

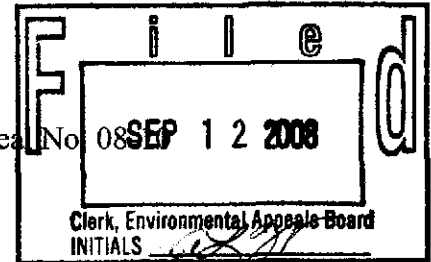
**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)

Mirant Canal, LLC)

NPDES Permit No. MA0004928)

NPDES Appeal No. 08



ORDER DIRECTING BRIEFING

On September 2, 2008, Mirant Canal, LLC, filed a petition for review of National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0004928, which Region 1 of the U.S. Environmental Protection Agency issued to Mirant Canal on August 1, 2008. Also on September 2, 2008, Mirant Canal and the Region filed a joint scheduling motion, seeking permission for Mirant Canal to file a supplement to its petition by September 30, 2008, for the Region to file a response to Mirant Canal's petition and supplemental petition by December 31, 2008, and for a reservation of their respective rights to request further opportunities to file a reply and surreply and take other appropriate actions.

Upon review of the joint motion, Mirant Canal's petition, and the permitting documents in the administrative record, we are holding in abeyance the joint scheduling motion at this time. Instead, we hereby order the Region to file a preliminary brief responding solely to Mirant Canal's contention that it was not provided an adequate opportunity to comment on the contents of Part I.A.13.g of the final permit due to changes between the draft and final permits.¹ In

¹ Part I.A.13.g specifies that Mirant Canal must install a closed-cycle cooling system or an alternative system capable of achieving equivalent reductions in marine organism entrainment levels.

addressing this issue, the Region shall discuss the applicability or inapplicability of 40 C.F.R. § 124.14(b) to this permit.

The Region must file a brief responding to Mirant Canal's argument on this issue on or before Tuesday, October 14, 2008.² Mirant Canal may file a response on or before Friday, October 31, 2008.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: September 12, 2008 By: Anna Holst
for Edward E. Reich
Environmental Appeals Judge

² The Board recognizes that the due date extends beyond the September 30 date by which Mirant Canal had desired to submit a supplemental petition. This order preserves Mirant Canal's request to file a supplemental petition for future consideration.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Directing Briefing** in the matter of *In re Mirant Canal, LLC*, NPDES Appeal No. 08-10, were sent to the following persons in the manner indicated:

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Annette Duncan
Secretary