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September 17, 2014

Via hand delivery and certified U.S. mail, return receipt requested to

Thomas F. Farrell II
Chairman, President, & CEO
Dominion Resources, Inc.
120 Tredegar Street
Richmond, VA 23219

Robert M. Blue
President
Virginia Electric and Power Company
120 Tredegar Street
Richmond, VA 23219

**Notice of Intent to Sue
FWPCA Section 505 – 33 U.S.C. § 1365**

Re: 60-Day Notice of Violation by Dominion Virginia Power Possum Point Power Plant, VPDES Permit # VA0002071

Dear Mr. Farrell and Mr. Blue:

The Potomac Riverkeeper and the Sierra Club hereby notify Dominion Resources, Inc., and its subsidiary Virginia Electric and Power Company d/b/a Dominion Virginia Power (collectively, “Dominion”) of their intent to sue for serious and ongoing violations of the Clean Water Act at the Possum Point Power Plant. Pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365, the Potomac Riverkeeper and the Sierra Club will bring suit for these violations of the Clean Water Act unless, within 60 days of receipt of this letter, the company enters into a binding agreement to cease and promptly remediate all such violations.

The Possum Point Power Plant is located in Dumfries, Virginia, and is owned and operated by Dominion Virginia Power. The Potomac Riverkeeper, the Sierra Club, and their members are concerned that the five coal ash ponds located on the power plant site are releasing contaminated wastewater into Quantico Creek, the Potomac River, and groundwater. Specifically, the organizations have discovered that

- three coal ash ponds abandoned nearly fifty years ago are leaking water contaminated with arsenic, barium, nickel, selenium, and other metals into Quantico Creek and into groundwater;
- two active coal ash ponds are leaching barium, cadmium, manganese, zinc, and other metals into groundwater, frequently at levels that exceed state groundwater criteria; and
- one of the active coal ash ponds is also discharging pollutants directly into Quantico Creek.

Background

A. Forty-Eight Years of Coal Ash Waste is Stored at the Possum Point Power Plant Site.

The Possum Point Power Plant is an electric generation station located on a narrow peninsula between the Potomac River and Quantico Creek about 25 miles south of Alexandria, in Prince William County, Virginia. Quantico Creek is a popular recreational destination for residents and visitors. Local residents participate in annual cleanups on the water and enjoy using the water for fishing, boating, hunting, birding, and other recreational activities. The creek's fishery is also a source of food for local fishermen and their families. Quantico Creek flows directly into the Potomac River, a National Heritage River that empties into the Chesapeake Bay.

The Possum Point plant burned coal from 1955 until 2003, when Dominion converted it to natural gas and fuel oil. During this forty-eight year period, the company stored the waste coal ash from the plant's furnaces in five different slurry lagoons—known as ash ponds A, B, C, D, and E—located on the site. Ponds A, B, and C are the original ash lagoons and received waste ash from 1955 to 1966 and possibly longer. Dominion stopped actively using these ponds several decades ago, but did not close or remediate them. The company built ash ponds D and E in the 1960s, and then re-engineered pond D in 1989 to be the permanent repository for waste coal ash at the site. Before the power plant converted to other fuels, pond E received the waste coal ash slurry from the plant. On at least two occasions, Dominion dredged pond E and moved its ash to pond D. Dominion has continued to operate ponds D and E since the plant's conversion from coal, and has no plans to close or remediate these lagoons. Pond D reportedly has a clay liner, but the other four lagoons are unlined. Today, waste coal ash remains in all five lagoons.

