



CONSERVATION LAW FOUNDATION

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October 27, 2006

ENVIR. APPEALS BOARD

Via Federal Express/Signature Required

U.S. Environmental Protection Agency
Eurika Durr
Clerk of the Board, Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: **In the Matter of Mirant Kendall, LLC
Mirant Kendall Station
Renewal of NPDES Permit No. MA0004898**

Dear Ms. Durr:

On behalf of the Conservation Law Foundation and the Charles River Watershed Association, I am herewith submitting for docketing and review by the Environmental Appeals Board the original of each of the documents listed below:

1. Petition for Review of NPDES Permit Issued by Region I on September 26, 2006;
2. Joint Scheduling Motion; and
3. Certificate of Service.

In lieu of five additional hard copies, I have sent electronic pdf files of each document to the EAB via EPA's CDX electronic submission system.

Thank you for your attention to this matter.

Very truly yours,

Carol Lee Rawn

Enclosures

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

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ENVIR. APPEALS BOARD

_____)	
In re: Mirant Kendall, LLC)	
Mirant Kendall Station)	NPDES Appeal No. 06-_____
_____)	
NPDES Permit No. MA0004898)	
_____)	
_____)	

JOINT SCHEDULING MOTION

The Conservation Law Foundation (“CLF”), the Charles River Watershed Association (“CRWA”) and the United States Environmental Protection Agency, Region I (“Region”), respectfully request that the Environmental Appeals Board (“EAB”) modify the schedule for the submission of a joint Petition for Review by CLF and CRWA, and the Region’s response to that Petition, as set forth below. In October 2006, Mirant Kendall, LLC (“Mirant Kendall”) and the Region filed a joint motion seeking the same briefing schedule that is proposed below. The requested modification is necessary and appropriate due to the complex issues and substantial administrative record associated with the issuance of NPDES Permit No. MA0004898, and will ensure that CLF and CRWA as well as the Region will be able to present their arguments to the EAB in a manner that is as clear and concise as possible. As further grounds for this joint motion, movants state:

1. CLF works to solve the problems threatening our natural resources and communities in Massachusetts and throughout New England. For the past two years, CLF

has focused much of its Massachusetts water advocacy work on issues regarding the health of the Charles River. CRWA is the nation's leading research and advocacy watershed organization, using science, law, and advocacy to protect and restore the Charles River and its watershed.

2. In June 2004, the Region issued a draft NPDES permit for Kendall Station, which is owned and operated by Mirant Kendall, LLC ("Mirant Kendall").

3. CLF, CRWA and Mirant Kendall, as well as other interested parties, submitted comments on the draft NPDES permit by October 15, 2004, the end of the public comment period.

4. On September 26, 2006, the Region issued the final NPDES Permit No. MA0004898 along with, inter alia, a Response to Comments document consisting of approximately 431 single-space pages, not including charts and exhibits. Subsequently, the Region compiled an index of the administrative record, which includes approximately 676 documents comprising thousands of pages.

5. Concurrently with the filing of this motion, CLF and CRWA are filing a timely Petition for Review of NPDES Permit No. MA0004898. That Petition itemizes the provisions of the permit that CLF and CRWA assert are the result of clear error by the Region or otherwise warrant review by the EAB.

6. CLF and CRWA require additional time in order to provide comprehensive and clear support for their Petition. Because of the significant size of the record, and the complexity of the issues, meaningful preparation would not be possible under the typical briefing schedule. CLF and CRWA accordingly seek leave to file a supplement to the Petition as described below.

7. Likewise, in order to fully address whether Mirant Kendall, CLF and CRWA (“the petitioners”) have satisfied the requirements for obtaining review under 40 C.F.R. §124.19(a), and to fully respond to the arguments presented by the petitioners as well as any supplements to the Petitions, the Region must undertake the same extensive review and analysis of the significant record. The Region therefore seeks additional time to respond to the Petitions and the supplements thereto, in order to best advise the EAB whether the matters raised by the petitioners should be reviewed, and to provide full and complete responses to the petitioners’ contentions.

8. Allowing the requested modification of the petition schedule will benefit the EAB because it will ensure that the procedural and substantive issues associated with this petition are articulated as clearly and concisely as possible. The EAB will have the benefit of refined and focused briefs that will assist its analysis and review of the issuance of NPDES Permit No. MA0004898 and its substantial administrative record. The requested modification will not prejudice any other potential party because, if requested and appropriate, a similar modification to the petition schedule may be made for any other petition and the Region’s responses thereto.

9. Mirant Kendall assents to this motion.

WHEREFORE, CLF, CRWA and the Region respectfully request that the EAB modify the schedule for the petition process as follows:

- On or before December 15, 2006, CLF and CRWA will submit a Supplement to their Petition for Review;
- On or before the 120th day following the Region’s receipt of CLF and CRWA’s Supplement to their Petition for Review, the Region will submit its

response to the Petition for Review and the Supplement to the Petition for Review; and

- CLF, CRWA and the Region reserve the rights to request the opportunity to file a reply or sur-reply, and to request any other appropriate action by the EAB regarding the record, requests for oral argument, etc., and/or to oppose any such requests.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,

and

**CHARLES RIVER WATERSHED
ASSOCIATION**

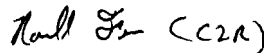
By their attorney,



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EPA REGION I,

By its attorneys,



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Dated: October 27, 2006