

IN RE:

POTOMAC ELECTRIC POWER  
COMPANY

BEFORE THE MARYLAND  
DEPARTMENT OF THE  
ENVIRONMENT

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order ("Consent Order") is issued pursuant to the authority vested in the Maryland Department of the Environment ("Department") by Titles 1, 2, and 6 of the Environment Article of the Maryland Code and by the Code of Maryland Regulations (COMAR) 26.11 to regulate air pollution in the State of Maryland and to enforce State air pollution control laws and regulations.

WHEREAS, Potomac Electric Power Company ("PEPCO") owns and operates electric generating plants in Charles, Montgomery and Prince George's Counties that are major sources of nitrogen oxide emissions;

WHEREAS, in May of 1998, as part of a coordinated regulatory initiative by the Northeast Ozone Transport Region ("OTR") states, the Department adopted regulations codified in ("COMAR") 26.11.27 and .28 requiring reductions of NOx emissions by utilities and other NOx sources during the ozone season from May 1 through September 30 of each year ("ozone season") commencing with the 1999 ozone season (the "NOx Budget Rule");

WHEREAS, the NOx Budget Rule establishes a separate NOx emissions "budget" for each source subject to the Rule through the allocation of allowances, with each allowance being equivalent to one (1) ton of NOx emissions. Sources subject to the Rule are permitted to achieve compliance through installation of pollution control equipment or other measures to reduce emissions, the purchase of allowances, or a combination of both. In order to maintain compliance with the Rule, a source must either ensure that its NOx emissions do not exceed its allocated budget, or acquire additional allowances for each ton of NOx emitted during the ozone season in excess of its allocated allowances. Sources subject to the Rule that overcontrol or otherwise reduce emissions below their allocated budget may sell excess allowances to other

sources. Under the NOx Budget Rule, PEPCO's system-wide NOx emissions budget is 11,909 tons:

WHEREAS, in June of 1998, PEPCO sought a judgment in the Circuit Court for Baltimore City declaring Maryland's NOx Budget Rule invalid, in part, on grounds that the Department failed to provide sources subject to the Rule with adequate lead time to achieve compliance:

WHEREAS, on February 9, 1999, the Circuit Court for Baltimore City remanded the NOx Budget Rule to the Department for reconsideration of the May 1, 1999 compliance deadline:

WHEREAS, on July 16, 1999, the Department published a proposed revised NOx Budget Rule (the "Revised NOx Budget Rule"), which would extend the compliance deadline one year to the ozone season which commences on May 1, 2000;

WHEREAS, PEPCO's chosen strategy for achieving compliance with the Revised NOx Budget Rule in 2000 is based in part on the purchase of allowances from other sources within the OTR that are also subject to NOx Budget Rules adopted by their respective states;

WHEREAS, PEPCO contends that a compliance deadline of May 1, 2000 does not allow adequate lead time for the installation of all of the pollution controls necessary to achieve compliance without the purchase of allowances and that there is significant uncertainty as to whether there will be a sufficient number of allowances available for purchase at a cost acceptable to PEPCO to ensure PEPCO's compliance in the 2000 ozone season;

WHEREAS, the Department disputes PEPCO's contention that the May 1, 2000 compliance deadline does not allow adequate lead time for the installation of pollution controls or the development of an adequate allowance market; and

WHEREAS, the parties wish to resolve this matter without the need for further litigation.

NOW THEREFORE, the Department hereby ORDERS, and PEPCO hereby CONSENTS to, the following terms and conditions:



1. PEPCO agrees that it will not bring any legal action against or otherwise contest, in any way, adoption of the Revised NOx Budget Rule, as proposed in the *Maryland Register* on July 16, 1999, if: (1) the Revised NOx Budget Rule is made final by the Department and approved by the United States Environmental Protection Agency ("EPA") as a revision to Maryland's State Implementation Plan under the federal Clean Air Act in substantially the same form in which it was proposed; and (2) the Department complies with the terms of this Consent Order.

2. PEPCO may defer, until the December 31, 2001 allowance transfer deadline, use of allowances on a 1:1 basis to cover up to 3,000 tons of year 2000 ozone season NOx emissions (the "Rolled Over Emissions"). Except as provided in Paragraph 5 of this Consent Order, any Rolled Over Emissions for which PEPCO fails to hold allowances, including allowance transfers submitted to the NOx Allowance Transfer System ("NATS") Administrator, by December 31, 2001, shall be subject to the 3:1 allowance forfeiture and monetary penalties, as provided in COMAR 26.11.27.13 and §§ 2-610 and 2-610.1 of the Environment Article. It is further provided that all year-2000 ozone season NOx emissions in excess of 14,909 tons for which PEPCO fails to hold allowances, including allowance transfers submitted to the NATS Administrator, on or before the December 31, 2000 allowance transfer deadline shall also be subject to the 3:1 allowance forfeiture and monetary penalties.