The Virginia Department of Environmental Quality has issued a series of Virginia Pollution Discharge Elimination System permits (known as "VPDES" permits) authorizing the discharge of wastewater from the Possum Point plant through certain

designated outfalls. The most recent permit, issued in April 2013, authorizes wastewater discharge through seven specified outfalls. *See* Permit No. VA0002071, issued April 3, 2013. The only authorized discharge point related to the ash lagoons is outfall 005, which sends wastewater from ash pond E into an unnamed tributary of Quantico Creek. Pond D does not have any authorized external outfalls; its wastewater is permitted only to flow into pond E. The VPDES permit does not authorize any wastewater discharges from abandoned ponds A, B, or C.¹

Coal ash waste is widely known to contain harmful pollutants, including heavy metals, which can cause harm to human health and the environment. Further, the 2008 coal ash spill at the Tennessee Valley Authority's Kingston Fossil Plant and the February 2014 spill into the Dan River near Eden, North Carolina demonstrate the dramatic consequences of structural failure at coal ash storage and treatment sites. EPA has determined, based on information provided by Dominion in response to a 2009 information request from the agency, that ponds D and E present a significant hazard potential in the event of dam failure or mis-operation. This designation indicates that failure could cause economic loss, environmental damage, or other concerns. Notably, the company's response to EPA's information request did not even disclose the existence of ash ponds A, B, or C. Thus, the hazard potential of those ponds has not been evaluated.

Despite these known risks, Dominion has failed to prevent seeps, leaks, and unpermitted discharges of waters contaminated with coal ash pollutants into nearby ground and surface waters. Indeed, all five ponds on site are currently discharging contaminated wastewater into Quantico Creek and groundwater in violation of the Clean Water Act. These discharges pose a threat to aquatic life in Quantico Creek and the Potomac River and the aesthetic, recreational, scientific, and conservation interests of members of the Potomac Riverkeeper and the Sierra Club.

B. Abandoned Ash Ponds A, B, and C Are Leaking Contaminated Wastewater Into Quantico Creek and Into Groundwater Connected to Quantico Creek.

Abandoned ash ponds A, B, and C are interconnected behind a single berm separating them from Quantico Creek. These lagoons cover twelve acres and contain an estimated 170,000 cubic yards of waste coal ash. They are unlined and uncapped and, because they have not been maintained for more than forty years, they are overgrown with scrubby brush and trees. The containment berm collects rainwater which percolates through the

¹ Prior versions of VPDES Permit No. VA0002071 indicate that all discharges of wastewater from ponds A, B, and C have occurred without authorization under the permit since at least 2004, and likely longer.

coal ash and is released as contaminated wastewater into Quantico Creek and groundwater.

Dominion has long been aware of the discharges associated with ponds A, B, and C. It previously included references in its VPDES permit applications and stormwater monitoring plans to discharges coming from a “concrete pipe which is integral to an inactive decant structure that previously served ash ponds A, B, and C.” Nonetheless, even though the company is aware that coal ash waste remains in these abandoned, unlined ponds, it did not include discharges from these lagoons in its most recent VPDES permit application, and the discharges are not addressed in the facility’s 2013 permit. In April 2014, shortly after the Duke Energy coal ash spill into the Dan River, Dominion contacted the Virginia Department of Environmental Quality (“DEQ”) to report the existence of these three “previously unaccounted for ash ponds.”

In April 2014, DEQ conducted two visits to the Possum Point Power Plant – one on April 11 and one on April 15. During those visits, DEQ documented at least four separate locations of continuing or intermittent unpermitted surface discharges from ash ponds A, B, and C.

- First, a discharge structure and discharge pipe at ash pond C—presumably the same pipe that Dominion itself previously acknowledged as a discharge point—is releasing wastewater to Quantico Creek at a rate of two gallons per minute even during dry weather.
- Second, rainfall is causing intermittent overflow from the top of the berm wall at ash pond B. At times, water in this area overtops the berm wall and drains down the berm slope toward Quantico Creek. DEQ records indicate that standing water in the area of this intermittent overflow is dark in color.
- Third, both DEQ and Dominion’s staff noted a breach of the berm wall at ash pond A. According to DEQ records, an area of the berm approximately five feet wide by six feet deep has eroded, sending a steady flow, consisting of both surface drainage and seepage, in the direction of Quantico Creek since at least March 2014.
- Fourth, seepage through the berm appears to be creating an additional area of flow from ash pond A. This area also appears to drain into Quantico Creek.

