

U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
2016 JUL -6 PM 0:55

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

MARYLAND DEPARTMENT  
OF THE ENVIRONMENT

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Plaintiff,

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PATUXENT RIVERKEEPER, *et al.*

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Civil Action No. 1:13-cv-01685 MJG

Intervenor Plaintiffs,

\*

v.

\*

GENON CHALK POINT, LLC, *et al.*

FILED ENTERED  
LOADED RECEIVED

Defendants.

AUG 26 2016

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

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**CONSENT DECREE**

Plaintiff, the Maryland Department of the Environment (hereinafter “the Department” or “MDE”), Defendants, GenOn Chalk Point, LLC (“GenOn Chalk Point”)<sup>1</sup> and GenOn Mid-Atlantic, LLC (“GenOn Mid-Atlantic”) (collectively, “GenOn”), and Intervenor Plaintiffs, Patuxent Riverkeeper, Potomac Riverkeeper, Inc., and Food & Water Watch (collectively, “Intervenor Plaintiffs”) hereby represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged violations of federal and Maryland environmental laws

<sup>1</sup> On June 14, 2013, GenOn Chalk Point, LLC changed its name to NRG Chalk Point LLC.

arising from the operations of the Chalk Point and Dickerson electric generating stations. The parties enter into this Consent Decree in full settlement of the above captioned proceeding.

A. FACTUAL BACKGROUND

WHEREAS, GenOn Chalk Point operates the Chalk Point electric generating station, located at 25100 Chalk Point Road, Aquasco, Prince George's County, Maryland 20608. The station, in relevant part, burns coal in two supercritical steam electric generating units rated at 355 megawatts each in order to generate electric energy for commercial sale. Operation of the Chalk Point electric generating station includes the discharge of nitrogen and phosphorus (collectively referred to as "nutrients") to surface waters of the Patuxent River.

WHEREAS, the Patuxent River is a Use II water of the State, protected for water contact recreation, fishing, aquatic life, shellfish harvesting and wildlife.

WHEREAS, GenOn Mid-Atlantic operates the Dickerson electric generating station, located at 21200 Martinsburg Road, Dickerson, Montgomery County, Maryland 20842. The station, in relevant part, burns coal in three sub-critical, steam electric generating units each rated at 182 megawatts to generate electric energy for commercial sale. The Dickerson electric generating station's operations include the discharge of nutrients to the surface waters of the Potomac River.

WHEREAS, GenOn Mid-Atlantic also operates the Morgantown electric generating station, located at 12620 Crain Highway, Newburg, Charles County, Maryland 20664. The station, in relevant part, burns coal in two supercritical steam electric generating units each rated at 624 megawatts to generate electric energy for commercial sale. The Morgantown electric generating station's operations include the discharge of nutrients to the surface waters of the Potomac River, downstream of the Dickerson generating station.

WHEREAS, in the area where the Dickerson electric generating station is located the Potomac River is a Use I-P water of the State, protected for water contact recreation, public water supply, fishing, aquatic life, and wildlife.

WHEREAS, both the Patuxent and Potomac Rivers are tributaries of the Chesapeake Bay. The Chesapeake Bay is listed as impaired for nutrients (i.e., nitrogen and phosphorus) pursuant to section 303(d) of the federal Clean Water Act, and subject to the Chesapeake Bay Total Maximum Daily Load ("TMDL"), which (among other things) addresses these impairments by setting limits for nutrients necessary to meet applicable water quality standards in the Bay and its tidal tributaries.

WHEREAS, in response to passage of the Maryland Healthy Air Act (Title 2, Subtitle 10 of the Environment Article, Annotated Code of Maryland), GenOn was required to install air pollution control devices to remove nitrogen oxide,

sulfur dioxide (“SO<sub>2</sub>”), and mercury from the air emissions of the coal-fired units at the Chalk Point, Dickerson, and Morgantown electric generating stations.

WHEREAS, flue gas desulfurization (“FGD”) scrubber systems were installed at the Chalk Point, Dickerson, and Morgantown electric generating stations. The FGD systems are designed to remove SO<sub>2</sub> from air emissions through a forced oxidation reaction designed to generate gypsum of saleable quality. The gypsum is generated by exposing the flue gas to an alkaline, limestone slurry delivered by the wet scrubber. This system has the added benefit of removing hydrogen chloride, mercury, and other ash particulate matter (which contain various metals) from a unit’s air emissions. These constituents are captured in wastewater.

WHEREAS, wastewater treatment plants associated with the FGD scrubber systems (“WWTPs”) were constructed to treat the FGD wastewater and water from the gypsum collection system at each of GenOn’s electric generating stations.

WHEREAS, the WWTPs utilize both chemical and biological treatment components. Metals and other constituents are first removed through the use of chemical flocculants, and the remaining wastewater undergoes biological treatment. The biological treatment component utilizes Sequencing Batch Reactors (“SBRs”) in which microbes (bacteria in the form of a sludge bed) are suspended and cycled between aerobic and anoxic conditions in order to remove

nutrients, including nitrogen and phosphorus, in the wastewater. The treated wastewater is then filtered to reduce suspended solids before being discharged to surface waters.

WHEREAS, at the time the WWTPs were designed and installed, SBR treatment technology was well established for the treatment of municipal sewage waste streams, but was a new technology for treatment of FGD waste streams. There are four electric generating stations in Maryland which utilize SBR technology to reduce nutrients from FGD waste streams, including the three stations operated by GenOn.

WHEREAS, GenOn asserts that collectively it has invested approximately 1.7 billion dollars to achieve the emissions reductions required by the Healthy Air Act and comply with regulations regarding the FGD waste streams.

WHEREAS, operation of the FGD scrubber system and associated WWTP at each generating station requires a discharge permit issued pursuant to 33 U.S.C. § 1342 and Section 9-323 of the Environment Article, Annotated Code of Maryland, and regulations promulgated thereunder.

#### B. CHALK POINT OPERATIONS

WHEREAS, on July 1, 2009, the Department issued State Discharge Permit 06-DP-0627, NPDES Permit MD0002658 (the "Chalk Point Discharge Permit") to

Mirant Mid-Atlantic, LLC (now GenOn Mid-Atlantic, LLC)<sup>2</sup> for the discharge of pollutants to surface waters of the State associated with the operation of the Chalk Point electric generating station.

WHEREAS, the Chalk Point Discharge Permit was subject to public notice and comment and EPA review, and the effluent limits in the permit were based on information provided by GenOn regarding historic flow and estimated effluent loadings at the generating station.

WHEREAS, Section I. Special Conditions, Paragraph A.5 of the Chalk Point Discharge Permit contains, *inter alia*, an annual maximum effluent limitation for total nitrogen equivalent to 329 pounds per year (“lbs/yr”), as monitored at Monitoring Point 801.

WHEREAS, Section II. General Conditions, Paragraph A.2 of the Chalk Point Discharge Permit requires that GenOn Mid-Atlantic summarize the monitoring results regarding discharges from the generating station obtained during each calendar month on a Discharge Monitoring Report Form (“DMR”) and submit monthly DMRs to the Department. The DMRs must be postmarked no later than the 28<sup>th</sup> day of the month following the reporting month.

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<sup>2</sup> The 2006 permit application and the 2008 application amendment, as well as correspondence related to the permit, were all in the name of the owner of the Chalk Point facility, Mirant Chalk Point, LLC.

WHEREAS, Section II. General Conditions, Paragraph B.3 of the Chalk Point Discharge Permit requires that all treatment, control and monitoring facilities, or systems installed or used by the permittee, are to be maintained in good working order and operated efficiently.

WHEREAS, on or around December 2009, the FGD system (and associated WWTP) at the Chalk Point electric generating station was brought on-line.

WHEREAS, shortly after initiating operation, and at various and repeated times thereafter, the microbes in the WWTP died, causing the nutrient reduction capability of the WWTP at the Chalk Point electric generating station to fail.

