State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

July 21, 2006

Stephen L. Johnson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Johnson:

Enclosed is a petition by the New Jersey Department of Environmental Protection requesting that you object to issuance of the Title V operating permit for the Portland Steam Generating Plant (Permit No. 48-00006), a major air pollution source located on the New Jersey border in Northampton County, Pennsylvania. This petition is made pursuant to Clean Air Act § 505(b)(2). Consequently, you must grant or deny this petition within sixty days after it is filed.

Sincerely,

William O'Sullivan, P.E.
Director
Division of Air Quality
NJ Dept. of Environmental Protection

Enclosure

cc (with enclosure):

Alan J. Steinberg, Region 2 Administrator, U. S. Environmental Protection Agency
Lisa P. Jackson, Commissioner, New Jersey Department of Environmental Protection
Kathleen McGinty, Commissioner, Pennsylvania Dept. of Environmental Protection
James V. Locher, Reliant Energy Mid-Atlantic Power Holdings, LLC

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of the Proposed Title V Operating Permit For:

Portland Generating Station to operate electric generating utility units located at Upper Mount Bethel Township, Northampton County, Pennsylvania

Facility No. 52-2154847-6
Permit No. 48-00006

Issued by the Pennsylvania Department of Environmental Protection

INTRODUCTION

Pursuant to Clean Air Act § 505(b)(2) and 40 CFR § 70.8(d), the New Jersey Department of Environmental Protection ("NJDEP") hereby petitions the Administrator of the United States Environmental Protection Agency ("EPA") to object to the proposed Title V operating permit for the Portland Generating Station ("the Portland plant") located in Upper Mount Bethel Township, Northampton County, Pennsylvania.

The Pennsylvania Department of Environmental Protection ("PADEP") released a draft and proposed permit for public comment on the same date, June 8, 2005. EPA submitted comments (not objections) on the proposed permit to PADEP on June 24, 2005.[1] EPA, PADEP and Reliant Energy Mid-Atlantic Power Holdings LLC ("Reliant," which is the current holder of the permit for the Portland plant) had various discussions and meetings regarding the permit through the end of May 2006. NJDEP has been informed that PADEP sent the "unofficial" final permit to EPA on or about May 24, 2006. EPA's 45-day review period thus was extended to May 24, 2006. This petition is filed within sixty days following the end of EPA's review period (ending on or about May 24, 2006) as required by Clean Air Act §

[1] NJDEP is concerned with the public participation process in this matter as a result of Pennsylvania's concurrent review process. PADEP released identical draft/proposed permits to the public and EPA in June 2005 (the exact date on which PADEP sent the draft/proposed permit to EPA is not known). Although NJDEP submitted timely comments on the permit, because of this concurrent review process it did not do so until after EPA had already submitted its comments to PADEP. It does not appear that PADEP forwarded NJDEP's comments to EPA until December 2, 2005. The concurrent review process thus resulted in violations of the Title V public participation requirements, as EPA could not have reviewed NJDEP's comments until well after PADEP issued the proposed permit.

505(b)(2). The Administrator must grant or deny the petition within sixty days after it is filed. Id. In compliance with Clean Air Act § 505(b)(2), this petition is based on objections to the proposed Title V permit that were raised during the public comment period. See **Exhibit 1** (NJDEP comments submitted July 8, 2005).

If the Administrator determines that this permit does not comply with applicable requirements or the requirements of 40 CFR Part 70, he must object to issuance of the permit. See 40 CFR § 70.8(c)(1); New York PIRG v. Whitman, 321 F.3d 316, 334 (2d Cir. 2003) (EPA "does not have discretion whether to object to draft permits once noncompliance has been demonstrated.").

The Title V comments submitted by NJDEP to PADEP on July 8, 2005 demonstrate that the permit is not in compliance with the Clean Air Act and related regulations. These examples of non-compliance are discussed further below. Based on this non-compliance, EPA must object to the permit.

NEW JERSEY IMPACTS

NJDEP has a compelling interest in abating pollution from the Portland plant because excess emissions from the plant contribute to damages to public health and the environment in New Jersey. The NOx emissions from the plant contribute to the formation and transport of ozone pollution. It is well documented that th release of ozone-creating pollutants in Pennsylvania contributes to the formation of ozone in New Jersey. See, e.g., *Finding a Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, 63 Fed. Reg. 57356, 57389-57399 (Oct. 27, 1998). Emissions of NOx and SO2 also lead to the creation of fine nitrate and sulfate particles which, like ozone, are formed in the atmosphere and are transported by prevailing winds to downwind states, principally New Jersey. These sulfates and nitrates as well as direct fine particulate emissions contribute to elevated fine particulate concentrations in New Jersey. Inhalation of fine particulate matter ("PM") causes respiratory distress, cardiovascular disease and premature mortality. See *National Ambient Air Quality Standards for Particulate Matter*, 62 Fed. Reg. 38652-01, 38655 (July 18, 1997).

The formation of sulfate and nitrate particles also is of special concern because of their impact on New Jersey's fine particulate nonattainment areas. See 40 CFR § 81.311. In addition, emissions from the Portland plant result in high ambient sulfur dioxide concentrations in New Jersey. See SO2 NAAQS Compliance Modeling for GPU's Portland Generating Station, May 1999, **Exhibit 2.** NJDEP also is concerned about visibility impacts from Portland plant emissions.

