree" or "Decree" means this Consent Decree including all appendices.

10. "Dickerson Plant" means, collectively, the three coal-fired units at the Dickerson Generating Station, located in Montgomery County, Maryland: Unit 1 (191 MW), Unit 2 (191 MW), and Unit 3 (191 MW).

11. "Emission Rate" means the number of pounds of pollutant emitted per million British thermal units of heat input ("lb/mmBTU"), measured in accordance with this Consent Decree.

12. "EPA" means the United States Environmental Protection Agency.

13. "lb/mmBTU" means the ratio of pounds of pollutant per million British thermal units of heat input.

14. "Maryland" means the State of Maryland.

15. "Mirant" means Mirant Mid-Atlantic, LLC, Mirant Potomac River, LLC, and Mirant Chalk Point, LLC.

16. "Mirant System" means, collectively, the Chalk Point Plant, Dickerson Plant, Morgantown Plant, and Potomac River Plant, but excludes any Unit that, after the effective date of the Decree, is permanently shut down or retired from service.

17. "Morgantown Plant" means, collectively, the two coal-fired units at the Morgantown Generating Station, located in Charles County, Maryland: Unit 1 (620 MW) and Unit 2 (620 MW).

18. "MW" means a megawatt or one million Watts.

19. "National Ambient Air Quality Standards" or "NAAQS" means national ambient air quality standards that are promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

20. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

21. "NO_x Allowance" means an authorization or credit to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or a State Implementation Plan.

22. "Operating Day" means any calendar day on which a Unit fires fossil fuel.

23. "Ownership Interest" means part or all of Mirant's legal or equitable interest in any Unit or plant in the Mirant System.

24. "Ozone Season" means the period from May 1 of any given year through September 30 of that same year.

25. "Parties" means the United States of America, the State of Maryland, Intervenor-Plaintiff, the Director of the Virginia DEQ, and Mirant; "Party" means one of the four named "Parties."

26. "Plaintiffs" means the United States of America, the State of Maryland, and Intervenor-Plaintiff, the Director of the Virginia DEQ;

27. "Potomac River Ozone Season Tonnage Limitation" means the sum of the tons of NO_X that may be emitted from the Potomac River Plant in the applicable Ozone Season and shall include NO_x emitted during periods of startup, shutdown, and malfunction (as defined at 40 C.F.R. 60.2).

28. "Potomac River Plant" means, collectively, the five coal-fired Units at the Potomac River Generating Station, located in the City of Alexandria, Virginia: Unit 1 (93 MW), Unit 2 (93 MW), Unit 3 (108 MW), Unit 4 (108 MW), and Unit 5 (108 MW).

29. "Project Dollars" means Mirant's expenditures and payments incurred or made in carrying out the Environmental Projects identified in Section VI (Environmental Projects) of this Consent Decree, to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section VI (Environmental Projects) of this Consent Decree; and (b) constitute Mirant's direct payments for such projects, Mirant's external costs for contractors, vendors, and equipment, or Mirant's internal costs consisting of employee time, travel, or out-of-pocket expenses specifically attributable to these particular projects and documented in accordance with Generally Accepted Accounting Principles.

30. "Selective Catalytic Reduction" or "SCR" means a pollution control device that employs selective catalytic reduction technology for the reduction of NO_x emissions.

31. "Separated Over-Fire Air" or "SOFA" means air injection, separate and downstream from the

primary combustion air to the low-NO_x burners, which relies on modifying the fuel-air ratio to suppress NO_x formation.

32. "States" means the Commonwealth of Virginia and the State of Maryland.

33. "System-Wide Annual Tonnage Limitations" means the sum of the tons of NO_x that may be emitted from the Mirant System in the relevant 12-Month calendar period, and shall include NO_x emitted during periods of startup, shutdown, and malfunction (as defined at 40 C.F.R. 60.2).

34. "System-Wide Ozone Season Emissions Limitations" means, collectively, the System-Wide Ozone Season Emission Rate and the System-Wide Ozone Season Tonnage Limitations.

35. "System-Wide Ozone Season Emission Rate" means the total pounds of NO_x emitted from the Mirant System during the period from May 1 through September 30 of each calendar year, divided by the total heat input (in mmBTU) to the Mirant System during the period of May 1 through September 30 of the same calendar year. Each System-Wide Ozone Season Emission Rate shall include all NO_x emissions and BTUs that occur during all periods of startup, shutdown and malfunction (as defined at 40 C.F.R. 60.2).

36. "System-Wide Ozone Season Tonnage Limitation" means the sum of the tons of NO_X that may be emitted from the Mirant System in the applicable Ozone Season, and shall include NO_X emitted during any periods of startup, shutdown, or malfunction (as defined at 40 C.F.R. 60.2).

37. "Third Party Transferee" means any person, as defined at 42 U.S.C. § 7602(e), including successors and assigns, to which an Ownership Interest is sold or transferred.

38. "Title V Permit" means the permit required of each of Mirant's major sources under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

39. "Transfer Closing" means completion of a sale or transfer of an Ownership Interest to a Third Party Transferee.

40. "Unit" means, for the purposes of this Consent Decree, collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for the production of electricity.

41. "Virginia" means the Commonwealth of Virginia.

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

A. Potomac River Plant

42. By May 1, 2004, Mirant shall install and continuously operate low-NO_x burners ("LNB") (or a technology more effective than LNB at reducing NO_x emissions) on the Potomac River Plant's Units 3, 4 and 5 at all times that these Units are in operation.

43. Beginning May 1, 2005, Mirant shall not operate any of the Potomac River Plant's Units 3, 4, or 5 unless it has installed and continuously operates Separated Over-Fire Air ("SOFA") technology (or a technology more effective than SOFA at reducing NO_x emissions) at the Unit at all times that the Unit is in operation.

44. In addition to meeting the System-Wide Annual Tonnage Limitations for NO_x set forth in Paragraph 49, and the System-Wide Ozone Season Emissions Limitations set forth in Paragraphs 50 and 51, Mirant shall not emit NO_x from the Potomac River Plant during the Ozone Season in an amount greater than the following number of tons:

For the Ozone Season in the Listed Year	Potomac River Plant Ozone Season Tonnage Limitations for NO_x
2004	1,750 tons
2005	1,625 tons
2006	1,600 tons
2007	1,600 tons
2008	1,600 tons
2009	1,600 tons
2010 and each ozone season thereafter	1,475 tons

B. <u>Morgantown Plant</u>

45. Beginning May 1, 2007, Mirant shall not operate Morgantown Unit 1 unless it has installed and continuously operates, on a year-round basis, Selective Catalytic Reduction technology ("SCR") (or an equivalent NO_x control technology approved pursuant to Paragraph 47), so as to achieve a 30-Day Rolling Average Emission Rate from such Unit not greater than 0.100 lb/mmBTU NO_x.

