

December 1, 2006

Mr. Joel La Bissonniere  
Assistant General Counsel for Ocean Services  
National Oceanic and Atmospheric Administration  
1305 East-West Highway, SSMC4, Room 6111  
Silver Spring, MD 20910

Re: Mirant Kendall, LLC  
MCZM Consistency Determination regarding NPDES Permit No. MA0004898

Dear Mr. La Bissonniere:

I write to follow up on the string of correspondence culminating in your letter of November 17, 2006, which provided an extension of time until December 29, 2006 for Mirant Kendall, LLC to re-file its appeal of the consistency determination issued on September 15, 2006 (the "September 15<sup>th</sup> determination") by the Massachusetts Office of Coastal Zone Management ("MCZM"). The September 15<sup>th</sup> determination concerned the proposed issuance by Region 1 of the U.S. Environmental Protection Agency ("EPA") of National Pollutant Discharge Elimination System Permit No. MA0004898 (the "NPDES Permit") for the Mirant Kendall Station in Cambridge, Massachusetts.

As described in your letter of November 17<sup>th</sup>, that extension until December 29<sup>th</sup> was required due to EPA's delays in compiling the administrative record that must be filed as part of an appeal of the September 15<sup>th</sup> determination.

The circumstances that led Mirant Kendall to seek to appeal MCZM's September 15<sup>th</sup> determination, however, have now changed. By letters dated November 8, 2006 and November 22, 2006, copies of which are attached, MCZM addressed its September 15<sup>th</sup> determination and, per its letter of November 22, now intends its letter of November 8<sup>th</sup> entirely to "supersede and replace" its September 15<sup>th</sup> determination.

The purpose of this letter is simply to inform your office that Mirant Kendall no longer intends to re-file its appeal of the September 15<sup>th</sup> determination because MCZM has entirely withdrawn and replaced that determination including, but not limited to, those aspects of the September 15<sup>th</sup> determination which had led Mirant Kendall to file its appeal to your office.

For the reasons identified in its notice of appeal initially filed with your office and dated October 24, 2006, however, Mirant Kendall continues to believe that the September 15<sup>th</sup>

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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determination constituted an objection by MCZM to EPA's proposed permit for Mirant Kendall, and that EPA's subsequent issuance of the NPDES permit on September 26, 2006 violated EPA's obligations under the Coastal Zone Management Act and its own regulations.

Mirant Kendall fully reserves its rights in any proceeding to contest whether EPA had authority to issue the NPDES permit on September 26, 2006 in reliance on the September 15<sup>th</sup> determination.

Very truly yours,



Ralph A. Child

/encls.

cc: Brett Grosko, NOAA  
Bennet Heart, EOE  
Bruce Carlisle, MCZM  
Ron Fein, EPA Region 1  
Bob Brown, MDEP

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

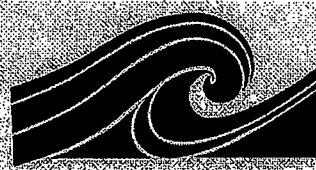
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bcc: Sonnet Edmonds  
Shawn Konary  
Leslie Alden  
Jeff Perry  
Chris Sherman  
Charlie Cooper  
Bret Leone-Quick  
Colin Van Dyke

LIT 1596021v.1



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
251 Causeway Street, Suite 800, Boston, MA 02114-2136  
(617) 626-1200 FAX: (617) 626-1240

November 22, 2006

Ralph A. Child  
Counsel for Mirant Kendall, LLC  
Mintz Levin  
One Financial Center  
Boston, MA 02111

RE: CZM Federal Consistency Review of Mirant Kendall Station,  
NPDES permit # MA0004898; Cambridge

Dear Mr. Child:

This letter is to respond to your inquiry dated November 10, 2006. The Massachusetts Office of Coastal Zone Management intended its correspondence to Mr. Shawn Konary, dated November 8, 2006, to supersede and replace the earlier letter dated September 15, 2006.

Sincerely,

(BKC for SSC)

Susan Snow-Cotter  
Director

czm #6078

cc: Shawn Konary: Mirant Kendall, L.L.C., 9 Freezer Road, Sandwich, MA 02563  
Brett Grosko: NOAA Office of General Counsel for Ocean Services,  
1315 East-West Highway, Rm. 6111, Silver Spring, MD 20910  
George Papadopolous & Ronald Fein: EPA New England, 1 Congress St., Suite 1100  
RAA, Boston, MA 02114  
Glenn Haas & Philip Weinberg: Mass DEP, 1 Winter Street, Boston, MA 02108





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November 8, 2006

Shawn Konary  
Director, Environmental, Safety and Health  
Mirant Kendall, L.L.C.  
9 Freezer Road  
Sandwich, MA 02563

RE: CZM Federal Consistency Review of Mirant Kendall Station,  
NPDES permit # MA0004898; Cambridge

Dear Mr. Konary:

On September 15, 2006, the Massachusetts Office of Coastal Zone Management (CZM) notified you by letter that we had completed our review of the Mirant Kendall Power Station NPDES permit. This letter is intended to clarify that correspondence.

CZM finds that the activity is consistent with the CZM enforceable program policies.

CZM also takes this opportunity to note that, going forward, federal regulations allow CZM the opportunity to (1) review activities that constitute "major amendments" to previously issued federal authorizations (15 CFR 930.51); (2) request remedial action to ensure that activities continue to conform to federal and state requirements (15 CFR 930.65); and (3) provide for supplemental coordination in cases where the proposed activity's effect on coastal uses or resources substantially differs from that originally described (15 CFR 930.66).

Thank you for your cooperation with CZM.

Sincerely,

Susan Snow-Cotter  
Director

*SKC for SSC*

czm #6078

cc: Brett Grosko: NOAA Office of General Counsel for Ocean Services,  
1315 East-West Highway, Rm. 6111, Silver Spring, MD 20910  
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Ralph Child: Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C., One Financial  
Center, Boston, MA 02111

