

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nancy Dodge, et al.

(b) County of Residence of First Listed Plaintiff St. Mary's County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Villari, Brandes & Kline, P.C., 8 Tower Bridge, Suite 400, 161 Washington St., Conshohocken, PA 19428

DEFENDANTS

Mirant Mid-Atlantic, LLC, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Recopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Clean Air Act, 42 U.S.C. Section 7401, et seq.

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE N/A DOCKET NUMBER _____

DATE

6/25/09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

NANCY DODGE)
41000 Cremona Road)
Mechanicsville, St. Mary's County, MD 20659) Civil Action No. _____)
)
NORTON DODGE)
41000 Cremona Road)
Mechanicsville, St. Mary's County, MD 20659)
)
CHESAPEAKE CLIMATE ACTION NETWORK)
6839 Eastern Ave)
Takoma Park, Montgomery County, MD 20912)
Montgomery County)
)
DAVID BOOKBINDER)
1700 Bryan Point Road)
Accokeek, Prince George's County, MD 20607)
)
CHRIS SCHMITTHENNER)
27290 Woodburn Hill Road)
Mechanicsville, St. Mary's County, MD 20659)
)
Plaintiffs,)
)
v.)
)
MIRANT MID-ATLANTIC, LLC)
1155 Perimeter Center West, Suite 100)
Atlanta, GA 30338)
)
MIRANT CHALK POINT, LLC)
Registered Agent for Mirant Mid-Atlantic, LLC &)
Mirant Chalk Point, LLC)
National Registered Agents, Inc. of MD)
836 Park Avenue, Second Floor)
Baltimore, Baltimore County, MD 21201)
)
Defendants)

COMPLAINT

I. INTRODUCTION

1. This is a citizen's action for declaratory, injunctive, and other relief brought under the Clean Air Act, 42 U.S.C. § 7401 *et seq.* against Mirant Mid-Atlantic, LLC and Mirant Chalk Point, LLC ("Defendants") to halt persistent, ongoing violations of the Clean Air Act and its implementing federal and state regulations at the Chalk Point Power Plant, located on the Patuxent River at Swanson Creek in Prince George's County, Maryland, and to protect the above captioned Plaintiffs' health and property rights. These violations have injured and continue to injure the recreational, aesthetics, and health interests of Plaintiffs.

2. Defendants for economic motive have repeatedly burned dirty, less expensive residual fuel oil in Emissions Units E-3 and E-4 at the Chalk Point Power Plant without legally required pollution controls to limit harmful particulate matter pollution, which has had, and will continue to have, significant adverse public health impacts as well as other adverse environmental impacts.

3. Particulate matter pollution can affect the heart and lungs, and cause serious adverse health effects when inhaled. Numerous scientific studies link exposure to particulate matter pollution to increased respiratory problems, 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. Airborne particulate matter pollution measuring less than 10 microns or micrometers, and especially those measuring below 2.5 microns or micrometers, are particularly unhealthy to breathe.

4. Defendants' burning of residual fuel oil in Emissions Units E-3 and E-4 without pollution controls required by the Clean Air Act ("Act") and the Act's implementing federal and state regulations

have resulted in excess emissions of particulate matter, hazardous air pollutants, and other air contaminants that degrade the quality of the ambient air in the communities resided, worked or recreated in by Plaintiffs and Plaintiffs' members. These emission violations have injured, and continue to injure, the recreational, aesthetic, and health interests of Plaintiffs and Plaintiffs' members.

5. Plaintiffs bring this case to enjoin Defendants' illegal activities and obtain other appropriate relief.

II. JURISDICTION AND VENUE

6. This Honorable Court has subject matter jurisdiction pursuant to 42 U.S.C. § 7604(a), 28 U.S.C. §§1331 and 2201. The relief requested is authorized pursuant to § 304(a) of the Clean Air Act, and 28 U.S.C. §§ 2201 and 2202. If the Court orders such relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief, and 28 U.S.C. § 2412 authorizes this Court to award Plaintiffs their costs and attorneys' fees. This Court also has pendant jurisdiction over Plaintiff's State law claims.

7. The Defendants' power plant that is the source of the emissions and violations are located in this District. Venue is therefore proper in this Court, pursuant to section 304(c)(1) of the Clean Air Act, and 28 U.S.C. §§ 1391(b), -(c).