46. Beginning May 1, 2008, Mirant shall not operate Morgantown Unit 2 unless it has installed and continously operates, on a year-round basis, SCR (or an equivalent NO_x control technology approved pursuant to Paragraph 47), so as to achieve a 30-Day Rolling Average Emission Rate from such Unit not greater than 0.100 lb/mmBTU NO_x.

47. With prior written notice to and written approval from Plaintiffs, Mirant may, in lieu of installing and operating an SCR at Morgantown Unit 1 and/or 2, install and operate an equivalent NO_x control technology, so long as such equivalent NO_x control technology achieves and thereafter maintains a 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU NO_x.

48. During the periods of times specified above when Mirant must operate an SCR, Mirant shall continuously operate each SCR (or equivalent NO_x control technology approved pursuant to Paragraph 47) at all times that the Unit it serves is in operation, subject to the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR or equivalent technology.

C. <u>System-Wide Annual Tonnage Limitations for NO_x</u>

49. Mirant shall comply with the following System-Wide Annual Tonnage Limitations for NO_x which apply to all Units collectively within the Mirant System, during each year specified below:

Applicable Year	System-Wide Annual Tonnage Limitations for NO_x
2004	36,500 tons
2005	33,840 tons
2006	33,090 tons
2007	28,920 tons
2008	22,000 tons
2009	19,650 tons
2010 and each year thereafter	16,000 tons

D. <u>System-Wide Ozone Season Emissions Limitations</u>

50. Beginning on May 1, 2004, for each Ozone Season specified, the sum of the tons of NO_x emitted by all Units within the Mirant System shall not exceed the following System-Wide Ozone Season Tonnage Limitations for NO_x:

Applicable Ozone Season	System-Wide Ozone Season Tonnage Limitations for NO_x
2004	14,700 tons

2005	13,340 tons
2006	12,590 tons
2007	10,190 tons
2008	6,150 tons
2009	6,150 tons
2010 and each Ozone Season thereafter	5,200 tons

51. Beginning on May 1, 2008, and continuing for each and every Ozone Season thereafter, the Mirant System shall not exceed a System-Wide Ozone Season Emission Rate of .150 lb/mmBTU NO_x.

E. <u>Use of NO_x Allowances</u>

52. If Mirant exceeds the limitations specified in Section IV, Subsection A (Potomac River Plant), B (Morgantown Plant), C (System-Wide Annual Tonnage Limitations for NO_x), or D (System-Wide Ozone Season Emissions Limitations), Mirant may not claim compliance with this Decree by using, tendering, or otherwise applying NO_x Allowances that were obtained prior to the lodging of this Decree, or that are subsequently purchased or otherwise obtained, and stipulated penalties apply as set forth in Section XI (Stipulated Penalties). Except as provided in Paragraphs 53 and 54, NO_x Allowances allocated to, or purchased by, or on behalf of, the Mirant System may be used by Mirant to meet its own federal and/or State Clean Air Act regulatory requirements to the extent otherwise allowed by law.

53. Beginning with the 2004 Ozone Season, and during each Ozone Season thereafter, solely for the purposes of compliance with any present or future NO_x emission limitations set forth in the Virginia and Maryland State Implementation Plans including, in particular, the Virginia NO_x

Budget Trading Program, 9 VAC Chapter 140 and the Maryland NO_x Reduction and Trading Program, COMAR 26.11.29 - 26.11.30, Mirant must first use: (a) any and all allowances previously held by Mirant; and (b) allowances allocated to the individual plants within the Mirant System. Only to the extent that such allowances are insufficient to establish compliance with the requirements of those SIPs, Mirant may use NO_x Allowances purchased or otherwise obtained from sources outside the Mirant System.

54. Except as provided in this Consent Decree, Mirant shall not sell or trade any NO_x Allowances allocated to the Mirant System that would otherwise be available for sale or trade as a result of Mirant's compliance with any of the NO_x emission limitations specified in Section IV of this Consent Decree.

55. Provided that Mirant is in compliance with all of the NO_x emission limitations specified in Section IV of this Consent Decree, including both unit-specific and system-wide emission rates and plant-wide and system-wide tonnage limitations, nothing in this Consent Decree shall preclude Mirant from selling or transferring NO_x Allowances allocated to the Mirant System that become available for sale or trade when, and only insofar as both: (a) the total Ozone Season NO_x emissions from all Units within the Mirant System are below the System-Wide Ozone Season Tonnage Limitations for the applicable year, as specified in Paragraph 50; and (b) the annual NO_x emissions from all Units within the Mirant System are below the System-Wide Annual Tonnage Limitations, as specified in Paragraph 49.

56. In order to sell or transfer NO_x Allowances pursuant to Paragraph 55, Mirant must also timely report the generation of such NO_x Allowances in accordance with Section IX (Periodic Reporting) of this Consent Decree.

F. NO_x CEMs

57. In determining Emission Rates for NO_x, Mirant shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75.

58. Mirant shall submit a report to Plaintiffs containing a summary of the data recorded by each NO_x CEMs in the Mirant System, expressed in lb/mmBTU, on a 30-day rolling average basis, in electronic format, within 30 days after the end of each calendar quarter and within 30 days after the end of each month of the Ozone Season, and shall make all data recorded available to the Plaintiffs upon request.

G. Surrender of NO_x Allowances

59. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering NO_x Allowances from the accounts administered by Plaintiffs for all Units in the Mirant System, so that such allowances can never be used to meet any compliance requirement of any person under the Clean Air Act, the Maryland and Virginia SIPs, or this Consent Decree.

60. For each calendar year beginning with calendar year 2004, Mirant shall surrender to EPA, or transfer to a non-profit third party selected by Mirant for surrender, the number of NO_x Allowances equal to the amount by which the NO_x Allowances allocated to all Mirant System Units for a particular year are greater than the System-Wide Annual Tonnage Limitations for NO_x established in Paragraph 49 for the same year.

61. If any NO_x Allowances are transferred directly to a non-profit third party, Mirant shall include a description of such transfer in the next report submitted to Plaintiffs pursuant to Section IX (Periodic Reporting) of this Consent Decree. Such report shall: (a) provide the identity of the

non-profit third-party recipient(s) of the NO_X Allowances and a listing of the serial numbers of the transferred NO_X Allowances; and (b) include a certification by the third-party recipient(s), in the form provided in Paragraph 85, stating that the recipient(s) will not sell, trade, or otherwise exchange any of the NO_x Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO_X Allowances, Mirant shall include a statement that the third-party recipient(s) tendered the NO_X Allowances for permanent surrender to Plaintiffs in accordance with the provisions of Paragraph 62 within one (1) year after Mirant transferred the NO_X Allowances to them. Mirant shall not have complied with the NO_X Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred NO_X Allowances to Plaintiffs.

