



# MARYLAND DEPARTMENT OF THE ENVIRONMENT

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January 15, 2010

## **BY CERTIFIED MAIL**

Edward R. Muller, President & CEO  
Mirant Corporation  
1155 Perimeter Center West, Suite 100  
Atlanta, GA 30338-5461

Robert Gaudette, President & CEO  
Mirant Mid-Atlantic, LLC  
601 13<sup>th</sup> Street, Suite 850 North  
Washington, DC 20005

James P. Garlick, Senior Vice President  
Mirant Mid-Atlantic, LLC/Mirant Maryland Ash  
Management, LLC  
8711 Westphalia Road  
Upper Marlboro, MD 20774

The Honorable Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building (Mail Code: 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: Mirant-Brandywine Landfill

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

The State of Maryland 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 and Mirant Maryland Ash Management, LLC for significant and ongoing violations of state and federal water pollution laws at the Brandywine Landfill in Prince George's 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).

Mirant Mid-Atlantic, LLC, the parent company of Mirant Maryland Ash Management, LLC, owns and operates an electrical generation station in Prince George's County, Maryland. The process of electrical

generation through coal combustion produces waste byproducts, including fly ash. Mirant Mid-Atlantic, LLC and Mirant Maryland Ash Management, LLC dispose of these waste byproducts at the Brandywine Landfill located on approximately 300 acres of land in southern Prince George's County, in and around the Mataponi Creek and one of its tributaries, placing pollutants in a location where they may enter the waters of the State. The Brandywine Landfill consists of numerous pits that have been used for disposal of fly ash and other coal combustion byproducts since 1970. Inadequate construction of the disposal cells and operation of the disposal area have resulted in leachate escaping from the disposal cells and contaminating the groundwaters and surface waters of the State. The coal combustion byproducts placed in the Brandywine Landfill contain high concentrations of aluminum, arsenic, cadmium, copper, lead, mercury, selenium, zinc, and other pollutants that are toxic to humans, aquatic life, and wildlife.

The Brandywine Landfill's wastewater treatment consists of a series of four settling ponds that are used to collect and treat groundwater and leachate pumped from four outfalls. Outfall 001 contains storm water runoff from the grass swale area in Area A and empties into Mataponi Creek. Outfall 002 contains storm water runoff from Areas 1, 2, 3, 7, and A, and empties into Mataponi Creek. Outfall 004 contains storm water runoff from Areas 4, 5, 6, 7, and sub-surface drainage, and empties into Mataponi Creek. Outfall 006 contains storm water runoff from the grassy areas in Areas 8, 9, 10, and 11, and empties into an unnamed tributary. The site is monitored by six groundwater wells and three surface water locations.

Investigation reveals that Mirant Maryland Ash Management, LLC has discharged and continues to discharge pollutants from leachate into groundwater without a permit. Reports submitted by Mirant Maryland Ash Management, LLC indicate that groundwater flow at the site is toward the north and northwest, in the direction of Mataponi Creek. Shallow groundwater discharges to Mataponi Creek and an unnamed tributary to the east of the site. Mataponi Creek drains to the Patuxent River approximately six miles from the facility.

Additionally, the levels of constituents in the coal combustion byproducts discharged cause or contribute to exceedance of Maryland water quality standards and are not authorized by the discharge permit issued to Mirant Maryland Ash Management, LLC. On September 1, 2005, the Maryland Department of the Environment issued Mirant Maryland Ash Management, LLC, National Pollutant Discharge Elimination System ("NPDES") Permit No. MD0054836 (State Discharge Permit No. 02-DP-1398), limiting discharges from Outfalls 001, 002, 004, and 006 at the Brandywine Landfill. The 2005 NPDES permit does not authorize discharges of pollutants from Outfalls 002, 004, and 006 that are not expressly authorized by the permit and that were identified as "absent" from discharges in the permit application submitted by Mirant Maryland Ash Management, LLC on July 6, 2001.

Condition N of the permit provides as follows:

It is a violation of this permit to discharge any substance not otherwise listed under the permit's "Effluent Limitations and Monitoring Requirements" special conditions at a level which would cause or contribute to any exceedance of the numerical water quality standards in COMAR 26.08.02.03 unless the level and the substance were disclosed in writing in the permit application prior to the issuance of the permit . . .

The Department has received information that Mirant Maryland Ash Management, LLC, has made and continues to make discharges of pollutants into Mataponi Creek via Outfalls 002, 004, and 006 that are causing or contributing to exceedance of water quality standards, and were not disclosed in Mirant Maryland Ash Management, LLC's permit application. Specifically, on or about March 12, 2007, Mirant Maryland Ash Management, LLC submitted an application for renewal of its discharge permit in which it identified pollutants in discharges from Outfalls 002, 004, and 006 that were not previously identified in the 2001 application, namely, antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, mercury, nitrate, nitrogen, phenols, radium, and silver. Additionally, the 2007 renewal application showed that sampling revealed high levels of cadmium, which cause an exceedance of the maximum permitted levels of contaminants in water. Each day of discharge of those pollutants from Outfalls 002, 004, and 006 constitutes an unauthorized discharge without a permit, a violation of Condition N of the NPDES permit, and a violation of the Maryland Water Pollution Control Law.

Furthermore, from 2003 through 2009, Mirant Maryland Ash Management, LLC reported levels of cadmium in the receiving waters of Mataponi Creek that consistently exceed the chronic level of .00025 milligrams per liter (mg/l) and occasionally exceed the acute level of .002 mg/l established in Code of Maryland Regulations ("COMAR") 26.08.02.03. Samples of discharges from Outfalls 002 and 004 collected by Mirant Maryland Ash Management, LLC on January 4, 2007 indicated cadmium levels of .0033 mg/l and .0017 mg/l respectively, which caused or contributed to an exceedance of the chronic water quality standards.

Analytical results of samples collected by the Department on December 16, 2009 from Pond 006 indicated a cadmium concentration of 1.2 micrograms per liter (ug/l) that is not authorized to be discharged under the permit and which could contribute to an exceedance of the ambient chronic surface water quality criteria of 2.5 ug/l from pond discharges. A selenium concentration of 138 ug/l was detected from the same sample, which would likely cause an exceedance of the acute criteria of 20 ug/l in discharges from the pond. Consequently, each day of discharge of these pollutants from Outfalls 002, 004, and 006 constitutes an unauthorized discharge without a permit, a violation of Condition N of the NPDES permit, and a violation of the Maryland Water Pollution Control Law.

These illegal discharges to groundwater and surface water into Mataponi Creek, which flows into the Merkle Wildlife Sanctuary and the Patuxent River constitute significant and ongoing violations of state and federal water pollution laws, contaminating the groundwaters 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,



Shari T. Wilson  
Secretary

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