On April 2, 2014, Dominion conducted tests of the water discharging from the pipe at pond C. The results of these tests reveal contamination by a broad range of metals, including arsenic, barium, cobalt, copper, chromium, molybdenum, nickel, antimony, selenium, magnesium, thallium, manganese, iron, zinc, and aluminum. It is very likely

that the water released from the other breaches, seeps, and leaks from the abandoned ponds contains similar pollutants. Further, although Dominion has not installed a single groundwater monitoring well near these ponds, the unlined ponds are also likely leaching these pollutants into groundwater which flows to Quantico Creek.

C. Ash Ponds D and E Are Also Leaking Contaminated Wastewater Into Quantico Creek and Into Groundwater Connected to Quantico Creek.

In addition to the long-ignored discharges from ash ponds A, B, and C, Dominion has allowed ongoing, unpermitted contamination of groundwater connected to Quantico Creek from ash ponds D and E for at least ten years. Although ash ponds D and E no longer actively receive coal ash waste, neither pond has been closed, and ash remains in these lagoons. Groundwater monitoring reports required by the plant's VPDES permit have detected barium, copper, cadmium, nickel, manganese, selenium, zinc, and other metals in monitoring wells below or adjacent to the ponds since at least 2004. These metals are often present at levels that far exceed Virginia groundwater standards including:

- Manganese at 66 times the standard;
- Zinc at 64 times the standard;
- Iron at 127 times the standard; and
- Cadmium at 46 times the standard.

While the Possum Point plant no longer actively generates waste coal ash, these monitoring reports show persistent contamination of groundwater connected to Quantico Creek at ponds D and E.

Further, water sampling conducted on July 2, 2014, indicates that ash pond E is also leaking contaminated wastewater directly into Quantico Creek. Water samples collected at the base of a concrete pipe conveying water from the toe of ash pond E under Possum Point Road reveal elevated levels of multiple pollutants, including arsenic, cadmium, and zinc. Some of these pollutants—most notably arsenic—were present at significantly higher concentrations in the surface water sampling results than the company has documented either through recent groundwater sampling or through periodic sampling of the discharge at Outfall 005. These high concentrations indicate that contamination at the sampling location cannot be adequately explained by either the migration of contaminated groundwater into Quantico Creek or by the known discharge at Outfall 005. Rather, the proximity of this sampling location to the toe of ash pond E strongly suggests that these pollutants are the result of a separate leak from that pond. Accordingly, the

Potomac Riverkeeper and the Sierra Club believe that ash pond E is also leaking contaminated wastewater directly into Quantico Creek.

Description of Violations

I. DOMINION’S DISCHARGES OF POLLUTED WATER DIRECTLY INTO QUANTICO CREEK FROM FOUR OF THE FIVE PONDS ARE WHOLLY UNAUTHORIZED AND VIOLATE THE CLEAN WATER ACT.

A. Under the Clean Water Act, the Discharge of Polluted Water From a Coal Ash Lagoon to Waters of the United States Requires a Permit.

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from any point source to waters of the United States, except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342. In Virginia, the State Water Control Board administers the Clean Water Act § 402 NPDES permit program through the issuance of VPDES permits under the State Water Control Law. *See* 40 Fed. Reg. 20,129 (May 1, 1975); Va. Code Ann. § 62.1-44.2 *et seq.*

Under the Clean Water Act, a “pollutant” is defined as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). This definition includes coal combustion waste, as well as its constituent pollutants. *See U.S. v. Lippold*, 2007 WL 3232483, at *7-8 (C.D. Ill. Oct. 31, 2007) (“Water contaminated by [] coal combustion waste is clearly a pollutant.”).

The act defines a “point source” as “*any* discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14) (emphasis added). The statute “embrac[es] the broadest possible definition of any identifiable conveyance from which pollutants might enter the waters of the United States.” *U.S. v. Earth Sciences, Inc.*, 599 F.2d 368, 373 (10th Cir. 1979). Sediment basins, slurry ponds, drainage ponds, leachate collection systems, and coal refuse piles all fall under the ambit of the statute’s broad definition of point source. *See id.*; *see also Sierra Club v. Abston Constr. Co.*, 620 F.2d 41, 45 (5th Cir. 1980); *Consolidation Coal Co. v. Costle*, 604 F.2d 239, 249-50 (4th Cir. 1979), *rev’d on other grounds*, 449 U.S. 64 (1980).

