



1920 L Street NW, Suite 800  
Washington, DC 20036  
p: 202-296-8800 f: 202-296-8822  
www.environmentalintegrity.org

January 22, 2008

Edward R. Muller  
Chairman of the Board, President and Chief Executive Officer  
Mirant Corporation  
1155 Perimeter Center West  
Suite 100  
Atlanta, Georgia 30338

*Via Certified Mail*

Robert E. Driscoll  
President and Chief Executive Officer  
Mirant Mid-Atlantic, LLC  
1155 Perimeter Center West  
Suite 100  
Atlanta, Georgia 30338

*Via Certified Mail*

Tom Turk  
Plant Manager  
Mirant Chalk Point, LLC  
25100 Chalk Point Road  
Aquasco, MD 20608

*Via Certified Mail*

Registered Agent for Mirant Mid-Atlantic, LLC &  
Mirant Chalk Point, LLC  
National Registered Agents, Inc. of MD  
Second Floor  
836 Park Avenue  
Baltimore, MD 21201

*Via Certified Mail*

**Re: Notice of Intent to Sue for Failure to Install Pollution Control Devices on Emission Units E-3 and E-4 in Violation of the Clean Air Act**

Dear Mr. Driscoll, Mr. Muller, and Mr. Turk:

We are writing on behalf of the Environmental Integrity Project (EIP), Chesapeake Climate Action Network, and David Bookbinder to provide you with notice of their intent to file suit for significant and ongoing violations of the Clean Air Act at the Chalk Point Electric

Generating Station (Chalk Point) located on the Patuxent River at Swanson Creek in Prince George's County, Maryland. Specifically, the owners and operators of Chalk Point have failed to install pollution controls on residual fuel oil fired boilers, Emission Units E-3 and E-4, as required by the Clean Air Act and the Maryland State Implementation Plan (SIP). 40 C.F.R. §52.1070(c); 57 Fed. Reg. 49,651, 49,653 (Nov. 3, 1992); Md. Code Regs. 26.11.09.06(B)(1)(a). This notice is being provided pursuant to the Clean Air Act, 42 U.S.C. §7604(b).

Citizens are entitled to bring suit to enjoin violations of an emission standard or limitation under the Clean Air Act and seek redress and civil penalties for such violations. 42 U.S.C. §7604(a). The Clean Air Act provides for civil penalties of up to \$32,500 per violation per day. 42 U.S.C. §§7413(d)(1),(e), and 7604(a); 40 C.F.R. §§19.2 and 19.4.

In accordance with section 304(b) of the Clean Air Act, we are writing to notify you that the EIP intends to file suit in federal district court any time sixty (60) days after the postmarked date of this letter to enjoin the violations described below that occurred after the January 3, 2006 effective date of the confirmation of Mirant Corporation's bankruptcy plan,<sup>1</sup> and ensure future compliance, obtain civil penalties for past noncompliance, recover attorney fees and costs of litigation, and obtain any other appropriate relief.

## **I. Background**

Chalk Point has repeatedly burned dirty, residual fuel oil in Emission Units E-3 and E-4 without any pollution controls to limit harmful particulate matter (PM) emissions in violation of the Clean Air Act and the SIP.<sup>2</sup> PM is a mixture of very small particles, including organic chemicals, metals, and ash, which can cause health and environmental problems. Once inhaled, PM can affect the heart and lungs, and cause serious health effects. 52 Fed. Reg. 24,634, 24,663 (July 1, 1987). Numerous scientific studies have linked PM exposure to increased respiratory systems, such as irritation of the airways, coughing, and difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; heart attacks; and premature death in people with heart or lung disease.

The U.S. Environmental Protection Agency (EPA) has stated that residual fuel oil "contain[s] significant quantities of ash, nitrogen, and sulfur" because it is "produced from the residue remaining after the lighter fractions (gasoline, kerosene, and distillate oils) have been

---

<sup>1</sup> Mirant Mid-Atlantic, LLC Annual Report (Form 10-K) (Dec. 31, 2007), available at <http://www.secinfo.com/d14D5a.tlHMb.htm>.

