BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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1828 Brandon Ave. SW
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Joel H. Peck
Clerk
State Corporation Commission
C/o Document Control Center
P.O. Box 2118
Richmond, VA 23218

Dear Mr. Peck:

Comments regarding Case No. PUE-2002-00315 – Draft memorandum of agreement between the Virginia Dept. of Environmental Quality (DEQ) and the Virginia State Corporation Commission (SCC)

I am writing on behalf of the Board of Directors of the Blue Ridge Environmental Defense League. BREDL is a regional, community-based, non-profit environmental organization. Our founding principles are earth stewardship, environmental democracy, social justice, and community empowerment. BREDL has chapters throughout the Southeast, including five chapters in Virginia.

We have great concerns with the Virginia Department of Environmental Quality's lack of addressing air quality related human and environmental health concerns, especially regarding the cumulative impacts from new and proposed gas-fired power plants. The DEQ has not taken steps to adequately address this issue. We will try to remain hopeful that DEQ, bound by the Memorandum of Agreement, will do its job to protect the air quality in Virginia and surrounding states, but we won't hold our breath – even if the air remains polluted.

Virginia and DEQ have had a long history of inaction and stall tactics regarding air quality related human and environmental health concerns. DEQ can't be trusted to protect the public health because the Department's first reaction is to sue to keep the air pollution laws as weak as possible. That's their track record and that's why organizations have sought the SCC process to get something done that the DEQ is unwilling to do.

- During the George Allen Administration, Virginia tried to squash its citizens' basic right to have "standing" in air pollution permits. The U.S. EPA had to take

Virginia to court to ensure that Virginia citizens would be allowed to challenge air permits. In early 1995, Mountain Heritage Alliance, a BREDL chapter, joined eleven other state health, environmental, and civil rights groups in a Southern Environmental Law Center filed petition requesting intervention in that case. Then, in March 1996, the three-judge panel of the 4th U.S. Circuit Court of Appeals unanimously sided with the EPA, thus granting Virginians the right to sue the state over air pollution permits.

- Virginia has tried to hide or mask the criteria pollutants problem by limiting the amount of monitors. Areas such as Blacksburg, Bristol, Lynchburg, Martinsville, Danville, Harrisonburg, and Charlottesville are a few of the bigger areas that lack ozone monitoring. Virginia communities, such as Roanoke and Bristol, which are showing a problem with particulate matter, do not have access to "real time" data and daily forecasts.

- Even with most of the ozone monitors reading unhealthy levels, Virginia has not used this information to better serve its citizens. Instead, Virginia has tried to delay taking any action. In a June 29, 2000 letter to EPA Region III, former Secretary of Natural Resources John Woodley, Jr. wrote, "Last July we wrote to then Regional Administrator . . . and suggested that making nonattainment area designations for the 8-hour ozone standard was inappropriate until all of the litigation over the standard has been resolved. We continue to adhere to that view." In the letter, the state of Virginia was practically begging EPA not to proceed with the designations saying "the prudent thing to do" is to wait. Virginia did, although seemingly reluctant, recommend areas for nonattainment for ozone based on the new 8-hour standard.

- On September 11, 2000 Virginia filed a brief with the U.S. Supreme Court arguing against the EPA 8-hour ozone standard and implementation process.

- As recent as April 30, 2002, the Air Division of DEQ has shown that the DEQ and Virginia are still trying to halt or limit the effectiveness of any controls that would in effect provide cleaner, healthier air for its citizens. In a letter sent to the U.S. EPA regarding the implementation process for the 8-hour ozone standard, John Daniel, Director of Division of Air Program Coordination, stated, "We believe that marginal or submarginal nonattainment areas should be exempted from transportation conformity requirements." Despite U.S. and Virginia citizens enduring years of delays in designating and implementing the new health based ozone standard, Mr. Daniel has asked EPA to provide for "sufficient time for marginal or submarginal areas to determine compliance with the standard (at least 3 years of monitoring data), after the implementation of at least the regional NOx emission reduction program."

- During February/March 2002, BREDL requested emissions data for new and proposed gas-fired power plants. The Richmond DEQ office informed BREDL that we would need to request that data from each of the seven regional offices.

All but one regional office complied with our Freedom of Information Request at no or minimal charge. One office wanted several hundred dollars and would not concede that all we wanted was the emissions data page from each of the power plants – a very minimal amount of copying. The DEQ guidelines for FOIA requests specifically mentions that emissions data should be provided. BREDL will be following up on this issue. We also believe that this information should be consolidated and easily available for both the main DEQ office and citizens.

