



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1-CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

NOV 29 2007

Mr. Shawn Konary
Director, Environmental Affairs
Mirant Canal, L.L.C.
9 Freezer Road
Sandwich, MA 02563

Re: Clean Water Act Section 308 Information Request Letter dated December 30, 2004 for
Canal Station NPDES Permit Reissuance - [NPDES Permit No: MA0004928]

Dear Mr. Konary:

The United States Environmental Protection Agency's office for the New England Region (EPA or the Region) has received your letter dated October 29, 2007, in which Mirant Canal, LLC (Mirant), requested that EPA terminate its pending information request, issued pursuant to section 308 of the Clean Water Act (CWA), relative to Mirant Canal Station's cooling water intake structures (CWISs).

Specifically, by letter dated December 30, 2004 (Section 308 Request), EPA required Mirant to submit certain information to EPA no later than January 7, 2008 to facilitate the development of future CWIS requirements under CWA § 316(b) for Mirant Canal Station. This information request was based on EPA's Phase II Rule for CWISs under CWA § 316(b), 40 C.F.R. Part 125, Subpart J (the Phase II Rule), which set national performance standards for, and information submission requirements regarding, CWISs at large, existing power plants. Given that Mirant Canal Station was subject to the Phase II Rule, EPA's Section 308 Request required the submission of information consistent with the requirements of the Rule.

As you correctly describe in your letter, the United States Court of Appeals for the Second Circuit remanded several provisions of the Phase II Rule while the Section 308 Request was pending. *See Riverkeeper, Inc. v. EPA*, 475 F.3d 83 (2d Cir. 2007). Furthermore, in response to that decision, on July 9, 2007, EPA formally suspended the Phase II Rule, with the exception of 40 C.F.R. § 125.90(b), by publishing a notice of suspension in the Federal Register. *See* 72 Fed. Reg. 37107 (July 9, 2007). Under 40 C.F.R. 125.90(b), permitting authorities are directed to establish § 316(b) requirements on a "best professional judgment" (BPJ) basis for existing facilities not subject to categorical standards contained in EPA regulations. Consistent with applicable federal regulations, EPA intends to issue a final permit in the near future that contains § 316(b) requirements based on BPJ.

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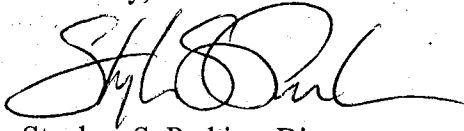
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In light of EPA's recent suspension of the Phase II Rule, the specific information submissions and deadlines to which the Section 308 Request refers are no longer in effect. Therefore, EPA is hereby withdrawing the information submission requirements detailed in its Section 308 Request.

If you have any questions concerning this letter, please contact Sharon DeMeo at (617) 918-1995.

Sincerely,



Stephen S. Perkins, Director
Office of Ecosystem Protection

- cc. Paul Hogan, MassDEP
- Mark Stein, EPA
- Sharon DeMeo, EPA
- ✓ David Webster, EPA