WHEREAS, MDE alleges that on January 20, 2010, and each day thereafter during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 7,229 lbs in calendar year 2010.

WHEREAS, MDE alleges that on January 20, 2011, and each day thereafter during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 6,563 lbs in calendar

year 2011.

WHEREAS, MDE alleges that on July 16, 2012, and each day thereafter during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 1,941 lbs in calendar year 2012.

WHEREAS, MDE alleges that on January 21, 2013, and each day thereafter during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 3,167 lbs for calendar year 2013.

WHEREAS, MDE alleges that on January 30, 2014, and each day thereafter during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 3,991lbs for calendar year 2014.

WHEREAS, MDE alleges that on January 25, 2015, and each day thereafter

during that year, the Chalk Point electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Chalk Point, the Chalk Point electric generating station exceeded its cumulative total annual nitrogen limit by 1,574 lbs in calendar year 2015.

### C. DICKERSON OPERATIONS

WHEREAS, on November 1, 2009, the Department issued State Discharge Permit 06-DP-0048A, NPDES Permit MD0002640A (the "Dickerson Discharge Permit") to Mirant Mid-Atlantic, LLC (now GenOn Mid-Atlantic, LLC) for the discharge of pollutants to surface waters of the State associated with the operation of the Dickerson electric generating station.

WHEREAS, the Dickerson Discharge Permit was subject to public notice and comment and EPA review, and the effluent limits in the permit were based on information provided by GenOn Mid-Atlantic regarding historical flow and estimated effluent loadings at the generating station.

WHEREAS, Section I. Special Conditions, Paragraph A.5 of the Dickerson Discharge Permit contains, *inter alia*, the following effluent limitations:

- i. Annual maximum effluent limitation for total nitrogen equivalent to 511 lbs/yr, calculated as the net result of total nitrogen discharged at Monitoring Point 101 plus the total nitrogen discharged at Monitoring Point 801

minus the total nitrogen intake at Monitoring Point 112; and

ii. Annual maximum effluent limitation for total phosphorus equivalent to 73 lbs/yr, calculated as the net result of total phosphorus discharged at Monitoring Point 101 plus the total phosphorus discharged at Monitoring Point 801 minus the total phosphorus intake at Monitoring Point 112.

WHEREAS, Section II. General Conditions, Paragraph A.2 of the Dickerson Discharge Permit requires that GenOn Mid-Atlantic summarize the monitoring results regarding discharges from the generating station obtained during each calendar month on a Discharge Monitoring Report Form ("DMR") and submit monthly DMRs to the Department. The DMRs must be postmarked no later than the 28<sup>th</sup> day of the month following the reporting month.

WHEREAS, Section II. General Conditions, Paragraph B.3 of the Dickerson Discharge Permit requires that all treatment, control and monitoring facilities, or systems installed or used by the permittee, are to be maintained in good working order and operated efficiently.

WHEREAS, in or around December 2009, the FGD system (and associated WWTP) at the Dickerson electric generating station was brought on-line.

WHEREAS, shortly after initiating operation, and at various and repeated times thereafter, the microbes in the WWTP died, causing the nutrient reduction capability of the WWTP at the Dickerson electric generating station to fail.

WHEREAS, MDE alleges that on February 3, 2010, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual nitrogen limit by 2,596 lbs in calendar year 2010.

WHEREAS, MDE alleges that on February 17, 2011, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual nitrogen limit by 4,220 lbs in calendar year 2011.

WHEREAS, MDE alleges that on June 2, 2011, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total phosphorus. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual phosphorus limit by 171 lbs in calendar year 2011.

WHEREAS, MDE alleges that on May 9, 2012, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual

maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual nitrogen limit by 3,052 lbs in calendar year 2012.

WHEREAS, MDE alleges that on February 28, 2013, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual nitrogen limit by 1,379 lbs for calendar year 2013.

WHEREAS, MDE alleges that on April 23, 2014, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station exceeded its cumulative total annual nitrogen limit by 1,754 lbs for calendar year 2014.

WHEREAS, MDE alleges that on March 13, 2015, and each day thereafter during that year, the Dickerson electric generating station exceeded its annual maximum effluent limitation for total nitrogen. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating

station exceeded its cumulative total annual nitrogen limit by 9,143 lbs for calendar year 2015.

WHEREAS, MDE alleges that on December 28, 2015, and each day thereafter during that year, the Dickerson electric generating stations exceeded its annual maximum effluent limitation for total phosphorus. According to discharge monitoring reports submitted by GenOn Mid-Atlantic, the Dickerson electric generating station began exceeding its cumulative total annual phosphorus limit by 2 lbs in calendar year 2015.

#### D. MORGANTOWN OPERATIONS

WHEREAS, on November 1, 2009, the Department issued State Discharge Permit 07-DP-0841, NPDES Permit MD0002674 (the "Morgantown Discharge Permit") to Mirant Mid-Atlantic, LLC (now GenOn Mid-Atlantic, LLC) for the discharge of pollutants to surface waters of the State associated with the operation of the Morgantown electric generating station.

WHEREAS, the Morgantown Discharge Permit was subject to public notice and comment and EPA review, and the effluent limits in the permit were based on information provided by GenOn Mid-Atlantic regarding historical flow and estimated effluent loadings.

WHEREAS, during permitting, GenOn Mid-Atlantic anticipated that the Morgantown electric generating station would have difficulty meeting its historic

nitrogen and phosphorus loading levels, while the Dickerson electric generating station would generate both nitrogen and phosphorus reductions at greater than historic loading levels. To capitalize on these offsets, GenOn Mid-Atlantic requested a "bubble permit" for the Morgantown electric generating station. Under the bubble permit, the nitrogen and phosphorus limits for Morgantown would be calculated by adding the historic baseline discharge levels from Morgantown to adjusted loads from the Dickerson Discharge Permit. The Dickerson loads were reduced since Dickerson is located to the north, and there would be some natural attenuation of the pollutants as they flowed south towards Morgantown. The Department further reduced the Dickerson load by an additional 5% to obtain an environmental benefit. Accordingly, when calculating monthly discharges for the Morgantown electric generating station, GenOn Mid-Atlantic must add the actual Dickerson discharges, multiplied by the attenuation rate and 5% retirement, to the actual Morgantown discharges. For any calendar year, the maximum credit from Dickerson that the permittee may apply when determining compliance with Morgantown's annual maximum loading rate is 609 lbs of total nitrogen per year.

WHEREAS, Section I. Special Conditions, Paragraph A.7 of the Morgantown Discharge Permit contains, *inter alia*, an annual maximum effluent limitation for total nitrogen equivalent to 792 lbs/yr, calculated as the total nitrogen discharged at Monitoring Point 801 minus the total nitrogen intake at Monitoring

Point 112, plus 0.79 times the net annual total nitrogen load reported under the Dickerson Discharge Permit.

WHEREAS, Section II. General Conditions, Paragraph A.2 of the Morgantown Discharge Permit requires that GenOn Mid-Atlantic summarize the monitoring results regarding discharges from the generating station obtained during each calendar month on a Discharge Monitoring Report Form ("DMR") and submit monthly DMRs to the Department. The DMRs must be postmarked no later than the 28<sup>th</sup> day of the month following the reporting month.

WHEREAS, in spite of nutrient exceedances at the Dickerson electric generating station, operations at the Morgantown electric generating station resulted in net reductions of nutrients, which has allowed the facility to remain in compliance with the effluent limits established by the Morgantown Discharge Permit.

#### E. OPERATIONAL IMPROVEMENTS

WHEREAS, the total nitrogen discharges at the Chalk Point and Dickerson electric generating stations have been higher than predicted by GenOn during WWTP planning. In addition, GenOn asserts that the historic industrial discharges of the Dickerson electric generating station contained nitrogen loadings that were not accurately delineated by GenOn during the permitting process.

