PUBLIC JUSTICE
RIGHTING WRONGS

January 24, 2013

By Certified Mail – Return Receipt Requested

David Crane
President and Chief Executive Officer
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540-6213

Re: 60-Day Notice of Intent to File Citizen Suit NRG Energy, Inc. Under Clean Water Act Section 505(a)(1) for Violation of Terms and Conditions of Maryland NPDES Permits MD0002658, MD0002640A, and MD0002674

Dear Mr. Crane:

Food & Water Watch ("F&WW"), the Patuxent Riverkeeper, and the Potomac Riverkeeper, Inc. ("Claimants"), in accordance with section 505 of the Clean Water Act (the "Act" or the "CWA"), 33 U.S.C. § 1365, and 40 C.F.R. Part 135, hereby notify you that NRG Energy, Inc. ("NRG") has violated, and continues to violate, "an effluent standard or limitation" under Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), by failing to comply with the terms and conditions of Maryland/National Pollution Discharge Elimination System ("MD/NPDES") Permits MD0002658, MD0002640A, and MD0002674. These Permits apply to NRG's Chalk Point Generating Station, Dickerson Generating Station, and Morgantown Generating Station, respectively. More specifically, NRG has and will continue to repeatedly illegally discharge nitrogen into waters of the United States from each of these three facilities. Additionally, NRG has and will continue to repeatedly illegally discharge nitrogen into waters of the United States from the Dickerson Generating Station. If within sixty days of the postmark of this letter NRG does not bring itself into full compliance with the Act, Claimants intend to file a citizens' suit seeking civil penalties for NRG's ongoing and continuing violations and for an injunction compelling it to come into compliance with the Act.

I. FACTUAL BACKGROUND

On July 1, 2009, the Maryland Department of the Environment (the "Department") issued Maryland state discharge permit number 06-DP-0627 and NPDES Permit Number MD0002658 to Mirant Mid-Atlantic, LLC's (now NRG's) Chalk Point Generating Station ("Chalk Point") located at 25100 Chalk Point Road,

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Prince George's County, Maryland 20608. The permit is still in effect and expires on June 30, 2014. Chalk Point discharges via Outfalls 001, 002, 012 and 013, which are monitored at Monitoring Point 801. These Outfalls discharge pollutants to the Patuxent River and Swanson Creek.

On November 1, 2009, the Department issued Maryland state discharge permit number 06-DP-004BA and NPDES Permit Number MD0002640A to Mirant Mid-Atlantic, LLC's (now NRG's) Dickerson Generating Station ("Dickerson") located at 21200 Martinsburg Road, Dickerson, Montgomery County, Maryland 20842. The permit is still in effect and expires on October 31, 2014. Dickerson discharges via Outfalls 001, 002, 003, and 004, which are monitored at Monitoring Points 101, 112, and 801. The Outfalls discharge pollutants into the Potomac River and unnamed tributaries of the Little Monocacy and Potomac Rivers.

On November 1, 2009, the Department issued Maryland state discharge permit number 07-DP-0841 and NPDES Permit number MD0002674 to Mirant Mid-Atlantic, LLC's (now NRG's) Morgantown Generating Station ("Morgantown") located at located at U.S Route 301 and the Potomac River in Morgantown, Charles County, Maryland 20664. The permit is still in effect and expires on October 31, 2014. Morgantown discharges from this facility via Outfall 001 and is monitored at Monitoring Points 112 and 801. The Outfall discharges into the Potomac River and the Pasquahanza Creek.

Each of the Permits issued by the Department limits discharges from the generating stations into the rivers and creeks listed in the permits. Each permit is subject to Title 9 of the Environmental Article, Annotated Code of Maryland, and regulations promulgated thereunder, and the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq. and implementing regulations 40 CFR Parts 122-125. Each of the generating stations monitored the water quality of its discharges into the permitted water bodies. In their Discharge Monitoring reports, the facilities reported the following values for Total Nitrogen, expressed as organic-N, ammonia-N and (NO2+NO3)—N:[1]

[1] In addition to the violations for 2009-2011 listed in the chart below, we are awaiting the 2012 Discharge Monitoring Reports and reserve the right to amend this notice letter should those DMRs show additional violations for 2012.