SUMMARY OF OBJECTIONS

NJDEP requests that the Administrator object to the Title V permit because the permit does not comply with the Clean Air Act and applicable requirements. In particular:

A) The permit does not assure compliance with applicable emission limitations and with the Prevention of Significant Deterioration ("PSD") and/or New Source Performance Standards ("NSPS") rules; therefore, schedules of compliance must be added to the permit.

B) The permit does not assure that emissions from the Portland plant will not result in exceedances of the National Ambient Air Quality Standards ("NAAQS") for nitrogen oxides ("NOx") and particulate matter ("PM"). Therefore, the permit must contain operational limits in the form of heat input limits.

OBJECTIONS

A. THE PROPOSED PERMIT LACKS A COMPLIANCE SCHEDULE DESIGNED TO BRING THE PORTLAND PLANT INTO COMPLIANCE WITH CLEAN AIR ACT REQUIREMENTS

The plant description accompanying the Portland plant fails to note that NJDEP has issued a Notice of Violation ("NOV") to the current and prior plant operators for ongoing Clean Air Act violations. The NOV, issued November 16, 2005, asserts that the Portland plant was modified in violation of the federal Clean Air Act Prevention of Significant Deterioration ("PSD") Program (the NOV is attached as **Exhibit 3**). The plant owners accordingly were required to apply for and obtain a PSD permit prior to plant modification and were required to control plant emissions with the Best Available Control Technology ("BACT"). Continued operation of the plant without a PSD permit and without BACT is a continuing violation of the Clean Air Act. NJDEP also contends that modifications undertaken at the plant likely resulted in an increase in the hourly emission rate at both Units 1-2, which would trigger NSPS requirements.

Data relating to the Portland plant indicates that Units 1-2 (both coal-fired units) increased their heat input capacity due to physical changes that resulted in a significant increase in emissions of sulfur dioxide ("SO2"), NOx and PM. By way of example, the following heat inputs were listed for Units 1-2 at various points in time:

1973
Unit 1: rated capacity = 1,480 mmBtu/hr
Unit 2: rated capacity = 2,185 mmbtu/hr

1991
Unit 1: actual heat input (24-hour period) = 1,657 mmBtu/hr
Unit 2: actual heat input (24-hour period) = 2,511 mmBtu/hr

2001 Title V permit, and 2006 "unofficial" Title V permit
Unit 1: rated capacity = 1,657.2 mmBtu/hr
Unit 2: rated capactiy = 2,511.6 mmBtu/hr

The above indicates that between 1973 and 1991, the heat input capacity for Unit 1 increased by approximately 11%, and the heat input capacity for Unit 2 increased by approximately 13%. An increase in the heat input greater than 10% indicates that the physical capability of the units increased, thereby increasing the hourly emission rate as well as overall annual emissions of SO2, NOx and PM. This is at least partly confirmed by Acid Rain data, which indicates that SO2 emissions for Unit 1 increased from 6,436 tons in 1985 to 11,088 tons in 1995--a 70% increase.

Information submitted to EPA pursuant to EPA's Section 114 request (42 U.S.C. § 7414) with respect to the Portland plant confirms that various capital projects were undertaken at the plant during the 1980s and early 1990s. See **Exhibit 3**. NJDEP contends that these physical changes increased the heat capacity of Units 1-2 and resulted in a significant increase in emissions of SO2, NOx and PM. Accordingly, BACT must be met at Units 1-2 and all of the Portland facility's emission increases should be considered increment-consuming.

Under 40 C.F.R. § 70.1(b) and Clean Air Act § 504(a), each facility that is subject to Title V permitting requirements must obtain a permit that "assures compliance by the source with all applicable requirements." Applicable requirements include, among others, NSPS requirements and the requirement to obtain a preconstruction permit that complies with applicable preconstruction review requirements under the Clean Air Act, U.S. EPA regulations, and state implementation plans ("SIPs"). See, 40 C.F.R. § 70.2. If a facility is in violation of an applicable requirement at the time that it receives an operating permit, the facility's permit must include a compliance schedule. See, 40 C.F.R. § 70.5(c)(8)(iii)(C). The compliance schedule must contain "an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance." See, 40 C.F.R. § 70.5(c)(8)(iii)(C). Thus, if a power plant is in violation of PSD, NSPS, or SIP requirements, the plant's operating permit must include an enforceable compliance schedule designed to bring the plant into compliance with those requirements. The plant is then bound to comply with that schedule or risk becoming the target of an enforcement action for violating the terms of its permit.

In response to NJDEP's objections to the proposed permit based on increases in the heat input for Units 1-2, PADEP informally advised NJDEP that if a source is subject to NSPS requirements, this is addressed through the New Source Review ("NSR") permitting division of PADEP's Bureau of Air Quality, not through the Title V process. NJDEP believes this is

inappropriate, and that the violations asserted in its NOV should be addressed in the Title V permit.