8. In compliance with 42 U.S.C §7604(b)(1)(A), Plaintiffs provided notice of intent to sue by letter on January 22, 2009 ("Notice of Intent to Sue") to the Defendants, with copies to the Administrator and Regional Administrator of Region III of the United States Environmental Protection Agency ("EPA"), the United States Attorney General, the Maryland Attorney General, the Secretary of the Maryland Department of the Environment ("MDE"), and the Governor of Maryland by certified

United States mail, return receipt requested. A copy of the Notice of Intent to Sue is attached to this Complaint as Exhibit “A.”

9. More than 60 days have elapsed since Plaintiffs’ served the Notice of Intent to Sue and Defendants have not indicated that Defendants will cease and desist in its violations of the Clean Air Act and its implementing federal and state regulations.

10. The MDE has not instituted any action against Mirant, and is thus not diligently prosecuting an action to redress these violations.

11. The EPA has not commenced any legal proceedings against Mirant, and is thus not diligently prosecuting an action to redress these violations.

12. A copy of this Complaint, pursuant to 42 U.S.C. § 7604(c)(3), will also be served upon the Attorney General of the United States and EPA Administrator.

III. PARTIES

13. Plaintiffs Nancy and Norton Dodge are married individuals who reside at Cremona Farm, located at 4100 Cremona Road in Mechanicsville, MD, 20659 and are adversely impacted by pollution from Mirant Chalk Point power plant. Their residence is approximately seven miles downstream from the Mirant Chalk Point power plant. Cremona Farm contains 1200 acres of land used for agriculture, education, and environmental conservation purposes. Plaintiffs’ need to close windows, limit their time outdoors, and/or cover their faces when they are outdoors to avoid the respiratory irritants and smell of the pollution from the Chalk Point Power Plant.

14. Plaintiff Chesapeake Climate Action Network (“CCAN”) is a non-profit organization that seeks to educate and mobilize citizens of Maryland, Virginia, and Washington, DC in a way that fosters a rapid societal switch away from dirty fossil fuels towards clean energy and energy efficient products.

CCAN's mission is to halt the dangerous trend of global warming and also enhance the health and welfare of its members. CCAN members residing in Maryland share a common concern about air pollution, including pollution caused by Defendants' burning of residual fuel oil in Emissions Unit E-3 and E-4 at the Chalk Point Power Plant without legally required pollution controls. CCAN has a principle place of business at 6839 Eastern Ave, Takoma Park, MD, 20912. CCAN brings this action on behalf of itself and its members.

15. Individual members of CCAN work, reside, recreate, own property, breathe the air and/or otherwise use areas in the vicinity of and/or downwind of Chalk Point Power Plant, and/or within the air shed impacted by the Chalk Point Power Plant. CCAN members are exposed to harmful air pollution as a direct result of Defendants' illegal air emissions described in this Complaint, and such exposure has caused and is causing actual and/or threatened injury to these members' health, recreational, aesthetic or other interests.

16. The interests that CCAN seek to protect in this action are germane to the organization's purpose. Neither the claims asserted, nor the relief requested, require the participation of individual CCAN members in the lawsuit. CCAN does not seek recovery of monetary damages for any of its members in this litigation.

17. Plaintiff David Bookbinder is an individual who resides at 1700 Bryan Point Road, Accokeek, MD 20607, and is adversely impacted by pollution from Mirant Chalk Point power plant. He resides approximately thirty miles away from the Mirant Chalk Point power plant.

18. Plaintiff Chris Schmitthenner is an individual who resides at 27290 Woodburn Hill Road, Mechanicsville MD, 20659, and is adversely impacted by pollution from Mirant Chalk Point power plant. Her residence is approximately eleven miles from the Mirant Chalk Point power plant, and she

works approximately five miles from the plant.

19. Defendants Mirant Mid-Atlantic, LLC and Mirant Chalk Point, LLC own and operate the Chalk Point Power Plant. Mirant Chalk Point, LLC is a wholly owned subsidiary of Mirant Mid-Atlantic, LLC. Mirant Chalk Point, LLC and Mirant Mid-Atlantic, LLC are affiliated companies and have common management.

20. Without the issuance of injunctive relief and imposition of civil penalties, Defendants will continue to degrade air quality in Maryland and the District of Columbia, and cause further injury to the Plaintiffs and members, and the environment.

21. The issuance of injunctive relief and imposition of civil penalties is likely to encourage Defendants to discontinue its current violations and deter it from committing future ones, thereby redressing the injuries caused by Defendants' violations.

IV. LEGAL BACKGROUND

22. The Clean Air Act is designed "to protect and enhance the quality of the nation's air, so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. §7401(b)(1).

23. Citizens may commence civil action under the Clean Air Act against any party "who is alleged to have violated...or to be in violation of an emission standard or limitation." Section 304(a) of the Act, 42 U.S.C. §7604(a).