62. For all NO_X Allowances surrendered to Plaintiffs, Mirant or the non-profit third-party recipient(s) (as the case may be) shall first submit a NO_X Allowance transfer request form to EPA directing the transfer of such NO_X Allowances to the Plaintiffs' Enforcement Surrender Account or to any other Plaintiffs' account that Plaintiffs may direct in writing. As part of submitting these transfer requests, Mirant or the third-party recipient(s) shall irrevocably authorize the transfer of these NO_X Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO_X Allowances being surrendered.

V. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

63. In no event shall the emission reductions required by this Decree be considered as creditable

contemporaneous emission decreases for the purpose of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs.

VI. ENVIRONMENTAL PROJECTS

64. Mirant shall implement each of the Environmental Projects ("Projects") described in Appendix A ("Environmental Projects") in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing all of the Projects, Mirant shall spend no less than $1.0 million in Project Dollars. As to the Projects described in paragraphs 1, 2, 3, 4, 5, 6, and 8 of Appendix A, Mirant shall operate indefinitely the improvements and installed equipment described therein. For each Environmental Project listed in Appendix A, Mirant shall submit a proposed plan to Plaintiffs for review and approval pursuant to Section X (Review and Approval of Submittals) of this Consent Decree and the schedules set forth in Appendix A. Mirant shall maintain, and present to Plaintiffs, upon request, all documents required by Generally Accepted Accounting Principles to substantiate the Project Dollars expended, and shall provide these documents to Plaintiffs within thirty (30) days of a request by Plaintiffs for the documents.

65. In the event that Mirant satisfactorily and timely completes each of the Projects listed in Appendix A, but the Project Dollars Mirant expends in implementing the Projects is less than the $1 million Mirant is required to spend for the completed Projects, Mirant shall:

a. Submit a proposal to the Plaintiffs for the expenditure of the remaining Project Dollars on one or more projects designed to further reduce PM and/or fugitive dust emissions from the Potomac River Plant including, but not limited to, projects that may result from, or be suggested by, the Settled Dust Study Project (described in Paragraph 7 of

Appendix A); or

b. If the Plaintiffs and Mirant, acting in good faith, cannot agree upon an additional Project or Projects, and such proposal is not approved by the Plaintiffs, Mirant shall pay a stipulated penalty to the Plaintiffs equal to the difference between the amount of Project Dollars expended by Mirant and the $1 million sum Mirant is required to spend for the Projects.

66. All plans and reports prepared by Mirant pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge.

67. Mirant shall certify, as part of each plan submitted to Plaintiffs for any Project, that Mirant is not otherwise required by law, and that Mirant is unaware of any other person that is required by law, to perform the Project described in the plan.

68. Mirant shall use good faith efforts to secure as much benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree. Mirant shall not financially benefit to a greater extent than any other member of the general public in the course of implementing any Project.

69. Within sixty (60) days following the completion of each Project listed in Appendix A, Mirant shall submit to Plaintiffs a report that documents the date that the Project was completed, Mirant's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by Mirant in implementing the Project.

70. Beginning six months after entry of this Consent Decree, and continuing until all Projects are completed in accordance with this Decree, Mirant shall provide Plaintiffs with semi-annual

updates concerning the progress of, and the costs incurred in implementing, each Project listed in Appendix A.

VII. CIVIL PENALTY

71. Within thirty (30) calendar days after entry of this Consent Decree, Mirant shall pay to the United States a civil penalty in the amount of $250,000. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2004v01020 and DOJ Case Number 90-5-2-1-07829 and the civil action case name and case number of this action. The costs of such EFT shall be Mirant's responsibility. Payment shall be made in accordance with instructions provided to Mirant by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Virginia. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Mirant shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XVI (Notices) of this Consent Decree.

72. Failure to timely pay the civil penalty shall subject Mirant to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Mirant liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

73. Within thirty (30) calendar days after entry of this Consent Decree, Mirant shall pay a civil penalty to the Commonwealth of Virginia in the amount of $250,000. Payment shall be made in

the form of a certified check or cashier's check, and be payable to "The Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
P.O. Box 10150
Richmond, VA 23240

The payment shall include Mirant's Federal ID number, the Potomac River Plant's state Registration Number, and shall state that it is being tendered in payment of the civil penalty agreed to under this Consent Decree. The check must reference *United States et al. v. Mirant*, and the civil action case number.

74. Mirant shall pay interest if it fails to make a complete or timely payment of the civil penalty that it is required to pay under Paragraph 73. Interest shall be determined pursuant to Section 58.1-15 of the Code of Virginia. The interest shall be calculated on the full amount of the civil penalty due as principal, calculated from the due date specified in this Consent Decree until the date that the delinquent payment is finally paid in full. An additional 10 percent late payment fee may be charged in the event complete payment is not received within 120 days of entry of this Consent Decree.

75. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

VIII. EFFECT OF SETTLEMENT

76. This Consent Decree represents full and final settlement and resolves Mirant's civil liability to the Plaintiffs for violations alleged in the Complaints filed by the Plaintiffs in this proceeding

through the date of lodging of this Consent Decree.

77. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree shall not be construed to limit the rights of the United States, Maryland, or Virginia to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

78. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Notwithstanding any provision of this Consent Decree, Mirant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Mirant's compliance with this Consent Decree shall be no defense to any action by the Plaintiffs commenced pursuant to said laws, regulations, or permits, except to the extent the action is based on matters resolved through this Consent Decree.

79. This Consent Decree does not limit or affect the rights of Mirant or of the Plaintiffs against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Mirant, except as otherwise provided by law.

IX. PERIODIC REPORTING

80. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of this Consent Decree, continuing on a semi-annual basis until December 31, 2012, and in addition to any other express reporting requirement in this Consent Decree, Mirant shall submit to Plaintiffs a progress report.

81. The progress report shall contain the following information:

a. All information necessary to determine compliance with this Consent Decree, including but not limited to the information reported in accordance with Paragraphs 56, 58, 61, 69, and 70;

b. All information relating to emission allowances and credits that Mirant claims to have generated in accordance with Paragraph 55 by compliance beyond the requirements of this Consent Decree; and

c. All information indicating that the installation and commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by Mirant to mitigate such delay.

82. In any periodic progress report submitted pursuant to this Section, Mirant may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Mirant attaches the Title V permit report and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

83. In addition to the progress reports required pursuant to this Section, Mirant shall provide a written report to Plaintiffs of any violation of the requirements of this Consent Decree, including exceedences of any Unit-specific 30-Day Rolling Average Emission Rates, System-Wide Annual Tonnage Limitations, System-Wide Ozone Season Tonnage Limitations, Potomac River Ozone Season Tonnage Limitation, or System-Wide Ozone Season Emission Rate, within ten (10) business days of when Mirant knew or should have known of any such violation. In this

report, Mirant shall explain the cause or causes of the violation and all measures taken or to be taken by Mirant to prevent such violations in the future.