The relevant statutory language in the permit-objection process provides: "The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661d(b)(2) (emphasis added). Here, non-compliance for purposes of the Title V permit review process is demonstrated by the NOV issued by NJDEP, which delineates NJDEP's determination that the Portland plant is operating in violation of PSD and/or NSPS and SIP requirements. Although NJDEP is not the administering agency for the Portland plant, it is the administering agency for several coal-fired power plants in New Jersey, and it has expertise in evaluating electric utilities' compliance with the Clean Air Act, including the Act's PSD and NSPS provisions, and with Title V program requirements. Before issuing the NOV, NJDEP undertook a thorough investigation of the Portland plant and reviewed numerous documents provided to EPA as part of EPA's investigation of the plant for potential Clean Air Act violations. Based on its access to this data, NJDEP was able to compile information regarding various physical modifications undertaken at the plant over the years, and to determine whether any associated emissions increases of criteria pollutants occurred. NJDEP thus is not making mere allegations whose truth is ascertained over the course of litigation; rather, it evaluated a significant amount of data and made findings of violations before issuing the NOV. Under these circumstances, NJDEP's assertions of Clean Air Act violations support its contention that PADEP must include a compliance schedule in the Portland plant permit.

The EPA Administrator has already objected to at least one proposed Title V permit due to the fact that the permit lacked a compliance schedule where EPA anticipated amending its complaint to include violations cited in a subsequently-issued NOV. According to EPA's objection to the permit proposed for Gallatin Steel Company in Warsaw, Kentucky:

> The EPA filed a civil judicial complaint against the Gallatin Steel Company in February 1999 for prior Clean Air Act violations and anticipates amending that complaint to include violations cited in a January 27, 2000 Notice of Violation (NOV). Therefore, the permit must include a schedule of compliance in accordance with 40 C.F.R. 70.6(c)(3). In addition, EPA and Gallatin have been engaged in settlement negotiations. If the permit is issued prior to completion of these negotiations, any compliance schedule included may have to be revised.

August 7, 2000, Notification to Kentucky Department of Environmental Protection of EPA objection to Title V Permit Issued to Gallatin Steel Company pursuant to 40 C.F.R. § 70.8(c), *available at* http://www.epa.gov/region4/air/permits/gallatin-obj.htm. See also New York

PIRG v. Johnson, 427 F.3d 172, 182 (2d Cir. 2005) (noting that in the Kentucky action, before the parties reached a settlement agreement EPA took "precisely" the position as NYPIRG now takes, i.e., that a compliance schedule is required in the Title V permit).

As EPA stated in its objection to the Gallatin Steel permit, a facility that is operating in violation of an applicable requirement must be made subject to a compliance schedule even if a related enforcement action remains unresolved as of the date of permit issuance. No such schedule is included in the "unofficial" final permit for the Portland plant, despite NJDEP's determination that the plant is currently operating in violation of PSD and/or NSPS and SIP requirements. Since the lack of a compliance schedule under these circumstances is a violation of 40 C.F.R. Part 70, the EPA Administrator must object to this proposed permit.

II. THE PROPOSED PERMIT LACKS ANY LIMITS ON MAXIMUM ALLOWABLE HEAT INPUT CAPACITIES FOR UNITS 1-2

NJDEP also contends that the Portland Title V permit should set forth maximum heat input limits at which Units 1-2 can operate. In other words, the permit must contain operational limits in the form of heat input limits as independent conditions, along with associated monitoring, recordkeeping, and reporting requirements to verify compliance. Such operational restrictions are necessary to ensure that emissions from the Portland plant do not lead to exceedances of the NAAQS for NOx and PM and to assume compliance with the Pennsylvania SIP. In addition, heat input limits are necessary to determine if NSPS requirements are triggered.

Both the Title V application for the original Title V permit and the Title V renewal application for the Portland plant state that Unit 1's heat input = 1,657.2 mmBtu/hr and Unit 2's heat input = 2,511.6 mmBtu/hr. As noted above, these heat input capacities are more than 10% higher than the maximum heat input capacities for Units 1-2 in 1973. Under Pennsylvania regulations, various emission limits are based on heat input values, and thus a higher heat input capacity will result in higher pounds per hour and tons per year emission rates. In Section G (Emission Restriction Summary) of the "unofficial" final permit for the Portland plant, the following limits (based on heat input) are listed for Units 1 and 2:

> Particulate matter: 25 Pa. Code §123.11 (PM emission rate no greater than 0.1 pound per million Btu of heat input).
>
> Sulfur dioxide: 25 Pa. Code § 123.22(a) (daily average SO2 emission rate not to exceed more than 2 days in any running 30-day period 4.0 pounds SO2 per 1 million Btu heat input). In addition, the permit provides that SO2 emissions shall not exceed 3.700 pounds per million Btu

on a 30-day running average. See Section G of unofficial final permit, **Exhibit 4**.

Nitrogen Oxides: Permit provides that NOx emissions not to exceed 0.370 pounds per million Btu and 0.580 pounds per million Btu on a 30-day running average for Units 1 and 2, respectively. See section G of unofficial final permit, **Exhibit 4**. In addition, NOx emissions from Unit 2 are not to exceed 379.400 tons/month based on 0.45 pounds per million Btu. Id.