- According to the Nov. 7, 2001 State Advisory Board on Air Pollution Report to the Virginia State Air Pollution Control Board, Virginia has never performed a review of the adequacy of the PSD program to prevent significant deterioration or increment violations despite the 40 CFR 51.166 requirement. We concur with the Advisory Board and call on the Virginia DEQ to perform an analysis on the PSD program prior to approving any PSD permits.

- Yet another shining example of how Virginia neglects looking out for its citizens' health and air standards can be seen in the DEQ correspondence involving the November 1999 EPA case against American Electric Power's Clinch River coal-fired power plant. EPA cited the plant for being in violation of the New Source Review provisions of the Clean Air Act. In addition, earlier in September of 1999, the Attorney General of New York gave DEQ notice of an impending lawsuit in the matter. This outdated facility has been cranking out enormous amount of toxins for years. It is the largest stationary source of NOx in Virginia. Instead of an opportunity to protect human health and the environment, DEQ stuck by the facility. An October 1, 1999 internal email remarked, "We have looked through AEP's files here and have found nothing that indicates there was a superheater change in the time period in question." Yet, currently in the DEQ files, there is a March 19, 1996 letter from AEP which documents these changes within the time frame mentioned by the EPA. In a October 29, 1999 letter to EPA, John Daniel, Director Air Program Coordination for Va DEQ, stated, "If EPA wants to change the way they have historically looked at routine maintenance, repair, and replacement, they should do it by rulemaking rather than an enforcement initiative that contradicts EPA's own policies…" A December 17, 1999 internal DEQ email from John Daniel stated, "…I would hate to see us get involved in the litigation. I think EPA is wrong on this issue for a variety of reasons." The reasons included: "replacement of superheaters . . .was a way to maintain the plants so they could operate safely.; even if you think EPA might be right about this why did they only select coal fired power plants?; EPA admitted several years ago when they thought everyone would fall in line with the NOx SIP call that they were 'out to get' coal fired plants…; If this gets to court I firmly believe that the utilities will win. While I hope this would not happen I might well be called as a witness by the utilities."

- Rarely do DEQ and Virginia take the initiative in requiring detailed air modeling on projects. At the request of the U.S. Forest Service, Cogentrix did provide some air modeling on the proposed Henry County facility. As SCC

Commissioner Hullihen Williams Moore stated in his June 25, 2002 dissenting opinion in SCC's approval of an 88 Mw power plant in Buchanan, County, sufficient analysis had not been given to the plant's impact on air quality. Commissioner Moore said, "An 88 megawatt unit is significant and the air pollution it will add must not be ignored." Yet, DEQ time after time ignores the cumulative impacts from such plants.

- The proposed Cogentrix 1100 Mw power plant in Henry County, one of the largest proposed in Virginia, is a good example of how DEQ could lessen the pollution impacts, but has failed to take the step. In a June 07, 2001 letter to DEQ, the U.S. EPA recommended that an oxidation catalyst be used as Best Available Control Technology for this facility. BREDL also commented that an oxidation catalyst, such as SCONOx, should be used. BREDL went as far as contacting the SCONOx company to verify that this type of pollution control is available and accepted for this type of facility. It has been deemed both "technically feasible" and "commercially available". In the draft permit, DEQ has agreed to let Cogentrix use SCR technology instead. The SCR control only achieves a NOx emission of 3.5 ppm, while SCONOx guarantees a rate for NOx emissions of 2 ppm. This is the type of information that may be lacking during the Department's report to the Commission as outlined by the Memorandum of Agreement.

Specifically, with regards to the Memorandum of Agreement:

- 3.A. the completeness of the information received; - This statement leaves a lot of room for interpretation as to what the term completeness means.

- 3.C. It is inadequate that the SCC only wants to know if a proposed facility is to be located in a region designated as "serious" nonattainment for the "one-hour" ozone standard. The 8-hour standard for ozone will soon be implemented. While it is currently not being enforced, DEQ has a very good idea as to which localities will not meet the new standard. DEQ should at least mention which facilities are proposing to build in or near these areas, as well as areas that may not meet the new particulate matter standard. DEQ and SCC should take a proactive role in preventing the further deterioration of air quality in these areas. DEQ cannot ignore air movements that would cause New York to sue a power plant in Southwest Virginia. DEQ and SCC cannot ignore facilities that may cause new violations of either the one-hour or 8-hour standard, regardless of type of designation and regardless of where that violation may occur. Virginia does not have enough ozone monitors to determine current impacts let alone impacts from proposed and newly built facilities. This needs to be resolved while the situation is somewhat controllable, not after the permitting of more facilities.

- 8. the Commission should retain as much power as possible to request additional information from the Department, as needed. The Commission has had to fulfill

environmental concerns in areas where the Department has been lacking. This checks and balance approach needs to be preserved, while still meeting the Chapter 483 of the Acts of Assembly requirements.

Sincerely submitted,

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