Once a “discernible, confined, and discrete conveyance” has been used to contain a pollutant, a point source exists, and all discharge from that point source must be permitted. This is true even when some or all of the discharge results from the effects of natural phenomena such as rainfall and gravity. *See, e.g., Abston Constr. Co.*, 620 F.2d at 45 (“Gravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the miner at least initially collected or channeled the water and other materials. A point source of pollution may also be present where miners design spoil piles from discarded overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water. . .”); *O’Leary v. Moyer’s Landfill, Inc.*, 523 F. Supp. 642, 655 (E.D. Pa. 1981) (“Notwithstanding that it may result from such natural phenomena as rainfall and gravity, the surface run-off of contaminated waters, once channeled or collected, constitutes discharge by a point source.”); *Washington Wilderness Coalition v. Hecla Min. Co.*, 870 F. Supp. 983, 988 (E.D. Wash. 1994) (“[T]he touchstone for finding a point source is the ability to identify a discrete facility from which pollutants have escaped.”).

B. Dominion’s Discharges From Ponds A, B, C, and E Are Not Authorized By Its VPDES Permit For the Possum Point Plant.

There is no question that Dominion is not authorized to discharge pollutants from ash ponds A, B, and C into any waterway. As set forth above, VPDES Permit #VA0002071 authorizes wastewater discharges from seven external outfalls, as well as stormwater discharge from fifteen outfalls. A map of the locations of these outfalls is included with this letter as Appendix A. As that map demonstrates, none of the permitted outfalls include discharges associated with ash ponds A, B, or C.

DEQ’s site visits on April 11 and 15, 2014, however, document that these three “previously unaccounted for ash ponds” are in fact continuously or intermittently discharging pollutants into Quantico Creek. A pipe from ash pond C is sending wastewater contaminated with numerous metals directly into the creek. Although Dominion recently submitted an application to DEQ for authorization to discharge from this pipe, it cannot properly be permitted as a stormwater outfall, and such a permit will not remedy the ongoing Clean Water Act violations. Dominion is also allowing contaminated water from these ponds to escape through a breach in the berm and by seepage occurring all along the berm wall and flowing toward Quantico Creek. In addition, heavy rains are causing overflow of pollutants over the top of the berm wall at ash pond B. Thus, all three ponds are point sources discharging pollutants into Quantico Creek without authorization under a permit, in violation of the Clean Water Act. *See, e.g., Earth Sciences*, 599 F.2d at 374 (“[W]hether from a fissure in the dirt berm or overflow of a wall, the escape of liquid from the confined system is from a point source.”)

Similarly, Dominion is not authorized to discharge pollutants from pond E into Quantico Creek. As Appendix A clearly shows, the only permitted discharge from pond E is Outfall 005, which is permitted to discharge into an unnamed tributary of Quantico Creek. Yet pollutants are present in Quantico Creek at concentrations that far exceed those reported by the company at Outfall 005—the sole permitted wastewater outfall from pond E. Given the short distance between the toe of ash pond E and the location of water sampling that documented these high concentrations of pollutants, these pollutants are almost certainly the result of an unauthorized discharge point from pond E.

These unpermitted discharges into Quantico Creek are ongoing and are likely to continue after the date of this letter and the subsequent filing of a lawsuit.

II. DOMINION’S CONTAMINATION OF GROUNDWATER FLOWING TO QUANTICO CREEK FROM ALL FIVE LAGOONS IS WHOLLY UNAUTHORIZED AND VIOLATES THE CLEAN WATER ACT.