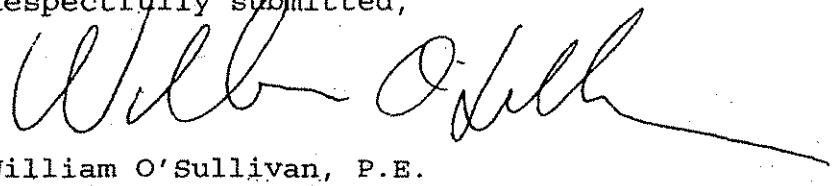
Thus, if Units 1-2 operate above their listed maximum heat input capacities, both units will violate their permitted emission rates in terms of pounds per hour and/or tons per year. Specifically, the absence of heat input limits will enable Units 1 and 2 to increase pounds per hour emissions of SO2, NOx, and total suspended particles ("TSP"), consisting of PM-10 and PM 2.5. Although Units 1-2 are required to monitor emissions of SO2, NOx and TSP, the units nonetheless may increase their hourly emissions for NOx and SO2 without violating the emission restrictions set forth in the unofficial final permit since those limits are 30-day or monthly limits (i.e., not hourly limits). Increasing the heat input--which increases hourly emissions--also may not result in a violation of the 3-hour limit for SO2 emissions for Units 1-2, so long as overall S02 tons remain below the state permit limits. Finally, the emission rate for PM is not tied to any time limit, so increasing the heat input--which will always result in an increase in PM emissions--is not addressed by the permit PM limits. Indeed, the listed TSP limit is merely a blanket restriction on emissions that does not qualify as a federally enforceable limit without a restriction on heat input. Stack testing for particulates must be at the highest allowed heat input to demonstrate compliance. This is another reason why the permit must contain operational limits as independent conditions.

For these reasons, the Title V permit should impose heat input limits as operational limits on Units 1-2. In line with the imposition of such limits, PADEP should delete from the Title V permit language suggested by Reliant, namely, that "Heat input capacities listed in Section A (Site Inventory) and Section D (Source Level Requirements) are for informational purposes only and are not enforceable limits." See **Exhibit 4**, Section H (Miscellaneous) of Unofficial Final Permit.

CONCLUSION

In sum, the permit is not in compliance with the Clean Air Act and applicable regulations, including 40 CFR Part 70. Therefore, the Administrator must object to the Title V permit for the Portland Generating Station.

Dated: July 21, 2006
Respectfully submitted,



William O'Sullivan, P.E.
Director
Division of Air Quality
New Jersey Department of Environmental Protection
401 East State Street, Floor 2
Trenton, New Jersey 08625
(609) 984-1484

Exhibit 1

State of New Jersey

Richard J. Codey
Acting Governor

Department of Environmental Protection
Division of Air Quality
P.O. Box 027
Trenton, NJ 08625-0027
(609)984-1484

Bradley M. Campbell
Commissioner

Mr. Norman Fredrick
Facilities Section, Chief
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18711-0790

July 8, 2005

RE: **Comments on the Proposed Title V/State Operating Permit Renewal for Reliant's Portland Generating Station** ***(Permit No. 48-00006)***

Dear Mr. Fredrick:

The New Jersey Department of Environmental Protection (NJDEP) would like to take this opportunity to comment on the proposed Title V/State Operating Permit Renewal for Reliant's Portland Generating Station.

Our comments have identified a number of important concerns regarding past and current modifications to Units 1, 2, and 5 and their permits. We ask PADEP to thoroughly investigate and address the identified issues before granting a Title V/State Operating Permit renewal to this facility

Sincerely,

William O'Sullivan, P.E.
Director

encl
c: Assistant Commissioner Wolfe
Director Edward Choromanski
DAG Kevin Auerbacher
DAG Lisa Morelli
Alan Dresser

NJDEP's Comments on the June 2005 Proposed Title V/State Operating Permit (Permit No. 48-00006)

The attached comments are based on NJDEP's review of Reliant's July 29, 2005 Portland Power Plant's Title V permit renewal application and the proposed Title V/State Operating Permit. Public notice on the proposed Title V/State Operating Permit was published June 8-10, 2005 in the Express-Times Newspaper.

Section D, Source ID 031 (page 22)

1. A maximum coal throughput value of 66.3 tons/hour and a maximum oil throughput value of 3,136 gal/hour were listed in the current Title V/State Operating Permit and in the July 2004 Title V permit renewal application. Why are these operational restrictions being eliminated from the proposed permit? Per 25 PA Code Chapter 127.450(a)(5) and 127.512, limits on operating parameters related to emissions should be part of the Title V/State operating permit.

2. Review of the operational and permitting history of Source 031 (Unit 1) indicate it may be subject to federal NSPS regulations and Pennsylvania NSR and their related emission restrictions and monitoring/reporting requirements. The current and proposed Title V/State Operating Permit lists the source capacity of Unit 1 as 1657.2 million BTU's per hour (MMBtu/hr). Earlier permit applications and submittals to PADEP confirm that the unit originally had lower rates for fuel input and rated heat capacity. For example,
September 28, 1973 – Permit application to modify Units 1 and 2 for modification of combustion controls and existing ESP, Unit 1 rated capacity is listed as 1480 MMBtu/hr.
September 12, 1986 – Plan approval application for replacement of ESP on Unit 1.
Unit 1 peak heat input is listed as 1,464 MMBtu/hr, coal firing rate listed as 55 TPH.
October 1993 – Plan approval applications to install low NOx burners on Unit 1, add NOx RACT emission limits, and reduce heat input of Units 1 and 2. Unit 1 peak heat input is listed as 1,464 MMBtu/hr, coal firing rate listed as 55 TPH.
March 1994 – Plan approval was issued to Unit 1 for low NOx burners based on the October 1993 application.
February 8, 2001 – Portland Power Plants initial Title V/State operating permit becomes effective, Unit 1's rated heat input is raised to 1657.2 MMBtu/hour. This represents a 13.2 percent increase over the peak heat input listed in the 1993 plan approval application. Later, a coal thruput of 66.3 TPH was added to Title V/State operating permit.

