

The proposed Decree requires the installation of NO_x pollution control equipment at the Potomac River Generating Station and the Morgantown Generating Plant, over a period of several years. In addition, the proposed Decree imposes limitations on the NO_x emissions from all four plants that apply both annually and during the ozone season.

The proposed Decree also requires Mirant to implement a series of environmental projects designed to reduce particulate matter emissions from the Potomac River Plant. They are described in the proposed Decree and are valued at about \$1 million. In addition, Mirant also will pay a civil penalty of \$250,000 to the United States, and a civil penalty of \$250,000 to the Commonwealth of Virginia.

Joining in the proposed Decree as co-plaintiffs are the State of Maryland and the Commonwealth of Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Mirant Potomac River LLC, Mirant Mid-Atlantic LLC*, D.J. Ref. 90-5-2-1-07829.

The proposed Decree may be examined at the offices of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia, and at the offices of U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.

During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Second Supplement to the Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with 28 CFR 50.7, notice is hereby given that a proposed Second Supplement to the Consent Decree in *United States and State of New York, et al. v. City of New York, et al.*, Civil Action No. CV 97-2154 (Gershon J.) (Gold, M.J.), was lodged with the United States District Court for the Eastern District of New York on September 23, 2004. In this action, the United States and the State of New York sought a court order requiring the City of New York to come into compliance with the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.*, and the Surface Water Treatment Rule, a National Primary Drinking Water Regulation, by installing filtration treatment for its Croton water supply system.

On November 24, 1998, the Court entered a Consent Decree in this action which required the City, among other obligations, to select a site for, design, and construct the Croton filtration plant. The City selected a site for the plant at the Mosholu Golf Course in Van Cortlandt Park in the Bronx. However, on February 8, 2001, the New York State Court of Appeals held that the City could not construct the plant at the Mosholu Golf Course Site without first obtaining approval from the New York State Legislature. The City sought, but did not promptly obtain legislative approval to construct the plant at the Mosholu Golf Course Site.

In view of the lack of legislative approval for the Mosholu Golf Course Site in 2001-2002, the parties to the Consent Decree negotiated in 2001 and the Court entered in 2002 a first Supplement to the Consent Decree ("first Supplement"), which required the City to select a new site and modified the deadlines for construction of the filtration plant. The City identified two alternative sites for construction of the filtration plant, a site in the Town of Mount Pleasant in Westchester County, denominated the Eastview Site, and a site adjacent to the Harlem River in Bronx County, denominated the Harlem River Site. The first Supplement to the Consent Decree required the City to conduct some initial study and design work relating to the Eastview Site and the Harlem River Site and to identify its preferred site in a draft environmental impact statement to be submitted on April 30, 2003. The City was to select one of these two sites or, if legislative approval for the

Mosholu Golf Course Site was obtained by April 15, 2003 and other requirements were met, the City could instead select the Mosholu Golf Course Site.

Legislative approval for the Mosholu Golf Course Site was not obtained by April 15, 2003. The City failed to select a preferred site under the requirements of the first Supplement by April 30, 2003. However, on June 20, 2003, the State legislature passed a bill allowing use of the Mosholu Golf Course Site for the Croton filtration plant, which was signed into law on July 22, 2003. The State legislation also required that the City conduct a supplemental environmental impact statement prior to selecting the preferred filtration plant site.

On June 30, 2004, the City completed a final supplemental environmental impact statement and selected the Mosholu Golf Course Site as its preferred site for the Croton filtration plant. The City also selected the Eastview Site as its backup site for the Croton filtration plant.

As a result of the City's failure to comply with the April 30, 2003 deadline for selecting its preferred site and the later enactment of the State legislation, the Parties have negotiated a further modification of the Consent Decree, which is set forth in the Second Supplement to the Consent Decree ("Second Supplement"). The Second Supplement supercedes the first Supplement.