A. The Clean Water Act Prevents the Discharge of Pollutants to Hydrologically-Connected Groundwater.

A majority of courts have held that the Clean Water Act prohibits discharges of pollutants to navigable waters via groundwater that has a direct hydrological connection to the surface water. *See Hawai’i Wildlife Fund v. County of Maui*, No. 12-00198, 2014 WL 2451565, at *12-13 (D. Ha. May 30, 2014) (liability arises under the CWA where groundwater is a conduit through which pollution reaches waters of the U.S.). *See also N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007) (finding CWA coverage based on hydrologic connection); *Quivira Mining Co. v. U.S. EPA*, 765 F.2d 126, 130 (10th Cir. 1985) (finding CWA coverage where discharges ultimately affected navigable-in-fact streams via underground flows); *Greater Yellowstone Coal v. Larson*, 641 F. Supp. 2d 1120, 1138 (D. Idaho 2009) (“there is little dispute that if the ground water is hydrologically connected to surface water, it can be subject to” the CWA); *Nw. Env’tl. Def. Ctr. v. Grabhorn, Inc.*, 2009 U.S. Dist. LEXIS 101359, *34 (D. Or. 2009) (“In light of EPA’s regulatory pronouncements, this court concludes that . . . the CWA covers discharges to navigable surface waters via hydrologically connected groundwater.”); *Idaho Rural Council v. Bosma*, 143 F. Supp. 2d 1169, 1180 (D. Idaho 2001) (“the CWA extends federal jurisdiction over groundwater that is hydrologically connected to surface waters that are themselves waters of the United States”); *Williams Pipe Line Co. v. Bayer Corp.*, 964 F. Supp. 1300, 1319-20 (S.D. Iowa 1997) (where groundwater flows toward surface waters, discharge of petroleum into this hydrologically-connected groundwater violates the CWA); *Friends of Santa Fe County v. LAC Minerals, Inc.*, 892 F. Supp. 1333, 1358 (D.N.M. 1995) (CWA covers discharges to groundwater that is connected to surface waters); *U.S. v. Banks*, 873 F. Supp. 650 (S.D. Fla. 1995) (finding CWA coverage

based on hydrologic connection via groundwater); *Wash. Wilderness Coal v. Hecla Mining Co.*, 870 F. Supp. 983, 990 (E.D. Wash. 1994) (“since the goal of the CWA is to protect the quality of surface waters, any pollutant which enters such waters, whether directly or through groundwater, is subject to regulation” under the CWA); *Sierra Club v. Colo. Ref. Co.*, 838 F. Supp. 1428, 1434 (D. Colo. 1993) (“discharge of any pollutant into ‘navigable waters’ includes such discharge which reaches ‘navigable waters’ through groundwater”).²

The reasoning behind these decisions is straightforward. As one court stated:

Congress has explicitly stated that the objective of the CWA “is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Therefore, *it would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from a factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.*”

N. Cal. Riverwatch v. Mercer Fraser Co., 2005 U.S. Dist. LEXIS 42997, at *7 (N.D. Cal. Sept. 1, 2005).

These courts have correctly determined that the Clean Water Act applies to discharges of pollutants from a point source into waters of the United States via groundwater that is hydrologically-connected to such waters. These rulings accord with EPA’s own interpretation of the Clean Water Act, which is entitled to *Chevron* deference.³ EPA has stated repeatedly that the Clean Water Act applies to hydrologically-connected groundwater discharges. 66 Fed. Reg. 2960, 3015 (Jan. 12, 2001) (“EPA is restating that the Agency interprets the Clean Water Act to apply to discharges of pollutants from a point source via ground water that has a direct hydrological connection to surface water.”); 56 Fed. Reg. 64876-01, 64892 (Dec. 12, 1991) (“the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters.”); 55 Fed. Reg. 47990, 47997 (Nov. 16, 1990) (announcing stormwater runoff rules and explaining that discharges to groundwater are

² A minority of courts have held otherwise. *See, e.g., Village of Oconomowoc Lake v. Dayton Hudson Corp.*, 24 F.3d 962, 965 (7th Cir. 1994) (groundwater not a water of the United States); *Cape Fear River Watch, Inc. v. Duke Energy Progress, Inc.*, No. 7:13-CV-200, 2014 WL 2573052 at *9-10 (E.D.N.C. June 9, 2014) (CWA does not extend to groundwater regardless of whether groundwater is “hydrologically connected” to navigable surface waters).