Facility	Permit Limit	Monitoring Point	Monitoring Date Range	Cumulative Nitrogen (lb/year)
Chalk Point	329 (lb/year)	MP 801	1/1/2010-12/31/2010	7558
		MP 801	1/1/2011-12/31/2011	6892.21
Dickerson	511 (lb/year)	MP 101	1/01/2010-12/31/2010	751.74
		MP 112	1/01/2010-12/31/2010	1066.19
		MP 801	1/01/2010-12/31/2010	3464.28
		MP 801	1/1/2011-12/31/2011[2]	4731.32
Morgantown	792 (lb/year)	MP 112	1/1/2010-12/31/2010	5516.49
		MP 801	1/1/2010-12/31/2010	2646.08
		MP 112	1/1/2011-12/31/2011	5204.65
		MP 801	1/1/2011-12/31/2011	1251.06

Chalk Point's permit limit for nitrogen is 329 pounds per year. In 2010, Chalk Point exceeded that limit on January 20, 2010, so that it violated the limit on that day and each of the remaining 345 days in 2010.[3] Chalk Point's total cumulative nitrogen discharge in 2010 was 7558 pounds, exceeding its annual permit limit by 7202 pounds.[4] In 2011, Chalk Point again began exceeding its annual nitrogen limit on January 21, 2011, so that it violated that limit on that day and on each of the remaining 344 days in 2011. Chalk Point's total cumulative nitrogen discharge in 2011 was 6,892.21 pounds, exceeding its annual permit by 6563.21 pounds.[5]

Dickerson's permit limit for nitrogen is 511 pounds per year. In 2010, Dickerson began exceeding that limit on February 23, 2010, so that it violated that limit on that day and on each of the remaining 311 days in 2010. Dickerson's total cumulative nitrogen discharge in 2010 was 5221.76 pounds, exceeding its annual permit limit by 4710.76 pounds.[6] In 2011, Dickerson again began exceeding its annual nitrogen limit on February 17, 2011, so that it violated that limit on

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[2] The summary chart was reported by NRG as part of its December 2011 DMR. The final page of the summary chart lists the December dates as 2010, but the prior months refer to 2011. We therefore assume the 2010 date is a typographical error.

[3] See Sierra Club v. City & County of Honolulu, 486 F.Supp.2d 1185, 1189-91 (D. Haw. 2007) (each day that a facility is in violation of its permit counts as a separate violation).

[4] Chalk Point Monitoring Reports, December 2010, Chalk Point Annual Nutrient Compliance Calculations summary report, p. 37.

[5] Chalk Point Monitoring Reports, December 2011, Chalk Point Annual Nutrient Compliance Calculations summary report, pp. 1, 37.

[6] Dickerson Discharge Monitoring Reports, December 2010, Dickerson Annual Nutrient Compliance Calculations summary report, pp. 1, 22.

that day and on each of the remaining 317 days in 2011. Dickerson's total cumulative nitrogen discharge in 2011 was 4731.32 pounds, exceeding its annual permit by 4220.32 pounds.[7]

Morgantown's permit limit for nitrogen is 792 pounds per year. In 2010, Morgantown began exceeding that limit on or about February 28, 2010, so that it violated that limit on that day and on each of the remaining 306 days in 2010. Morgantown's total cumulative nitrogen discharge in 2010 was 8162.57 pounds, exceeding its annual permit limit by 7370.57 pounds.[8] In 2011, Morgantown began exceeding its annual nitrogen limit on February 28, 2011, so that it violated that limit on that day and on each of the remaining 306 days in 2011. Morgantown's total cumulative nitrogen discharge in 2011 was 6455.71 pounds, exceeding its annual permit by 5663.71 pounds.[9]

In addition to the nitrogen violations cited above, Claimants also are hereby providing notice for violations of phosphorus discharge limits at Dickerson. Dickerson's NPDES permit contains an annual phosphorus discharge limit of 73 pounds.[10] According to Discharge Monitoring Reports generated by NRG, Dickerson began exceeding its annual phosphorus limit on June 2, 2010, so that it violated that limit on that day and on each of the remaining 212 days in 2010. Dickerson again began exceeding its annual phosphorus limit on June 2, 2011, so that it violated that limit on that day and on each of the remaining 212 days in 2011. Dickerson's total cumulative phosphorus discharge was 175.86 pounds in 2010 and 244.47 pounds in 2011.[11]

Nutrient pollution, specifically nitrogen and phosphorus, discharged into the Chesapeake Bay and its tributaries is the main cause of the Bay's continued poor health.[12] In fact, most of the Bay and its tidal waters are listed as impaired because of excess nitrogen and phosphorus

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[7] Dickerson Discharge Monitoring Reports, December 2011, Dickerson Annual Nutrient Compliance Calculations summary report, pp. 49.

