

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard
Baltimore, Maryland 21230

Plaintiff

v.

MIRANT MARYLAND ASH
MANAGEMENT, LLC
1155 Perimeter Center West
Atlanta, Georgia 30338

Serve On:

National Registered Agents, Inc. of Md.
836 Park Avenue, Second Floor
Baltimore, Maryland 21201

and

MIRANT MID-ATLANTIC, LLC
1155 Perimeter Center West
Atlanta, Georgia 30338

Serve On:

National Registered Agents, Inc. of Md.
836 Park Avenue, Second Floor
Baltimore, Maryland 21201

Defendants

* * * * *

COMPLAINT

The Plaintiff, State of Maryland, Department of the Environment (“the “Department”), by and through its attorneys, Douglas F. Gansler, Attorney General, Steven R. Johnson, Assistant Attorney General, and Yvette N. Diamond, Assistant Attorney General, files this Complaint for civil penalties and injunctive

relief against Defendants, Mirant Maryland Ash Management, LLC (“Mirant Ash”) and Mirant Mid-Atlantic, LLC (“Mirant Mid-Atlantic”) for the following reasons:

STATEMENT OF THE CASE

1. This is a civil action instituted by the Department to compel Defendants, Mirant Ash and Mirant Mid-Atlantic, to abate significant and ongoing violations of state and federal water pollution laws and regulations at the coal combustion waste disposal site it owns and operates at 11700 North Keys Road in Prince George’s County, Maryland, known as the Brandywine Landfill, and which is identified on the Prince George’s County ADC Map as 33-D11 (“the Disposal Site”). Mirant Ash acquired ownership of the Disposal Site from Potomac Electric Power Company (“PEPCO”) on December 22, 2000. The Disposal Site is located on approximately 300 acres of land next to Mataponi Creek in southern Prince George’s County.

2. The process of electrical generation through the combustion of coal produces waste byproducts, including fly ash. This coal combustion waste contains high concentrations of arsenic, cadmium, lead, mercury, copper, selenium, zinc, and other pollutants that are toxic to humans, aquatic life, and wildlife. Defendants and their predecessors have been disposing of these wastes in four disposal pits at the site since 1970.

3. Inadequate construction of the disposal pits and operation of the disposal area have resulted in contaminated leachate escaping the disposal pits via groundwater and constructed outfalls and discharging to Mataponi Creek. Passive treatment systems that were installed in the late 1980’s to collect leachate from the pits into holding ponds have failed to stop the discharges. The ponds discharge polluted water to Mataponi Creek through constructed outfalls that discharge when the water in the pond reaches a certain level and by seepage through the groundwater.

4. Although Mirant Ash holds a discharge permit, the discharges alleged in this Complaint are not authorized under that permit and are illegal under State and federal law. These discharges present a serious danger to the environment and natural resources of the State of Maryland, and a serious danger to the health and safety of its citizens.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C § 1365(a). The Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. §1367.

6. By letter dated January 15, 2010, the Department gave notice of its intention to bring this action as required by the Clean Water Act, 33 U.S.C. § 1365, to the Administrator of the Environmental Protection Agency (“EPA”), the Attorney General of the United States, the Defendants, and the State of Maryland. A copy of the January 15, 2010 letter is attached hereto as Exhibit A.

7. Sixty days have passed since the notice was served, the violations complained of in the notice letter are continuing or are reasonably likely to continue, and the Defendants remain in violation of the Clean Water Act.

8. Venue in this District is proper pursuant to 42 U.S.C. § 6972, 28 U.S.C. § 1391(b), and 33 U.S.C. § 1365 (c)(1).

PARTIES

9. The Plaintiff is a State agency within the Executive Branch of the State of Maryland that is charged with the responsibility to protect the environment and enforce the State’s environmental laws and the comprehensive federal-state scheme to protect the waters of the State and the navigable waters of the United States. Md. Code Ann., Envir. § 1-401. The Plaintiff is also a “citizen” authorized to commence a civil action under the Clean Water Act. 33 U.S.C. § 1365.