a. The increase in the unit's allowable rated heat input in 2001 resulted in an increase in the allowable hourly emission rates of sulfur dioxide, nitrogen oxides, and TSP. The proposed Title V/State operating permit maintains the higher rated heat input. Did such an increase make the unit subject to regulations in 25 PA Code Chapter 127, Subchapter B (Plan Approval Requirements), Subchapter D (Prevention of Significant Deterioration of Air Quality) and/or Subchapter E (New Source Review)?

b. Would the increase in heat input of Unit 1 and the resulting increase in the maximum hourly emission rates subject the unit to federal New Source Performance Standards (NSPS)? Did the

Section D, Source ID 103 (page 30)

5. Section D, Source ID# - 103, Combustion Turbine No. 5 (page 30)
The original plan approval for Unit 5 specified a peak MMBtu/hr value for the source. In the current Title V permit for Unit 5 there is no maximum MMBtu/hour value specified, only a fuel throughput capacity of 10,544 gal/hour of oil and 1,391.8 MCF/hour of natural gas. In the Title V/State operating permit renewal application, Unit 5 has a rated heat input of 1812.8 MMBtu/hour for natural gas and 1,880 MMBtu/hour for oil. Also in the renewal application the fuel throughput capacities are listed as 13,000 gal/hour of oil and 1,752 MCF/hour of natural gas. The proposed Title V/State operating permit lists N/A for source capacity/throughput (i.e., there are no MMBtu/hour or fuel use values).

By approving the proposed permit without previous plan approval MMBtu/hour limits or Title V/State operating permit fuel throughput limits, PADEP is allowing Unit 5 to increase its actual emissions. Why are these operational restrictions being eliminated from the proposed permit? Per 25 PA Code Chapter 127.450(a)(5) and 127.512, limits on operating parameters related to emissions should be part of the Title V/State operating permit. Because Unit 5 is PSD applicable for nitrogen oxides and PM-10, would this modification (the addition of Unit 5 to the Portland Power Plant) be subject NSR and/or PSD regulations?

6. The Unit 5 plan approval stated the maximum sulfur content of No. 2 oil shall not exceed 0.05 percent sulfur. This condition needs to be added to the Title V/State operating permit.

7. Section D, Source ID# - 103, Combustion Turbine No. 5, I. Restrictions (page 30-31)
Neither the current nor proposed Title V/State Operating Permit specifies a PM-10 emission limit for Unit 5 (the current Title V permit does have an inappropriate reference to a TSP limit for processing sources per 25 PA Code 123.13). At the time the source was originally permitted particulate emissions were assumed to be 1 lb/hr, making Unit 5 a natural minor source for PM/PM-10. Reliant's July 2004 Title V Renewal Permit Application for Unit 5 does list a PM-10 emission rate of 180.8 tons per year (Section 8, Attachment 6). The potential for significant PM-10 emissions from Unit 5 is supported by data contained in the March 27, 2003 and June 6, 2003 letters from Reliant sent to Thomas DiLazaro of PADEP. In these letters Reliant provides PM-10 emission factors for Unit 5 when firing natural gas and fuel oil. The emission factors are based on either stack tests conducted in September 2002 (oil-fired) or data based on similar combustion units and AP-42 (natural gas firing). Based on the Reliant recommended emission factors, Unit 5 on full load will emit 22.6 lb/hr of PM-10 when firing oil and 13.6 lb/hr of PM-10 when firing natural gas. Applying these emission factors to the MMBtu/year fuel throughput restrictions in #005 (page 31 of the proposed permit), the allowable PM-10 emissions from Unit 5 are approximately 44.7 tons/year.

Therefore, Unit 5 is not a minor source for PM-10 as specified in its current plan approval and its current Title V/State permit. To correct this error, should the applicant submit a revised plan approval application, a BACT analysis, and air quality impact analysis for these PM-10 emissions? Is the source considered in violation of its plan approval and operating permit if it continues to operate without such a permit revision?

Exhibit 2

Exhibit 3

RICHARD J. CODEY
Acting Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
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TRENTON, NJ 08625-0093

PETER C. HARVEY
Attorney General

November 16, 2005

Via Certified Mail (Return Receipt Requested)

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GPU, INC.
c/o GPU Service Inc.
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FIRSTENERGY CORP.
76 South Main Street
Akron, OH 44308

Re: Notice of Intent to Sue Pursuant to Clean Air Act §7604

Dear Sirs/Mesdames:

As explained in more detail below, an investigation that we have undertaken has revealed that Reliant Energy Mid-Atlantic Power Holdings, LLC, and its parent companies, Reliant Energy Power Generation, Inc. and Reliant Energy, Inc.; Sithe Energies, Inc.; and Metropolitan Edison

Company and its former and current parent, GPU, Inc. and FirstEnergy, respectively (collectively, the "Companies"), modified the Portland Generating Station ("Portland plant") in violation of the Prevention of Significant Deterioration ("PSD") provisions of the Clean Air Act (the "Act") in effect at the time of the violations. As a result, the Portland plant has emitted excess amounts of nitrogen dioxide ("NO_2"), which is a form of nitrogen oxides ("NO_x"), sulfur dioxide ("SO_2"), and particulate matter ("PM"), which can damage the environment and contribute to the endangerment of public health in downwind locations, including the State of New Jersey. The Portland plant is located in Mount Bethel Township, Pennsylvania near the Delaware River, directly across and upwind from Warren County, New Jersey.