3. To the extent necessary to satisfy PEPCO's obligations for the year 2000 under the Revised NOx Budget Rule and in this Consent Order, PEPCO agrees to acquire all NOx allowances in EPA's National Allowance Tracking System that are available to PEPCO for acquisition and are offered for purchase for the year-2000 ozone season up to a total expenditure of \$8,600,000. PEPCO will provide to the Department certifications from brokers who have made allowance acquisitions on PEPCO's behalf to document PEPCO's compliance with this paragraph.

4. PEPCO agrees that in each of the ozone seasons for the years 2001 and thereafter, PEPCO is subject to the Revised NOx Budget Rule, as published in the *Maryland Register* on July 16, 1999, so long as the rule is in effect. PEPCO reserves its right to contest any future proposed revisions to the Revised NOx Budget Rule that would result in a substantial change to PEPCO's obligations under the rule. PEPCO further agrees that in each of the ozone seasons for the years 2001 and thereafter that it is subject to the Revised NOx Budget Rule, all of PEPCO's ozone season NOx emissions that exceed the number of allowances held by PEPCO at the December 31st allowance transfer deadline in each year, except as provided in Paragraph 5 of this Consent Order, will be subject to the 3:1 allowance forfeiture and monetary penalty provisions as authorized by law. PEPCO agrees that in any future enforcement action by the Department for violation of COMAR 26.11.27 or 26.11.28, PEPCO will not contest the validity of COMAR 26.11.27.13 or raise as a defense that the compliance deadline in the Revised NOx Budget Rule failed to provide PEPCO adequate lead time to comply with the rule.

5. PEPCO may obtain additional NOx emission reductions in calendar years 2000 and 2001 at its Chalk Point generation station units 1, 2, 3 and 4, and its Morgantown generation station units 1 and 2 during any period of a calendar year other than the ozone season of May 1 through September 30 (hereinafter the "non-ozone season") to the extent that such reductions are not otherwise required by federal or state law during the non-ozone season. For every two (2) tons of NOx emission reductions PEPCO obtains in excess of 1,000 tons above what is otherwise required by law, the Department agrees to reduce by one (1) ton the number of Rolled Over Emissions provided for in Paragraph 2 of this Consent Order. In no event, however, may PEPCO's Rolled Over Emissions be reduced by more than 1,000 tons as a result of the non-



ozone season operation of NOx pollution controls under this Paragraph. Creditable reductions shall be determined by subtracting, from the product of each unit's actual non-ozone season heat input and NOx Baseline Emission Rate, as provided in Exhibit 1, each unit's actual non-ozone season NOx emissions. If PEPCO desires credit for non-ozone season emission reductions that occur during the year-2000 non-ozone season, PEPCO shall submit to the Department on or before January 30, 2001 hourly Continuous Emission Monitoring data showing such reductions in a format approved by the Department. If PEPCO desires credit for emission reductions that occur during the year 2001 non-ozone season, PEPCO shall submit to the Department on or before January 30, 2002 hourly Continuous Emission Monitoring data showing such reductions in a format approved by the Department.

6. PEPCO agrees to comply with proposed COMAR regulations 26.11.29 and 26.11.30 as published in the *Maryland Register* on July 16, 1999, provided that such regulations are promulgated in substantially the same form as that in which they were proposed, or regulations providing an equivalent program for NOx emission reductions from Maryland sources.

7. The provisions of this Consent Order shall apply to and be binding on PEPCO, and its successors and assigns, including all transferees of any legal or equitable interest in PEPCO's electrical generating plants. Any agreement for the transfer of any legal or equitable interest in PEPCO's Maryland electrical generating plants shall provide that the transferee of such interest shall fully comply with the terms and conditions of this Consent Order and that the Department may enforce the terms of the Consent Order against the transferee. At least thirty (30) days prior to any transfer by PEPCO of any legal or equitable interest in PEPCO or in any of

PEPCO's electrical generating plants. PEPCO shall provide a copy of this Consent Order by means of certified mail to the prospective successor-in-interest. PEPCO agrees to contemporaneously provide the Department with a copy of written documentation of its provision of this Consent Order to the successor-in-interest. PEPCO further agrees that within five (5) business days following execution of any agreement for transfer of any legal or equitable interest in one or more of PEPCO's generating plants, PEPCO will provide the Department with a copy of the portion(s) of that agreement evidencing its compliance with the requirements of this Paragraph; provided, however, that PEPCO reserves the right to redact from such portion(s) any confidential commercial information.

