MDE
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Martin O'Malley
Governor

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Robert M. Summers, Ph.D.
Acting Secretary

January 3, 2011

BY CERTIFIED MAIL

Edward R. Muller, President & CEO
Mirant Corporation
(GenOn Energy, Inc.)
1155 Perimeter Center West, Suite 100
Atlanta, GA 30338

Mark M. Jacobs, President and COO
GenOn Energy, Inc.
1000 Main Street
Houston, TX 77002

Robert Gaudette, President & CEO
Mirant (GenOn) Mid-Atlantic, LLC
601 13th Street, Suite 850 North
Washington, DC 20005

James P. Garlick, Senior Vice President
Mirant (GenOn) Mid-Atlantic, LLC/
Mirant (GenOn) Maryland Ash Management, LLC
2711 Centerville Road
Wilmington, DE 19808

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building (1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Shawn Garvin, Regional Administrator
U.S. Environmental Protection Agency
Region 3
1650 Arch Street (SRA00)
Philadelphia, PA 19103-2029

The Honorable Eric H. Holder, Jr.
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Notice of Intent to File Citizen Suit for Violations of the Clean Water Act at the Mirant Westland Coal Combustion Waste Disposal Site in Montgomery County, Maryland

Dear Mr. Muller, Mr. Jacobs, Mr. Gaudette, Mr. Garlick, Administrator Jackson, Regional Administrator Garvin, and Attorney General Holder:

The State of Maryland, Department of the Environment ("Department") hereby gives notice that it intends to bring suit under Section 505 of the Clean Water Act, 33 U.S.C. Section 1365, against Mirant Mid-Atlantic, LLC ("Mirant Mid-Atlantic"), and Mirant Maryland Ash Management, LLC ("Mirant Ash"), (collectively "Mirant"), for significant and ongoing violations of state and federal water pollution laws at the Westland disposal site in Montgomery County, Maryland. Clean Water Act, 33 U.S.C. Section 1251 *et. seq.*; Maryland's Water Pollution Control Law, Md. Ann. Code, Environment Article, Section 9-301 *et seq.*; *U.S. Dept. of Energy v. Ohio*, 503 U.S. 607, 617, 112 S.Ct. 1627, 1634 (1992).

According to correspondence filed by Mirant with the Department on December 17, 2010, on December 3, 2010, RRI Energy, Inc. and Mirant Corporation completed a merger to form GenOn Energy, Inc. Mirant has advised that the wholly owned subsidiaries and permit holders changed their names to GenOn Mid-Atlantic, LLC and GenOn Maryland Ash Management, LLC. Section 4A-708 of the Corporations Article of the Annotated Code of Maryland governs the effective date of mergers, and provides as follows: "A merger is effective as of the later of: (1) The time [the State Department of Assessments and Taxation ("SDAT")] accepts the articles of merger for record; or (2) The time established under the articles of merger, not to exceed 30 days after the articles of merger are accepted for record." In this case, as of the date of filing of this Notice of Intent, the articles of merger have not been accepted by the SDAT. The only document on file with the SDAT is a reservation of the name, GenOn Energy, Inc., which has been filed monthly to hold that name since April 2010. Accordingly, the Department has identified the entities at issue in this Notice of Intent as Mirant entities but has addressed and served the Notice of Intent on both the Mirant and GenOn Energy, Inc. Presidents, Chief Executive Officers, and Chief Operating Officers.

Mirant Mid-Atlantic, the parent company of Mirant Ash, owns and operates the Dickerson electrical generation station located in Montgomery County, Maryland and directs environmental compliance and technical support functions at the Mirant Westland disposal site ("Disposal Site"). The process of electrical generation through the combustion of coal produces waste. Mirant Mid-Atlantic and Mirant Ash dispose of and partially treat this waste at the Disposal Site located in Montgomery County, in and around two unnamed tributaries, described as "Little Stream" and "Big Stream," which merge together at the western end of the Disposal Site and lead to the Potomac River, placing pollutants in a location where they may enter the waters of the State.

