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December 8, 2008

FILE NO: 58182.000007

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

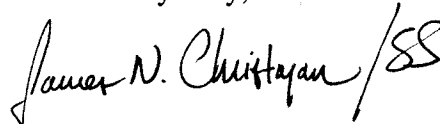
Mirant Canal, LLC
NPDES Permit No. MA0004928
NPDES Appeal No. 08-10

Dear Ms. Durr:

Enclosed for filing please find an original and six copies of Permittee Mirant Canal LLC's Answer to Region 1's Status Report and Motion for Stay of Proceedings in the above-captioned matter. Please date-stamp the copy and give it to the awaiting courier.

Should you have any questions regarding this submittal, please let me know. Thank you for your attention to this matter.

Yours very truly,


James N. Christman

Enclosures

cc: Mark A. Stein, Esq.
Richard T. Witt, Esq.

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

In re: Mirant Canal, LLC

NPDES Appeal No. 08-10

NPDES Permit No. MA0004928

ENVIRONMENTAL APPEALS BOARD
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**PERMITTEE MIRANT CANAL, LLC'S ANSWER TO REGION 1'S
STATUS REPORT AND MOTION FOR STAY OF PROCEEDINGS**

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Counsel for Petitioner Mirant Canal, LLC

December 8, 2008

On December 4, 2008, Region 1 of the United States Environmental Protection Agency provided the Appeals Board a status report¹ and requested that the Board stay these appeal proceedings until June 1, 2009. The Region will exercise its option under 40 C.F.R. § 124.19(d) to withdraw certain permit conditions, re-notice them as draft permit conditions for public comment, consider public comments received, write responses to the significant comments received, and prepare new final permit conditions.

The conditions in the final permit to be withdrawn are those “based upon the Region’s determination under section 316(b) of the Clean Water Act, 33 U.S.C. § 1326(b), that closed-cycle cooling is the best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 for reducing entrainment by Canal Station’s cooling water intake structures” (Respondent’s Status Report at 2). According to the Region’s letter of December 4, 2008, to the Appeals Board and Mirant Canal’s counsel, the permit provisions to be re-noticed are these:

Therefore, in accordance with 40 C.F.R. § 124.19(d), Region 1 will re-notice the withdrawn permit provisions as draft permit conditions and provide the public an opportunity to comment on them. Specifically, the Region will withdraw provisions of the Final Permit that were based on Region 1’s determination that closed-cycle cooling is the best technology available for reducing entrainment by Mirant Canal Station’s cooling water intake structures, namely permit conditions I.A.2.f, I.A.7.f, I.A.8, I.A.13.g, and I.A.13.h. The Region will also issue a supporting Fact Sheet for the new draft permit conditions.

Region 1 is only withdrawing and re-proposing the provisions of the Final Permit set forth in the paragraph above and is not seeking comment on other permit provisions. Nevertheless, the permitting agencies recognize the possibility that a commenter might wish to comment on additional permit conditions that the commenter believes are inextricably intertwined with the BTA determination for entrainment. Region 1 will consider and respond to any significant comments in this regard that it determines to be within the scope of this proposed action.

¹ Respondent’s Status Report and Motion for Stay of Proceedings (December 4, 2008).

The Permittee-Petitioner, Mirant Canal, LLC, supports Region 1's request to stay the appeal proceedings until June 1, 2009. We disagree with the Region's Status Report and Motion for Stay only in that the statement of issues to be re-noticed is too narrowly drawn. The permit provisions that require closed-cycle cooling (or something comparable) are Parts I.A.13.g and .h (as well as the closely related heat load report provision, I.A.7.f, the requirement of source water physical data and cooling water intake structure data, I.A.8, and the cooling tower blowdown limits, I.A.2.f). We agree with the Region that these should be re-noticed. But other permit provisions should be re-noticed as well.

Mirant Canal has argued, in its Petition for Review of September 2, 2008, that several provisions in the final permit for the Canal Station came as a surprise, that Mirant Canal and the public were not given opportunity to comment, and that they were not a "logical outgrowth" of the proposed permit.

Certainly the requirement of closed-cycle cooling is among those "logical outgrowth issues," but there are others. Chief among them is the requirement in the final permit that fly ash wastewater be separated from chemical and nonchemical metal cleaning wastes and that iron and copper limits apply to nonchemical cleaning wastes that have in the past been classified "equipment washes" (Final Permit Part I.A.5.b, Petition for Review pp. 21-24). Although this requirement was in the proposed permit, the Region performed a "best technology available" (BAT) analysis (which requires a detailed consideration of several statutory factors) to justify the requirement only in the response to comments. As Mirant Canal said in its petition (p. 24), it had "no opportunity to comment on this analysis."