<sup>2</sup> See Air & Radiation Mgmt. Admin., Md. Dep't of the Env't, Mirant Chalk Point, LLC Chalk Point Generating Station Draft Part 70 Operating Permit Fact Sheet (No. 24-033-00014) 21 (Aug. 2008) (noting that Emission Units E-3 and E-4 do not have pollution controls for PM) and Attachment A (documenting shipments of residual fuel oil received by Mirant Chalk Point power plant from 2006 through 2008). According to the draft Title V permit for Chalk Point, Emission Units E3 and E4 are the only units at the Chalk Point facility that burn residual fuel oil. See Air & Radiation Mgmt. Admin., Md. Dep't of the Env't, Mirant Chalk Point, LLC Chalk Point Generating Station Draft Part 70 Operating Permit Fact Sheet (No. 24-033-00014) 21 (Aug. 2008).

removed from the crude oil.”<sup>3</sup> In addition, the burning of residual fuel oil produces significantly more harmful PM emissions than burning cleaner natural gas or distillate oil.<sup>4</sup>

In addition to the serious public health impacts, PM can be carried long distances to settle over land or water, which may result in acidic lakes and streams, nutrient imbalances in aquatic systems, and damage to forests and farmlands. Burning residual fuel oil also produces more carbon dioxide emissions, a greenhouse gas contributing to global warming, than burning natural gas.<sup>5</sup>

The United States Environmental Protection Agency (EPA) emission factors for residual fuel oil and distillate fuel oil can be used to predict the relationship between sulfur dioxide emissions and the type of fuel burned in a particular emission unit.<sup>6</sup> According to EPA, one gallon of distillate fuel oil with a sulfur content of 0.2 percent burned in Emissions Units E-3 and E-4 will release 0.0314 pounds of SO<sub>2</sub>, or 0.226 pounds of SO<sub>2</sub> per mmBtu.<sup>7</sup>

According to data from the U.S. Energy Information Administration (EIA), Chalk Point has only received shipments of distillate fuel oil with a sulfur content of 0.2 percent in 2006, 2007, and 2008. See Attachment A. Thus, SO<sub>2</sub> emissions from Units E-3 and E-4 should not exceed 0.226 pounds per mmBtu when burning distillate oil. When SO<sub>2</sub> emissions exceed 0.226 pounds per mmBtu, Emission Units E-3 and E-4 must be burning residual fuel oil or a combination of residual and distillate fuel oil. SO<sub>2</sub> emissions that exceed 0.226 pounds per mmBtu indicate that Mirant is burning residual fuel oil without pollution controls in violation of the Clean Air Act and SIP.

## II. Summary of Violations

Emission Units E-3 and E-4 have operated, and continue to operate, without pollution control devices required under the Clean Air Act and the SIP. Md. Code Regs. 26.11.09.06(B)(1)(a), as incorporated into the SIP, states that “[a] person may not cause or permit the combustion of residual fuel oil in fuel burning equipment unless the equipment is fitted with a dust collector” in Prince George County, Maryland. This emission standard is incorporated into the SIP. 40 C.F.R. §52.1070(c); 57 Fed. Reg. 49651, 49653 (Nov. 3, 1992).

---

<sup>3</sup> U.S. Env'tl. Prot. Agency, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources*, § 1.3.1 (Sept. 1998), [available at](http://www.epa.gov/ttn/chief/ap42/ch01/index.html) <http://www.epa.gov/ttn/chief/ap42/ch01/index.html>.

<sup>4</sup> *Id.* § 1.3.3.1.

<sup>5</sup> U.S. Env'tl. Prot. Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006* 3:1-3:62 (April 2008), [available at](http://www.epa.gov/climatechange/emissions/downloads/08_CR.pdf) [http://www.epa.gov/climatechange/emissions/downloads/08\\_CR.pdf](http://www.epa.gov/climatechange/emissions/downloads/08_CR.pdf)

<sup>6</sup> See U.S. Env'tl. Prot. Agency, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources*, § 1.3, tbl. 1.3-1, [available at](http://www.epa.gov/ttn/chief/ap42/ch01/index.html) <http://www.epa.gov/ttn/chief/ap42/ch01/index.html> (noting an emission factor of 157S for boilers larger than 100 mmBtu)

<sup>7</sup> See U.S. Env'tl. Prot. Agency, *Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources*, § 1.3, tbl. 1.3-1, [available at](http://www.epa.gov/ttn/chief/ap42/ch01/index.html) <http://www.epa.gov/ttn/chief/ap42/ch01/index.html> (noting an emission factor of 157S for boilers larger than 100 mmBtu) and Energy Info. Admin., *Apples, Oranges and Btu* (Aug. 2008), [available at](http://www.eia.doe.gov/ncic/infosheets/apples.html) <http://www.eia.doe.gov/ncic/infosheets/apples.html> (noting 1 gallon of Number 2, or distillate, oil is equivalent to 138,690 Btu).