10. Defendant Mirant Mid-Atlantic is incorporated under the laws of Delaware and is doing business in Prince George's County, Maryland. Mirant Mid-Atlantic, the parent company of Mirant Ash, operates the Chalk Point Generating Facility ("Chalk Point"), which generates the coal combustion waste that is disposed of at the Disposal Site, and arranges and directs the disposal of its coal combustion waste by Mirant Ash.

11. Defendant Mirant Ash is incorporated under the laws of Delaware and is doing business in Prince George's County, Maryland. Mirant Ash is the fee simple owner of the Disposal Site, where it disposes of coal combustion waste from Mirant Mid-Atlantic's electric generating station, and where the water pollution violations that are the subject of this Complaint occurred and continue to occur.

LEGAL BACKGROUND

A. Federal Law

12. Section 1251 of the Clean Water Act establishes the federal statutory framework for the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. Section 1342(a) requires a person to hold a National Pollutant Discharge Elimination System ("NPDES") discharge permit before discharging any pollutant into navigable waters.

13. The Clean Water Act grants citizens the authority to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the Clean Water Act and to seek penalties for such violations. 33 U.S.C. § 1365(a)(1). "Effluent standard or limitations" means "an unlawful act under subsection (a) of section 1311 [,] ... an effluent limitation or other limitation under section 1311 or 1312 [,] ... [or] a permit condition thereof issued under section 1342." 33 U.S.C. § 1365(f). Accordingly, citizens may bring citizen suits to enjoin the discharge of pollutants without an NPDES permit or in violation of an NPDES permit, and may seek civil penalties

for such violations.

14. The Clean Water Act provides for civil penalties of up to \$37,500.00 per violation beginning January 13, 2009, and \$32,500.00 per violation prior to that date. Each day of violation constitutes a separate violation. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. The Clean Water Act also authorizes the Court to award injunctive relief and the costs of litigation, including reasonable attorney's fees and expert witness fees. 33 U.S.C. §§ 1319(b) and 1365(a) and (d).

15. The Administrator of the EPA may delegate issuance of NPDES discharge permits to states desiring to administer their own discharge permit programs so long as they meet the applicable criteria. 33 U.S.C. § 1342(b).

16. The EPA has delegated authority to the State of Maryland to administer its own discharge permit program and to issue NPDES discharge permits for discharges into navigable waters within its jurisdiction.

B. State Law

17. Md. Code Ann., Envir. §§ 9-301 to 9-351 establishes the statutory framework for the prevention, abatement and control of pollution of waters of the State. Section 9-322 prohibits a person from discharging any pollutant into the waters of the State. Section 9-323 requires a person to hold a discharge permit issued by the State before the person may operate a disposal system or any other facility, if its operation could cause or increase the discharge of pollutants into waters of the State.

18. Section 26.08.02.09C(1) of the Code of Maryland Regulations ("COMAR") provides that the discharge of pollutants may not cause groundwater to exceed the primary or secondary drinking water standards established in COMAR 26.04.01. COMAR 26.04.01.06A establishes maximum contaminant levels ("MCL") for inorganic chemicals in drinking water. COMAR 26.08.02.03-2

establishes maximum criteria for toxic substances in surface waters.

19. The Department enforces the laws pertaining to water pollution control in accordance with Md. Code Ann., Envir. §§ 9-334 through 9-344. Section 9-339 authorizes the Department to bring actions for injunctive relief against any person who violates any provision of Title 9, Subtitle 3, of the Environment Article or any rule or regulation adopted thereunder.

20. Section 9-342(a) of the Environment Article authorizes the Court to impose civil penalties of up to \$10,000.00 per violation of Title 9, Subtitle 3, or any rule or regulation adopted thereunder. Each day of violation constitutes a separate violation. Maryland law also authorizes the Court to award the Department the reasonable costs incurred in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect of a discharge on public health and the environment. Md. Code Ann., Envir. § 9-342.2.

FACTUAL ALLEGATIONS

A. Coal Combustion Waste

21. Mirant Mid-Atlantic generates thousands of tons of coal combustion waste at its electrical generating stations, including Chalk Point. 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.

