COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

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David K. Paylor
Director

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

SECTION A: Purpose

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

SECTION B: Definitions

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

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

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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

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

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

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

7. "Mirant" means Mirant Potomac River, LLC, a limited liability company which as of December 3, 2010 is now known as GenOn.

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

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

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

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

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

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

14. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

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

2. On February 4, 2010, DEQ staff conducted a Partial Compliance Evaluation of the Fourth Quarter Excess Emissions Report and the Fourth Quarter Continuous Emissions Monitoring System (CEMS) Downtime Report from Mirant for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations and made the following observation:

    a. The EER and CEMS downtime report did not include all required CEMS data for merged stack 1 (MS-1) and merged stack 4 (MS-4).

3. DEQ requested the CEMS Quarterly Report from Mirant and it was submitted on March 9, 2010. Department staff conducted a review of the submitted data. PM-CEMS are not to be used as a direct compliance tool for determining compliance with permitted limits, therefore, while data may indicate an emission exceedance occurred, DEQ is not assessing a violation of permitted limits.

4. On March 11, 2010, DEQ and Mirant met to discuss the submitted data. During this meeting, DEQ ascertained the following:

   a. Real-time data displays of the PM-CEMS units were not initially available to plant operators in the boiler control room;
   b. Standard operating procedures had not been developed to advise facility personnel of the use of data produced by the PM-CEMS to facilitate proper operation of the boilers and associated pollution control equipment;
   c. The PM-CEMS units had maintenance and operational issues since their certifications in CY2009. GenOn asserts that these issues resulted in unreliable results from the PM CEMS.

5. On March 19, 2010, DEQ staff conducted a Partial Compliance Evaluation of data from the continuous opacity monitoring system (COMS) from Mirant to determine compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations and made the following observation:

   a. On February 26, 2010, 6 minute average readings on Stack 4 at 11:00 am, 11:06 am, 11:24 am, and 11:30 am were 20.9%, 31.3%, 21.1%, and 23.4% respectively.
   b. Mirant initially advised that opacity exceedances were the result of electrostatic precipitator (ESP) fields on unit # 3 and unit # 4 tripping due to high ash levels.
   c. GenOn asserts that further review of the data showed that ash levels were not high but rather the ESP fields tripped for unknown reasons.

6. On June 28, 2010, DEQ staff conducted a Partial Compliance Evaluation of COMS data received from Mirant on June 25, 2010 for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations and made the following observation:

   a. On June 21, 2010, 6 minute average readings on Stack 1 at 14:00, 14:06, and 14:18 were 23.9%, 27.9%, and 23.1% respectively.
   b. Mirant advised that the opacity exceedances were the result of operator error stemming from the operator failing to respond quickly enough to the rising opacity to prevent an exceedance.

7. On September 1, 2010, DEQ conducted a Full Compliance Evaluation of the Facility to determine compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations and made the following observations:

   a. The fuel certification for an 11,448.03 ton shipment of coal reported an ash content of 11.22%.
   b. Used oil from the Facility was being combusted in the boilers.

8. On January 13, 2011, DEQ received notification from GenOn that it had loaded a railcar of Sodium Bicarbonate (SBC) into the Facility's dry sorbent injection system silos.

9. 9 VAC 5-40-50 and Condition 41 of the Permit requires that GenOn submit quarterly reports to DEQ for excess emissions from any process monitored by a continuous monitoring system.

10. 9 VAC 5-40-20(E) requires GenOn to operate the Facility in a manner consistent with air pollution control practices for minimizing emissions.

11. 9 VAC 5-40-80 and Condition 33 of the Permit prohibits the discharge into the atmosphere of visible emissions which exhibit greater than 20% opacity, except for one six-minute period in any one hour of not more than 60% opacity.

