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ENVIRONMENTAL APPEALS BOARD

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FILE NO: 58182.000007

September 2, 2008

BY HAND DELIVERY

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, DC 20005

Ladies and Gentlemen:

Enclosed are the original and five copies of the following documents for filing with and consideration by the Environmental Appeals Board:

1. Joint Scheduling Motion; and
2. Petition for Review of the Mirant Canal NPDES Permit Issued by EPA Region 1.

Please do not hesitate to contact me with any questions about these filings. Thank you for your attention.

Yours very truly,

Kristy A. N. Bulleit

Enclosures

cc: Mark A. Stein, Esq.

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WASHINGTON, D.C.

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_____)
In re: Mirant Canal, LLC)
NPDES Permit No. MA0004928) NPDES Appeal No. 08-_____
_____)

JOINT SCHEDULING MOTION

Mirant Canal, LLC ("Mirant Canal") and the United States Environmental Protection Agency, Region I ("Region"), respectfully request that the Environmental Appeals Board ("EAB") modify the schedule for the submission of Mirant Canal's Petition for Review, and the Region's response to that Petition, as set forth below.

The requested modification is necessary and appropriate due to the manifold complicated issues raised by, and the substantial administrative record associated with, the issuance of NPDES Permit No. MA0004928, and will ensure that Mirant Canal as the petitioner and the Region as the respondent both are able to present their arguments to the EAB in a manner that is as clear and concise as possible. Moreover, this modification will ensure that Mirant Canal has sufficient time to study and understand each of the Final Permit's new provisions in order to limit the focus of its appeal to as few issues and provisions as practically possible. As further grounds for this joint motion, movants state:

1. Mirant Canal owns and operates the Canal Station, a 1120-megawatt power plant located in Sandwich, Massachusetts on the banks of the Cape Cod Canal. The Canal Station has existed from the 1960s, and has held NPDES Permit No.

MA0004928 since the commencement of permitting under the Clean Water Act. The Station is currently operating under the permit issued in 1989.

2. In May 1994, Mirant Canal applied for a re-issuance of its NPDES permit. In response to an April 30, 2003 request by the Region pursuant to Section 308 of the Clean Water Act, Mirant Canal supplemented its permit application with a submittal dated October 30, 2003.

3. In December 2005, the Region issued a draft NPDES permit.

4. Mirant Canal and other interested parties submitted comments on the draft NPDES permit by the end of the public comment period, which was February 4, 2006.

5. On August 1, 2008, the Region issued the final NPDES Permit No. MA0004928 along with, *inter alia*, a Response to Comments document consisting of approximately 185 single-space pages.

6. The Region has also completed compiling an index of the administrative record, which includes approximately 399 documents comprising thousands of pages. Several of those documents were created or added to the record after the close of public comments on the draft permit and were not available for review by Mirant Canal until after issuance of the final permit.

7. Concurrently with the filing of this motion, Mirant Canal is filing a timely Petition for Review of NPDES Permit No. MA0004928. That Petition contains an itemization of the provisions of the permit that Mirant Canal asserts are the result of clear error by the Region or otherwise warrant review by the EAB.

8. Providing full and appropriate bases for Mirant Canal's Petition, however, requires additional time for Mirant Canal to review the permitting record described

above. In order to distill and crystallize its arguments in a manner that is sufficient to allow the EAB to provide meaningful review of its Petition, Mirant Canal must analyze and synthesize the original Fact Sheet, its own comments on the draft Permit, the comments provided by other interested parties, the Region's response to all of those comments, and the administrative record. Because of the size of the record, and the number of issues included in Mirant Canal's Petition, meaningful preparation would not be possible under the typical briefing schedule. Furthermore, in order to prepare meaningful responses to each of the appealed Permit provisions, Mirant Canal must coordinate the efforts among its internal technical and operations personnel as well as its outside consultants and counsel, which, due to scheduling difficulties at this time of year, necessitates some flexibility on timing. Mirant Canal accordingly seeks leave to file a supplement to the Petition as described below.

9. Likewise, in order to fully address whether Mirant Canal has satisfied the requirements for obtaining review under 40 C.F.R. § 124.19(a), and to fully respond to the arguments presented by Mirant Canal's petition and the expected supplement to the Petition, the Region must undertake the same extensive review and analysis of the significant record in light of Mirant Canal's Petition and the supplement thereto. The Region therefore seeks additional time to respond to Mirant Canal's Petition and the supplement thereto, in order to best advise the EAB whether the matters raised by Mirant Canal should be reviewed, and to provide complete responses to Mirant Canal's contentions.

10. Allowing the requested modification of the petition schedule will benefit the EAB because it will ensure that the procedural and substantive issues associated with

this petition are articulated as clearly and concisely as possible, and will also ensure that unnecessary permit provisions are not appealed due to insufficient time to make a meaningful assessment of their appealability. The EAB will have the benefit of refined and focused briefs that will assist its analysis and review of the issuance of NPDES Permit No. MA0004898. The requested modification will not prejudice any other potential party because, if requested and appropriate, a similar modification to the petition schedule may be made for any other petitions and the Region's responses thereto.

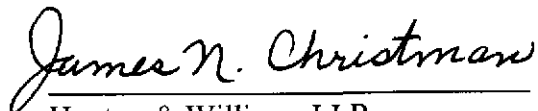
WHEREFORE, Mirant Canal and the Region respectfully request that the EAB modify the schedule for the petition process as follows:

- On or before September 30, 2008, Mirant Canal will submit a Supplemental Petition for Review;
- On or before December 31, 2008, the Region will submit its response to the Petition for Review and the Supplemental Petition for Review; and
- Mirant Canal and the Region reserve the rights to request the opportunity to file a reply or sur-reply, and to request any other appropriate action by the EAB regarding the record, requests for oral argument, etc., and/or to oppose any such requests.

Respectfully submitted,

MIRANT CANAL, LLC

By its attorneys,



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Dated: September 2, 2008