22. 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

23. The Disposal Site consists of approximately 300 acres, of which 140 acres are utilized for the disposal of coal combustion waste. These 140 acres are divided into three unlined disposal pits, or cells, which are now closed and one cell which is currently active. Disposal Cell #1 (also known as Historical Area A) is 17.1 acres and Disposal Cell #2 (also known as Historical Area B) is 11.4 acres. These cells were active between approximately 1971 and 1994. They were capped with soil but were never lined to prevent leachate from escaping the Disposal Site. Disposal Cell #3 (also known as Phase 1) is 81.9 acres in size and was closed in 2008. A majority of Disposal Cell #3 (63.6 acres) was covered with soil, while 18.3 acres was covered with stabilized coal combustion waste from the Potomac River and Chalk Point generating stations. Disposal Cell #3 was never lined to prevent leachate from escaping the Disposal Site. Disposal Cell #4 (also known as Phase 2) is divided into two cells: 2A (17 acres) and 2B (12 acres). Area 2A has not been used and is intended for future disposal. Area 2B was constructed in 2007 with a liner and is currently receiving coal combustion waste.

24. More than 5.5 million cubic yards, or 8,434,800 tons, of coal combustion waste have been disposed at the Disposal Site over the last thirty years.

25. Because three of the disposal pits were not 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 Mataponi Creek. These toxic pollutants include arsenic, barium, beryllium, boron, cadmium, chromium, lead, molybdenum, nickel, selenium, and zinc.

26. A leachate collection system was installed in the late 1980's. This system consists of a slurry wall that was installed below the closed and unlined disposal pits to collect groundwater and leachate, which is then pumped to four settling ponds. The slurry wall was designed to prevent only a portion of the contaminated groundwater from flowing into Mataponi Creek. The currently active disposal cell has a geo-membrane liner that collects the leachate and directs it to one of the settling ponds. The groundwater and leachate collected in the settling ponds are stored to permit sediment and some of the metals to settle on the bottom of the ponds, and then the water is discharged to Mataponi Creek through Outfalls 001, 002, 004 and 006, each of which corresponds to a specific settling pond.

27. Because the settling ponds are not lined, heavy metals that sink to the bottom of the ponds leach into the groundwater aquifer that is hydro-geologically connected to Mataponi Creek. Many of the pollutants do not settle, dissolve in the water in the ponds and then discharge directly to Mataponi Creek via Outfalls 001, 002, 004, and 006.

C. Water Bodies Impacted

28. Mataponi Creek is a navigable water of the United States and a water of the State of Maryland. 33 U.S.C. § 1362(7); Md. Code Ann., Envir. § 9-101(l). It is a Use I water of the State protected for water contact recreation, fishing, aquatic life and wildlife. It flows into the Merkle Wildlife Sanctuary, which is a wintering ground for thousands of Canada geese, and eventually flows into the Patuxent River.

29. The Disposal Site sits on the Brandywine formation, which is characterized by sandy soils with gravel deposits. The soil is highly permeable and groundwater below the Disposal Site readily flows in a north and northwest direction toward Mataponi Creek. Because the groundwater below the Disposal Site is very shallow, it flows directly into Mataponi Creek.

C. The Discharge Permit

30. 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 permit.

31. On September 1, 2005, the Department issued State Discharge Permit 02-DP-1389, NPDES Discharge Permit MD 0064836 (the "Discharge Permit") to Mirant Ash to discharge from Outfalls 001, 002, 004 and 006. The Discharge Permit was based on an application submitted by Mirant Ash on July 6, 2001. Consequently, the pollutants covered in the permit and the effluent limits for those pollutants were dependent upon the representations made by Mirant Ash in its application as to the pollutants and level of pollutants in the proposed discharge.

32. In its permit application, Mirant Ash identified the following pollutants as "absent" from its discharge: alpha, antimony, arsenic, barium, beryllium, beta, bis (2-Ethyl-hxyl) phthalate, cadmium, chromium, cobalt, mercury, nitrate, nitrogen, phenols, radium, radium 226, silver, sulfide, sulfite, surfactants, tin and titanium. Mirant Ash made these representations despite more than thirty years of data on the constituents of leachate and discharges from coal combustion waste. In addition, Mirant Ash failed to identify sodium and chloride as being present in the discharge.

33. The Discharge Permit does not authorize the discharge of pollutants from Outfalls 001, 002, 004 and 006 that are not expressly authorized by the Discharge Permit.

