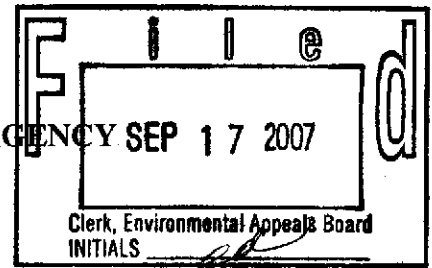


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:

Mirant Kendall, LLC,
Mirant Kendall Station

NPDES Permit No. MA0004898

NPDES Appeal Nos. 06-12, 06-13

ORDER GRANTING LEAVE TO PARTICIPATE IN STATUS CONFERENCE

By motion dated September 13, 2007, the Massachusetts Department of Environmental Protection ("MassDEP"), with the concurrence of counsel for the parties, seeks leave to participate in the status conference scheduled for the above-captioned appeals on September 27, 2007, and in any subsequent status conference(s) in which briefing schedules may be discussed.¹ The September 27 status conference was scheduled pursuant to an August 21, 2007 Board order directing Petitioners Mirant Kendall, LLC ("Mirant"), and the Conservation Law Foundation together with the Charles River Watershed Association ("CLF/CRWA"), along with U.S. Environmental Protection Agency ("EPA") Region 1 (the "Region"), to appear to discuss their positions with respect to the Region's Motion to Extend Stay of Proceedings (July 25, 2007).

In support of its Motion to Participate, MassDEP explains that it is the state regulatory agency responsible for implementing, administering, and enforcing the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. MassDEP further states that it has interest in the

¹ The certificate of service attached to MassDEP's Motion to Participate did not indicate that a copy of the motion had been sent to counsel for Mirant Kendall, LLC. Counsel for Mirant should be included in all future filings related to the above-captioned appeals.

outcome of the above-captioned appeals because:

(i) NPDES Permit No. MA0004898 (the "Permit") was jointly issued by Region 1 and MassDEP and consists of two separate and independent federal and state permit authorizations; (ii) MassDEP issued a Water Quality Certification for the Permit pursuant to Section 401 of the Federal Clean Water Act; and (iii) Petitioner [Mirant] has filed two separate appeals which are pending with MassDEP for the state components of this permitting process, including an appeal of the state permit authorization contained in the Permit and an appeal of the state Water Quality Certification issued for the Permit.

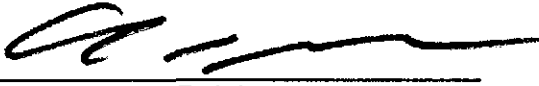
Motion of MassDEP to Participate in Status Conferences at 1-2. MassDEP also notes that, after the present stay is lifted, it intends to move for leave to file an amicus curiae brief in support of Region 1 in connection with Mirant's and CLF/CRWA's petitions for review. *See id.* at 2 n.1. MassDEP finally argues that, given that "Region 1 intends to modify the jointly issued Permit and that such permit modification may require MassDEP to modify its state Water Quality Certification, and that any permit modification could have implications for Mirant's parallel state appeals," MassDEP should be permitted to participate in the September 27, 2007 status conference and in any subsequent status conference(s) in which briefing schedules may be discussed. *Id.* at 2.

For good cause shown, the Board hereby GRANTS MassDEP leave to participate in the September 27, 2007 status conference, beginning at 10:30 a.m.²

So ordered.

Dated: September 17, 2007

ENVIRONMENTAL APPEALS BOARD

By: 
Edward E. Reich
Environmental Appeals Judge

² No subsequent status conferences are contemplated at this time. Robert G. Brown, attorney for MassDEP, notes in his September 12, 2007 cover letter to the Clerk of the Board that he intends to participate in the status conference via video conferencing at Region 1's offices.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Scheduling Status Conference, in the matter of Mirant Kendall, LLC, Mirant Kendall Station, NPDES Petition Nos. 06-12, 06-13, were sent to the following persons in the manner indicated:

By First Class Mail
Postage Prepaid and
Facsimile:

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By Pouch Mail and:
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Ronald A. Fein
Timothy Williamson
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Region 1
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fax: (617) 918-0040

Dated: SEP 17 2007


Annette Duncan
Secretary