Therefore, although notice is not required under § 304(a)(3) of the Clean Air Act, 42 U.S.C. § 7604(b), the State of New Jersey hereby notifies the Companies, as well as the relevant state and federal officials, of New Jersey's intent to file suit against the Companies in federal district court for violations of the Act. Specifically, we will allege that the Companies, and/or their corporate predecessors or affiliates, violated the Act by constructing, and continuing to operate, modifications to a major stationary source without obtaining the pre-construction permits required by the PSD provisions that are incorporated into the Pennsylvania Administrative Code, 25 Pa. Code §§ 127.81-127.83. These provisions in turn adopt the PSD requirements promulgated in 40 C.F.R. Part 52 by the Administrator of the United States Environmental Protection Agency ("EPA") under the Act.

Statutory Background

The statutory PSD pre-construction permit program requires major sources of air pollution located in areas that meet national ambient air quality standards ("NAAQS"), or are located in areas that are unclassifiable with respect to the NAAQS, to undergo pre-construction permit review prior to construction of a modification at the source and to install Best Available Control Technology ("BACT"). 42 U.S.C. § 7475(a). Congress intended the PSD process to protect the public health and welfare from any actual or potential adverse effects that may reasonably be anticipated to occur from air pollution, or from effects of air pollution on other natural resources such as water, notwithstanding attainment of all NAAQS. 42 U.S.C. § 7470(1).

In enacting the PSD program, Congress also recognized that the transport of pollutants across State boundaries was a common

occurrence that unfairly exposed residents of one State to adverse health effects associated with pollution originating in another State. Thus, the PSD program also is intended to ensure that emissions from sources in one State will not interfere with efforts to prevent significant deterioration of air quality in another State. 42 U.S.C. § 7470(4). To effectuate these goals, the PSD provisions of the Act provide that any decision to allow new construction or the modification of a source of air pollution in any area be made only after careful evaluation of all consequences of such a decision, including the interstate effects, and after adequate procedural opportunities for informed public participation in the decision-making process. 42 U.S.C. § 7470(5). Therefore, in addition to obtaining a permit and installing BACT, sources subject to PSD review must complete a source impact analysis and demonstrate that their emissions will not cause adverse air quality effects, including violation of PSD increments and exceedance of ambient air quality standards. 42 U.S.C. § 7475(a). In implementing the pre-construction PSD permit program, the EPA requires existing, major sources of air pollution to obtain pre-construction approval prior to commencing construction of a modification. 40 C.F.R. § 52.21 et seq.

EPA approved the adoption by the State of Pennsylvania of the federal PSD regulations into the Pennsylvania state regulations for the implementation of the PSD program. 25 Pa. Code §§ 127.81-127.83.

In addition, the State of Pennsylvania has adopted regulations to implement the Act's Title V operating permit program. 25 Pa. Code § 127.501 et seq. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), and the Pennsylvania Title V operating permit program, require that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable State Implementation Plan ("SIP"). Such requirements include applicable PSD requirements to comply with an emission rate that meets BACT. A source operating in violation of applicable requirements, including the PSD requirements, must include a schedule for compliance with those requirements in its Title V permit application. Id. at § 127.503(8)(iii).

Violations

The information available to us indicates that the Companies have undertaken modifications at Units 1 and 2 between 1979 and

1995 of the Portland facility without undergoing preconstruction review as required by PSD. The information available to us indicates that the Companies should have projected a significant net emissions increase (as defined in 40 C.F.R. § 52.21 and § 51.166) in emissions of NO_2 (which is a form of NO_x), SO_2, and/or PM from these projects, triggering PSD requirements. These modifications were subject to the pre-construction review requirements of the PSD program. Specifically, at all relevant times, the Portland plant has been located in an area--Northampton County, Pennsylvania--that has been classified as attainment for SO_2, NO_2 (which is a form of NO_x), and PM. The record, however, indicates that the Companies failed to apply for PSD permits for the modifications, and have not, to this date, installed BACT to control emissions of NO_2, SO_2, and PM from the Portland plant or complied with any other substantive requirements of PSD.

In addition, the Companies' continued operation of the Portland plant--in violation of the PSD requirements--after the effective date of the Title V requirements (as provided by 25 Pa. Code § 127.501 et seq.), constitutes a violation of the Title V requirements of the Act and the Pennsylvania regulations. Finally, we believe there may be additional violations that may have resulted in an increase in hourly emissions at both Units 1 and 2 which would have triggered PSD and/or NSPS requirements.