34. The Discharge Permit also does not authorize discharges of any pollutants into Mataponi Creek from any point other than through Outfalls 001, 002, 004 and 006. In particular, it does not authorize discharges of any pollutants to groundwater, which then flows into Mataponi Creek. These unauthorized discharges undermine the Department's determinations regarding which pollutants to

include in the permit and their effluent levels. The only basis for not limiting discharges of those pollutants in the Discharge Permit is the assumption of available assimilative capacity (*i.e.* negligible in-stream levels) in the receiving stream. Unreported levels of other discharges to the receiving stream from the groundwater interface take away the assimilative capacity of the stream and make it impossible to determine appropriate effluent levels.

35. On March 15, 2007, Mirant Ash submitted to the Department an application for the renewal of the Discharge Permit. In this application, Mirant Ash reported that those pollutants identified as “believed absent” in its 2001 application were indeed “present” in its discharges from Outfalls 001, 002, 004 and 006, based on samples taken by Mirant Ash on January 4, 2007.

36. Notwithstanding the renewal application, the Department has not authorized Mirant Ash to discharge any of the pollutants reported to be present in the discharges by Mirant Ash in 2007 that were marked as “absent” in the 2001 application and not included in the Discharge Permit. Discharges of these pollutants to Mataponi Creek through leaks in the disposal pits and settling ponds amounts are also unauthorized and a violation of the law.

37. The Discharge Permit also requires Mirant Ash to monitor and submit quarterly discharge reports for each settling pond. In particular, based on representations by Mirant Ash in its application about the levels of selenium in its discharges, the Department did not consider selenium to be of concern and did not include an effluent limitation in the Discharge Permit but required Mirant to monitor and report discharges of selenium.

38. Mirant Ash is required to collect groundwater samples at the Site, as well as samples from the Mataponi Creek and report the findings at each of the monitoring wells and surface water locations. The Disposal Site is monitored by six groundwater wells known as B-3, B-10, B-11, B-12, B-13, and B-

14. Wells B-13 and B-14 are down gradient of Disposal Cell #4. Wells B-3, B-10, B-11, and B-12 are up-gradient of Disposal Cells #1, #2, and #3. Three surface water locations, S-1, S-2 and S-3, which border the Disposal Site along Mataponi Creek, are also sampled. Of those locations, S-1 is the farthest upstream.

E. Unauthorized Discharges of Pollutants

39. Discharges of pollutants identified by Mirant as “present” in the March 17, 2007 permit renewal application that were marked as “believed absent” in the 2001 permit application and not listed in the Discharge Permit are unauthorized.

40. Quarterly monitoring results submitted by Mirant Ash from groundwater monitoring wells around the disposal pits show that sulfates, total dissolved solids (“TDS”), manganese and iron have exceeded groundwater quality standards. All six monitoring wells have shown results above the 250 mg/l secondary maximum contaminant level (“MCL”) for sulfates with the highest concentration of 1600 mg/l occurring in monitoring well B-12. All of the wells except B-13 reported TDS levels higher than the 500 mg/l secondary MCL with B-12 having the highest concentration at 2800 mg/l.

41. Monitoring wells have consistently shown high concentrations of manganese and iron. All of the wells reported manganese levels 50 to 60 times greater than the secondary MCL. Dissolved cadmium levels have exceeded the MCL in four wells. Several wells showed significant levels of aluminum and chloride in excess of the secondary MCL.

42. Three of the wells showed sulfate levels that are 6 to 8 times the secondary MCL.

43. Surface water sample results reported by Mirant Ash show cadmium above numerical chronic ambient water quality criteria at three surface water sampling locations within Mataponi Creek.

44. Samples taken by the Department on January 26, 2010 from the settling ponds show a concentration of aluminum in Outfall 001 that is five times the amount identified by Mirant Ash in its application and more than twice the secondary MCL. Arsenic was present in Outfalls 001, 004, and 006 at levels above what was reported as present in the 2001 application and at levels that could cause or contribute to an exceedance of numerical water quality standards, and samples of Mataponi Creek also revealed the presence of arsenic above detection limits. Sodium was present in all settling ponds and in Mataponi Creek at levels that exceed the secondary MCL for ground water and at levels that could adversely affect fish populations in Mataponi Creek.