[8] Dickerson Discharge Monitoring Reports, December 2010, Dickerson Annual Nutrient Compliance Calculations summary report, pp. 1, 22.

[9] See Morganton Discharge Monitoring Reports, December 2011, Morganton Annual Nitrogen and Phosphorus summary report, pp. 23-45.

[10] Letters from NRG to the Department, Jan. 13, 2011 and Jan. 13, 2012 re: NPDES Exceedances for Annual Nitrogen and Phosphorus Limits.

[11] Dickerson Discharge Monitoring Reports, December 2010, Dickerson Annual Nutrient Compliance Calculations summary report, p. 49; *see also* Letters from NRG to the Department, Jan. 13, 2011 and Jan. 13, 2012 re: NPDES Exceedances for Annual Nitrogen and Phosphorus Limits.

[12] Chesapeake Bay Program, Nutrients, http://www.chesapeakebay.net/nutr1.htm (last visited Sept.18, 2011).

levels.[13] These pollutants cause algae blooms that consume oxygen and create "dead zones" where fish and shellfish cannot survive, block sunlight that is needed for underwater Bay grasses, and smother aquatic life on the bottom of the Bay.[14]

Achieving measurable reductions in nitrogen and phosphorus pollution throughout the Chesapeake Bay and the approximately 76 impaired segments, including segments of the Patuxent and Potomac Rivers, into which Maryland's industrial, municipal, and agricultural sources discharge nutrient pollution will be critical to restoring water quality throughout the state, as well as achieving the goals of the Chesapeake Bay Total Maximum Daily Load (TMDL) and Maryland's Watershed Implementation Plan (WIP).

II. CLEAN WATER ACT VIOLATIONS

Noncompliance with an NPDES Permit constitutes a violation of the CWA. Sierra Club v. Powellton Coal Co., LLC, 662 F. Supp. 2d 514, 516 (S.D. W. Va. 2009). Citizens may sue any person who violates a term or condition of an NPDES Permit. Id. at 517. NRG's MD/NPDES Permits prohibit discharges of nitrogen and phosphorus above Permit levels. 47 C.S.R. § 30-5.1.f.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, each of the above-described violations subjects the violator to a penalty of up to $37,500 per day. Each day that NRG was in violation of its permit for any individual annual discharge limitation is a separate violation. See Sierra Club v. City & County of Honolulu, 486 F. Supp.2d 1185, 1189-91 (D. Haw. 2007). Claimants allege that NRG currently has 2353 total violations of their Permits for nitrogen and phosphorus discharges at its three facilities. In addition to civil penalties, Claimants will seek injunctive relief under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs including attorney's fees.

III. CONCLUSION

Claimants believe that this Notice of Intent to Sue sufficiently states grounds for filing suit. The discharges referenced above constitute past and on-going violations of the CWA. As discussed above, if NRG fails to come into compliance with the Clean Water Act, the federally-enforceable provisions of the Environmental Article of Title 9, Annotated Code of Maryland, and its permits under those two statutes, Claimants intend to file a citizen suit under section 505(a)(1) of the Clean Water Act against NRG as owner and operator of the above-referenced facilities for the violations discussed herein seeking civil penalties and injunctive relief, as well as seeking a court order compelling NRG to come into compliance with the law. Be aware that

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[13] U.S. Environmental Protection Agency, Final Chesapeake Bay TMDL, Executive Summary ES-3 (Dec. 29, 2010).

[14] Id.

this notice is sufficient to allow us to sue NRG for any post-notice violations related to the violations described herein. See generally, Public Interest Research Group of N.J., Inc. v. Hercules, Inc., 50 F.3d 1239 (3rd Cir. 1995).

During the 60-day notice period, we will be willing to discuss effective remedies for the violations noted in this letter. If NRG has taken any steps to eradicate the underlying cause of the violations described above, or if NRG believes that anything in this letter is inaccurate, please let us know. If NRG does not advise us of any remedial steps during the 60-day period, we will assume that no such steps have been taken and that violations are likely to continue. Additionally, we would be happy to meet with NRG or its representatives to attempt to resolve these issues within the 60-day notice period. If you wish to pursue a settlement, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and negotiations may be completed before the end of the 60-day notice period.

Sincerely,

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