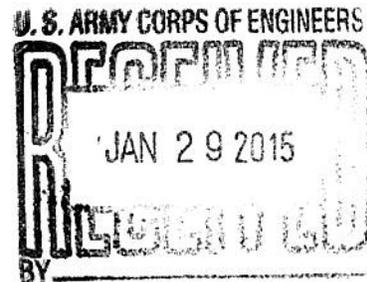


Dominion Virginia Power  
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January 29, 2015

Mr. Randy L. Steffey  
Norfolk District, Corps of Engineers  
ATTN: CENAO-WR-R  
803 Front Street  
Norfolk, VA 23510-1096  
By email to [randy.l.steffey@usace.army.mil](mailto:randy.l.steffey@usace.army.mil)



**RE: NAO-2012-00080/13-V0408, Proposed Electric Power Transmission Line Known as the Surry-Skiffes Creek-Wheaton Project, Application of Dominion Virginia Power**

Dear Randy:

I reviewed your email to Courtney Fisher dated January 5, 2015, a copy of which is attached to this letter. We appreciate the update and understand your desire for clarity regarding the compliance timeline for EPA's Mercury and Air Toxics Standards (MATS) regulation. Because we wanted to provide additional supporting material, we thought it more appropriate to respond in this manner – with hard copies of the documents – for your review and consideration.

We know you still seek clarity on the last date for an alternative to no longer be practical from a timing perspective. Dominion's position all along has been that the **last possible date is April 16, 2017**. We explain our analysis further below. Beyond that date, Dominion would be considered out of compliance and in violation of EPA regulations. That is not practical, not legal, and not an option for us. If the transmission line is not in service by that date, load shed would be the only option available for us to maintain reliability of the overall transmission system, and that is similarly not practical or acceptable.

To enable the permit process to move forward expeditiously, we offer Dominion's analysis of the schedule implications and attach the key legal documents for your review – and for the record. Documents attached are:

- **Presidential Memorandum**, dated December 21, 2011, entitled Flexible Implementation of the Mercury and Air Toxics Standards Rule, dated December 21, 2011 (Attachment 1),
- **EPA Memorandum**, dated December 16, 2011, from Cynthia Giles, Assistant Administrator of the Office of Enforcement and Compliance Assurance to Regional Administrators, Regional Counsel, Regional Enforcement Division Directors, and Air Division Directors, entitled: The Environmental Protection Agency's Enforcement

Response Policy For Use Of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standards (Attachment 2) , and

- **Section 113** of the Clean Air Act (Attachment 3).

As you know, the MATS rule itself requires compliance by April 16, 2015. Recognizing the real potential for adverse impacts to electric reliability that could be caused by strict adherence to that compliance date, the Presidential Memorandum directed EPA to work with state agencies to make one year extensions (under Section 112(i)(3)(B) of the CAA) broadly available to utilities where justified. Dominion asked for, and received, this one year extension from the VA DEQ for its Yorktown units. As a result, Dominion's **current compliance date** for Yorktown is **April 16, 2016**.

The Presidential Memorandum also noted that Section 113(a) of the CAA provides EPA with flexibility to bring sources into compliance over the course of an additional year, should "unusual circumstances" warrant such flexibility. The EPA Memorandum explains EPA's use of Section 113(a) administrative orders (AO) for sources that "must operate in noncompliance with MATS for up to a year to address a specific and documented reliability concern." (EPA Memorandum, page 2) If Dominion follows EPA's requirements and qualifies for such an AO, its compliance date can be extended up to April 16, 2017, and no later. Dominion is evaluating whether it can qualify and apply for such an extension.

It is critical to note what the EPA Memorandum does not cover:

This policy does not address situations where a reliability critical unit needs more than one year to come into compliance after the MATS Compliance Date...The EPA intends to handle such scenarios as it has in the past, by assessing each situation on a case-by-case basis, at the appropriate time, to determine the appropriate **enforcement response and resolution**. (EPA Memorandum, page 2)

Section 113(a) is clear that EPA's AOs cannot exceed one year in duration:

An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, **but in no event longer than one year after the date the order was issued, and shall be nonrenewable**. (Section 113(a)(4))

After that, in pursuing enforcement response and resolution, EPA's authority under Section 113(b) of the CAA is to coordinate with the US Department of Justice to file a lawsuit in federal district court for a permanent or temporary injunction and significant monetary penalties on a per day per violation basis.

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To guard against that draconian result, the EPA Memorandum establishes an expectation of compliance during the one year timeframe of AO's:

In the event that such sources are interested in receiving a schedule to come into compliance while operating, the EPA intends, *where necessary to avoid a serious risk to electric reliability, and provided the criteria set forth herein are met, to issue an expeditious case-specific AO to bring a source into compliance within one year.* (EPA Memorandum, page 4)

Thus, for those who can (1) document serious reliability concerns, and (2) meet the criteria set forth in the EPA Memorandum, EPA can issue an AO for up to one year. Obviously, as this is a new and as yet untested process, there is no guarantee that any request by Dominion can or will even be granted.

Randy, as a result of all of these legal requirements, we believe the answer to the question posed in your email – *what is the last possible date for an alternative to no longer be practicable from a time perspective...2016? 2017? or beyond?* – is clearly **April 16, 2017**.

Again, your observation is correct. Dominion will **not** operate in a state of non-compliance subject to penalties. Because the law (Presidential Memorandum, EPA Memorandum, Section 113 of the CAA) can provide flexibility and protection from penalties and further enforcement action only until April 16, 2017, that is clearly the last possible date beyond which any alternative is no longer practicable...or legal.

We hope this helps your analysis and the project to move forward. If you have any questions, please let us know. Thank you in advance for your consideration.

Very truly yours,



Wade F. Briggs, Jr. PE  
Project Manager III

w/encs.

Cc (via e-mail only):

Col. Owen, ACE  
Tom Walker, ACE  
Lynette Rhodes, ACE  
Ben Stagg, VMRC  
John Bull, VMRC  
Daniel L. Siegfried, Dominion

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