



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

By Federal Express and Electronic Submission

February 11, 2009

U.S. Environmental Protection Agency
Eurika Durr, Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: In re Mirant Canal, LLC; Appeal Number NPDES 08-10

Dear Ms. Durr:

In connection with the above-referenced NPDES permit appeal, please find enclosed for docketing an original of the Status Report by EPA Region 1. The Region has also submitted the Status Report electronically.

Although the Environmental Appeals Board dismissed the permit appeal in its December 11, 2008, *Order Dismissing Petition for Review Without Prejudice*, the Board also requested a status report from the Region within two weeks of the close of the comment period on the new draft permit conditions. Thus, Region 1 is filing the enclosed Status Report in compliance with the Board's Order.

As indicated in the Certificate of Service, copies of the Status Report have been served on the other party to this proceeding.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Stein", written over a white background.

Mark A. Stein
Senior Assistant Regional Counsel
Office of Regional Counsel

cc: Recipients Listed on Certificate of Service

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

In re: Mirant Canal, LLC)

NPDES Permit No. MA 0004928)

NPDES Appeal No. 08-10

STATUS REPORT BY EPA REGION 1

On December 11, 2008, the United States Environmental Protection Agency's ("EPA" or "Agency") Environmental Appeals Board ("Board") issued its *Order Dismissing Petition for Review Without Prejudice* in the above-captioned National Pollutant Discharge Elimination System ("NPDES") permit appeal. The Board's Order requested that EPA Region 1 ("Region 1" or "the Region") "file a status report with the Board no later than two weeks after the close of the public comment period on the new permit conditions, or June 1, 2009, whichever is earlier." In accordance with the Board's Order, Region 1 hereby submits this Status Report.

As discussed in the Order, Region 1 has acted under 40 C.F.R. § 124.19(d) to withdraw certain conditions of the final NPDES permit issued by the Region on August 1, 2008, to the Canal Station power plant owned by Mirant Canal, LLC ("Mirant"). Specifically, Region 1 withdrew permit conditions based upon the Region's determination under section 316(b) of the Clean Water Act, 33 U.S.C. § 1326(b), that closed-cycle cooling is the best technology available ("BTA") for reducing entrainment by Canal Station's cooling water intake structures. On December 12, 2008, Region 1 re-noticed the withdrawn permit conditions as new draft permit conditions for additional public comment. The new comment period was initially scheduled to close on January

15, 2009, but in response to requests for a longer comment period, Region 1 extended the comment period until January 29, 2009. Region 1 also held a public hearing on January 14, 2009, in Sandwich, Massachusetts, where Canal Station is located.

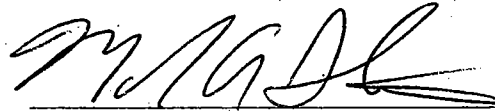
During the comment period, the Region received nine sets of new written comments from a variety of interested parties, including Mirant. Mirant submitted an approximately 100-page long set of comments, together with a series of consultant reports and materials on computer diskettes. Region 1 is not yet in a position to predict with any confidence how long it will take to review and consider all these comments, write responses to them, and develop final permit conditions. The Region believes, however, that it is likely to take several months at a minimum.

Region 1 also notes that the United States Supreme Court is expected to issue its decision in *Entergy Corporation v. Environmental Protection Agency* (Supreme Court Nos. 07-588, 07-589 and 07-597) this term (i.e., by no later than July 2009, and possibly significantly earlier in the year). In *Entergy*, the Court is reviewing the holding by the United States Court of Appeals for the Second Circuit in *Riverkeeper, Inc., et al. v. United States EPA*, 475 F.3d 83 (2d Cir. 2007), that EPA may not consider comparisons between costs and benefits as a factor in determining the BTA under CWA § 316(b).

Once the Supreme Court issues its decision, EPA will assess the import of that decision for ongoing permit proceedings such as the one for the Canal Station permit.

Respectfully submitted,

Dated: February 11, 2009



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In re: Mirant Canal, LLC
NPDES Appeal No. 08-10


CERTIFICATE OF SERVICE

I, Charlotte L. Withey, hereby certify that on this 11th day of February, 2009, I served true copies of Status Report by EPA Region 1 on the following parties in the manner indicated:

Via First Class Mail

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