The Second Supplement sets forth a modified schedule for the City to construct filtration facilities. Consistent with the terms of the Second Supplement, the City selected its preferred and backup sites. The Second Supplement requires the City to complete construction of the Croton filtration plant at its preferred site, the Mosholu Golf Course Site, by May 1, 2011, and commence full operation of the Croton filtration plant by October 31, 2011. The Second Supplement also provides that, if the United States, State, or the City determines during the course of implementation of the Second Supplement that the City cannot complete the plant at the preferred site within the schedule set forth in the Second Supplement or within a reasonable time period agreed to by the parties, the City shall construct the plant at its backup site, the Eastview Site. In addition, the Second Supplement provides for continued implementation of interim measures and for payment by the City of stipulated penalties in the amount of \$180,000 for its failure to select a preferred site timely in accordance with

the first Supplement. The City will also spend up to \$225,000 for an expert consultant to be retained by the United States and State to assess the feasibility of expediting the City's construction schedule.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Second Supplement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, c/o Deborah B. Zwany, Assistant U.S. Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and should refer to *United States and State of New York v. City of New York*, D.J. Ref. 90-5-1-1-4429. A copy of the comments should also be sent to Chief, Environmental Enforcement Section, U.S. Department of Justice, PO Box 7611, Washington, DC 20044.

The proposed Second Supplement may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and at the U.S. Environmental Protection Agency, Region II office, 290 Broadway, New York, New York 10007. During the public comment period, the Second Supplement may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the Second Supplement may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044-7611, or by faxing or emailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$18.00 (25 cent per page reproduction costs) for the Second Supplement, payable to the U.S. Treasury.

Karen S. Dworkin,

Assistant Chief Environmental Enforcement Section, Environment & Natural Resources Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed First Amendment to the Consent Decree, in *United States v. The Upjohn Co. et al. v. ABF Freight System, Inc., et al.* Civil No. 1:92-CV-659 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on September 10, 2004, pertaining to the West KL Avenue Landfill Superfund Site (the "Site"), located on West KL Avenue, Oshtemo Township, Kalamazoo County, Michigan. The proposed First Amendment to the Consent Decree amends a Consent Decree entered by the Court in 1992 that resolved the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Pharmacia Corp., successor to The Upjohn Company; Kalamazoo County; Charter Township of Oshtemo; the City of Kalamazoo (collectively, the "Performing Settling Defendants"); and 219 additional Third-Party Defendant generators at the Site (all defendants, collectively, the "Settling Defendants").

Under the proposed First Amendment to the Consent Decree, the Performing Settling Defendants are obligated to implement a Record of Decision ("ROD") Amendment, issued by the U.S. Environmental Protection Agency ("EPA") on February 27, 2003, of a 1990 ROD for the Site. The ROD Amendment requires the establishment of a new municipal water service zone or alternative institutional controls around a newly discovered area of groundwater contamination and a buffer zone within a determined area extending beyond the contamination, in which every property in the zone will be hooked up to the City of Kalamazoo's municipal water system, and in which groundwater use will be restricted. The ROD Amendment revises the groundwater cleanup standards established in the original 1990 ROD, replacing the Michigan Act 307 type B standards with the current residential standards established under Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (formerly known as Michigan Act 307). The ROD Amendment also provides for the continuation of natural attenuation studies and calls for the preparation of

the landfill cap design to continue while those studies are underway.

Under the proposed First Amendment to Consent Decree, Plaintiff and the Performing Settling Defendants agree to modify the terms of the Consent Decree, as provided by Paragraph 85 of the Consent Decree, to require the Performing Settling Defendants to implement the provisions of the February 27, 2003 ROD Amendment. The Settling Defendants other than the Performing Settling Defendants are not signatories to the proposed First Amendment to the Consent Decree. However, the First Amendment to the Consent Decree does not add to or change any of the settlement obligations of the Settling Defendants other than the Performing Settling Defendants, and none of the settling Third-Party Defendants will have any obligations to implement the provisions of the February 27, 2003 ROD Amendment.

To facilitate future modifications to the Consent Decree regarding implementation of the Work, if any, the First Amendment to the Consent Decree also effectively modifies the provisions of Paragraph 85 in the Consent Decree so that notification to the Settling Defendants other than the Performing Settling Defendants for any future material modifications to the Work under the Consent Decree will not be required.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed First Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044-7611, and should refer to *United States v. The Upjohn Co. et al., v. ABF Freight System, Inc., et al.*, Civil No. 1:92-CV-659 (W.D. Mich.), and DOJ Reference No. 90-11-2-561.

The proposed First Amendment to the Consent Decree may be examined at: (1) the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave. NW., Suite 501, Grand Rapids, MI 49503, (616-456-2404); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604-3507 (contact: Stuart Hersh (312-886-6235)).

During the public comment period, the proposed First Amendment to the Consent Decree may also be examined on the following U.S. Department of Justice Web site, <http://usdoj.gov/enrd/open.html>. A copy of the proposed First Amendment to the Consent Decree may also be obtained by mail from the