84. Each Mirant report shall be signed by Mirant's Director, Environmental Safety and Health, Mirant Mid-Atlantic, LLC or, in his or her absence, the President of Mirant Mid-Atlantic, LLC, or higher ranking official, and shall contain the following certification:

> This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

85. If any NO_x Allowances are surrendered to any non-profit third party pursuant to Subsection IV.G. (Surrender of NO_X Allowances) of this Consent Decree, the third party's certification pursuant to Paragraph 61 shall be signed by a managing officer of the third party and shall contain the following language:

> I certify under penalty of law that,_____ [name of third party] will not sell, trade, or otherwise exchange any of the NO_x Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

X. REVIEW AND APPROVAL OF SUBMITTALS

86. Mirant shall submit each plan, report, or other submission to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. Plaintiffs may approve the submittal or decline to approve it and provide written comments.

Within sixty (60) days of receiving written comments from Plaintiffs, Mirant shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to Plaintiffs; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XIII (Dispute Resolution) of this Consent Decree.

87. Upon receipt of Plaintiff's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Mirant shall implement the approved submittal in accordance with the schedule specified therein.

XI. STIPULATED PENALTIES

88. For any failure by Mirant to comply with the terms of this Consent Decree, and subject to the provisions of Sections XII (Force Majeure) and XIII (Dispute Resolution) of this Consent Decree, Mirant shall pay, within thirty (30) days after receipt of written demand to Mirant by the United States, Maryland, or Virginia, the following stipulated penalties to the Plaintiffs, in accordance with their direction on the amounts to be paid to each of the Plaintiffs:

Consent Decree Violation	**Stipulated Penalty (per day per violation, unless otherwise noted)**
a. Failure to pay the civil penalty as specified in Section VII (Civil Penalty) of this Consent Decree	$10,000
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500
c. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$5,000

d. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000
e. Failure to comply with any System-Wide Ozone Season Emission Rate, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500
f. Failure to comply with any System-Wide Ozone Season Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$5,000
g. Failure to comply with any System-Wide Ozone Season Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000
h. Failure to comply with any System-Wide Annual Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 61 and 62 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
i. Failure to comply with any System-Wide Ozone Season Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 61 and 62 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
j. Failure to comply with any Potomac River Ozone Season Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 61 and 62 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded

k. Operation of a Unit without operation of a NOx pollution control device as required by this Consent Decree	$10,000 per day per violation for the first 30 days, $27,000 per day per violation thereafter
l. Failure to apply for any permit required by Section XIV	$1,000
m. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per day per violation for the first ten days, $1,000 per day per violation thereafter
n. Using, selling, or transferring NO_X Allowances, except as permitted by Paragraphs 52, 53 and 55	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 61 and 62 of this Consent Decree, of NO_X Allowances in an amount equal to four times the number of NO_X Allowances used, sold, or transferred in violation of this Consent Decree
o. Failure to surrender a NO_X Allowance as required by Paragraph 60	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 61 and 62 of this Consent Decree, of NO_X Allowances in an amount equal to four times the number of NO_X Allowances not surrendered in violation of this Consent Decree
p. Failure to demonstrate the third-party surrender of an NO_X Allowance in accordance with Paragraph 61	$2,500
q. Failure to undertake and complete any of the Environmental Projects in compliance with Section VI (Environmental Projects) of this Consent Decree	$1,000 per day per violation for the first 30 days, $5,000 per day per violation thereafter
r. Any other violation of this Consent Decree	$1,000

89. Violation of a 30-Day Rolling Average Emission Rate is a violation on every day on which the average is based.

90. Where a violation of a 30-Day Rolling Average Emission Rate from the same source recurs

within periods of less than thirty (30) days, Mirant shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

91. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

92. Mirant shall pay all stipulated penalties to the Plaintiffs within thirty (30) days of receipt of written demand to Mirant, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless Mirant elects within 20 days of receipt of written demand to Mirant to dispute the accrual of stipulated penalties in accordance with the provisions in Section XIII (Dispute Resolution) of this Consent Decree.

93. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 88 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of Plaintiffs pursuant to Section XIII (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of Plaintiffs' decision;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, Mirant shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph 93.c.;

c. If the Court's decision is appealed by any Party, Mirant shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

For purposes of this Paragraph, the accrued stipulated penalties agreed by the Parties, or determined by the Plaintiffs through dispute resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 88.

94. All stipulated penalties shall be paid in the manner set forth in Section VII (Civil Penalty) of this Consent Decree.

95. Should Mirant fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

96. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to any Plaintiff by reason of Mirant's failure to comply with any requirement of this Consent Decree or applicable law.

XII. FORCE MAJEURE

97. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of Mirant, its contractors, or any

entity controlled by Mirant that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Mirant's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

98. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Mirant intends to assert a claim of Force Majeure, Mirant shall notify the Plaintiffs in writing as soon as practicable, but in no event later than twenty-one (21) business days following the date Mirant first knew, or by the exercise of due diligence should have known, that the event caused or may cause such delay or violation. In this notice, Mirant shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Mirant to prevent or minimize the delay or violation, the schedule by which Mirant proposes to implement those measures, and Mirant's rationale for attributing a delay or violation to a Force Majeure Event. Mirant shall adopt all reasonable measures to avoid or minimize such delays or violations. Mirant shall be deemed to know of any circumstance which Mirant, its contractors, or any entity controlled by Mirant knew or should have known.

99. If Mirant fails to comply with the notice requirements in Paragraph 98, the Plaintiffs may void Mirant's claim for Force Majeure as to the specific event for which Mirant has failed to comply

with such notice requirement.

100. The United States shall notify Mirant in writing regarding Mirant's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 98. If Plaintiffs agree that a delay in performance has been or will be caused by a Force Majeure Event, the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XX (Modification) of this Consent Decree.

101. If Plaintiffs do not accept Mirant's claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Decree.

102. In any dispute regarding Force Majeure, Mirant shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Mirant shall also bear the burden of proving that Mirant gave the notice required by Paragraph 98 and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

103. A Force Majeure Event shall not include economic hardship, changed economic circumstances, or unanticipated or increased costs or expenses associated with the performance of Mirant's obligations under this Consent Decree.

104. The Parties agree that, depending upon the circumstances related to an event and Mirant's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: delays associated with construction, labor, equipment or, in the case of compliance with Paragraph 43 (SOFA installation) or Section VI (Environmental Projects), securing the applicable local government permits or other related authorizations; malfunction of a Unit or emission control device (as defined at 40 C.F.R. 60.2); acts of God; acts of war or terrorism; and orders by a regulatory authority or a regional transmission organization such as PJM Interconnection, L.L.C., acting under and authorized by applicable law, that direct Mirant to supply electricity in response to a system-wide (state-wide or regional) emergency.

105. As part of the resolution of any matter submitted to this Court under Section XIII (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of the Force Majeure Event. Mirant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Mirant shall not be precluded from asserting that a new Force Majeure Event has caused or may cause a new or additional delay in complying with the extended or modified schedule.