Effect on New Jersey

New Jersey has a compelling interest in abating the violations described above because excess emissions from the Portland plant may contribute to damages to public health and the environment in the State. The NO_2 emissions from the plant contribute to the formation and transport of ozone pollution. It is well documented that the release of ozone-creating pollutants in Pennsylvania contributes to the formation of ozone in New Jersey. See, e.g., *Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, 63 Fed. Reg. 57356, 57389-57399 (Oct. 27, 1998).

Emissions of NO_2 and SO_2 also lead to the creation of fine nitrate and sulfate particles, which, like ozone, are formed in the atmosphere in Pennsylvania but are transported to downwind states including New Jersey by prevailing winds. Inhalation of fine PM causes respiratory distress, cardiovascular disease and premature mortality. See *National Ambient Air Quality Standards for*

Particulate Matter; Final Rule, 62 Fed. Reg. 38652-01, 38655 (July 18, 1997).

The Companies' continuing violation of the PSD requirements exacerbates the harm caused by the transport of emissions from the Portland plant. In addition, increases in direct emissions of particulate matter increases the ambient concentrations of fine particulates, especially nearby the plant including areas of New Jersey. Therefore, unless the Companies abate these violations, New Jersey may commence an action against the companies in federal court pursuant to 42 U.S.C. § 7604(a)(1) and (a)(3) seeking injunctive relief, penalties, and mitigation of the harm caused by the excess emissions of the Portland plant.

We are willing to discuss a settlement of this matter that would achieve the goal of protection of public health and the environment. If you are interested in discussing settlement, please contact me as soon as possible at 609-292-6945.

Sincerely yours,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Kevin P. Auerbacher
Deputy Attorney General

KPA/rec

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Exhibit 4

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AIR QUALITY PROGRAM

TITLE V/STATE OPERATING PERMIT

Issue Date: May 31, 2006 Effective Date: June 1, 2006
Expiration Date: June 1, 2011

In accordance with the provisions of the Air Pollution Control Act, the Act of January 8, 1960, P.L. 2119, as amended, and 25 Pa. Code Chapter 127, the Owner, [and Operator if noted] (hereinafter referred to as permittee) identified below is authorized by the Department of Environmental Protection (Department) to operate the air emission source(s) more fully described in this permit. This Facility is subject to all terms and conditions specified in this permit. Nothing in this permit relieves the permittee from its obligations to comply with all applicable Federal, State and Local laws and regulations.

The regulatory or statutory authority for each permit condition is set forth in brackets. All terms and conditions in this permit are federally enforceable applicable requirements unless otherwise designated as "State-Only" or "non-applicable" requirements.

TITLE V Permit No: 48-00006

Federal Tax Id - Plant Code: 52-2154847-6

Owner Information
Name: RELIANT ENERGY MID ATLANTIC POWER HOLDINGS LLC
Mailing Address: 121 CHAMPION WAY
STE 200
CANONSBURG, PA 15317-5817

Plant Information
Plant: RELIANT ENERGY MID A/PORTLAND GENERATING STATION
Location: 48 Northampton County 48932 Upper Mount Bethel Township
SIC Code: 4911 Trans. & Utilities - Electric Services

Responsible Official
Name: JAMES V LOCHER
Title: VP COAL PLANT OPERATIONS
Phone: (724) 597 - 8547

Permit Contact Person
Name: TIMOTHY E MCKENZIE
Title: SR ENV SCIENTIST
Phone: (724) 597 - 8670

[Signature]
THOMAS A DILAZARO, NORTHEAST REGION AIR PROGRAM MANAGER

SECTION A. Table of Contents

SECTION A. Table of Contents

Note: These same sub-sections are repeated for each source!

Section E. Source Group Restrictions

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E-II: Testing Requirements
E-III: Monitoring Requirements
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E-VI: Work Practice Standards
E-VII: Additional Requirements

Section F. Alternative Operating Scenario(s)

F-I: Restrictions
F-II: Testing Requirements
F-III: Monitoring Requirements
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Section G. Emission Restriction Summary

Section H. Miscellaneous

SECTION G. Emission Restriction Summary.

Source ID / Source Description

031 UNIT 1 W/LOW NOX BURNERS

Emission Limit			Pollutant
0.370	Lbs/MMBTU	30-day running average	NOX
3.700	Lbs/MMBTU	30-day running average	SO2
4.000	Lbs/MMBTU	at any time	SO2
8.730	Tons	per 3-hour period	SO2
0.100	Lbs/MMBTU		TSP

032 UNIT 2 W/LOW NOX BURNERS

Emission Limit			Pollutant
0.580	Lbs/MMBTU	30-day runnig average	NOX
379.400	Tons/Mth	based on 0.45 lbs/MMBTU emissions	NOX
3.700	Lbs/MMBTU	30-day running average	SO2
4.000	Lbs/MMBTU	at any time	SO2
13.350	Tons	per 3-hour period	SO2
0.100	Lbs/MMBTU		TSP

033 AUXILIARY BOILER

Emission Limit			Pollutant
4.000	Lbs/MMBTU	over any 1-hour period	SO2
0.400	Lbs/MMBTU		TSP