WHEREAS, GenOn asserts that the WWTP operational difficulties at the

Chalk Point and Dickerson electric generating stations have been impacted by extended dispatch-based shutdown periods as a result of changes in power consumption, the low price of natural gas, and the increased cost of operating the control devices on the coal-fired units.

WHEREAS, GenOn asserts that the Department was notified of the operational difficulties experienced at the Chalk Point and Dickerson WWTPs and the resulting nutrient discharge exceedances, as required by their respective discharge permits.

WHEREAS, on or about June 18, 2010, GenOn Mid-Atlantic requested that the Dickerson Discharge Permit be reopened to 1) allow nutrient offsets generated at the Morgantown Generating Station to be applied at the Dickerson station, 2) revision of the annual nitrogen loading limit, and 3) allow the use of non-point source to point-source offsets in the Potomac watershed. The Department acknowledges that as of this date it has not officially approved or denied the request.

WHEREAS, on August 3, 2010, the Department received from GenOn a request that the Chalk Point Discharge Permit be reopened to 1) obtain credit for capturing and treating an internal source of nitrogen from the condensate polisher regeneration system, 2) revise the annual nitrogen loading limit, and 3) allow the use of non-point source to point-source offsets in the Patuxent River watershed.

The Department acknowledges that as of this date it has not officially approved or denied the request.

WHEREAS, GenOn asserts that the WWTP has been improved and the WWTP reliability has stabilized at the Chalk Point and Dickerson electric generating stations through a series of system upgrades, including but not limited to:

- i. Installing mix tank capabilities for pH adjustment of the clarifier effluent to provide a more stable pH for SBR influent water;
- ii. Installing instrumentation to the clarifier sludge bed level control in order to stabilize water quality of the clarifier influent water;
- iii. Modifying the dilution water source of the polymer feed system by either relocation of line (at Chalk Point) or changes to stabilize polymer addition during all operating situations and minimizing fluctuations in clarifier performance (at Dickerson);
- iv. Utilizing a new strain of microbes in the WWTP which better tolerate the high chloride levels associated with the FGD waste stream;
- v. Providing a continuous feed to the microbes in the WWTP by slowly bleeding water from the FGD's process-water holding tank during periods of facility shut-down;
- vi. Adjusting the nitrification and denitrification SBR cycle

durations;

vii. Relocating and automating the carbon source feed from the influent tank to the SBRs to provide for operating stability;

viii. Installing heaters to maintain the temperature of the SBRs above 80 degrees Fahrenheit during the winter;

ix. Installing refrigeration to maintain the temperature of the SBRs under 95 degrees Fahrenheit during the summer;

x. Aerating the SBR effluent equalization tank; and

xi. Relocating Dissolved Oxygen (DO), Oxidation-Reduction Potential (ORP), and pH measurement instruments from the mixing pump suction line to the SBR vessels.

WHEREAS, GenOn asserts that in 2011 and 2012, upgrades were made to the condensate polisher regeneration systems at the Chalk Point electric generating station to capture and treat discharges from that system which were previously directed to a settling pond and ultimately discharged to the Patuxent River from Outfall 001 via Monitoring Point 102. GenOn asserts that by redirecting the polisher regeneration water through the WWTP, the Chalk Point electric generating station is now capable of capturing and treating 12,000 lbs of nitrogen per year at full operation, which had been discharged historically without nutrient treatment.

WHEREAS, the Department alleges that the discharge of nitrogen associated with the condensate polisher regeneration water from Outfall 001 via Monitoring Point 102 (prior to the upgrades which redirected those discharges through Monitoring Point 801) are discharges of pollutants into waters of the State without or in violation of the Chalk Point Discharge Permit.

WHEREAS, GenOn asserts that the nitrogen discharges associated with the condensate polisher regeneration water from Outfall 001 via Monitoring Point 102 (prior to the upgrades which redirected those discharges through Monitoring Point 801) were properly disclosed to the Department such that they were within the Department's reasonable contemplation during prior permit issuances.

WHEREAS, the Department alleges that during each of the various and repeated periods whereby the WWTPs at the Chalk Point and Dickerson electric generating stations were unable to sustain nutrient reduction capability constitute violations of the Chalk Point and Dickerson discharge permits.

WHEREAS, GenOn asserts that the periods whereby the WWTPs at the Chalk Point and Dickerson electric generating stations were unable to sustain nutrient reduction capability constitute upsets within Section II. General Conditions, Paragraph B.6 of the generating stations' respective discharge permits.

WHEREAS, GenOn asserts that in 2013, GenOn Mid-Atlantic implemented permanent process changes enabling the Dickerson electric generating station to

reuse wastewater from the historic industrial wastewater treatment point (identified as Discharge 101) for certain internal processes, and thereby reducing non-FGD wastewater flows from the station by approximately forty percent.

WHEREAS, on June 11, 2013, the Department filed in the United States District Court for the District of Maryland a complaint, case number 1:13-cv-10685MJG, seeking civil penalty and injunctive relief (“the Complaint”).

WHEREAS, on August 9, 2013, the Potomac Riverkeeper, the Patuxent Riverkeeper, and Food & Water Watch (collectively, “Intervenor Plaintiffs”) filed an uncontested motion to intervene. That motion was granted on August 13, 2013.

WHEREAS, on August 14, 2013, Intervenor Plaintiffs filed a complaint in the above captioned matter pursuant to the citizen suit provision of the Federal Clean Water Act seeking penalties and injunctive relief (“Intervenor Complaint”).

WHEREAS, the Department, GenOn, and Intervenor Plaintiffs (“the Parties”) understand and intend this Consent Decree, upon entry by the Court, to be a full and final settlement and resolution of the following violations, including those alleged in the Complaint and the Intervenor Complaint:

- a. Unauthorized discharge of nitrogen into waters of the State in excess of the Dickerson Discharge Permit’s annual maximum effluent limitation for total nitrogen in 2010 through 2016, in violation of 33 U.S.C. § 1311, §§ 9-322 and 9-323 of the

Environment Article, Annotated Code of Maryland, and Special Condition A.5 of the Dickerson Discharge Permit;

- b. Unauthorized discharge of phosphorus into waters of the State in excess of the Dickerson Discharge Permit's annual maximum effluent limitation for total phosphorus in 2011 and 2016, in violation of 33 U.S.C. § 1311, §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, and Special Condition A.5 of the Dickerson Discharge Permit;
- c. Unauthorized discharge of nitrogen into waters of the State in excess of the Chalk Point Discharge Permit's annual maximum effluent limitation for total nitrogen in 2010 through 2016, in violation of 33 U.S.C. § 1311, §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, and Special Condition A.5 of the Chalk Point Discharge Permit;
- d. Unauthorized discharge of nutrients associated with persistent periods of WWTP malfunction at the Chalk Point Generating Station, in violation of 33 U.S.C. § 1311, §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, and

General Condition B.3 of the Chalk Point Discharge Permit for the period 2010 through 2016;

- e. Unauthorized discharge of nutrients associated with persistent periods of WWTP malfunction at the Dickerson Generating Station, in violation of 33 U.S.C. § 1311, §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, and General Condition B.3 of the Dickerson Discharge Permit for the period 2010 through 2016; and
- f. Unauthorized discharge of nitrogen (associated with the polisher regeneration system) from Outfall 001 via Monitoring Point 102 at the Chalk Point Generating Station, in violation of 33 U.S.C. § 1311, and §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

WHEREAS, the Parties wish to settle the Department's and Intervenor Plaintiffs' claims against GenOn Chalk Point and GenOn Mid-Atlantic for the above referenced allegations (collectively, "Alleged Violations") without the expense and inconvenience of litigation, and agree that such settlement is in the best interests of the Parties and in the public interest.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREEED AS FOLLOWS:**

## **I. JURISDICTION AND VENUE**

1. For purposes of this Consent Decree, the Parties agree that this Court has jurisdiction over the Parties and over the subject matter of this action pursuant to 33 U.S.C. § 1365 (CWA citizen suit provision). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), because it is the judicial district in which GenOn Chalk Point and GenOn Mid-Atlantic are located, do business, and in which the violations alleged in the Complaint and Intervenor Complaint occurred, as well as 33 U.S.C. § 1365(c)(1), because the sources of the alleged CWA violations are located in this judicial district.

2. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over this Consent Decree and consent to venue in this judicial district.

## **II. SCOPE OF THIS CONSENT DECREE**

3. The express purpose of the Parties entering into this Consent Decree is for: a) GenOn Chalk Point to undertake certain improvements to optimize the WWTP at the Chalk Point electric generating station to reduce nutrient discharges to waters of the State; b) GenOn Mid-Atlantic to undertake certain improvements to optimize the WWTP at the Dickerson electric generating station to reduce nutrient discharges to waters of the State; c) GenOn to pay a civil penalty to resolve the past violations collectively alleged in this Consent Decree and the

Complaints; d) GenOn to undertake certain supplemental environmental projects in order to reduce nutrient loadings in the Potomac and/or Patuxent rivers; e) the Department to propose a permit modification to the Dickerson NPDES Permit based on historic flows and operation of an optimized FGD Waste Water Treatment System; f) the Department to propose a permit modification to the Chalk Point NPDES Permit based on historic flows and operation of an optimized FGD Waste Water Treatment System; g) the Department to propose a permit modification to the Morgantown NPDES Permit based on information which was not available at the time of permit issuance; h) to provide for a plan for compliance for the Chalk Point and Dickerson electric generating stations; and i) to resolve all Alleged Violations. The following sections of this Consent Decree constitute the injunctive relief and remedial measures that GenOn shall accomplish, and the permit modifications which the Department shall propose, subject to public participation.

### **III. WWTP ENHANCED INSTRUMENTATION**

4. GenOn shall install and operate ammonia, nitrate, and oxygen uptake measurement instruments in the SBR vessels of the Flue Gas Desulfurization Wastewater Treatment Plant (WWTP) at the Chalk Point and Dickerson electric generating stations by November 1, 2016. Upon prior approval from the

Department, following consultation with Intervenor Plaintiffs, GenOn may substitute comparable monitoring methods.

#### IV. WWTP OPTIMIZATION

5. GenOn shall install and operate membrane ultra-filtration technology at the WWTPs at the Chalk Point and Dickerson electric generating stations by October 1, 2016. The installed system shall consist of a two train, skid mounted ultra-filtration system. Each train shall contain a minimum of 20,000 square feet of membrane area, and the system shall be capable of leaving one train in operation while the second train is off-line.

6. Beginning thirty (30) days after startup of the membrane ultra-filtration technology at each generating station, GenOn shall ensure that the Sludge Retention Time (“SRT”) in the SBRs at the Chalk Point and Dickerson WWTPs is maintained between 5 and 12 days during at least 95% of WWTP operations (calculated monthly). The SRT shall be mathematically calculated using at least one (1) daily grab sample of suspended solids from the operational SBR and monitoring the amount of solids wasted on a daily basis.

7. Beginning thirty (30) days after startup of the membrane ultra-filtration technology at each generating station, GenOn shall ensure that the effluent Total Suspended Solids (“TSS”) from the Chalk Point and Dickerson

WWTPs does not exceed 5 mg/l (calculated as a monthly average based on two 24-hour composite samples per week).

8. Beginning January 1, 2017, GenOn shall ensure that the effluent Total Phosphorus ("TP") from the Chalk Point and Dickerson WWTPs does not exceed 0.3 mg/l (calculated as an annual average based on two 24-hour composite samples per week).

9. GenOn shall submit to the Department copies of material records documenting performance of the activities required by Paragraphs 6 through 8 of this Consent Decree, and the results there from, with the monthly DMR submittal required by the applicable Discharge Permit. GenOn shall provide, upon written request, any additional information reasonably necessary to determine compliance with Paragraphs 6 through 8 within thirty (30) days of that written request. GenOn shall maintain all such documentation at the applicable generating station for at least five (5) years, and produce those records for review upon the Department's request.

**V. PROPOSED DISCHARGE PERMIT REVISIONS**

10. Pursuant to this Consent Decree, the Department will publish tentative determinations to renew the Discharge Permits for the Chalk Point, Dickerson, and Morgantown electric generating stations, and in conjunction therewith, will propose draft permits for review under the public participation

process required for NPDES permits for each facility ("Proposed Permit"). The Department will prepare and make available to GenOn and Intervenor Plaintiffs draft Proposed Permits for each generating station within six (6) months of the Effective Date of this Consent Decree.

11. Among other things, the Proposed Permit for the Chalk Point electric generating station will contain the following limits. The Proposed Permit shall include an annual, facility-wide TN loading limit of 2,557 lbs/yr, to be effective upon implementation of the permit. The Proposed Permit shall also include a concentration-based annual maximum loading rate of 6.0 mg/l times the annual total flow from monitoring point 801, to be effective January 1, 2018 or upon permit issuance, whichever is later, unless that limit is determined to be impracticable based on actual performance of the membrane wastewater treatment system installed and operated pursuant to Paragraphs 5 – 8 of this Consent Decree. Provided the Department concludes that GenOn has operated the equipment properly in all material respects and in accordance with Paragraphs 5 – 8 of this Consent Decree, the limit shall be determined to be impracticable if after 12 consecutive months of operation of the membrane wastewater treatment system the facility cannot achieve a 6.0 mg/l average TN loading concentration for the 12 month period. In such case, the Proposed Permit shall indicate that the concentration-based loading limit may be revised as a major permit revision

subject to public participation. The Department agrees to act on a request to begin a permit modification proceeding within one (1) year of receiving all data required to make an impracticability determination. The Proposed Permit shall further specify that, at the end of each calendar year beginning in 2018, the permittee shall calculate, report, and comply with the concentration-based loading rate limitation or the facility-wide loading limit, whichever is more restrictive. If the permittee seeks to re-open the final Discharge Permit during the permit term, the Department may reevaluate the concentration based total nitrogen limit of that Discharge Permit and may propose a different, including more stringent, limit based on at least 2 years of actual operational data from the membrane wastewater treatment system.

12. Among other things, the Proposed Permit for the Dickerson electric generating station will contain the following limits. The Proposed Permit shall include an annual, facility-wide TN loading limit of 2,383 lbs/yr, to be effective upon implementation of the permit. The Proposed Permit shall also include a concentration-based annual maximum loading rate of 6.0 mg/l times the annual total flow from Monitoring Point 801 to be effective January 1, 2018 or upon permit issuance, whichever is later, unless that limit is determined to be impracticable based on actual performance of the membrane wastewater treatment system installed and operated pursuant to Paragraphs 5 through 8 of this Consent

Decree. Provided the Department concludes that GenOn has operated the equipment properly in all material respects and in accordance with Paragraphs 5 – 8 of this Consent Decree, the limit shall be determined to be impracticable if after 12 consecutive months of operation of the membrane wastewater treatment system the facility cannot achieve a 6.0 mg/l average TN loading concentration for the 12 month period. In such case, the Proposed Permit shall indicate that the concentration-based loading limit may be revised as a major permit revision subject to public participation. The Department agrees to act on a request to begin a permit modification proceeding within one (1) year of receiving all data required to make an impracticability determination. The Proposed Permit shall specify that, at the end of each calendar year, the permittee shall calculate, report, and comply with both the concentration-based loading rate limitation and the facility-wide loading limit. If the permittee seeks to re-open the final Discharge Permit during the permit term, the Department may reevaluate the concentration based total nitrogen limit of that Discharge Permit and may propose a different, including more stringent, limit based on at least 2 years of actual operational data from the membrane wastewater treatment system.