A. Coal Combustion Waste

Mirant Mid-Atlantic generates millions of tons of coal combustion waste at its electrical generating stations, including Dickerson. This waste is the residue generated by burning coal and is derived primarily from incombustible mineral material. Coal combustion waste contains a myriad of pollutants including high concentrations of toxic pollutants such as arsenic, cadmium, copper, lead, mercury, selenium and zinc.

These pollutants, when improperly disposed of or controlled, leach or are otherwise discharged into groundwater and surface water, thereby causing the contamination or other alteration of the physical, chemical, or biological properties of these waters. This contamination adversely impacts water supplies, aquatic organisms, wildlife, and humans, and renders the waters harmful or detrimental to public health, safety, or welfare and legitimate beneficial uses.

B. Disposal of Coal Combustion Waste at the Disposal Site

The Disposal Site consists of approximately 288 acres, of which 180 acres are utilized for the disposal of coal combustion waste. There are three distinct areas for coal combustion byproduct disposal labeled by Mirant Ash as Areas A, B, and C. These areas contain unlined "cells" where coal combustion waste is placed for disposal. Area C is the westernmost disposal site and has been completely filled, capped,

and vegetated. Area B is located immediately to the west of Area A and is currently an active storage disposal site. Area A is located in the easternmost portion of the property and will be utilized when Area B is filled to capacity. None of the disposal pits were adequately lined to prevent leachate from migrating from the Disposal Site to groundwater or surface waters.

More than 3.8 million cubic yards, or 5,827,600 tons, of coal combustion waste have been deposited at the Disposal Site over the last thirty years. Approximately 150,000 cubic yards of waste are placed at the Disposal Site every year.

Because the disposal pits were inadequately lined and impermeable caps were not installed, rainwater and snow melt penetrate the disposal pits, flow through the accumulated waste, and leach out toxic pollutants, which then enter the groundwater and are discharged into "Little Stream" and "Big Stream," which merge together and lead to the Potomac River. These toxic pollutants include, but are not limited to, aluminum, arsenic, barium, cadmium, chloride, chromium, cobalt, copper, iron, lead, magnesium, manganese, nickel, pH, selenium, sulfates, total suspended solids, and zinc.

C. Wastewater and Leachate Collection and Treatment

The Disposal Site plan provides for three settling ponds to collect groundwater and leachate from three disposal pits. Ponds 2 and 3 are in use but rarely discharge. Pond 2 is unlined and Pond 3 was not lined with a synthetic liner until 2010. Currently, since Area B is the only active disposal site, any leachate generated from Area B flows through unlined ditches into Pond 3. Wastewater in the ponds is aerated and treated with soda ash before it is discharged through Outfalls 002 and 003. Outfall 002 discharges storm water runoff from Area B to an unnamed tributary leading to the Potomac River. Outfall 003 discharges storm water runoff from Areas B & C to an unnamed tributary leading to the Potomac River.

This leachate collection and treatment system fails to prevent leachate from entering waters of the State. Because the settling ponds were not adequately lined, heavy metals that sink to the bottom of the ponds continue to leach into the groundwater aquifer, which is hydro-geologically connected to tributaries of the Potomac River. Many of the pollutants do not settle, dissolve in water in the ponds, and then discharge directly via Outfalls 002 and 003 to "Little Stream" and "Big Stream," which merge together and lead to the Potomac River.

D. Water Bodies Impacted

"Little Stream," "Big Stream" and the Potomac River are navigable waters of the United States and waters of the State of Maryland. 33 U.S.C. § 1362(7); Md. Code Ann., Envir. § 9-101(l). They are Use I waters of the State protected for water contact recreation, fishing, aquatic life, and wildlife. These waters are valuable and unique ecological areas located within the Chesapeake Bay Watershed.