We are notifying you of a total of 1,430 separate violations of Md. Code Regs. 26.11.09.06(B)(1)(a), occurring from January 4, 2006 through February 13, 2008.<sup>8</sup> See Attachment B. As discussed previously, SO<sub>2</sub> emissions that exceed 0.226 pounds per mmBtu indicate that the boiler is burning residual fuel oil. According to EPA's Clean Air Markets Emissions data, hourly emissions from Emission Units E-3 and E-4 exceeded 0.226 pounds per mmBtu 591 times in 2006; 726 times in 2007; and 113 times in 2008. *Id.* Each hour Emission Units E-3 and E-4 burn residual fuel oil without required pollution controls is a separate violation of the Clean Air Act and the SIP.

These violations harm, and will continue to harm, the health, environmental, aesthetic, and economic interests of EIP, the Chesapeake Climate Action Network and its members, and David Bookbinder. The harm is traceable to the violations, and redressing the violations will redress the harm. These violations are ongoing.<sup>9</sup>

### **III. Offer to Review Information**

To the extent you have evidence that shows, contrary to the allegations in this letter, that Chalk Point is in full compliance with applicable requirements, we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

### **IV. Conclusion**

EIP intends to file suit to enjoin the violation described above and to ensure future compliance, obtain civil penalties for past noncompliance, recover attorney fees and costs of litigation, and obtain any other appropriate relief. Additionally, EIP intends to seek additional civil penalties to be used in beneficial mitigation projects consistent with 42 U.S.C. §7604(g)(2).

---

<sup>8</sup> Clean Air Markets emissions data for 2008 is only available through the month of September at this time. To the extent that Mirant has burned residual fuel oil in Emission Unit E-3 or E-4 from October 2008 onward, we are notifying you of these violations.

<sup>9</sup> Although a September 2006 administrative consent decree between the Maryland Department of the Environment and Mirant Chalk Point, LLC prohibits Mirant from burning residual fuel oil in Emission Units E-3 and E-4 during the ozone season (May 1 through September 30), the consent decree does not require Mirant to install pollution controls or prohibit Mirant from burning residual fuel oil from these units during the months of October through April. *Maryland Dep't of the Env't v. Mirant Chalk Point, LLC*, No. CAL06-18220 §II.A. (Md. Cir. Ct. Sept. 11, 2006).

We would be happy to discuss the allegations in this notice, and look forward to hearing from you if you believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise like to discuss settlement, or any aspect of this matter, prior to initiation of litigation. Please contact EIP at the address below.

Sincerely,



---

Jennifer Peterson  
Attorney  
Environmental Integrity Project  
1920 L Street N.W., Ste. 800  
Washington, DC 20036  
Tel: (202) 263-4440  
Email: [jpeterson@environmentalintegrity.org](mailto:jpeterson@environmentalintegrity.org)

Diana Dascalu-Joffe  
Chesapeake Climate Action Network  
PO Box 11138  
Takoma Park, MD 20912

David Bookbinder  
1700 Bryan Point Road  
Accokeek, MD 20607

CC: Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

*Via Certified Mail*

Regional Administrator  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street (3PM52)  
Philadelphia, PA 19103-2029

*Via Certified Mail*

U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, DC 20530-0001

*Via Certified Mail*

Shari T. Wilson  
Secretary of the Environment  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230

*Via Certified Mail*

Governor Martin O'Malley  
Maryland Office of the Governor  
100 State Circle  
Annapolis, Maryland 21401-1925

*Via Certified Mail*

Douglas F. Gansler  
Maryland Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

*Via Certified Mail*

Walter Stone  
Associate General Counsel  
Mirant Mid-Atlantic, LLC  
601 13th Street NW, Suite 850N  
Washington, DC 20005  
walter.stone@mirant.com