13. The Chalk Point and the Dickerson Proposed Permits shall include and incorporate the WWTP Optimization requirements of Paragraphs 6 through 9 of this Consent Decree.

14. Among other things, the Proposed Permit for the Morgantown electric generating station shall decouple the Morgantown and Dickerson stations by eliminating the permit provision in the Morgantown NPDES Discharge Permit whereby Morgantown must report its annual total nitrogen and total phosphorus discharges by adding to Morgantown's annual discharges the corresponding discharges from Dickerson, multiplied by an attenuation factor and a 5% retirement.<sup>3</sup> Instead, the Proposed Permit will include TN and TP annual maximum loading rates, compliance with which shall be calculated as the sum of Morgantown's monthly loading rates as monitored and calculated at Monitoring Point 801 during January through December of a calendar year.

15. GenOn and Intervenor Plaintiffs agree not to contest inclusion of the effluent limits, WWTP optimization requirements, and permit revision collectively provided for in Paragraphs 10 through 14 of this Consent Decree, in the applicable Discharge Permit, provided however that nothing in this Paragraph shall preclude

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<sup>3</sup> The Morgantown NPDES Discharge Permit currently provides that the total nitrogen and total phosphorus discharges of the Morgantown Generating Station be calculated according to the following equation: (the sum of the monthly loading rates from January through December of the current calendar year at Monitoring Point 801) plus [(0.79) times (the corresponding TN or TP Annual Maximum Loading Rate at the Dickerson Generating Station Monitoring Point 801 reported under a final issued Discharge Permit No. 06-DP-0048)]. For any calendar year, the maximum credit from Dickerson that the permittee may apply when determining compliance with Morgantown's annual maximum loading rate is 609 lbs of total nitrogen per year.

Intervenor Plaintiffs from challenging a proposed revision of the effluent limit for total nitrogen above 6.0 mg/l, as set forth in Paragraphs 11 and 12.

16. The Parties acknowledge and agree that Paragraphs 11 through 14 of this Consent Decree shall not be construed as restricting the Department from proposing any other appropriate limit or requirement in the applicable Discharge Permit. The Parties further acknowledge and agree that the loading and concentration limits to be proposed by the Department pursuant to Paragraphs 11 and 12 of this Consent Decree shall not be binding upon the Department when proposing total nitrogen limits in future Discharge Permits applicable to the Chalk Point or Dickerson electric generating stations.

#### **VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

17. Within seventy five (75) days of execution of this Consent Decree, or within any time extension granted in writing by the Department at its discretion, GenOn shall submit to the Department for review and approval, in consultation with Intervenor Plaintiffs, a series of supplemental environmental projects ("SEPs"). SEPs shall be designed in accordance with the provisions of Paragraph

18. The Department acknowledges that GenOn has submitted proposed concepts for SEPs, which the Department has not yet evaluated.

18. Approvable SEPs shall conform to the following requirements:

- a. The value of all proposed SEPs shall be a total, cumulative cost of no less than one million dollars (\$ 1,000,000.00).
- b. Unless otherwise agreed to, no more than one percent (1%) of the money allocated to any individual SEP shall be spent on administrative costs associated with managing the project.
- c. The SEPs shall be implemented in the Potomac and Patuxent riversheds, and shall be designed to produce significant and lasting reductions in nitrogen loading to the Potomac and Patuxent Rivers. A SEP proposal shall include a quantification of the nitrogen reductions estimated from the project, and the methodology used to make that calculation.
- d. A SEP submittal shall include a detailed description of the project and the work to be performed, and a construction schedule developed in consultation with the recipient containing milestones designed to ensure timely completion of the SEP.
- e. An approvable SEP shall not be a study on environmental impacts of a particular activity, nor shall the SEP be a project GenOn is otherwise legally obligated to perform by any federal, state, or local law or regulation or any other

agreement or order for injunctive relief. In addition, an approvable SEP may not be a project that is already underway for which GenOn funds have already been encumbered.

19. To the extent GenOn is not constructing or otherwise implementing a proposed SEP, GenOn shall require, as a precondition to providing funding, an enforceable guarantee that the recipient will perform the SEP in accordance with the proposal specifications and that performance shall be completed on a timely basis. If the project is not completed in accordance with the construction schedule approved by the Department (with consideration being given for reasonable delay) or if the project is not completed in accordance with the project specifications, GenOn shall either have the project promptly completed to specifications or pay the cost of the project to the Department.

20. If the Department rejects a project proposed pursuant to Paragraph 17 of this Consent Decree, GenOn shall have an opportunity to submit alternative proposals, but shall, in any event, have no more than one hundred and eighty (180) days from the Entry of this Consent Decree for GenOn and the Department to agree on the proposed project(s), provided that, consistent with Paragraph 17, the Department has provided its final written approval or disapproval within sixty (60) days of receipt of GenOn's submittal. If GenOn and the Department cannot agree on an approved proposal within one hundred and eighty (180) days, either party

may invoke the Dispute Resolution procedures in Section XV of this Consent Decree.

21. In the event that GenOn fails to submit an approvable project(s) pursuant to Paragraphs 17 through 19 of this Consent Decree, GenOn shall pay to the Department within thirty (30) days of written demand by the Department any unexpended portion of the one million dollars (\$1,000,000) allocated to the project(s) pursuant to Paragraph 17. Any dispute regarding the value, approval, timeliness, or satisfactory completion of the project(s) shall be subject to the Dispute Resolution procedures in Section XV this Consent Decree. GenOn's obligation to pay any remaining project funds under this Paragraph shall be stayed pending the final resolution of any dispute initiated pursuant to that Section.

22. No later than ninety (90) days following the completion of any SEP approved in accordance with Paragraph 17, GenOn shall submit to the Department a written notice of completion including all documents required by generally accepted accounting principles to substantiate the capital costs expended by GenOn. GenOn shall provide, upon written request by the Department, any additional information reasonably necessary to determine the capital construction costs of the applicable SEP. Such information shall be provided within thirty (30) days of the Department's written request. In the event that GenOn expends less than one million dollars (\$1,000,000) on the approved SEPs, GenOn shall pay to

the Department any unexpended portion of that amount within thirty (30) days of written demand by the Department

23. Any statement, publication, or other material published or distributed by GenOn or on GenOn's behalf referencing the SEP shall include a statement that "this project was required as the result of an enforcement action by the State of Maryland."

#### **VII. RESPONSIBILITY FOR CONSTRUCTION**

24. Notwithstanding the use of consultants or contractors in planning, installing and implementing the projects and operations required by Paragraphs 4 through 8, and 17 of this Consent Decree, GenOn shall be responsible for the satisfactory completion of those projects. "Satisfactory completion" means completion of all work in accordance with all work plans, specifications, construction permits, and State and federal laws and regulations.

25. GenOn shall notify the Department and Intervenor Plaintiffs in accordance with Section XXII of this Consent Decree upon completion of the projects required pursuant to Paragraphs 4, 5, and 17 of this Consent Decree.

#### **VIII. SCHEDULE OF COMPLIANCE**

26. This Consent Decree constitutes a schedule of compliance within the meaning of COMAR 26.08.01.01.A(79), and is intended to address discharges that do not comply with current permit conditions and effluent limits so as to allow the

construction and implementation of the membrane ultra-filtration technology at the Chalk Point and Dickerson electric generating stations, and the issuance of renewal Discharge Permits for the Chalk Point and Dickerson electric generating stations, as imposed by this Consent Decree and designed to optimize nutrient treatment and enable compliance with 33 U.S.C. § 1311, and §§ 9-301 through 9-344 of the Environment Article, Annotated Code of Maryland. The schedule of compliance shall continue from the date of execution of this Consent Decree until the issuance of each renewal Discharge Permit for the Chalk Point and Dickerson electric generating stations, respectively, in accordance with this Consent Decree.