³ *Chevron U.S.A Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984); *U.S. v. Mead*, 533 U.S. 218, 226-28 (2001); *accord U.S. v. W.R. Grace & Co.*, 429 F.3d 1224, 1237 (9th Cir. 2005).

covered by the rule where there is a hydrological connection between the groundwater and a nearby surface water body).

B. All Five Ash Ponds Are Leaching Metals Into Groundwater That Flows to Quantico Creek.

Dominion is violating the Clean Water Act by causing unpermitted discharges of pollutants from ash ponds D and E into groundwater. Since at least 2004, and likely earlier, the company's groundwater monitoring reports reveal that these lagoons have been leaching a suite of metals into the underlying groundwater, in some cases at levels that exceed state groundwater criteria. Dominion's own reports also show that groundwater down-gradient of ash ponds D and E flow directly to Quantico Creek. In light of the long-term groundwater contamination caused by coal ash at ponds D and E, the Potomac Riverkeeper and the Sierra Club also have reason to believe that abandoned ash ponds A, B, and C are contaminating groundwater connected to Quantico Creek.

Because there is a direct hydrologic connection between groundwater and Quantico Creek, this contamination represents an unpermitted discharge from a point source into the waters of the United States in violation of the Clean Water Act. Dominion has taken no steps to prevent further leaching of pollutants from these ash lagoons into the underlying groundwater. These discharges are ongoing, not authorized by any permit, and likely to continue after the date of this letter and the subsequent filing of a lawsuit.

III. DOMINION IS VIOLATING THE EXPRESS TERMS OF ITS VPDES PERMIT FOR THE POSSUM POINT POWER PLANT IN VIOLATION OF THE CLEAN WATER ACT.

Dominion is also violating the Clean Water Act by violating two express conditions in its VPDES permit for Possum Point: Part II.R., titled "Disposal of Solids or Sludges," and Part II.F., titled "Unauthorized Discharges." As the Fourth Circuit stated in *Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1111 (4th Cir. 1988), "[a] violation of a NPDES permit, whether issued by state or federal officials, is a violation of the [Clean Water] Act exposing the permit holder to liability under § 505 of the Act [citizen suit provision]." See 40 C.F.R. § 122.41(a). Each of these provisions expressly prohibits the contamination of state surface water and groundwater.

Dominion has violated the provision of its VPDES permit that prohibits the unauthorized discharge of solids, sludges, and pollutants removed in the course of treatment, in this case treatment by the coal ash ponds. Part II.R. of Dominion's VPDES permit requires that:

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering *state waters*.

(emphasis added). Virginia’s definition of “state waters” in the State Water Control Law includes both surface water and groundwater. VA Code Ann. § 62.1-44.3.

Ash Ponds A, B, C, D, and E have all received and treated coal ash waste. These wastes have been treated by, among other things, sedimentation in the ash lagoons. Thus, pollutants that have been removed in the course of treatment are stored in all five ash ponds.

Dominion’s VPDES permit clearly prohibits the permittee from allowing these pollutants to enter the waters of Virginia. Yet, as described more fully above, pollutants from all five ash lagoons have for years been entering state waters. Sampling around ash ponds D and E demonstrates that pollutants removed in the course of treatment in those ponds are entering groundwater, and provides a reasonable basis for concluding that pollutants from ash ponds A, B, and C are also entering groundwater. Dominion has not prevented these pollutants from entering state waters, as required by its VPDES permit. Its failure to do so is a clear violation of the VPDES permit, and thus of the Clean Water Act. For the same reason, the surface discharges to Quantico Creek described above constitute violations of this provision of Dominion’s VPDES permit.

In addition, Dominion has violated the provision of its VPDES permit that prohibits unauthorized discharges into state waters. Part II.F. of Dominion’s VPDES permit states that:

Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

The discharge of coal ash waste and its constituent pollutants into Quantico Creek and into groundwater clearly constitutes a “[d]ischarge into state waters” of “industrial wastes . . . or any noxious or deleterious substances.”⁴ Such discharges also “alter the physical,

⁴ Virginia State Water Control Law defines “industrial wastes” to mean “liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.” The term “other wastes” means “decayed wood, sawdust, shavings,

chemical, or biological properties of such state waters and make them detrimental to the public health, or to . . . aquatic life, or to the use of such waters for . . . recreation, or for other uses,” in violation of the terms of the permit.