*Via Email by Request*

## Attachment A

Distillate Fuel Oil Shipments to Chalk Point  
2006 - 2008

YEAR	MONTH	FACILITY NAME	STATE	FUEL TYPE	QUANTITY RECEIVED	SULFUR CONTENT
2006	1	Chalk Point LLC	MD	DFO	7759	0.2
2006	1	Chalk Point LLC	MD	DFO	17149	0.2
2006	4	Chalk Point LLC	MD	DFO	21104	0.2
2006	5	Chalk Point LLC	MD	DFO	557	
2006	6	Chalk Point LLC	MD	DFO	719	0.2
2006	6	Chalk Point LLC	MD	DFO	20886	0.2
2006	7	Chalk Point LLC	MD	DFO	3031	0.2
2006	8	Chalk Point LLC	MD	DFO	18645	0.2
2006	8	Chalk Point LLC	MD	DFO	2125	0.2
2006	11	Chalk Point LLC	MD	DFO	2166	0.2
2006	11	Chalk Point LLC	MD	DFO	12974	0.2
2007	2	Chalk Point LLC	MD	DFO	709	0.2
2007	2	Chalk Point LLC	MD	DFO	3937	0.2
2007	3	Chalk Point LLC	MD	DFO	13531	0.2
2007	3	Chalk Point LLC	MD	DFO	1257	0.2
2007	6	Chalk Point LLC	MD	DFO	5856	0.2
2007	7	Chalk Point LLC	MD	DFO	28882	0.2
2007	7	Chalk Point LLC	MD	DFO	177	0.2
2007	8	Chalk Point LLC	MD	DFO	8895	0.2
2007	8	Chalk Point LLC	MD	DFO	42854	0.2
2007	9	Chalk Point LLC	MD	DFO	9508	0.2
2007	9	Chalk Point LLC	MD	DFO	28354	0.2
2007	10	Chalk Point LLC	MD	DFO	13618	0.2
2007	10	Chalk Point LLC	MD	DFO	29113	0.2
2008	1	Chalk Point LLC	MD	DFO	1436	0.2
2008	2	Chalk Point LLC	MD	DFO	22969	0.2
2008	2	Chalk Point LLC	MD	DFO	366	0.2
2008	3	Chalk Point LLC	MD	DFO	1082	0.2
2008	4	Chalk Point LLC	MD	DFO	25305	0.2
2008	6	Chalk Point LLC	MD	DFO	2110	0.2
2008	6	Chalk Point LLC	MD	DFO	30069	0.2

Distillate Fuel Oil Shipments to Chalk Point

2006 - 2008

YEAR	MONTH	FACILITY_NAME	FACILITY_STATE	FUEL_TYPE_CODE	QUANTITY_RECEIVED	SULFUR_CONTENT
2008	7	Chalk Point LLC	MD	DFO	7242	0.2
2008	8	Chalk Point LLC	MD	DFO	50471	0.2
2008	9	Chalk Point LLC	MD	DFO	2016	0.2

SOURCE: Energy Info. Admin., Dep't of Energy, Form EIA-423 Database, Monthly Nonutility Fuel Receipts and Fuel Quality Data (2006, 2007, 2008), available at <http://www.eia.doe.gov/cneaf/electricity/page/eia423.html>

Residual Fuel Oil Shipments to Chalk Point  
2005 - 2007

YEAR	MONTH	FACILITY NAME	STATE	FUEL TYPE	SUPPLIER	QUANTITY RECEIVED	SULFUR CONTENT
2005		1 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	304699	0.7
2005		1 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	212564	1
2005		2 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	70651	0.7
2005		3 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	9842	0.7
2005		3 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	219791	1
2005		6 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	258640	0.7
2005		6 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	211772	1
2005		7 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	218935	0.7
2005		7 Chalk Point LLC	MD	RFO	MAEN (Piney Pt)	340306	0.7
2005		8 Chalk Point LLC	MD	RFO	MAEM	96380	0.7
2005		8 Chalk Point LLC	MD	RFO	MAEM	256308	0.7
2005		9 Chalk Point LLC	MD	RFO	MAEM	166507	0.7
2005		9 Chalk Point LLC	MD	RFO	MAEM	267606	1
2005		10 Chalk Point LLC	MD	RFO	MAEM	17742	0.7
2005		10 Chalk Point LLC	MD	RFO	MAEM	305239	1
2005		11 Chalk Point LLC	MD	RFO	MAEM	36021	0.7
2005		11 Chalk Point LLC	MD	RFO	MAEM	105617	1
2005		12 Chalk Point LLC	MD	RFO	MAEM	278662	0.7
2005		12 Chalk Point LLC	MD	RFO	MAEM	300780	1
2006		1 Chalk Point LLC	MD	RFO	MAEM	63550	1
2006		2 Chalk Point LLC	MD	RFO	MAEM	31731	0.7
2006		3 Chalk Point LLC	MD	RFO	MAEM	475	0.7
2006		6 Chalk Point LLC	MD	RFO	MAEM	1970	0.7
2006		6 Chalk Point LLC	MD	RFO	MAEM	2560	0.7
2006		7 Chalk Point LLC	MD	RFO	MAEM	17189	0.7
2006		7 Chalk Point LLC	MD	RFO	MAEM	39980	1
2006		8 Chalk Point LLC	MD	RFO	MAEM	45542	1
2006		8 Chalk Point LLC	MD	RFO	MAEM	71238	0.7
2006		9 Chalk Point LLC	MD	RFO	MAEM	2096	0.7
2006		12 Chalk Point LLC	MD	RFO	MAEM	15010	0.7
2007		1 Chalk Point LLC	MD	RFO	MAEM	31668	1

