

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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ENVIR. APPEALS BOARD

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September 12, 2007

Eurika Durr
Clerk of the Board, Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, NW, Suite 600
Washington, DC 2005-3135

Re: **Mirant Kendall, LLC.**
Mirant Kendall Station
NPDES Permit No. MA0004898
NPDES Appeal Nos. 06-12, 06-13

Dear Ms. Durr:

On behalf of the Massachusetts Department of Environmental Protection, please find enclosed for docketing and review by the Environmental Appeals Board the original, and five copies, of the Motion of the Massachusetts Department of Environmental Protection to Participate in Status Conferences.

As I indicated in a voice mail message this date indicated, I would like to participate in the Status Conference scheduled for September 27, 2007, at 10:30 a.m. via video conferencing at EPA's Region 1 offices.

Thank you for your attention to this matter.

Sincerely,

Robert G. Brown
Attorney for the Massachusetts
Department of Environmental Protection

Cc: Peter Shelley, Esq., Conservation Law Foundation
Ronald A. Fein, Esq., EPA Region 1

**BEFORE THE 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

**MOTION OF THE
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
TO PARTICIPATE IN STATUS CONFERENCES**

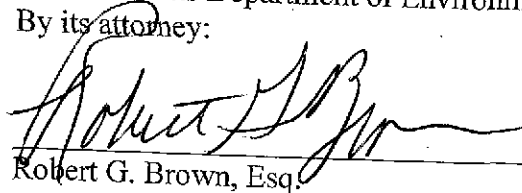
The Massachusetts Department of Environmental Protection ("MassDEP") hereby moves, with the concurrence of counsel for the parties, for an Order allowing it to participate in the Status Conference that has been scheduled by the Environmental Appeals Board (the "EAB") in this matter for September 27, 2007, at 10:30 a.m., and in any subsequent status conference(s) in which briefing schedules may be discussed.

MassDEP is the state regulatory authority charged with implementing, administering and enforcing the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. MassDEP has an interest in the outcome of this case 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 Kendall, LLC ("Mirant") has filed two separate parallel 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.¹ 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 requests that the Board allow MassDEP to participate in the Status Conference scheduled in this matter and in any subsequent status conference(s) in which briefing schedules may be discussed.

Respectfully submitted,

Massachusetts Department of Environmental Protection
By its attorney:



Robert G. Brown, Esq.
Massachusetts Department of Environmental Protection
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Date: September 12, 2007

¹ MassDEP notes that, after the stay is lifted, MassDEP 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.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion of the Massachusetts Department of Environmental Protection to Participate in Status Conferences in the matter of Mirant Kendall, LLC, Mirant Kendall Station, NPDES Appeal Nos. 06-12, 06-13, were served on the following persons this September 12, 2007:

Original by U.S. Postal Service Overnight Delivery

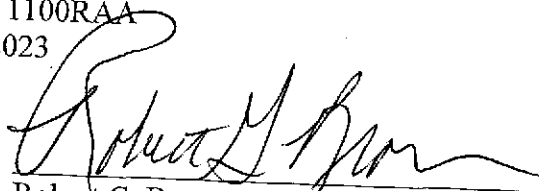
Eurika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
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