



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
NPDES Permit No. MA 0004898
Mirant Kendall, LLC

May 27, 2008

Dear Ms. Durr,

Enclosed please find the original of Respondent's 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, electronic copies of each document have been posted to the CDX system.

Sincerely,

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

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

cc: Ralph A. Child, Esq., Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C.
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 |
| |) | |
| NPDES Permit No. MA 0004898 |) | |
| _____ |) | |

**RESPONDENT'S STATUS REPORT AND
MOTION TO EXTEND STAY OF PROCEEDINGS**

Region 1 ("Region") of the United States Environmental Protection Agency ("Agency"), with the assent of Petitioners Mirant Kendall, LLC ("Mirant"), the Conservation Law Foundation ("CLF"), and the Charles River Watershed Association ("CRWA"), hereby provides this status report and respectfully requests that the Environmental Appeals Board ("Board") extend the stay of proceedings in this case, in light of the status of a pending modification to the permit under appeal.

As explained in more detail below, the Region today requests that the stay be extended to October 15, 2008, so that the Region may finalize the permit modification.

BACKGROUND

As set forth more fully in the Board's two most recent orders in this matter, this proceeding is currently stayed in light of a pending modification to the permit that is the subject of this proceeding. *See generally In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12 & 06-13, at 1 (EAB Apr. 23, 2008) (Order Extending Stay of Proceedings) ("April 23 Order"); *In re Mirant Kendall, LLC, Mirant Kendall*

Station, NPDES Appeal Nos. 06-12 & 06-13 (EAB Sept. 28, 2007) (Order Extending Stay of Proceedings). As of the date of the Board's most recent order, the public comment period for the draft permit modification was still pending. *See* April 23 Order, at 1. In that order, the Board granted the Region's request for an immediate extension of the stay of proceedings until May 28, 2008, so that the Region could initially review the comments and estimate the time it would take to complete the permit modification. *See id.* at 2.

STATUS REPORT AND GROUNDS FOR EXTENSION OF STAY

The public comment period for the draft permit modification closed on May 1, 2008. Mirant, CLF, and several other interested persons submitted written and/or oral comments, and the Region has reviewed all comments received.

While it is impossible to predict with certainty the amount of time needed to respond to the comments and make any appropriate changes to the draft permit modification, the Region presently estimates that, based on the number and complexity of the comments and the difficulty of the issues raised therein, the Region will need until October 15, 2008. An extension of the stay until that date is necessary for the Region to be able to examine the issues raised in the comments, consult with interested state and federal agencies as necessary, make any appropriate changes, develop written responses to the comments, and finalize the permit modification.

REQUESTED RELIEF

In the interest of judicial economy and to enable the Region to complete the permit modification process contemplated by 40 C.F.R. § 124.19(d), the Region requests that the Board issue an order extending the stay of proceedings. The Region proposes to submit a

status report no later than October 15, 2008, advising whether the Board should extend the stay, establish a revised schedule for the litigation, or take other appropriate action.

The Region represents that its undersigned counsel has discussed this Status Report and Motion to Extend Stay of Proceedings with Petitioners' respective counsel, and that Petitioners assent to the motion.

Respectfully submitted,



Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114
617-918-1040
Fax: 617-918-0040

Date: May 27, 2008

Of Counsel:

Richard Witt, Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
Washington, D.C. 20460

In re: Mirant Kendall, LLC
NPDES Appeal Nos. 06-12, 06-13

CERTIFICATE OF SERVICE

I, Ronald A. Fern, hereby certify that copies of the foregoing Respondent's Status Report and Motion to Extend Stay of Proceedings were sent on the 27th day of May 2008 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: May 27, 2008