In addition, the § 316(b) issues related to impingement, not just entrainment, should be included in the re-noticing of the permit. The two sets of issues are too closely related to be

treated separately. The intake technology (or, as the Region would have it, closed-cycle cooling) used to minimize entrainment also affects impingement. If cooling towers are *not* required to minimize entrainment, for example, the permit limits on cooling tower blowdown (Final Permit Part I.A.2.f, Petition for Review pp. 18-20) will not be needed, as Region 1 recognizes by including I.A.2.f among the provisions to be re-noticed. If cooling towers *are* required, many of the biological monitoring requirements (Final Permit Parts I.A.9 through I.A.12, Petition for Review pp. 27-36) will not be necessary. Also, the choice of intake technology affects the requirements for intake structures and Outfall 002 in Final Permit Parts I.A.3, I.A.13, and I.A.14 (Petition for Review pp. 36-46).

If there is one thing the Shaw Group analysis (Exhibit E to Mirant Canal’s reply brief of October 30, 2008) makes clear, it is that a power plant is a complicated set of systems that have to work together. Changing one component often requires changing others. In particular, plant modifications to reduce entrainment inevitably affect cooling tower blowdown requirements, intake screen requirements, biological monitoring requirements, and fish return (Outfall 002) requirements.

Accordingly, Mirant Canal asks that the permit be re-noticed and opened for comment on the following issues:

Final Permit	Issue	Mirant Canal’s Petition for Review
<u>Inextricably Intertwined Issues</u>		
I.A.2.c	Measuring water temperature 15 feet below surface July 1 through September 30	18
I.A.2.f	Limits on cooling tower blowdown	18-20
I.A.9 - .12	Biological monitoring	27-36

Final Permit	Issue	Mirant Canal's Petition for Review
<u>Inextricably Intertwined Issues</u>		
I.A.3.b, I.A.3.c, I.A.3.d, I.A.13.b, I.A.13.c, I.A.13.d, I.A.13.e, I.A.13.f, I.A.14.b	Changes to intake structures and Outfall 002	36-46
<u>Other "Logical Outgrowth" Issues</u>		
I.A.5.b	Segregating metal cleaning wastes and applying iron and copper limits to nonchemical metal cleaning wastes	21-24

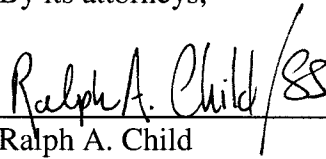
In contrast, Region 1 in its December 4 letter lists only the specific requirements I.A.2.f, I.A.7.f, I.A.8, I.A.13.g, and I.A.13.h. The Region leaves open the possibility that comments will be considered on additional permit conditions that are "inextricably intertwined" with the BTA determination for entrainment. Mirant Canal submits that the permit conditions I.A.2.c, I.A.9. - .12, I.A.3.b - .d, I.A.13.b - .f, and I.A.14.b, identified above, are just such "inextricably intertwined" issues. We ask the Board to direct the Region to consider comments on those "inextricably intertwined" issues as well as the "logical outgrowth" issue of metal cleaning wastes, I.A.5.b.

By attempting to identify, above, the issues that raise the "logical outgrowth" issue and the issues that are inextricably intertwined with entrainment reduction technology, we do not intend to preclude interested parties from commenting on other issues that may arise from the parts of the permit that the Region re-notices. But the above is a reasonable list of the issues that should be opened for comment.

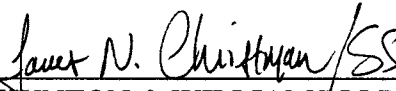
Respectfully submitted,

MIRANT CANAL, LLC

By its attorneys,

/SS

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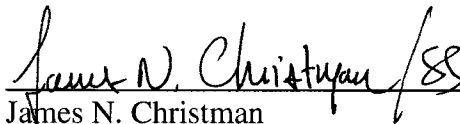
Dated: December 8, 2008

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Permittee Mirant Canal, LLC's Answer to Region 1's Status Report and Motion For Stay of Proceedings was served by U.P.S. Overnight Delivery on the following this 8th day of December, 2008.

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