Groundwater at the Disposal Site flows southeast to west following the contour of the land and the direction of the streambeds. The Disposal Site lies within the New Oxford formation, comprised of weathered and unweathered sandstone and siltstone that is porous and has high conductivity. Water movement is primarily mobile through vertical fractures and/or flow parallel to bedding planes. In areas of intense fracturing, water flow is equivalent to water flow through porous rock content. Fractured rock exists northwest of Area B. Water flows into this area and then rapidly disappears, facilitating leachate contamination of groundwater, detrimentally affecting water quality beneath the fill areas, as shown by increased contaminant levels in monitoring wells. Groundwater monitoring confirms that pollutants present in the groundwater discharge to "Little Stream" and "Big Stream," which merge and lead into the Potomac River.

E. The Discharge Permit

On July 1, 1995, the Department issued National Pollutant Discharge Elimination System ("NPDES") Discharge Permit No. MD-0057584 (State Discharge Permit No. 91-DP-1680) (the "Discharge Permit") to the Potomac Electric Power Company ("PEPCO"), the prior owner of the Disposal Site, authorizing the discharge of certain pollutants from Outfalls 001, 002, and 003. On or about December 22, 2000, when Mirant Ash purchased the Disposal Site from PEPCO, the existing discharge permit was transferred from PEPCO to Mirant Ash, and Mirant Ash assumed PEPCO's obligations under the Discharge Permit.

The Discharge Permit was based on an application submitted by PEPCO on September 12, 1990. In the application, PEPCO identified the following pollutants as "believed present" in Outfalls 002 and 003: aluminum, arsenic, barium, cadmium, chromium, copper, iron, lead, magnesium, manganese, nickel, pH, selenium, sulfates, total suspended solids, and zinc. With the exception of total suspended solids and pH, PEPCO stated that no data was available regarding the concentrations of pollutants and that analysis would be run upon future discharges. The Discharge Permit provided an effluent limit for total suspended solids and iron, and a limit for pH. However, the Discharge Permit did not include effluent limits for the balance of the pollutants "believed present" based upon the lack of information in the application to show that they would cause or contribute to violations of water quality standards.

The Discharge Permit does not authorize the discharge of pollutants from Outfalls 001, 002, and 003 that are not expressly authorized by the Discharge Permit. The Discharge Permit also does not authorize discharges of any pollutants into "Little Stream" and "Big Stream" and tributaries of the Potomac River from any point other than through Outfalls 001, 002, and 003. In particular, it does not authorize discharges of any pollutants to groundwater, which then flows to tributaries of the Potomac River.

On or about November 22, 1999, PEPCO submitted to the Department an application for renewal of the Discharge Permit. In this application, PEPCO again reported that the following pollutants were "believed present" in Outfall 002 and/or Outfall 003 but for some pollutants, did not provide data as to their concentration: aluminum, arsenic, barium, cadmium, iron, magnesium, manganese, nickel, pH, selenium,

sulfates, total suspended solids, and zinc. Cobalt, chromium, and copper were reported as "believed absent" in the 1999 renewal application. As its successor in interest, Mirant Ash is bound by the statements in PEPCO's renewal application.

Discharges of pollutants from Outfall 002 or Outfall 003 reported to be present, but at concentrations that would not cause or contribute to violations of water quality standards in the 1990 application and not included in the Discharge Permit, are unauthorized if discharged in concentrations that would cause or contribute to an exceedance of water quality standards. Discharges of pollutants in any concentrations to "Little Stream," "Big Stream," or tributaries of the Potomac River through leaks in the disposal pits and settling ponds are also unauthorized and a violation of the law.

Mirant Ash is required to collect groundwater samples at the Site, as well as samples from "Little Stream" and "Big Stream," and report the findings at each of the monitoring wells and surface water locations. The Disposal Site is monitored by eight groundwater wells. The water quality of "Little Stream" and "Big Stream" is sampled from twenty-six surface water locations that border the Disposal Site.

F. Unauthorized Discharges of Pollutants

Monitoring results submitted by Mirant Ash and Mirant Mid-Atlantic from groundwater monitoring wells around the disposal pits demonstrate unauthorized discharges of sulfates, total dissolved solids ("TDS"), manganese, iron, chlorides, and aluminum in concentrations that cause or contribute to violations of water quality standards.