24. Section 110 of the Clean Air Act requires States to develop a State Implementation Plan (SIP) containing air pollution regulations and control strategies that meet the national ambient air quality standards (NAAQS) established under section 109 of the Act. Once approved by EPA, SIP provisions are federally enforceable. 42 U.S.C. §7413, 40 C.F.R §52.23.

25. 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 which is so designed that it can reasonably be expected to produce sufficient dust particle force, residence time, and particle retention to satisfy the requirements of Table 1.” This requirement applies to fuel burning equipment located in Area IV. Id. Prince George’s County is located in Area IV. Md. Code Regs. 26.11.01.03(D). This limit is incorporated into the SIP. 40 C.F.R. § 52.1070(c). This regulation constitutes an “emissions standard or limitation” under 42 U.S.C. 7604(f)(4), which are subject to citizen suit under 42 U.S.C. 7604(a).

26. Table 1, entitled “Emission Standards and Dust Collector Performance Standards for Fuel-Burning Equipment,” states that “new equipment burning residual oil” greater than 250 million Btu may not emit more than 0.01 gr/scfd. See Md. Code Regs. 26.11.09.09. “Existing . . . equipment burning residual oil” may not emit more than 0.02 gr/scfd. Id. “New equipment” is defined as equipment that is “built” after July 1, 1975, and “existing equipment” is defined as equipment “built” prior to July 1, 1975. Id. These provisions are contained in the SIP and are federally enforceable. 40 C.F.R. § 52.1070(c). This regulation constitutes an “emissions standard or limitation” under the Clean Air Act, 42 U.S.C. 7604(f)(4), which are subject to citizen suit under 42 U.S.C. 7604(a).

27. A Secretarial Order (By Consent) dated July 19, 1979 authorized a waiver for compliance with Md. Code Regs. 10.18.05.03(B)(1)(a), 10.18.05.03B(2), and 10.18.05.02(A) for Emissions Unit E-3. Attached hereto as Exhibit “B.” The 1979 Secretarial Order authorizes the burning of residual fuel oil in Emissions Unit E-3 without pollution controls for particulate matter, establishes a relaxed particulate matter emission limit (0.05 gr/scfd) and visible emission limit (20% opacity) for this unit. Id. This Secretarial Order was approved by EPA as a SIP revision. 40 C.F.R. § 52.1100(c)(34); 40 C.F.R. §

52.1070(d); 45 Fed. Reg. 58340 (Sep. 3, 1980). Thus, the terms of the Secretarial Order establish the federally approved SIP limits with respect to the dust collector requirement, particulate matter emission limit, and visible emission limit for Emissions Unit E-3.

28. One provision of the 1979 Secretarial Order states, “[i]n the event that this Order is voided or otherwise held unenforceable by any court of law, COMAR 10.18.05.03B(2) (particulate matter), 10.18.05.02A (visible emissions) and 10.18.05.03B(1)(a) (dust collectors) shall be fully applicable to Chalk Point Unit #3.” Attachment B, at 4.

29. A subsequent Consent Decree between MDE and Mirant Chalk Point, LLC executed on September 11, 2006, and attached hereto as Exhibit “C,” voids the 1979 Secretarial Order in its entirety. The 2006 Consent states that “Mirant agrees that as of May 1, 2007, the 1978 and 1979 Consent Orders shall be void and of no further effect.” Exhibit “C,” ¶ 1. The “1979 Consent Order” referred to in ¶ 1 of the 2006 Consent Decree is the July 19, 1979 Secretarial Order applicable to Chalk Point Emissions Unit E-3. See Exhibit C, at 3 (“Unit 3 is subject to the visible emission standard established by an Administrative Consent Order, dated July 19, 1979 (the ‘1979 Consent Order’), and approved by the United States Environmental Protection Agency...as part of the Maryland State Implementation Plan. 40 CFR § 52.1070(c)(34)...”).

30. The 2006 Consent Decree also states that “[t]his Consent Decree supersedes, in their entirety, the Consent Decrees between the Department and PEPCO, dated February 27, 1978, and July 19, 1979.” Id. ¶ 36.

31. Effective May 1, 2007, according to the terms of the 1979 Secretarial Order, which is an EPA approved source-specific SIP limit, Emissions Unit E-3 is required to comply with Md. Code Regs. 26.11.09.06(B)(1)(a) and 26.11.09.06(B)(2) (i.e. install pollution controls for particulate matter when

burning residual fuel oil and comply with the particulate matter emission limit identified in Table 1 at Md. Code Regs 26.11.09.09).