**IX. INTERIM STANDARDS FOR TOTAL NITROGEN**

27. Upon entry of this Consent Decree and continuing until conclusion of the permit modification process as required by Paragraph 11, GenOn Chalk Point shall operate the Chalk Point electric generating station to comply with an interim performance standard for total nitrogen of 658 pounds per year for its annual maximum loading rate.

28. Upon entry of this Consent Decree and continuing until conclusion of the permit modification process as required by Paragraph 12, GenOn Mid-Atlantic shall operate the Dickerson electric generating station to comply with an interim performance standard for total nitrogen of 1,022 pounds per year for its annual maximum loading rate.

**X. STIPULATED PENALTIES**

29. GenOn Chalk Point and/or GenOn Mid-Atlantic shall pay stipulated penalties to the Maryland Department of the Environment "Clean Water Fund" in accordance with the following criteria:

i. If GenOn Chalk Point fails to complete installation at the Chalk Point generating station and begin operation of the WWTP enhanced instrumentation project pursuant to Paragraph 4, GenOn Chalk Point shall pay \$500 per day for each day beyond the required completion date until the requirement is met. If GenOn Mid-Atlantic fails to complete installation at the Dickerson generating station and begin operation of the WWTP enhanced instrumentation project pursuant to Paragraph 4, GenOn Mid-Atlantic shall pay \$500 per day for each day beyond the required completion date until the requirement is met.

ii. If GenOn Chalk Point fails to complete installation and begin operation of the membrane ultra-filtration project at the Chalk Point generating station pursuant to Paragraph 5, GenOn Chalk Point shall pay \$500 per day for each day beyond the required completion date until the requirement is met. If GenOn Mid-Atlantic fails to complete installation and begin operation of the membrane ultra-filtration project at the Dickerson generating station pursuant to Paragraph 5, GenOn Mid-Atlantic shall pay \$500 per day for each day beyond the required completion date until the requirement is met.

iii. If GenOn fails to meet the construction schedule of the approved supplemental environmental project(s) pursuant to Paragraph 17, GenOn shall pay \$500 per day for each day beyond the date required by the approved construction schedule until the requirement is met.

iv. Upon entry of this Consent Decree and continuing until final disposition of any applicable permit modification proceeding pursuant to Paragraphs 10 and 11, GenOn Chalk Point shall accrue a penalty of \$500 per day of violation of the interim annual maximum loading limit for total nitrogen applicable to the Chalk Point generating station pursuant to Paragraph 27, beginning on the first day the annual limit was exceeded, determined to the nearest day, and continuing through the end of that calendar year.

v. Upon entry of this Consent Decree and continuing until final disposition of any applicable permit modification proceeding pursuant to Paragraphs 10 and 12, GenOn Mid-Atlantic shall accrue a penalty of \$500 per day of violation of the interim annual maximum loading limit for total nitrogen applicable to the Dickerson Generating Station pursuant to Paragraph 28, beginning on the first day the annual limit was exceeded, determined to the nearest day, and continuing through the end of that calendar year.

30. All stipulated penalties which accrue pursuant to Paragraph 29(iv) and (v) shall be held in abeyance until final disposition of the applicable permit

modification proceeding pursuant to Paragraphs 11 and 12 of this Consent Decree. Upon issuance of a final permit, the Department shall recalculate the amount of stipulated penalties owed by the applicable facility pursuant to Paragraph 29(iv) or (v) based on any violation of either the interim limit or the final annual total nitrogen limit contained in the corresponding permit, whichever limit is higher, from the date of execution of this Consent Decree through the date of permit issuance. No stipulated penalties in excess of the recalculated amount shall be owed to the Department.

31. GenOn agrees not to contest the amount of a stipulated penalty, but reserves the right to contest whether a violation has occurred unless either GenOn Chalk Point or GenOn Mid-Atlantic has self-reported such violation on its monthly discharge monitoring report and the event is not otherwise within the scope of the force majeure clause of this Consent Decree. Neither demand for, nor payment of, stipulated penalties shall be construed as an election of remedy or other limitation on the Department's discretion to seek any form of injunctive relief available to it under the Environment Article or other applicable law for violations of this Consent Decree. Nothing in this Consent Decree shall be construed to limit the Department's discretion to seek any form of injunctive relief available to it under the Environment Article for violations of this Consent Decree. The absence of stipulated penalties for a violation of this Consent Decree shall not be construed to

limit in any way the Department's discretion to seek civil or administrative penalties, any form of injunctive relief, or any other right, remedy or sanctions available to it for violations of the Consent Decree, or for any other violation of State law not expressly addressed in the Complaint in this action.

32. All stipulated penalties shall begin to accrue on the day after the performance is due or the first day of a calendar year in which the generating station's annual maximum loading limit is exceeded when calculated as of December 31, and shall continue to accrue in that calendar year until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of the Consent Decree.

33. All stipulated penalties due pursuant to this Consent Decree shall be due within thirty (30) days following receipt of written demand by the Department. No stipulated penalty due pursuant to Paragraph 29(iv) or (v) shall be owed, however, until recalculation pursuant to Paragraph 30. The Department's written demand shall describe the noncompliance and shall indicate the amount of penalties due. Any such stipulated penalties shall be paid by check made payable to "Maryland Department of the Environment/Clean Water Fund" and sent to c/o The Maryland Department of the Environment, Fiscal Services Division, Cash

Receipts/Advance Unit, P.O. Box 2057, Baltimore, MD 21203, and shall reference the caption of this Consent Decree.

34. The Department may in its sole discretion reduce or waive a stipulated penalty if it determines that Defendants have demonstrated sufficiently that the facilities are operating properly and that noncompliance is beyond the reasonable control of Defendants.

#### **XI. PENALTY PAYMENT**

35. Within thirty (30) calendar days of entry of this Consent Decree, GenOn shall pay to the Department a civil penalty in the amount of one million dollars (\$ 1,000,000.00).

36. GenOn shall mail to the Maryland Department of the Environment, Fiscal Services Division, Cash Receipts/Advances Unit, P.O. Box 2057, Baltimore, Maryland 21203-2057 a single check for the above-referenced amount, payable to the Maryland Clean Water Fund. The following shall be noted on the check: PCA 13710, Object 7545, SFX 408. A copy of the check shall be mailed to: Michael F. Strande, Assistant Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 6048, Baltimore, Maryland 21230.

37. GenOn shall not deduct any payments made under this Consent Decree pursuant to this Section, Section X (Stipulated Penalties), or Section VI (Supplemental Environmental Project), in calculating federal tax, as they are

penalties within the meaning of § 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal law. In addition, GenOn shall not deduct any payments made under this Consent Decree pursuant to this Section, Section X (Stipulated Penalties), or Section VI (Supplemental Environmental Project), in calculating its State or local income tax.

## **XII. PAYMENT OF ATTORNEY'S FEES**

38. Within thirty (30) calendar days of entry of this Consent Decree, GenOn shall pay to the Intervenor Plaintiffs attorney's fees in the amount of seventy five thousand dollars (\$ 75,000.00).

39. GenOn shall mail a single check payable to Morningside Heights Legal Services for the above-referenced amount, to 435 W. 16<sup>th</sup> Street New York, New York 10027.

## **XIII. RIGHT OF ENTRY**

40. GenOn shall allow authorized representatives of the Department to enter the Chalk Point or Dickerson electric generating stations during business hours for the purpose of collecting samples, information, and/or photographs, and to perform any other activity necessary to ascertain and evaluate whether GenOn and the applicable generating station are in compliance with this Consent Decree and State or federal law. Upon request of the Department, GenOn shall provide the Department with access to any records or information that may be related to the

generating station, this Consent Decree, or GenOn's compliance with State or federal law; unless such records or information are protected from disclosure by the attorney-client privilege, attorney work-product doctrine, or other similar doctrine protecting them from disclosure. Intervenor Plaintiffs may also request in writing that the Department inspect, sample, or monitor at the Chalk Point and/or Dickerson electric generating station to determine compliance with this Consent Decree and Intervenor Plaintiffs may invoke the Dispute Resolution procedures in this Consent Decree if the Department fails to conduct the requested activities within a reasonable amount of time following the request.