45. Analytical results of samples collected on December 16, 2009, December 28, 2009, and January 26, 2010 revealed that concentrations of selenium that exceed acute and chronic water quality criteria are present in the wastewater contained within the Disposal Site's ponds that discharge to Mataponi Creek via Outfalls 002, 004 and 006. In addition, analytical results of samples collected from Mataponi Creek on January 26, 2010 indicate that concentrations of selenium within Mataponi Creek exceed chronic water quality criteria.

46. A sample collected on January 26, 2010 at Pond 002 had a selenium concentration of 24.4 ug/l that exceeded the acute water quality criteria of 20 ug/l. Samples collected on December 16, 2009 and January 26, 2010 at Pond 004 had selenium concentrations of 5.9 and 12 ug/l respectively that exceeded the chronic water quality criteria of 5.0 ug/l. Samples collected from Pond 006 on December 16 and December 28, 2009 and January 26, 2010 had selenium concentrations of 138, 121 and 99.6 ug/l respectively that exceeded both the acute and chronic numerical criteria for selenium.

47. Samples for selenium were collected on January 26, 2010 at designated in-stream locations of Mataponi Creek (sampling stations S-1, S-2, and S-3) as well as at a location approximately

75 feet upstream of S-1 (S-1A) and another location approximately 50 feet downstream of S-3 (S-3A). Analytical results show that concentrations of selenium within Mataponi Creek increase at each successive down-gradient monitoring station with the highest concentrations exceeding chronic water quality criteria of 5 ug/l at stations S-3 and S-3A. Higher concentrations of selenium were detected in samples taken from locations closer to the Disposal Site.

COUNT I
Violation of 33 U.S.C. § 1311
(Unauthorized Discharge of Pollutants to Navigable Waters of the United States)

48. The Department incorporates by reference the allegations set forth in paragraphs 1-47 as though fully set forth herein.

49. Sampling results from groundwater monitoring wells, from the settling ponds, and from Mataponi Creek demonstrate that Defendants are discharging pollutants are being discharged from the disposal pits, the settling ponds and through Outfalls 001, 002, 004 and 006 into Mataponi Creek that are not authorized, or in amounts that are not authorized, by the Discharge Permit.

50. These sampling results also demonstrate that Defendants are discharging pollutants are being discharged to Mataponi Creek from the disposal pits and settling ponds by leaking into groundwater that is hydro-geologically connected to Mataponi Creek. Discharges from these points are not authorized by the Discharge Permit.

51. Each discharge of unauthorized pollutants, of pollutants in unauthorized amounts, and of pollutants from unauthorized points constitutes a separate violation of the NPDES Discharge Permit and Section 1311 of the Clean Water Act. These unauthorized discharges have been occurring daily since at least January 4, 2007.

52. A person who violates Section 1311 of the Clean Water Act or a Discharge Permit issued under Section 1342 of the Clean Water Act shall be subject to a civil penalty of up to \$37,500.00 per violation per day beginning January 13, 2009 and \$32,500.00 per violation per day prior to that date. Each day of violation constitutes a separate violation. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4.

53. The Clean Water Act also authorizes the Court to award injunctive relief and the costs of litigation, including reasonable attorney's fees and expert witness fees. 33 U.S.C. §§ 1319(b) and 1365(a) and (d).

54. Unless enjoined by an order of the Court, the Defendants will continue to discharge pollutants from coal combustion waste leachate to the waters of the United States.

COUNT II
Violation of Md. Code Ann., Envir. §§ 9-322 and 9-323
(Unauthorized Discharge of Pollutants to Surface Waters of the State)

55. The Department incorporates by reference the allegations set forth in paragraphs 1-54 as though fully set forth herein.

56. Sampling results from groundwater monitoring wells, from the settling ponds, and from Mataponi Creek demonstrate that Defendants are discharging pollutants from the disposal pits and the settling ponds, and through Outfalls 001, 002, 004 and 006, into Mataponi Creek that are not authorized, or in amounts not authorized, by the Discharge Permit.