106. If Mirant intends to exclude a period of malfunction (as defined at 40 C.F.R. 60.2) from the calculation of any 30-Day Rolling Average Emission Rate, Mirant shall notify Plaintiffs in writing

as soon as practicable, but in no event later than fourteen (14) business days following the date Mirant first knew, or by the exercise of due diligence should have known, of the malfunction. Mirant shall be deemed to know of any circumstance which Mirant, its contractors, or any entity controlled by Mirant knew or should have known.

a. In this notice, Mirant shall describe the anticipated length of time that the malfunction may persist, the cause or causes of the malfunction, all measures taken or to be taken by Mirant to minimize the duration of the malfunction, and the schedule by which Mirant proposes to implement those measures. Mirant shall adopt all reasonable measures to minimize the duration of such malfunctions.

b. A malfunction does not constitute a Force Majeure Event unless the malfunction also meets the definition of a Force Majeure Event, as provided in this Section.

XIII. DISPUTE RESOLUTION

107. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Parties.

108. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Parties advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Parties receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

109. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives unless they agree in writing to shorten or extend this period. During the informal negotiations period, the disputing Parties may also submit their dispute to a mutually-agreed-upon alternative dispute resolution ("ADR") forum if the Parties agree that the ADR activities can be completed within the 30-day informal negotiations period (or such longer period as the Parties may agree to in writing).

110. If the disputing Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide Mirant with a written summary of their position regarding the dispute. The written position provided by the Plaintiffs shall be considered binding unless, within forty-five (45) calendar days thereafter, Mirant seeks judicial resolution of the dispute by filing a petition with this Court. The Plaintiffs may respond to the petition within forty-five (45) calendar days of filing.

111. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

112. This Court shall not draw any inferences nor establish any presumptions adverse to any disputing Party as a result of invocation of this Section or the disputing Parties' inability to reach agreement.

113. As part of the resolution of any dispute under this Section, in appropriate circumstances the

disputing Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Mirant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Mirant shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

114. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 110, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XIV. PERMITS

115. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Mirant to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, Mirant shall make such application in a timely manner.

116. When permits are required as described in Paragraph 115, Mirant shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by Mirant to submit a timely permit

application for any Unit in the Mirant System shall bar any use by Mirant of Section XII (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

117. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XXIV (Conditional Termination of Enforcement Under Consent Decree) of this Consent Decree.

118. Within one hundred eighty (180) days after entry of this Consent Decree, Mirant shall apply for amendment of its Title V permits or applicable state operating permits for each plant in the Mirant System, and amend any existing Title V permit application, to include a schedule for all Unit-specific and system-wide performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, the Unit-specific NO_x emission control requirements set forth in Section IV, at Subsections A (Potomac River Plant) and B (Morgantown Plant), the System-Wide Ozone Season Emission Rate, System-Wide Annual Tonnage Limitations, System-Wide Ozone Season Tonnage Limitations, and, as to the Potomac River Plant's permits only, the Potomac River Ozone Season Tonnage Limitations, as set forth in this Consent Decree.

119. Within one (1) year from the commencement of operation of each pollution control device to be installed under this Consent Decree, Mirant shall apply to amend its Title V permit and any

applicable state operating permit for the plant where such device is installed to reflect all requirements under this Consent Decree that are applicable to that plant, including, but not limited to, any applicable 30-Day Rolling Average Emission Rate.

120. Mirant shall provide Plaintiffs with a copy of each application to amend the Title V permit (or permit application) and applicable state operating permit for each plant in the Mirant System, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

121. If Mirant sells or transfers an Ownership Interest in a plant in the Mirant System to a Third Party Transferee, Mirant shall comply with the requirements of Paragraphs 118 through 120 with regard to that plant, consistent with the the provisions of Section XVII (Sales or Transfers of Ownership Interests) and Appendix B (Allocated Emission Limitations in the Event of Sale or Transfer), prior to the completion of such sale or transfer unless, following any such sale or transfer, Mirant remains the holder of the Title V permit for such facility.

XV. INFORMATION COLLECTION AND RETENTION

122. Any authorized representative of the Plaintiffs, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the Mirant System at any reasonable time for the purpose of:

a. Monitoring the progress of activities required under this Consent Decree;

b. Verifying any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;

c. Obtaining samples and, upon request, splits of any samples taken by Mirant or its

representatives, contractors, or consultants; and

d. Assessing Mirant's compliance with this Consent Decree.

123. Mirant shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to Mirant's performance of its obligations under this Consent Decree until December 31, 2015. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

124. All information and documents submitted by Mirant pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless: (a) the information and documents are subject to legal privileges or protection, or (b) Mirant claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

125. Nothing in this Consent Decree shall limit the authority of the Plaintiffs to conduct tests and inspections at Mirant's facilities or otherwise obtain information under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations or permits.

XVI. NOTICES

126. Unless otherwise provided herein, whenever reports, notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-5-2-1-07829

and

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building (2242A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

and

Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

As to Virginia:

Director
Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, VA 23240-0009

As to Maryland:

Manager, Air Quality Compliance Program
Maryland Department of the Environment
1800 Washington Boulevard, Suite 715
Baltimore, MD 21230

As to Mirant:

Mirant Mid-Atlantic, LLC
Attention: Director Environmental, Safety and Health
8711 Westphalia Road
Upper Marlboro, MD 20774

and

Mirant Corporation
Attention: General Counsel
1155 Perimeter Center West
Atlanta, GA 30338-5416

127. All reports, notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; or (b) certified or registered mail, return receipt requested. All reports, notifications, communications and submissions (a) sent by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked; or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

128. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

XVII. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

129. If Mirant proposes to sell or transfer an Ownership Interest to a Third Party Transferee, prior to the execution of any agreement for sale or transfer of an Ownership Interest, Mirant shall advise the Third Party Transferee in writing of the existence of this Consent Decree, provide a copy of this Consent Decree to such Transferee, and, within 10 days after execution of such agreement, send a copy of such written notification to the Plaintiffs pursuant to Section XVI

(Notices) of this Consent Decree. Any agreement for sale or transfer of an Ownership Interest shall provide, as a condition of sale or transfer, and effective as of the Transfer Closing, that: (a) the Third Party Transferee agrees to be bound by the obligations of this Consent Decree as they are described in subparagraphs a. or b., below, as applicable; and (b) that such obligations under this Consent Decree shall be directly enforceable against the Third Party Transferee.

In any such transfer of an Ownership Interest, upon the completion of such sale or transfer ("Transfer Closing Date"), the Third Party Transferee shall assume the following obligations and liabilities:

a. (1) all applicable Plant-specific and Unit-specific obligations set forth in Section IV of this Consent Decree; (2) the allocated system-wide obligations of the Consent Decree that are applicable to the transferred Ownership Interest, as specified in Appendix B, and which shall apply in lieu of the Mirant system-wide obligations in Section IV.C. and D. of this Consent Decree; and (3) all requirements of this Consent Decree that are not specific to any particular plant in the Mirant System, except Sections VI (Environmental Projects) and VII (Civil Penalty), obligations which are exclusively Mirant's; or

b. Any variation of the obligations in subparagraph (a), above, that has been agreed upon by Mirant, the Third Party Transferee, and the Plaintiffs.