32. The SIP authorizes a limited exemption from compliance with Md. Code 26.11.09.06(B)(1)(a) and 26.11.09.06(B)2) for “[f]uel burning equipment burning gas with an interruptible gas service” when the “gas supplier (utility) makes the decision to interrupt the gas service based on the availability of gas and not on the cost of fuel or other parameter.” Md. Code Regs. 26.11.09.06(B)(6)(a); 40 C.F.R. § 52.1070(c); 71 Fed. Reg. 1996, 1997 (Jan. 12, 2006); 71 Fed. Reg. 34014 (June 13, 2006). The exemption only applies “during the interruptible period” (i.e. during the time the gas supplier makes a determination that there is a shortage of gas and interrupts the gas supply to the facility). *Id.* Said exemption does not apply to Defendants’ emissions from Unit E-3 and E-4, at all time relevant to this complaint.

V. FACTUAL BACKGROUND

33. Defendants own and operate the Mirant Chalk Point Power Plant. Chalk Point Power Plant is located on the Patuxent River at Swanson Creek in Prince George’s County, Maryland, and consists of several large fossil fuel-fired boilers. The Chalk Point Power Plant is located in Area IV. According to the draft Clean Air Act operating permit for the Chalk Point Power Plant issued by MDE in September of 2008, the primary fuel for Emissions Units E-3 and E-4 of the Chalk Point Power Plant is No. 6 fuel oil (i.e. residual fuel oil) with natural gas as the secondary fuel source. Attached hereto as Exhibit “E.”

34. According to the draft Clean Air Act operating permit issued by the Maryland Department of the Environment (MDE) and a study submitted to MDE by Defendants, Emissions Unit E-4 is not equipped with pollution controls for particulate matter. Attached hereto as Exhibit “E” and

Exhibit “F.” Emissions Unit E-3 became operational in 1975 and, Unit E-4 became operational in 1981. See attached Exhibit “E.”

35. Emissions Units E-3 and E-4 of the Chalk Point Power Plant have and continue to operate without any pollution control devices for particulate matter while burning residual fuel oil, which produces increased and excess particulate matter emissions, and emissions of hazardous air pollutants.

36. Particulate matter is a mixture of small particles, including organic chemicals, metals and ash, which can and do cause health and environmental problems. Once inhaled, PM can affect the heart and lungs and cause serious health effects. 52 Fed. Reg. 24663 (July 1, 1987). Numerous scientific studies have linked PM exposure to increased respiratory problems, such as irritation of the airways, coughing or difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease. *Particle Pollution and Your Health*, Office of Air and Radiation, September 2003, EPA-452/F-03-001.

37. A 2006 Harvard School of Public Health study shows that particulate matter pollution from the Chalk Point plant has negative health impacts on individuals living within a 400 km radius of the Chalk Point plant. Attached hereto as Exhibit “G.”

38. Data from the U.S. Energy Information Administration evidences that Chalk Point received over 187 million gallons of residual fuel oil from January 2005 to June 2007. Attached hereto as Exhibit “H.”

39. The United States Environmental Protection Agency emission factors for boilers burning residual fuel oil and distillate fuel oil can be used to predict the relationship between sulfur dioxide

(SO₂) emissions and the type of fuel burned. According to the EPA emission factors, one gallon of distillate fuel oil with a sulfur content of 0.2 percent burned in Emissions Unit E-3 and E-4 will release approximately 0.0314 pounds of SO₂, or 0.226 pounds of SO₂ per mmBTU. Attached hereto as Exhibit “I.”

40. According to data from the U.S. Energy Information Administration, Chalk Point Power Plant has only received shipments of distillate fuel oil with a sulfur content of 0.2 in 2006, 2007 and 2008. Attached hereto as Exhibit “J.” Thus, any SO₂ emissions that exceed 0.226 pounds per mmBTU indicate that Defendants are burning residual fuel oil or a combination of residual and distillate fuel oil without pollution controls for particulate matter.

41. EPA Clean Air Market emissions data shows hourly emissions from Emissions Units E-3 and E4 have exceeded 0.226 pounds per mmBtu hundreds of times since January 4, 2006. A summary of hourly violations is attached as Exhibit “K.”

42. The sole reason that residual oil is being burned is to lower costs and increase the profit margin for Chalk Point to the detriment of Plaintiffs, neighboring residents, the public and the environment

43. The excess emissions caused by the failure of Defendants to comply with its legal obligation to either install pollution controls on Emissions Units E-3 and E-4 or burn distillate fuel oil or natural gas at all times has caused, and will continue to cause, a degradation of air quality.