57. In addition, sample results of the wastewater in the ponds demonstrate the presence of unauthorized pollutants in a position likely to pollute Mataponi Creek, which constitutes a discharge under Maryland law.

58. Each discharge of unauthorized pollutants and of pollutants in unauthorized amounts to waters of the State constitutes a separate violation of the Discharge Permit and Sections 9-322 and 9-323

of the Environment Article. These unauthorized discharges have been occurring daily since at least January 4, 2007.

59. Md. Code Ann., Envir. § 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or Discharge Permit adopted or issued thereunder shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

60. Maryland law also authorizes the Court to award the Department the reasonable costs incurred in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect of a discharge on public health and the environment. Md. Code Ann., Envir. § 9-342.2.

61. Unless enjoined by an order of the Court, the Defendants will continue to discharge pollutants from coal combustion waste leachate to the waters of the United States.

COUNT III
Violation of Md. Code. Ann., Envir. §§ 9-322 and 9-323
(Unauthorized Discharge of Pollutants to Groundwaters of the State)

62. The Department incorporates by reference the allegations set forth in paragraphs 1-61 as though fully set forth herein.

63. Md. Code Ann., Envir. § 9-322 requires a person to hold a discharge permit before discharging any pollutants into waters of the State. Groundwater is a water of the State. Md. Code Ann. § 9-101(1).

64. Sampling results from groundwater monitoring wells at the Disposal Site demonstrate that Defendants are discharging pollutants from the disposal pits and settling ponds to the groundwater that are not authorized by any permit and in amounts that exceed groundwater quality standards. These unauthorized discharges have been occurring daily since at least January 4, 2007.

65. Md. Code Ann., Envir. § 9-342 provides that a person who violates Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order or Discharge Permit adopted or issued thereunder shall be subject to a civil penalty of up to \$10,000.00 per day for each such violation.

66. Maryland law also authorizes the Court to award the Department the reasonable costs incurred in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect of a discharge on public health and the environment. Md. Code Ann., Envir. § 9-342.2.

67. Unless enjoined by an order of the Court, the Defendants will continue to unlawfully discharge pollutants entrained in leachate from the coal combustion waste to groundwaters of the State.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of Maryland, Department of the Environment, respectfully requests that this Court enter judgment in its favor against Defendants, Mirant Maryland Ash Management, LLC and Mirant Mid-Atlantic, LLC, granting the following civil penalties and permanent injunctive relief:

A. That the Court require the Defendants to cease discharging any pollutants to waters of the State from all locations not authorized by a NPDES/State discharge permit issued by the Department, and require the Defendants to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 1342(a) of the Clean Water Act and to comply with Sections 9-322 and 9-323 of the Environment Article of the Maryland Code;

B. That the Court enjoin the Defendants from further disposing of any coal combustion waste in any portion of the Disposal Site, and require the Defendants to close and cap the existing open

disposal cells of coal combustion waste within one (1) year, in accordance with the requirements of COMAR 26.04.07.21.

C. That the Court order the Defendants to demonstrate that all wastewater discharged from the Disposal Site's treatment systems meets established requirements set forth in the effective Discharge Permit and that all wastewater discharged from the Disposal Site is properly captured, contained, and treated so that it will prevent water pollution and will not cause or contribute to a violation of the surface water quality standards of COMAR 26.08.02.03-2, the groundwater quality standards of COMAR 26.08.02.09.C, and federal drinking water standards.

D. That the Court order the Defendants to implement a system to insure that the extent of contamination from the leachate plume in groundwater is adequately evaluated and monitored, and that necessary remedial actions are taken to capture, treat and prevent further water pollution from coal combustion waste disposal activities.

E. That the Court require the Defendants within sixty (60) days to submit to the Department for review and approval a plan and schedule that will characterize the site-wide contamination and assess the extent of contamination of groundwater and surface waters in the vicinity of the Disposal Site, and a corrective action plan and timetable for Department's review and approval to implement potential remedial alternatives to assess, contain and prevent the off-site migration of the leachate plume to waters of the State and comply with established water quality standards.

F. That the Court require Mirant Maryland Ash Management, LLC to comply with all terms and conditions of its Discharge Permit and any modification of the Discharge Permit.