Prior to the Transfer Closing Date, Mirant shall provide to the Plaintiffs, in accordance with Section XVI (Notices): (a) a copy of the aforesaid agreement for sale or transfer of an Ownership Interest, or the portion thereof demonstrating the Third Party Transferee's assumption of obligations; (b) information regarding the technical and financial capabilities of

Third Party Transferee; and (c) a draft modification pursuant to Section XX (Modification) that makes the Third Party Transferee a party to this Consent Decree.

130. No later than sixty (60) days after the provision of such documents to the Plaintiffs, Mirant, the Third Party Transferee, and the Plaintiffs shall execute the above modification, to be effective at the Transfer Closing, which the Parties shall submit to the Court for approval.

131. In any such modification submitted pursuant to Paragraph 130, Mirant may also request that the modification relieve Mirant of its obligations and liabilities under this Consent Decree to the extent obligations are undertaken by the Third Party Transferee with respect to the purchased or transferred Ownership Interests (and the draft modification submitted by Mirant shall incorporate language providing such relief from liability). Provided the conditions of Paragraph 129 are satisfied, Plaintiffs will not oppose such request if they determine that such transfer of liability and obligations is justified upon consideration of the Third Party Transferee's technical capability, financial capability and history of administratively noticed or judicially alleged events of environmental noncompliance.

132. Unless and until such modification relieving Mirant of liability for the obligations and liabilities associated with the transferred Ownership Interest is entered by the Court, Mirant shall remain liable for all the requirements of this Consent Decree, including those that may be applicable to the purchased or transferred Ownership Interests.

133. Mirant shall not assign, and shall not be released from, any obligation under this Consent Decree that is not specifically applicable to the purchased or transferred Ownership Interests, including the obligations set forth in Sections VI (Environmental Projects) and VII (Civil

Penalty) of this Consent Decree.

134. On July 14, 2003 and July 15, 2003, and on certain subsequent dates, Mirant and certain of its affiliates filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") for relief under chapter 11 of Title 11 of the United States Code, Case No. 03-46590 (DML) (the "Proceeding"). In the event that an Ownership Interest is transferred to a Third Party Transferee in a manner other than a negotiated sale during the pendency of the Proceeding, Mirant and the Plaintiffs intend that the obligations and liabilities created under Section XVII, Paragraph 129, Subparagraph a. or b. of this Consent Decree, as they pertain to the transferred Ownership Interest, shall become the obligations and liabilities of the Third Party Transferee by order of a court of competent jurisdiction, through the incorporation of these obligations and liabilities into the applicable Title V operating permit, by virtue of a separate federally enforceable agreement among the Third Party Transferee, Mirant, and the Plaintiffs, or otherwise by operation of law. Plaintiffs will not oppose a modification of the Consent Decree relieving Mirant of liability for obligations specific to the transferred Ownership Interest if they determine that such transfer of liability and obligations is justified upon consideration of the Third Party Transferee's technical capability, financial capability and history of administratively noticed or judicially alleged events of environmental noncompliance. At such time as the Third Party Transferee becomes subject to the aforesaid obligations and liabilities, by order of a court of competent jurisdiction, through the incorporation of these obligations and liabilities into the applicable Title V operating permit, by virtue of a separate federally enforceable agreement among the Third Party Transferee, Mirant, and the Plaintiffs,

then Mirant and the Plaintiffs (but not necessarily the Third Party Transferee) shall submit an executed modification to the Court for approval in accordance with the procedure described in this Decree that would relieve Mirant from obligations and liabilities under the Consent Decree to the extent they have become obligations and liabilities of the Third Party Transferee.

135. If, after any such sale or transfer, either Mirant or a Third Party Transferee owns more than one of the plants in the Mirant System (i.e., a "Mirant System Subset"): (a) the ozone season tonnage limitations applicable to the Mirant System Subset shall be the sum of the ozone season tonnage limitations set forth in Appendix B (or as otherwise agreed upon pursuant to Paragraph 129(b)); (b) the annual tonnage limitations applicable to the Mirant System Subset shall be the sum of the annual tonnage limitations set forth in Appendix B (or as otherwise agreed upon pursuant to Paragraph 129(b)); and (c) the ozone season emission rate applicable to the Mirant System Subset shall be as set forth in Appendix B (or as otherwise agreed upon pursuant to Paragraph 129(b)), and shall be calculated in accordance with Paragraph 35 of this Consent Decree.

136. Notwithstanding anything set forth in this Section, the Potomac River Plant may not exceed the emissions limitations assigned to it in Section IV, Subsection A of this Consent Decree, and no agreement to sell or transfer a Ownership Interest may affect this requirement.

137. Nothing in this Section is intended to affect or waive any rights the Plaintiffs may have against a Third Party Transferee in the enforcement of this Consent Decree, consistent with Paragraph 2 of this Decree.

XVIII. EFFECTIVE DATE

138. On July 14, 2003 and July 15, 2003, Mirant and certain of its affiliates filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") for relief under chapter 11 of Title 11 of the United States Code, Case No. 03-46590 (DML). From and after the date of execution of this Consent Decree, Mirant shall use it's best efforts to obtain, on an expedited basis, approval of Mirant's entry into this Consent Decree by the Bankruptcy Court, under Federal Rule of Bankruptcy Procedure 9019, but in any event shall move for such approval no later than 60 days after lodging of this Decree, unless the Plaintiffs agree to a limited extension of this period. The parties agree that this Consent Decree shall not be binding on Mirant without the approval of the Federal Bankruptcy Court for the Northern District of Texas.

139. The effective date of this Consent Decree shall be the later of: (a) the date upon which this Consent Decree is entered by this Court; or (b) the date upon which Mirant's entry into this Consent Decree is approved by the Bankruptcy Court.

XIX. RETENTION OF JURISDICTION

140. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XX. MODIFICATION

141. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XXI. GENERAL PROVISIONS

142. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

143. In any subsequent administrative or judicial action initiated by the Plaintiffs for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Mirant shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the Plaintiffs in the subsequent proceeding were brought, or should have been brought, in the instant case.

144. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Mirant of its obligation to comply with all applicable federal, state, and local laws and regulations. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

145. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree and, except as otherwise provided in this Consent Decree, every other term used in this Consent Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Consent Decree what such term means under the Act or

those implementing regulations.

146. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

147. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. Mirant shall round the fourth significant digit to the nearest third significant digit. For example, if an actual Emission Rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an Emission Rate of 0.100, and if an actual Emission Rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an Emission Rate of 0.100. Mirant shall report data to the number of significant digits in which the standard or limit is expressed. As otherwise applicable and unless this Consent Decree expressly directs otherwise, the calculation and measurement procedures established under 40 C.F.R. Part 75 apply to the measurement and calculation of NO_x emissions under this Consent Decree.

148. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

149. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall

they be used in construing the terms of this Consent Decree.

150. Each Party to this action shall bear its own costs and attorneys' fees.

XXII. SIGNATORIES AND SERVICE

151. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

152. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

153. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. PUBLIC COMMENT

154. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Mirant shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Mirant, in writing, that the United States no longer supports entry of the Consent Decree.

XXIV. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

155. After Mirant:

a. Has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree;

b. Has obtained final Title V permits (i) as required by the terms of this Consent Decree; (ii) that cover all Units in this Consent Decree; and (iii) that include as enforceable permit terms all of the Unit performance requirements, all plant-specific and system-wide NO_x limitations, and all other requirements specified in Section XIV (Permits) of this Consent Decree; and

c. Certifies that the date is later than December 31, 2011;

then Mirant may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within forty-five (45) days of receipt of Mirant's certification, then, for any violations that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements contained in the Title V permit through the applicable Title V permit and not through this Consent Decree.

156. Notwithstanding Paragraph 155, if enforcement of a provision in this Consent Decree cannot be pursued by a Party under the applicable Title V permit, or if a Consent Decree requirement was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree.

XXV. FINAL JUDGMENT

157. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the Plaintiffs and Mirant.

SO ORDERED, THIS _____ DAY OF _____, 2004.

_____
UNITED STATES DISTRICT COURT JUDGE

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

FOR THE UNITED STATES OF AMERICA:

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

Nicole Veilleux

Matthew W. Morrison, Senior Counsel
Nicole Veilleux, Trial Attorney
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

PAUL J. MCNULTY
United States Attorney

Richard W. Sponseller (VSB 39402)
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: 703/299-3700

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

ADAM M. KUSHNER
Acting Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Edward J. Messina
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

Donald S. Welsh

Donald S. Welsh
Regional Administrator, Region 3
U.S. Environmental Protection Agency

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

FOR THE COMMONWEALTH OF VIRGINIA:

CARL JOSEPHSON
Senior Assistant Attorney General
Commonwealth of Virginia

ROBERT G. BURNLEY
Director
Department of Environmental Quality
Commonwealth of Virginia

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

FOR THE STATE OF MARYLAND:

Kendl P. Philbrick, Secretary
Maryland Department of the Environment

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

KATHY M. KINSEY
Assistant Attorney General
Office of the Maryland Attorney General

Signature Page for Consent Decree in:

United States of America, State of Maryland and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

FOR MIRANT POTOMAC RIVER, LLC AND MIRANT MID-ATLANTIC, LLC:

LISA D. JOHNSON
President, Mirant Potomac River, LLC and
Mirant Mid-Atlantic, LLC

Appendix A: Environmental Projects

In compliance with and in addition to the requirements in Section VI (Environmental Projects) of the Consent Decree in United States of America, State of Maryland, and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality v. Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC, Mirant shall comply with the requirements of this Appendix to reduce emissions of particulate matter and/or fugitive dust from that facility.

I. Environmental Projects

1. Bottom Ash and Fly Ash Silo Vent Secondary Filtration

   a. Within 90 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the installation of two secondary filtration systems (i.e., baghouse dust collectors and associated equipment) at the Potomac River Plant, as described herein.

   b. Ash from the Potomac River Plant's operations is transported pneumatically from the five units to three ash silos. Once in the silos, ash drops out and the transport air is vented out the top of the silo, through a baghouse dust collector. In this Project, Mirant shall install ductwork from the outlet of each ash silo vent down to ground level. Mirant shall also combine the vents from the two adjacent fly ash silos into one duct. In addition, Mirant shall install two secondary baghouse dust collectors and associated equipment at the outlet of the ducts at ground level.

   c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 30 tons per year.

   d. Mirant estimates it will spend $140,000 in implementing this Project.

   e. Mirant shall complete this Project and place the secondary filtration system in service by the later of September 1, 2005 or 7 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

2. Coal Pile Wind Erosion and Dust Suppression

   a. Within 30 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the implementation of fencing to control coal pile wind erosion and coal dust dispersion, as described herein.

   b. Mirant shall install a 12' high perimeter fence with windscreens on the windward and leeward sides of the coal storage pile to reduce wind erosion. The fencing shall be installed on top of existing concrete walls, which form the boundary of the coal pile. The fencing shall also be engineered to handle area wind loads, and be designed to avoid the effects of eddying and dust carryover.

   c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 2.8 tons per year.

d. Mirant estimates it will spend $75,000 in implementing this Project.

e. Mirant shall complete this Project and place the facility in service by the later of April 1, 2005 or 3 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

3. Coal Stackout Conveyor Dust Suppression

a. Within 30 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the use of a chemical binding agent on the conveyor system to control coal dust dispersion at this location, as described herein.

b. Coal delivered to the Potomac River Plant is either transported from a railcar unloader to the plant via a series of conveyor belts, or conveyed to a storage pile outside the plant. At the time of lodging of this Decree, a set of nozzles spray water at the end of the conveyor that drops coal onto the storage pile to suppress fugitive dust emissions. Once this Project is implemented, Mirant shall spray a chemical binding agent onto coal as it drops onto the belt. The binding agent shall be a non-hazardous chemical that agglomerates fine coal particles together prior to being dropped onto the pile, thereby preventing wind from causing the fine particles to escape. The binding agent shall remain effective for a month or more on the coal in the pile, even with rain or when coal is moved around the pile.

c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 800 pounds per year.

d. Mirant estimates it will spend $112,000 in implementing this Project.

e. Mirant shall complete this Project and place the facility in service by the later of December 1, 2004 or 30 days after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

4. Ash Loader Upgrade

a. Within 90 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the installation of modern ash loading equipment at the Potomac River Plant, as described herein.

b. Ash is transferred from storage silos to trucks by a gravity-feed system, in which ash-loading equipment regulates the flow of ash out of the silo above, then mixes it with water prior to dropping the dampened ash into a truck below. Fugitive ash dust emissions at this location are correlated to the extent to which the loader mixes water into the flowing ash. There are three ash silos, two of which have had modern ash loader equipment installed (in 1997 and 2001), and one that has the original equipment. Mirant shall replace the ash loading equipment on the third silo with the modern design which is much more effective at mixing water into the ash, further reducing fugitive dust emissions associated with this process.

c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 200 pounds per year.

d. Mirant estimates it will spend $280,000 in implementing this Project.

e. Mirant shall complete this Project and place the facility in service by the later of June 1, 2006 or 17 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

5. Ash Loading System Dust Suppression

a. Within 90 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the installation of a water fogging system to improve dust suppression in the ash loading process, as described herein.