Residual Fuel Oil Shipments to Chalk Point  
2005 - 2007

YEAR	MONTH	FACILITY NAME	STATE	FUEL TYPE	SUPPLIER	QUANTITY RECEIVED	SULFUR CONTENT
2007		1 Chalk Point LLC	MD	RFO	MAEM	17742	0.7
2007		2 Chalk Point LLC	MD	RFO	MAEM	268141	1
2007		2 Chalk Point LLC	MD	RFO	MAEM	123455	0.7
2007		3 Chalk Point LLC	MD	RFO	MAEM	50026	0.7
2007		4 Chalk Point LLC	MD	RFO	MAEM	793	1
2007		5 Chalk Point LLC	MD	RFO	MAEM	28	0.7
2007		6 Chalk Point LLC	MD	RFO	MAEM	24	0.7

SOURCE: Energy Info. Admin., Dep't of Energy, Form EIA-423 Database, Monthly Nonutility Fuel Receipts and Fuel Quality Data (2005, 2006, 2007), available at <http://www.eia.doe.gov/cneaf/electricity/page/eia423.html>

## Attachment B

**Summary of Hourly Violations**  
**January 4, 2006 through December 31, 2006**

	Emission Unit 3	Emission Unit 4	
1/4/2006	9	0	
1/5/2006	19	0	
1/6/2006	16	0	
1/7/2006	17	0	
1/15/2006	10	0	
1/16/2006	24	0	
1/17/2006	1	0	
1/27/2006	5	0	
2/26/2006	0	8	
2/27/2006	0	23	
2/28/2006	0	20	
3/1/2006	0	2	
5/25/2006	0	4	
6/3/2006	7	0	
7/3/2006	10	0	
7/10/2006	6	0	
7/11/2006	4	0	
7/12/2006	9	0	
7/17/2006	9	0	
7/18/2006	15	3	
7/19/2006	0	17	
7/20/2006	0	5	
7/24/2008	0	19	
7/25/2006	8	18	
7/26/2006	14	17	
7/27/2006	0	13	
7/29/2006	6	0	
7/30/2006	4	3	
7/31/2006	14	0	
8/1/2006	17	17	
8/2/2006	17	14	
8/3/2006	24	24	
8/4/2006	24	23	
8/5/2006	13	0	
8/6/2006	12	0	
8/7/2006	14	0	
8/8/2006	3	6	
12/12/2006	0	12	
12/13/2006	0	12	
TOTALS:			
TOTALS:	331	260	<i>Total Violations: 591</i>

Summary of Hourly Violations in 2007  
Emission Units E-3 and E-4

	Emission Unit 3	Emission Unit 4	
1/17/2007	14	16	
1/25/2007	20	21	
1/26/2007	22	10	
2/5/2007	21	20	
2/6/2007	24	24	
2/7/2007	24	24	
2/8/2007	24	24	
2/9/2007	24	14	
2/12/2007	21	0	
2/13/2007	24	0	
2/14/2007	24	5	
2/15/2007	24	24	
2/16/2007	24	24	
2/17/2007	24	0	
2/18/2007	24	0	
2/19/2007	24	0	
2/20/2007	24	0	
2/21/2007	0	15	
3/6/2007	0	20	
3/7/2007	0	24	
3/8/2007	0	24	
3/9/2007	0	12	
12/6/2007	14	0	
12/7/2007	5	0	
12/11/2007	0	3	
12/12/2007	0	9	
12/13/2007	0	8	
<b>TOTALS:</b>	<b>405</b>	<b>321</b>	<b>Total Violations: 726</b>

Summary of Hourly Violations in 2008  
Emission Units E-3 and E-4

	Emission Unit 3	Emission Unit 4	
1/3/2008	11	12	
1/4/2008	13	11	
2/12/2008	19	15	
2/13/2008	16	16	
<b>TOTALS:</b>	59	54	<b>Total Violations: 113</b>