



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

VIA FAX AND VIA FIRST CLASS MAIL

Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC 1103B)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: NPDES Appeal Nos. 06-12, 06-13, 09-04
NPDES Permit No. MA 0004898
Mirant Kendall, LLC

September 23, 2009

Dear Ms. Durr,

Enclosed please find the original of the parties' Joint Status Report and Motion to Extend Stay of Proceedings in the above-captioned case, with an attached certificate of service. The motion and the certificate of service have also been mailed to the Board and to counsel of record today. In lieu of five additional paper copies for the Board, an electronic copy has been posted to the CDX system.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fein".

Ronald A. Fein, Assistant Regional Counsel
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cc: Ralph A. Child, Esq., Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C.
Kristy A. Bulleit, Esq., Hunton & Williams LLP
Peter Shelley, Esq., Conservation Law Foundation
Robert Brown, Esq., Massachusetts Department of Environmental Protection

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

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| _____ |) | |
| In re: Mirant Kendall, LLC |) | |
| Mirant Kendall Station |) | NPDES Appeal Nos. 06-12, 06-13, 09-04 |
| |) | |
| NPDES Permit No. MA 0004898 |) | |
| _____ |) | |

**JOINT STATUS REPORT AND
MOTION TO EXTEND STAY OF PROCEEDINGS**

The parties to this proceeding—Petitioner Mirant Kendall, LLC (“Mirant,” the permittee), Petitioner Conservation Law Foundation (“CLF”), Petitioner Charles River Watershed Association (“CRWA”), and Respondent United States Environmental Protection Agency (“Agency”), Region 1 (“Region”)—hereby provide this status report and respectfully request that the Environmental Appeals Board (“Board”) further stay all proceedings in this case by two months to allow for the parties to continue, and likely conclude, settlement negotiations. As explained below, the parties believe that they will be able to agree upon the text of a proposed permit modification by the week of November 16, 2009.

BACKGROUND

The full history of this matter is amply set forth in prior Board orders. Briefly, these proceedings began in October 2006 with petitions for review of a National Pollutant Discharge Elimination System (“NPDES”) permit that the Region issued for Mirant’s Kendall Station power plant (“Permit”). The Permit includes both thermal discharge limits imposed under Section 316(a) of the Clean Water Act, 33 U.S.C. § 1326(a), and cooling water intake structure requirements imposed under Section 316(b) of the Clean Water Act,

33 U.S.C. § 1326(b). Both Mirant and CLF (on behalf of itself and CRWA) filed petitions for review of the Permit. Each petition, albeit for different reasons, challenged the Permit's thermal discharge limits and its cooling water intake structure requirements imposed under Sections 316(a) and (b), respectively, of the Clean Water Act, as well as other provisions of the Permit. The Region eventually elected to withdraw the Permit's requirements imposed under Section 316(b) of the Act, and issued a Draft and then Final Permit Modification revising those requirements. Mirant filed a Petition for Review of Modified Permit, which the Board later consolidated with the existing appeals.

In parallel with the above developments, however, the parties had begun settlement discussions. In particular, the parties discussed the possibility of Mirant's installing technology that would substantially reduce both its thermal discharge and its cooling water intake flow. The Board has twice granted the parties' joint motions to extend the stay of proceedings for the purpose of engaging in settlement discussions. *See In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12 & 06-13 (EAB, Feb. 26, 2009) (Order Granting Joint Motion to Extend Stay of Proceedings); *In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12 & 06-13 (EAB, June 9, 2009) (Order Granting Joint Motion to Extend Stay of Proceedings) ("June 9 Order"). In the June 9 Order, the Board extended the stay of proceedings until October 5, 2009, and required the parties to submit by September 24, 2009 a status report that would advise the Board on the progress of settlement discussions and whether it is appropriate to continue the stay, establish a revised briefing schedule, or take other appropriate action.

STATUS REPORT

The parties are nearing settlement. Since the issuance of the June 9 Order, the parties have continued to engage in serious and substantive settlement discussions concerning the structure and terms of a NPDES permit modification that would resolve this matter without the need for any further litigation before the Board.

By October 2, 2009, the Region intends to transmit to Mirant, CLF, and CRWA a partial draft permit modification that, the Region believes, resolves all issues pertaining to cooling water intake structure requirements under Section 316(b) of the Clean Water Act. While the petitioners will need to review this proposed text, and while more work remains on thermal discharge limits under Section 316(a) of the Clean Water Act, the parties believe these negotiations can be completed, and draft permit modification text agreed to, by the week of November 16, 2009.

GROUND FOR FURTHER RELIEF

A further extension of the stay of proceedings, to November 24, 2009, is essential so that the parties may complete detailed and substantive settlement discussions. During this time, Mirant, CLF, CRWA, the Region, and MassDEP will attempt to resolve all outstanding issues pertaining to permit text, and embody that agreement in a negotiated draft permit modification. To be sure, an agreed-upon draft permit modification would not itself resolve the entire appeal: for example, the draft would need to be submitted for public comment, which could result in the need for further evaluation and/or discussions. Further, since compliance with the contemplated conditions of the permit modification will require the installation of new equipment by Mirant, the limits and conditions applicable to permitted operations and discharges until the new equipment is installed and operating still

require resolution. However, an agreed-upon draft permit modification would mark a significant milestone in the resolution of this matter, and pave the way towards an agreed-to final permit modification which the petitioners here would not appeal.

Such a resolution would further the goals of the Clean Water Act by achieving important environmental benefits without protracted litigation, and would conserve administrative and judicial resources by avoiding unnecessary briefing of issues that could be resolved by settlement. Absent a continuation of the stay during this time period, the Region (and the Board) would be forced to divert their time and effort to issues that could instead be entirely resolved through settlement discussions.

REQUESTED RELIEF

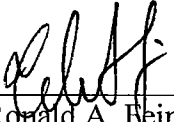
The parties jointly propose the following course of action.

1. That all proceedings in this matter be stayed until November 24, 2009;
2. That the Region and Petitioners, preferably jointly but separately if they are unable to agree, submit by November 19, 2009 a status report advising the Board on the progress of their settlement discussions and advising the Board whether it is appropriate to continue the stay, establish a revised briefing schedule, or take other appropriate action.

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,



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Date: September 23, 2009

U.S. Environmental Protection Agency
Washington, D.C. 20460

MIRANT KENDALL, LLC

By its attorneys,

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**CONSERVATION LAW FOUNDATION and
CHARLES RIVER WATERSHED ASSOCIATION**

By their attorney,

Peter Shelley / by *ECF* as authorized

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Date: September 23, 2009

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the parties' Joint Status Report and Motion to Extend Stay of Proceedings were sent on the 23d day of September 2009 to the following persons in the manner described below:

Original by first class mail
Copy posted to CDX electronic system
Copy by fax

Eurika Durr, Clerk of the Board
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Signed: September 23, 2009