Sampling of discharges from Outfalls 002 and 003 reveal concentrations of selenium, chloride, sulfates, and hardness exceeding water quality standards. Samples collected on March 15, 2010 from Outfalls 002 and/or 003 revealed excessive amounts of arsenic, barium, chromium, cobalt, copper, iron, selenium, and zinc, which violate water quality standards. Excessive amounts of arsenic, barium, copper, iron, selenium, and zinc were also found in monitoring wells. A sample from Outfall 002 revealed a total selenium concentration of 12.4 ug/l and a dissolved selenium concentration of 11.3 ug/l. Samples from a pond near the overflow pipe at Outfall 003 revealed a total selenium concentration of 44.7 ug/l and a dissolved selenium concentration of 42.6 ug/l. Samples from Outfall 003 revealed a total selenium concentration of 79.2 ug/l and a dissolved selenium concentration of 71.6 ug/l. All of those test results constitute exceedances of the Maryland numerical water quality criteria and the national recommended water quality criteria established by the EPA of 5.0 ug/l for selenium.

Furthermore, Mirant Ash submitted five quarterly discharge monitoring reports between the third quarter of 2009 and the second quarter of 2010 showing exceedances of Maximum Contaminant Levels ("MCL") in all of the groundwater monitoring wells that are required to be sampled under the Discharge Permit. Following is a list of MCL exceedances at each well during the above time period, identifying the well and the number of quarterly reports showing exceedances of a particular constituent:

Monitoring Well	Pollutant	Number of quarterly reports showing exceedances of Pollutant (First Quarter 2009 – First Quarter 2010)
Well D-1	Sulfate	1
	Dissolved Iron	1
	TDS	4
	Dissolved Manganese	1
	Chloride	3
Well D-2	TDS	2
Well D-3	TDS	2
Well D-4	TDS	1
Well D-5	Dissolved Aluminum	1
Well D-6R	TDS	4
	Chloride	4
	Sulfate	4
Well D-7	TDS	4
	Sulfate	4
Well D-8	Dissolved Manganese	3
	TDS	3
	Sulfate	3

In violation of 33 U.S.C. § 1311 and Md. Code Ann., Envir. §§ 9-322 and 9-323, sampling results from groundwater monitoring wells, from Outfalls 002 and 003, and from "Little Stream" and "Big Stream," demonstrate that Mirant Ash and Mirant Mid-Atlantic are discharging and continue to discharge pollutants, including but not limited to, aluminum, arsenic, barium, beryllium, boron, cadmium, chlorides, chromium, cobalt, copper, cyanide, iron, lead, manganese, mercury, molybdenum, nickel, pH, selenium, silver, sulfates, TDS, tin, and zinc from the disposal pits, the treatment cells, the settling ponds and through Outfalls 002 and 003 into "Little Stream" and "Big Stream" directly or through discharges to groundwater that is hydro-geologically connected to surface waters that are not authorized, or in amounts that are not authorized, by the Discharge Permit. In addition, sample results of the leachate in the treatment ponds demonstrate the presence of unauthorized pollutants in a position likely to pollute "Little Stream" and "Big Stream" and tributaries of the Potomac River, which constitutes a discharge under Maryland law. All of these unauthorized discharges are continuing and have been occurring daily since at least December 1, 2005.

Until the disposal area is completely lined or enclosed to prevent the discharge of pollutants to surface waters or groundwater of the State and/or until all leachate is collected and treated prior to discharge to State waters, Mirant Ash and Mirant Mid-Atlantic will continue to unlawfully discharge pollutants entrained in leachate from the coal combustion waste to ground and surface waters of the State and navigable waters of the United States.

These illegal discharges to groundwater and surface water into unnamed tributaries known as "Little Stream" and "Big Stream," which flow into the Potomac River, constitute significant and ongoing violations of state and federal water pollution laws, contaminating the groundwater and surface waters of the State of Maryland, thereby causing an adverse impact on the environment. Consequently, notice of the State's intent to file suit is hereby given.

Sincerely,

Robert M. Summers, Ph.D.
Acting Secretary

cc: The Honorable Martin O'Malley, Governor of Maryland
The Honorable Douglas F. Gansler, Attorney General of Maryland