12. Condition 26(a)(iii) of the Permit states that the maximum ash content per shipment is 11%.

13. Condition 25 of the Permit states that the approved fuel for the boilers is bituminous coal and distillate oil.

14. Condition 5 of the Permit states that SO2 emissions from the boilers shall be controlled by the use of low sulfur coal and dry sorbent injection of Sodium Sesquicarbonate.

15. On April 6, 2010, May 12, 2010, July 8, 2010, October 22, 2010, and February 8, 2011, based on the February 4, 2010, March 19, 2010, June 28, 2010, September 1, 2010, and January 13, 2011, evaluations and follow-up information, the Department issued individual NOVs to GenOn for the violations described in section C(2) through (14) of this Order.

16. Based on the results of the foregoing evaluations, meetings, and submittals, the Board concludes that GenOn has violated Permit Conditions 5, 25, 26(a)(iii), 33, and, 41; and 9 VAC 5-40-50, 9 VAC 5-40-20(E), and 9 VAC 5-40-80.

17. In order for GenOn to complete its return to compliance, DEQ staff and representatives of GenOn have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $275,562.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

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

SECTION E: Administrative Provisions

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

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

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

4. GenOn consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. GenOn declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by GenOn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. GenOn shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God,

war, strike, or such other occurrence. GenOn shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. GenOn shall notify the DEQ Regional Director orally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;

b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the GenOn intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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

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

11. This Order shall continue in effect until:

a. GenOn petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

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

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by GenOn and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of GenOn certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind GenOn to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of GenOn.

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

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

And it is so ORDERED this 6th day of May, 2011.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

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

Date: 5/6/11 By: _____, _____
Walt Stone (Person) (Title)
GenOn Potomac River, LLC
VP, Environmental Policy

~~Commonwealth of Virginia~~

City/County of Washington, DC

The foregoing document was signed and acknowledged before me this 6 day of May, 2011, by Walter Stone who is Vice President of GenOn Potomac River, LLC, on behalf of the company.

_____
Notary Public

_____
Registration No.

My commission expires: 9/30/2012

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **GenOn Potomac River, LLC shall**:

   a. Within 60 days of the execution of this Order, submit to DEQ for review and comment a copy of the standard operating procedures developed for the following:

      i) how the PM-CEMS will be used in daily operation, including, but not limited to, how PM-CEMS monitoring data is available in real time to the operators, if the PM-CEMS shows high PM levels, how the operator will check other operating parameters such as opacity monitors, oxygen, coal feeders, soot blowers, NOx and CO monitors, average power for the operating ESPs, and other information taken as a whole to adjust operations and perform diagnostics accordingly to stay within applicable permit requirements.
      ii) ensuring an approved dry-sorbent is being used;
      iii) ensuring the proper percent of ash in the coal.

   b. Within 90 operating days of the execution of this Order conduct Relative Response Audits (RRA) on Stack 1 and Stack 4 to verify PM-CEMS operation. RRAs shall be conducted quarterly thereafter or within 90 operating days of the previous test until such time as four satisfactory tests per stack verify the PM-CEMS proper operation. Operating days will be calculated independently for each stack. For purposes of this Order, an operating day shall be defined as any calendar day any unit that discharges to a particular stack combusts fossil fuels.

   c. Within 60 days of the execution of this Order, submit to DEQ for review and approval a method ascertaining in detail how GenOn will satisfy Conditions 19 and 41 of the Permit as they apply to the PM-CEMS. The Permit is silent as to the required PM-CEMS availability and how the terms such as "valid hour", "valid three hour average" and "start up" and "shut down" exceptions apply. The method would delineate how GenOn would address these issues. GenOn shall schedule a meeting with DEQ staff to discuss these conditions and possible methods for demonstrating compliance within 30 days of the execution of this Order.

2. **Certification of Documents and Reports**

   In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, GenOn, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

   "I certify under penalty of law that this document and all attachments were prepared 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 inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. **DEQ Contact**

Unless otherwise specified in this Order, GenOn shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193