8. In the event that PEPCO holds allowances in year 2000 equal to or in excess of year 2000 ozone season NOx emissions, PEPCO reserves the right to terminate this Consent Order with thirty (30) days advance written notice to the Department. In such event, PEPCO is subject to the NOx Budget Rule for the year 2001 ozone season and thereafter, subject to Paragraph 4 of this Consent Order, and all NOx emissions by PEPCO that are subject to COMAR regulations 26.11.27 and 26.11.28, including allowances submitted to the NATS Administrator, at the December 31st allowance transfer deadline in each year will be subject to the 3:1 allowance forfeiture and monetary penalties, as provided in COMAR 26.11.27.13 and §§ 2-610 and 2-610-1 of the Environment Article. Subject to the terms and conditions of Paragraph 6 of this Consent Order, in the event that PEPCO exercises its right under this Paragraph to terminate this Consent Order, PEPCO agrees that it will not bring any legal action or otherwise contest, in any way, Maryland's future adoption of regulations implementing the NOx SIP Call or providing an equivalent program for NOx emission reductions from Maryland sources; provided,

however, that PEPCO reserves the right in any event to submit comments to the Department on proposed regulations.

9. Whenever notice is required under the terms of this Consent Order, such notice shall be given to:

Director  
Air and Radiation Management Administration  
Maryland Department of the Environment  
2500 Broening Highway  
Baltimore, Maryland 21224

10. This Consent Order shall be deemed an integral part of the Revised NOx Budget Program and the Department agrees to submit this Consent Order to EPA for approval as a revision to Maryland's State Implementation Plan and shall make all reasonable efforts to secure its proposed and final approval by EPA.

11. For the purposes of this Consent Order, a condition of force majeure caused by an act of God, a strike, a riot, or a catastrophe shall not be a violation of this Consent Order.

12. The Department agrees and acknowledges that its agreement to this Consent Order constitutes its full and final approval of the terms of this Consent Order as a plan for compliance pursuant to § 2-611 of the Environment Article to bring PEPCO's Dickerson, Chalk Point, and Morgantown Generating Stations into compliance with the Revised NOx Budget Rule.

13. Nothing in this Consent Order shall be construed to expand whatever authority the Department may have to pursue any cause of action based upon violations of requirements not specifically addressed in this Consent Order.

14. PEPCO agrees that the Department may pursue all legal and equitable remedies available to it for any violations by PEPCO of the terms of this Consent Order, including, but not



limited to, the right to seek injunctive relief pursuant to § 2-609 of the Environment Article and civil and administrative penalties pursuant to §§ 2-610 and 2-610.1 of the Environment Article.

15. In any challenge to this Consent Order or actions taken pursuant to it, the Department will reasonably and in good faith defend the Department's reliance on terms set forth in the Consent Order.

16. It is the intent of PEPCO and the Department that the provisions of this Consent Order are severable and that, should any provision be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.

17. This Consent Order shall be construed in accordance with Maryland law.

MARYLAND DEPARTMENT OF THE ENVIRONMENT

BY:

Mertylin Law-Mon  
Mertylin Law-Mon, Director  
Air and Radiation Management Administration

9/13/99  
Date

POTOMAC ELECTRIC POWER COMPANY

BY:

James S. Potts  
James S. Potts, Vice President  
Environment

9/10/99  
Date

Approved for form and legal sufficiency  
this 13th day of September 1999.

Kathy M. Kinsey  
Kathy M. Kinsey  
Assistant Attorney General



EXHIBIT 1

**Generating Unit**

**Baseline Emission Rate**

Chalk Point Unit 1  
Chalk Point Unit 2  
Chalk Point Unit 3  
Chalk Point Unit 4  
Morgantown Unit 1  
Morgantown Unit 2

.70 lb./mmBtu  
.70 lb./mmBtu  
.32 lb./mmBtu  
.30 lb./mmBtu  
.66 lb./mmBtu  
.66 lb./mmBtu