G. That the Court require the Defendants to take the following actions regarding drinking water wells near the Site:

(1) Within thirty (30) days, the Defendants shall submit to the Department for review and approval a plan and schedule for identifying all drinking water wells within a one mile radius of the Site and sampling a representative subset of those wells located down-gradient of the Site for sulfates and metals; and

(2) Provide a replacement water supply in the event that such wells are identified by the Department as being contaminated by coal combustion waste activities at the Disposal Site. The methodology for determining whether additional off-site drinking water wells are contaminated by coal combustion waste activities at the Disposal Site shall use sulfate as the primary indicator and may include, but not be limited to, other ash leachate characteristics, review of data including background water quality (temporal and spatial variability), physical location of the well in relationship to the Disposal Site, and information from other wells that are being used to track the extent of the contamination.

H. That the Court enter an injunction requiring the Defendants to perform the following monitoring and reporting activities:

(1) Conduct groundwater and surface water monitoring and sampling at the Disposal Site necessary to identify and prevent the discharge of pollutants exceeding any State water quality criteria and necessary to identify all the pollutants contained in its discharges that have the reasonable potential to cause or contribute to an exceedance of any State water quality criteria. The Defendants shall submit to the Department for review and approval a water quality monitoring plan, including but not limited to, all monitoring currently required by the Discharge Permit as well as additional monitoring to characterize the presence of dissolved and total constituents in discharges, groundwater and surface water of Mataponi Creek and the unnamed tributary. The plan shall establish an additional in-stream

sampling location in Mataponi Creek up-gradient of station S-1 as well as representative sampling points in the unnamed tributary and groundwater.

(2) Submit to the Department on a quarterly basis the results of all groundwater and surface water monitoring and the status of progress on implementing actions set forth in the approved plan. The quarterly reports shall highlight all data above Discharge Permit effluent limits, surface water or groundwater quality standards. The sampling results obtained during each calendar quarter shall be submitted to the Department no later than January 31st, April 30th, July 31st, and October 31st of each calendar year. The April 30th quarterly report for each year shall include a long-term trend analysis, and a summary of the status and effectiveness of the treatment systems at the Disposal Site, so as to determine the effectiveness of remediation, to continue until the Department has determined that the Disposal Site complies with all surface and groundwater quality standards, and the Department notifies Defendants in writing that the remediation has been successful.

I. That the Court assess civil penalties against the Defendants of up to \$37,500.00 per violation per day beginning January 13, 2009; and \$32,500.00 per violation per day prior to that date, for each violation of Section 1311 of the Clean Water Act or a Discharge Permit issued under Section 1342 of the Clean Water Act.

J. That the Court assess the costs of litigation, including reasonable attorney's fees and expert witness fees, against the Defendants under Section 1365(d) of the Clean Water Act.

K. That the Court assess civil penalties against the Defendants of up to \$10,000.00 per violation per day for each violation of Sections 9-322 and 9-323 of the Environment Article of the Maryland Code.

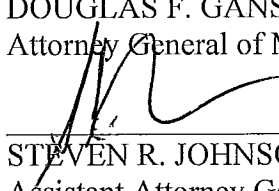
L. That the Court award the Department reimbursement for the costs of conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect of a discharge on public health and the environment under Section 9-342.2 of the Environment Article of the Maryland Code.

M. That within sixty (60) days, the Defendants shall submit for the Department's review and approval, a plan and schedule for conducting benthic and fish tissue studies, and aquatic impact and acute and chronic toxicity testing of contaminated groundwater and wastewater discharged to Mataponi Creek and the unnamed tributary.

N. That the Court award such other and further relief as it deems just and appropriate.

Respectfully submitted,

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Shari T. Wilson
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Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Deputy Secretary

January 15, 2010

BY CERTIFIED MAIL

Edward R. Muller, President & CEO
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1155 Perimeter Center West, Suite 100
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The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building (Mail Code: 1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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

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

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

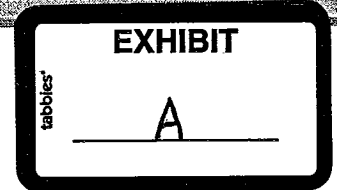
The Honorable Eric H. Holder, Jr.
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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