#### **XIV. DELAY**

41. If any event occurs which causes or which GenOn expects to cause a delay in the achievement of any requirement imposed in this Consent Decree, GenOn shall notify the Department, in writing, within ten (10) calendar days of obtaining knowledge of the occurrence of such event and of its impact on timely compliance. The notice shall identify the cause of the delay, an estimate of the anticipated length of delay, the measures taken and to be taken to prevent or minimize the delay, and an estimate of the date by which such measures will be completed. GenOn may request in writing an extension of the deadline at least ten (10) working days prior to the deadline. The Department, following consultation with Intervenor Plaintiffs, may, at its sole discretion, grant an extension upon such

request. Notwithstanding any delay, GenOn shall promptly comply with the requirements of this Consent Decree as soon as reasonably possible.

42. GenOn and Intervenor Plaintiffs shall have the right to implement the Dispute Resolution provisions in Section XV of this Consent Decree should either party disagree with the Department's decision regarding a request for deadline extension and/or tolling of stipulated penalties pursuant to Paragraphs 34 and 41.

#### **XV. DISPUTE RESOLUTION**

43. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures in this Section shall be the exclusive mechanism to resolve a dispute arising under or with respect to this Consent Decree ("Covered Dispute"). A Covered Dispute shall be considered to have arisen when one party serves on the other parties a written notice of dispute, in accordance with Section XXII of this Consent Decree. Such notice of dispute shall state clearly the matter in dispute.

44. Any Covered Dispute shall first be the subject of informal dispute resolution. Informal dispute resolution shall proceed from the date the notice of dispute is served, as follows, unless these periods are modified by written agreement. The party invoking dispute resolution procedures shall, within fifteen (15) days of service of written notice of the dispute, serve on other parties a written Statement of Position regarding the Covered Dispute, in accordance with Section

XXII of this Consent Decree. The Statement of Position shall include, but need not be limited to, a concise statement of the Covered Dispute, the party's position, and an explanation of that position.

45. The remaining parties shall serve their Statement of Position within thirty (30) days of receipt of the initial Statement of Position, in accordance with Section XXII of this Consent Decree. The Statement of Position shall include, but need not be limited to, a concise statement of the Covered Dispute, the party's position, and an explanation of that position. In the instance where Intervenor Plaintiffs did not invoke Dispute Resolution, they may notify the Department and GenOn in writing of their intent to not participate in the process rather than submit a Statement of Position.

46. Upon receipt of the Statements of Position, the participating parties may work toward resolving the Covered Dispute. If no resolution is reached within fifteen (15) days, or such longer period as may be agreed to in writing by the parties, the Department shall provide to the participating parties a written Statement of Decision, signed by the Director of the Water Management Administration, and the reasons therefore. In the event the filing of a Statement of Decision is delayed, any applicable schedule(s) shall be deemed extended by the period of days that exceeds the 15 day, or other agreed upon, deadline for filing the Statement of Decision.

47. The Parties thereafter shall comply either with the agreement reached as a result of informal negotiations, including any extension of time to comply with a schedule or deadline as granted by the Department in its discretion, or with the Department's Statement of Decision. Alternatively, any party may seek resolution of the Covered Dispute by filing with the Court and serving on the other parties a motion requesting resolution of the Covered Dispute.

48. The existence of any Covered Dispute, as defined in this Section (Dispute Resolution), and the Department's consideration of matters placed into dispute, shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the Dispute Resolution process. Thus, in the event GenOn does not prevail in a dispute regarding an obligation for which GenOn sought an extension, such obligation must be completed in the remaining amount of time originally specified in the Consent Decree.

49. Subject to the procedures in this Section, nothing herein shall be construed to prohibit the Department or Intervenor Plaintiffs from exercising any other remedy available at law or equity to enforce the terms of this Consent Decree.

**XVI. PERSONS BOUND BY ORDER**

50. This Consent Decree shall be binding upon the Parties and their successors. All work performed by GenOn Chalk Point, GenOn Mid-Atlantic, or their successors and assigns, officers, directors, employees, agents, independent contractors, contractors, subcontractors, and consultants shall be carried out in accordance with the requirements of this Consent Decree, and each Party shall be responsible for the failure of its officers, directors, employees, independent contractors, contractors, subcontractors or consultants to do so.

**XVII. RELEASE**

51. By this Consent Decree, the Department and Intervenor Plaintiffs release, resolve, and settle any civil liability against GenOn Chalk Point and GenOn Mid-Atlantic, and their past or present officers, directors, agents, employees, representatives, predecessors, affiliates, parent or subsidiary companies, successors or assigns, that the Department or the Intervenor Plaintiffs may have under the Clean Water Act, 33 U.S.C §§ 1251 through 1387, and Maryland law or regulations for the alleged violations described in this Consent Decree and in the Complaints filed in Civil Action No. 1:13-cv-01685 MJG through the date of entry of this Consent Decree.

### **XVIII. EFFECT OF SETTLEMENT**

52. Neither the actions undertaken by GenOn Chalk Point and/or GenOn Mid-Atlantic in accordance with this Consent Decree nor the payment of any penalty or attorney's fees shall constitute an admission or adjudication of liability or fact by either GenOn Chalk Point or GenOn Mid-Atlantic with regard to any of the alleged violations.

53. Other than the release in Section XVII of this Consent Decree, nothing in this Consent Decree shall be construed to limit or prevent the Department or Intervenor Plaintiffs from pursuing any remedies, including civil or administrative penalties, injunctive relief, or sanctions, available to them for any violation of applicable federal or State law, regulations, permits, or orders that are not expressly addressed in this Consent Decree, nor shall anything set forth in this Consent Decree be deemed to be a waiver of GenOn's right to contest such actions.

54. Nothing in this Consent Decree shall be construed to prevent the Department from seeking injunctive relief, ordering additional corrective action, or taking any other action it deems necessary to prevent or abate any threat to public health, welfare or the environment to the extent otherwise authorized by State law.

55. Except as expressly set forth in this Consent Decree, nothing herein shall be construed to alter GenOn's obligation to comply with all applicable federal, State, or local statutes, regulations, permits, and orders.

### **XIX. FORCE MAJEURE**

56. GenOn shall comply with the requirements of this Consent Decree unless performance is prevented by events which constitute a Force Majeure, including an Act of God, fire, flood, strike, riot, catastrophe, or other cause beyond the control of Defendants (hereinafter, "Force Majeure Event"). Force Majeure Events do not include (1) difficulties caused by reasonably foreseeable weather conditions which could have been overcome by reasonable efforts; (2) increased cost of performance; (3) natural market fluctuations; or (4) changed economic circumstances.

57. The burden of establishing a Force Majeure Event shall rest with GenOn. GenOn's burden shall be by a preponderance of the evidence and the Department's determination, made in consultation with Intervenor Plaintiffs, shall not be unreasonable, arbitrary or capricious. If GenOn establishes to the Department's satisfaction that they have been delayed in the implementation of any obligation under this Agreement by a Force Majeure Event, then the Department shall extend the time for performance of the Approved Plan for an appropriate period of time as determined by the Department. Any extension granted by the Department shall not be unreasonable, arbitrary or capricious.

58. GenOn and Intervenor Plaintiffs shall have the right to implement the Dispute Resolution provisions in Section XV of this Consent Decree should either

party disagree with the Department's decision regarding a request for deadline extension and/or tolling of stipulated penalties due to a Force Majeure Event.