44. The actions and omissions of Defendant have caused and continue to cause threat to the health of Plaintiffs and or its members and interferes with neighboring property owners’ use and enjoyment of property and the publics use and enjoyment of surrounding recreational areas including the Pautuxent River.

45. Monetary damages are insufficient to compensate for the irreparable harms being done to the Plaintiffs, the public and the environment.

46. Since Defendant's conduct is continuing, the Plaintiffs and the public are breathing contaminated air, exposed to harmful emissions and/or denied the safe use and enjoyment of their property and the surrounding areas, and have suffered and will continue to suffer irreparable injury, time is of the essence.

V. CLAIMS FOR RELIEF

Count 1. Violation of the State Implementation Plan (Emissions Units E-3 and E-4)

47. Paragraphs 1 through 46, above, are incorporated herein by reference as if fully set forth.

48. Since January 4, 2006, Chalk Point has been regularly burning residual fuel oil in Emissions Unit E-4 without pollution controls in violation of the Clean Air Act and Maryland Code 26.11.09.06(B)(1)(a), which specifically provides 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 which is so designed that it can reasonably be expected to produce sufficient dust particle force, residence time, and particle retention to satisfy the requirements of Table 1."

49. EPA Clean Air Markets Emissions data show that hourly emissions from Emissions Unit E-4 exceeded 0.226 pounds per mm BTU 260 times between January 4, 2006 and December 13, 2006; 321 times in 2007, 54 times in 2008, and 108 times in 2009. Exhibit "K." Clean Air Markets emissions data is only available through March of 2009 at the time this Complaint was filed. To the extent that Mirant has burned residual fuel oil in Emissions Unit E-4 from March of 2009 onward during a time period that is not exempt under Md. Code Regs 26.11.09.06(B)(6)(a), these are violations of the SIP.

50. Since May 1, 2007, Chalk Point has been regularly burning residual fuel oil in Emissions Unit E-3 without pollution controls in violation of the Clean Air Act and Maryland Code 26.11.09.06(B)(1)(a), which specifically provides 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 which is so designed that it can reasonably be expected to produce sufficient dust particle force, residence time, and particle retention to satisfy the requirements of Table 1.” These violations of Maryland Code 26.11.09.06(B)(1)(a) constitute violations of the Maryland SIP, which are “emissions standard or limitation” under 42 U.S.C. 7604(f)(4) and are subject to citizen suit under 42 U.S.C. 7604(a).

51. EPA Clean Air Markets Emissions data show that hourly emissions from Emissions Unit E-3 exceeded 0.226 pounds per mm BTU 19 times in December of 2007, 59 times in 2008, and 93 times in 2009. Exhibit “K.” Clean Air Markets emissions data is only available through March of 2009 at the time this Complaint was filed. Since Mirant has burned residual fuel oil in Emissions Unit E-3 from March of 2009 onward during a time period that is not exempt under Md. Code Regs 26.11.09.06(B)(6)(a), these are violations of the SIP.

52. As provided in 42 U.S.C. §7604(a), 40 C.F.R §19.4, and 42 U.S.C. §7413(d)(1), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$32,500 per day for each violation that occurred after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, as amended by 31 U.S.C. §3701.

RELIEF REQUESTED

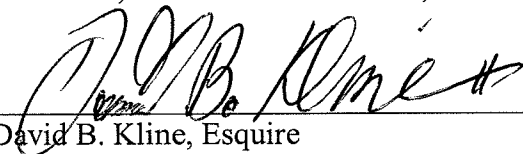
WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that Defendants are in violation of the Clean Air Act;
- (2) Enjoin Defendants from further violations of the Clean Air Act;
- (3) Enjoin Defendants from operating Emissions Units E-3 and E-4 until Defendants take all necessary steps to comply with emission standards including, but not limited to, installing adequate pollution controls on Emissions Units E-3 and E-4 for particulate matter pollution or switching to a cleaner fuel such as natural gas or distillate oil.
- (4) Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to the public health and the environment caused by the violations of the Clean Air Act alleged above;
- (5) Assess significant civil penalties against Defendants for each violation of the Clean Air Act;
- (6) Award Plaintiffs the cost of litigation, including reasonable attorney's fees, costs, and expert witness fees and expenses;
- (7) Retain jurisdiction over this action to ensure compliances with the Court's decree; and
- (8) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

VILLARI, BRANDES & KLINE, P.C.

Dated: 6/25/09

By: 

David B. Kline, Esquire
Bar I. D. No. 29000
8 Tower Bridge, Suite 400
161 Washington Street
Conshohocken, PA 19428
(610) 729-2900

Counsel for Plaintiffs