b. In addition to the Ash Loader Upgrade Project described in Paragraph 6, Mirant shall install a water fogging system at the transfer points between the ash loaders and trucks, for additional dust suppression. Mirant shall also install a system of water pumps, piping, nozzles, and a control system to form a "fog" around the ash loader discharge chute. The water droplets shalll drop fugitive ash particles to the ground, drain into a collection sump, and be treated at the Plant's water treatment facility.

c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 200 pounds per year.

d. Mirant estimates it will spend $85,000 in implementing this Project.

e. Mirant shall complete this Project and place the fogging system in service by the later of June 1, 2005 or 5 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

6. Coal Railcar Unloading Dust Suppression

a. Within 90 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the use of a chemical binding agent in conjunction with the railcar unloading process, as described herein.

b. The railcar unloader is a device that empties individual railcars filled with coal onto conveyor belts, prior to the conveyance of the coal to the plant, by tipping the railcar upside down. To supplement the existing dust controls at this location, Mirant shall spray a dilute mixture of water and binding agent onto the coal at three locations during the unloading process. The three spray levels shall be activated in sequence as each railcar is tipped over.

c. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 200 pounds per year.

d. Mirant estimates it will spend $250,000 in implementing this Project.

e. Mirant shall complete this Project and place the facility in service by the later of June 1, 2006 or 17 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

7. Settled Dust Study

a. Within 60 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide objectives and parameters for the implementation of a study of fugitive dust emission sources around the Potomac River Plant, along with associated impacts on ambient air quality, as described herein.

b. On a daily basis, Mirant shall place acetate sheets in stands at multiple sites on the property near dust sources. At the conclusion of each day, Mirant shall collect these sheets and analyze them for dust accumulation. Mirant shall also record wind speed and direction data on a daily basis. Mirant shall retain a qualified consultant to correlate the meteorological data with the collected dust accumulation information to determine frequency and severity of dust transport at the Plant site. Mirant shall submit a report to the Plaintiffs at the conclusion of the study, summarizing the data collected and any conclusions or inferences drawn therefrom, including those regarding impacts on ambient air quality. Mirant shall also make such report available to the public upon request.

c. Mirant estimates it will spend $100,000 to complete this Study.

d. Mirant shall commence this Study by the later of November 1, 2004 or 30 days after the Plaintiffs' approval of Mirant's timely submitted proposed plan, and shall complete the study and submit the final report by no later than 180 days after such date.

8. Truck Washing Facility

a. Upon entry of this Consent Decree, Mirant shall commence operation of a temporary Truck Washing Facility at the Potomac River Plant designed to reduce fugitive dust emissions.

b. Within 90 days after entry of the Consent Decree, Mirant shall submit a proposed plan for this Project to the Plaintiffs for review and approval. The proposed plan shall provide specifications for the installation of a permanent Truck Washing Facility at the Potomac River Plant, as described herein.

c. A permanent truck washing facility shall be installed at the Potomac River Plant to wash the wheels, under-carriage, and sides of trucks used to haul fly ash and bottom ash to off-site ash storage facilities. The facility shall consist of a steel basin with ramps on either end, and an array of nozzles that spray high velocity jets of water on the bottom and sides of trucks as they are driven through the device. Water shall be recirculated through a filtration tank. Two pumps shall move water through the system, one to supply water to the spray nozzles, and one to draw water out of the basin and through the filtration tank. Accumulated solids

in the filtration tank shall be removed periodically, transported off site, and disposed of in accordance with all applicable local, state, and federal laws and regulations.

d. At the time of lodging of this Decree, Mirant estimates that this Project may reduce fugitive dust emissions at the Potomac River Plant by as many as 13.7 tons per year.

e. Mirant estimates it will spend $100,000 in implementing this Project.

f. Mirant shall complete this Project and place the facility in service by the later of July 1, 2005 or 5 months after the Plaintiffs' approval of Mirant's timely submitted proposed plan for this Project.

9. Virginia Clean Air Partners Project

a. Within ninety (90) days after entry of this Consent Decree, and as part of the consideration provided to Virginia for its resolution of claims under this Consent Decree, Mirant shall provide funding to Clean Air Partners, an organization administered through the Metropolitan Washington Council of Governments, to support the development of an education campaign focused on "particle pollution" (PM). The primary function of the campaign shall be the development of a formal educational curriculum, training, and outreach to affected members of the community in the Northern Virginia area. The educational materials developed shall focus on the health effects of exposure to PM emissions, the causes and sources of PM emissions, and methods for protecting against health impacts and for reducing individual contributions to air pollution in the Washington region.

b. Mirant estimates it will spend $30,000 to fund this public outreach program.

Appendix B – Allocated Emission Limitations in the Event of Sale or Transfer

		TONNAGE LIMITS		RATE LIMITS
2004	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB	1,750	5,050	N/A
Dickerson	-	1,970	4,800	N/A
Chalk Point	-	4,470	10,840	N/A
Morgantown	-	6,510	15,810	N/A
	TOTALS	**14,700**	**36,500**	

		TONNAGE LIMITS		RATE LIMITS
2005	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,625	4,615	N/A
Dickerson	-	1,950	4,780	N/A
Chalk Point	-	3,280	8,910	N/A
Morgantown	-	6,485	15,535	N/A
	TOTALS	**13,340**	**33,840**	

		TONNAGE LIMITS		RATE LIMITS
2006	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,600	4,550	N/A
Dickerson	-	1,840	4,660	N/A
Chalk Point	-	3,150	8,870	N/A
Morgantown	-	6,000	15,010	N/A
	TOTALS	**12,590**	**33,090**	

		TONNAGE LIMITS		RATE LIMITS
2007	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,600	4,550	N/A
Dickerson	-	1,840	4,660	N/A
Chalk Point	-	3,150	8,870	N/A
Morgantown	1 SCR	3,600	10,840	N/A
	TOTALS	**10,190**	**28,920**	

		TONNAGE LIMITS		RATE LIMITS
2008	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,600	4,550	0.270
Dickerson	-	1,840	4,660	0.260
Chalk Point	-	1,570	7,950	0.150
Morgantown	2 SCRs	1,140	4,840	0.060
	TOTALS	**6,150**	**22,000**	

		TONNAGE LIMITS		RATE LIMITS
2009	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,600	4,550	0.270
Dickerson	-	1,950	4,770	0.260
Chalk Point	-	1,620	7,330	0.150
Morgantown	2 SCRs	980	3,000	0.060
	TOTALS	**6,150**	**19,650**	

		TONNAGE LIMITS		RATE LIMITS
2010	**Technology**	**Ozone Cap**	**Annual Cap**	**Ozone Rate**
Potomac River	3 LNB + 3 SOFA	1,475	4,425	0.240
Dickerson	-	1,480	4,300	0.220
Chalk Point	-	1,420	4,430	0.130
Morgantown	2 SCRs	825	2,845	0.050
	TOTALS	**5,200**	**16,000**	