## **XX. SUBSEQUENT MODIFICATION**

59. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Consent Decree may not be modified except by written agreement of the Parties and shall not be effective until approval and entry by the Court. A Party shall not petition the Court for modification of the Consent Decree without having first made a good faith effort to reach agreement with the other parties on such modification.

## **XXI. TRANSFER OF OWNERSHIP**

60. No transfer of ownership or operation of the Chalk Point and/or Dickerson electric generating stations shall relieve GenOn Chalk Point or GenOn Mid-Atlantic of their obligations to ensure that the terms of this Consent Decree are implemented unless (a) the transferee agrees to undertake any unperformed obligations required under this Consent Decree and to be substituted for GenOn Chalk Point and/or GenOn Mid-Atlantic as a party under the Consent Decree and thus be bound by the terms thereof, (b) the Department consents to relieve GenOn Chalk Point and/or GenOn Mid-Atlantic of its obligations, which consent shall not be unreasonably withheld, and (c) the transferee becomes a party to this Consent

Decree pursuant to the provisions for Subsequent Modification. At least thirty (30) days prior to any such transfer, GenOn Chalk Point and/or GenOn Mid-Atlantic shall provide a copy of this Consent Decree to the proposed transferee and simultaneously provide written notice of the prospective transfer, together with a copy of the provisions of the proposed written agreement pertaining to the successor entity's assumption of responsibilities under this Consent Decree, to the Department and Intervenor Plaintiffs in accordance with Section XXII of this Consent Decree. Any attempt by GenOn Chalk Point, LLC or GenOn Mid-Atlantic, LLC to transfer ownership or operation of either the Chalk Point or Dickerson electric generating stations without complying with this Paragraph constitutes a violation of this Consent Decree.

## **XXII. NOTIFICATION**

61. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required by this Consent Decree shall be in writing and shall be sent to the following:

For MDE:

Chief, Enforcement Division  
Compliance Program  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

and

Michael F. Strande  
Assistant Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard  
Suite 6048  
Baltimore, Maryland 21230

For Intervenor Plaintiffs:

Edward Lloyd  
Columbia University School of Law  
Environmental Law Clinic  
435 W. 116th Street  
New York, New York 10027

For GenOn Mid-Atlantic:

GenOn Mid-Atlantic, LLC  
Attention: General Counsel  
8301 Professional Place, Suite 230  
Landover, MD 20785

and

GenOn Mid-Atlantic, LLC  
Attention : General Counsel  
804 Carnegie Center  
Princeton, New Jersey 08540

For GenOn Chalk Point :

GenOn Chalk Point, LLC  
Attention : General Counsel  
8301 Professional Place, Suite 230  
Landover, MD 20785

and

GenOn Chalk Point, LLC  
Attention : General Counsel  
804 Carnegie Center  
Princeton, New Jersey 08540

If the point of contact changes for any party, that party shall provide notification of the new point of contact.

**XXIII. NON-SEVERABILITY**

62. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial or administrative authority to be invalid, the entire Consent Decree is void.

**XXIV. CONTINUING JURISDICTION**

63. This Court shall have jurisdiction to enforce the terms and conditions of this Consent Decree, to modify the Consent Decree upon petition of any party, and to resolve disputes arising under this Consent Decree.

**XXV. GENERAL PROVISIONS**

64. The terms of this Consent Decree are binding on the Parties and shall be enforceable in the federal courts. In the event that a party fails to perform the actions required herein in the time periods stated herein, any party may institute an action to enforce this Consent Decree against the appropriate party(ies). In such or

any other action, this Consent Decree shall be governed by and interpreted under the laws of the State of Maryland.

65. The terms of this Consent Decree are contractual and not mere recitals.

66. This Consent Decree constitutes the entire agreement between the Parties settling the violations alleged in this Consent Decree and the Complaints. No other prior or contemporaneous written or oral agreement, action, or statement regarding the matters described herein shall be valid or have any bearing on the interpretation, application, or enforcement of this Consent Decree.

67. This Consent Decree has been freely negotiated by the Parties, and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department, Intervenor Plaintiffs, GenOn Chalk Point, or GenOn Mid-Atlantic.

68. This Consent Decree shall not be construed to create any rights in persons other than the Department, Intervenor Plaintiffs, GenOn Chalk Point, and GenOn Mid-Atlantic.

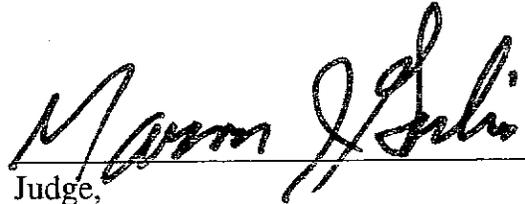
69. This Agreement is effective upon entry by the Court.

#### **XXVI. TERMINATION**

70. This Consent Decree shall remain in force and effect until all obligations and terms referred to herein have been completed or satisfied, at which

time it shall be terminated. Upon termination, the Parties shall file the appropriate notice with the Court, so that the Clerk may close the file.

IT IS SO DECREED this 26th day of August, 2016:



Judge,  
U.S. District Court for the District of  
Maryland

IT IS SO AGREED AND CONSENTED TO:

Signature Page for Consent Decree in:

*Maryland Department of the Environment, et. al v. GenOn Chalk Point, LLC, et. al*, Civil Action No. 1:13-cv-01685 MJG

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

7/5/16  
Date

Lynn Buhl  
Lynn Buhl, Director  
Water Management Administration

7/5/16  
Date

Michael F. Strande  
Michael F. Strande  
Assistant Attorney General

Signature Page for Consent Decree in:

*Maryland Department of the Environment, et. al v. GenOn Chalk Point, LLC, et. al*, Civil Action No. 1:13-cv-01685 MJG

FOR INTERVENOR PLAINTIFFS

7.6.2016  
Date

  
\_\_\_\_\_  
Susan J. Kraham  
Counsel for Intervenors

Signature Page for Consent Decree in:

*Maryland Department of the Environment, et. al v. GenOn Chalk Point, LLC, et. al*, Civil Action No. 1:13-cv-01685 MJG

FOR NRG CHALK POINT LLC

7/16/16  
Date

  
Judith E. Lagano, President,  
NRG Chalk Point LLC

FOR GENON MID-ATLANTIC, LLC

7/16/16  
Date

  
Judith E. Lagano, Vice President,  
GenOn Mid-Atlantic, LLC

U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

Aug 26 - 6 PM 3:35

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

*Handwritten initials*

MARYLAND DEPARTMENT  
OF THE ENVIRONMENT, *et al.*

\*

Plaintiffs,

\*

Civil Action No. 1:13-cv-01685 MJG

\*

v.

\*

GENON CHALK POINT, LLC, *et al.*

\*

Defendants.

\*

\* \* \* \* \*

**NOTICE OF SERVICE OF PROPOSED CONSENT DECREE  
UPON U.S. EPA AND U.S. DEPARTMENT OF JUSTICE**

In accordance with 40 C.F.R. §135.5(b), notice is hereby given that a copy of the proposed Consent Decree in the above-captioned case was mailed via First Class Mail, return receipt requested, to the following individuals on July 6, 2016:

The Honorable Gina McCarthy,  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building (11014)  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460

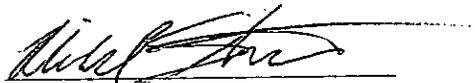
Shawn Garvin, Regional Administrator  
U.S. Environmental Protection Agency,  
Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Honorable Loretta E. Lynch  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington D.C. 20530

40 C.F.R. § 135.5(b) provides that the Consent Decree shall not be entered prior to 45 days of service upon the Administrator and the Attorney General of a copy of the Consent Decree.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland



Michael F. Strande  
(Bar # 30039)  
Assistant Attorneys General  
Maryland Department of the Environment  
1800 Washington Boulevard, Ste. 6048  
Baltimore, Maryland 21230  
(410) 537-3421

*Counsel for Maryland Department  
of the Environment*