101 COMBUSTION TURBINE 3

Emission Limit			Pollutant
500.000	PPMV		SO2
0.040	gr/DRY FT3		TSP

102 COMBUSTION TURBINE 4

Emission Limit			Pollutant
500.000	PPMV		SO2
0.040	gr/DRY FT3		TSP

103 COMBUSTION TURBINE 5 W/H2O INJECTION

Emission Limit			Pollutant
8.850	Tons/Yr	firing #2 fuel oil	CO
20.910	Lbs/Hr	firing natural gas	CO
21.900	Lbs/Hr	firing #2 fuel oil	CO
36.430	Tons/Yr	firing natural gas*	CO
164.790	Lbs/Hr	firing natural gas	NOX
300.000	Tons/Yr	aggregate emissions	NOX
303.170	Lbs/Hr	during fuel switchover	NOX
303.170	Lbs/Hr	firing #2 fuel oil	NOX
1.980	Tons/Yr	firing natural gas*	SO2
26.160	Lbs/Day	firing natural gas	SO2
38.500	Tons/Yr	firing #2 fuel oil	SO2
2,287.200	Lbs/Day	firing #2 fuel oil	SO2

SECTION G. Emission Restriction Summary.

Source Id	Source Description

0.020	gr/DRY FT3		TSP
3.050	Tons/Yr	firing #2 fuel oil	VOC
4.590	Lbs/Hr	firing natural gas	VOC
7.540	Lbs/Hr	firing #2 fuel oil	VOC
8.360	Tons/Yr	firing natural gas*	VOC

104 MISCELLANEOUS #2 OIL FUELED UNITS (3)

Emission Limit		Pollutant
500.000	PPMV	SO2
0.040	gr/DRY FT3	TSP

105 DRAVO HEATER

Emission Limit		Pollutant
500.000	PPMV	SO2
0.040	gr/DRY FT3	TSP

Site Emission Restriction Summary

Emission Limit	Pollutant

SECTION H. Miscellaneous.

(a) The following sources located at this facility have minor emission and no applicable emission, testing, monitoring, recordkeeping or reporting requirements:

(1) Hydrazine Solution Storage: Hydrazine is stored in drums, and are kept sealed during storage. When in use, the hydrazine is stored in solution in two (2) 400-gallon capacity storage tanks. Any losses from these tanks are due to accidental spillage.
(2) Ammonium Hydroxide Storage: Ammonium Hydroxide is stored in drums, and are kept sealed during storage. When in use, ammonium hydroxide is used to make an ammonia solution, which is stored in two (2) 400-gallon capacity storage tanks. Any losses from these tanks are due to accidental spillage.
(3) Aluminum Sulfate Storage: Aluminum Sulfate is stored in a 400 gallon capacity storage tank. Any losses from this tank are due to accidental spillage.
(4) Main Station, Combustion Turbine, ESP & Coal Transformers: These 17 transformers are sealed units which use non-PCB transformer oils. There are no expected atmospheric emissions.
(5) Dilute Sulfuric Acid Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 750 gallons of 10% H2SO4 solution. Any losses from this tank are due to accidental spillage.
(6) Concentrated Sulfuric Acid Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 6,000 gallons of 93% H2SO4 solution. Any losses from this tank are due to accidental spillage.
(7) Dilute Sodium Hydroxide Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 5,000 gallons of 20% NaOH solution. Any losses from this tank are due to accidental spillage.
(8) Concentrated Sodium Hydroxide Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 4,000 gallons of 50% NaOH solution. Any losses from this tank are due to accidental spillage.
(9) Water Treatment Dilute Caustic Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 1,000 gallons of 4% NaOH solution. Any losses from this tank are due to accidental spillage.
(10) Water Treatment Dilute Acid Storage: These two (2) above-ground tanks are horizontal, fixed roof tanks which each hold a maximum of 1,000 gallons of H2SO4 solution. One tank holds a 93% H2SO4 solution, and the other holds a 5% H2SO4 solution. Any losses from these tanks are due to accidental spillage.
(11) Emergency Generator Fuel Storage: Three (3) small storage tanks (275 gallon capacity each) are used to store the diesel fuel used to supply the emergency generators.
(12) Dravo Heater Fuel Oil Storage: This above-ground tank is a horizontal, fixed roof tank which holds a maximum of 1,200 gallons of #2 fuel oil.
(13) Miscellaneous Minor Sources: These include Support Systems equipment (Hydraulic & lubricating oil storage and handling), Battery Charger emissions (emits small amounts of hydrogen gas), Vapor Extractors (to remove condensed water from the lubricating oil reservoir), various Boiler House vents (which release steam, oil vapor, carbon dioxide and small amounts of hydrogen gas), various Vented Equipment (which emit mostly steam and water vapor), and the Water Pretreatment and Wastewater Treatment & Handling (sedimentation basins and the coal run-off pond) systems.

(b) Heat input capacities listed in Section A. (Site Inventory) and Section D. (Source Level Requirements) are for informational purposes only and are not enforceable limits.

(c) The applicable emission restrictions and operating requirements for the Portland Electric Generating Station are set forth in Sections C through G of this permit. The general Title V requirements of Section B in this permit continue in full force and effect.

GPU Genco
Johnstown, Pennsylvania

ENSR®

SO_2 NAAQS Compliance Modeling for GPU's Portland Generating Station

ENSR Corporation
May 1999
Document Number 3142-003-301

GPU Genco
Johnstown, Pennsylvania

SO_2 NAAQS Compliance Modeling for GPU's Portland Generating Station

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