Thus, the persistent discharge of pollutants into Quantico Creek and groundwater at ponds A, B, C, D, and E violate Part II.R and Part II.F of Dominion’s VDPEs permit for the Possum Point facility and thus are violations of the Clean Water Act. These violations are ongoing and continuous and are likely to continue after the date of this letter and the subsequent filing of a lawsuit.

Persons Responsible for Violations

The Possum Point Power Plant is owned and operated by Dominion Resources, Inc., through its subsidiary Virginia Electric and Power Company d/b/a Dominion Virginia Power. Dominion Virginia Power is responsible for all violations at Possum Point.

Persons Giving Notice

Potomac Riverkeeper, Inc. is a nonprofit organization with over 1,000 members throughout Maryland, Virginia, West Virginia and the District of Columbia. Potomac Riverkeeper utilizes the Clean Water Act and other environmental laws to stop pollution that damages water quality and river habitats and that negatively impacts the ability of Potomac Riverkeeper members and the public to use and enjoy the Potomac River and its tributaries. Potomac Riverkeeper seeks to protect the health and safety of the nearly six million people who use the Potomac for drinking water and recreation, to preserve the health of aquatic life in the Potomac and its tributaries, and to preserve the scenic and recreational resources throughout the Potomac watershed.

The Sierra Club is a national nonprofit organization with approximately 760,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns include the protection and enjoyment of Virginia’s coastal and inland waterways. The Sierra Club has approximately 15,060 members in the Commonwealth of Virginia.

Potomac Riverkeeper, the Sierra Club, and their members have been harmed by Dominion’s unpermitted discharges. Members of both organizations recreate and fish on

bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.” Va. Code § 62.1-44.3.

Quantico Creek and the Potomac River in the vicinity of and downstream from the Possum Point Power Plant. They are concerned about contamination of water and wildlife in Quantico Creek and the Potomac River by discharges from Dominion's coal ash ponds containing arsenic and other pollutants. Discharges from the Possum Point Power Plant coal ash ponds are reducing the use and enjoyment of these water bodies by the organizations and their members.

The names, addresses, and phone numbers of the persons giving notice are:

Sarah Rispin, General Counsel and Potomac Riverkeeper
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(202) 556-2930

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The Potomac Riverkeeper and the Sierra Club believe that a negotiated settlement of these violations, codified through a court-approved consent decree, would be preferable to protracted litigation. However, if we are unable to reach an enforceable settlement agreement, the Potomac Riverkeeper and the Sierra Club are prepared to file suit in the United States District Court for the Eastern District of Virginia pursuant to § 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), after sixty days from the date of this letter. This lawsuit will seek injunctive relief, appropriate monetary penalties, fees and costs of litigation, and such other relief as the Court deems appropriate.

If you have any questions concerning this letter or the described violations, or if you believe this notice is incorrect in any respect, please contact the undersigned counsel, the Southern Environmental Law Center, at (434) 977-4090 (tel.), (434) 977-1483 (fax). During the notice period, we are available to discuss this matter with you. However, we do not intend to delay prosecution of this suit once the notice period has expired; thus, if you desire to institute negotiations in lieu of a civil action, we suggest that you do so immediately. Please be advised that the failure to remedy any of the violations set forth in this letter can result in a court order enjoining further violations and imposing civil penalties of \$37,500 per violation, per day for each violation of the Clean Water Act. In addition, upon the successful prosecution of this suit, the Potomac Riverkeeper and the Sierra Club intend to seek compensation for attorneys' fees and the costs of litigation under the citizen suit provisions of the Clean Water Act, 33 U.S.C. § 1365.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Gregory Buppert". The signature is written in a cursive, flowing style.

Greg Buppert
Deborah Murray
Sarah Fort
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cc:

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