



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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ENVIR. APPEALS BOARD

By Federal Express

December 4, 2008

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

Ralph A. Child, Esq.
(Counsel for Mirant Canal Station, LLC)
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111

Re: Notice of Withdrawal of Contested Conditions
Mirant Canal Station, NPDES Permit MA0004928
NPDES Appeal No. 08-10

Dear Ms. Durr and Mr. Child:

The Region 1 Office (Region 1 or the Region) of the United States Environmental Protection Agency (EPA) is providing this notification to EPA's Environmental Appeals Board (Board) and Mirant Canal Station, LLC (Mirant), pursuant to 40 C.F.R. § 124.19(d). Specifically, this letter notifies the Board, Mirant and the other recipients listed below that Region 1 intends to withdraw certain provisions of the final National Pollutant Discharge Elimination System (NPDES) permit that the Region and the Massachusetts Department of Environmental Protection (MassDEP) jointly issued to Mirant's Canal Station power plant (Canal Station) on August 1, 2008 (Final Permit), and then to re-notice those provisions as draft permit conditions for public comment.

After Region 1 issued the Final Permit to Canal Station, Mirant appealed the permit to the Board on September 2, 2008. One of the issues raised in the appeal was whether the Final Permit's entrainment reduction requirements should be re-noticed to provide additional opportunity for public comment. Preliminary briefing on this issue took place during October 2008, and the issue was discussed at a status conference held by the Board on November 19, 2008. While the Board indicated that it has not yet decided how it would rule on the issue, and Region 1 does not believe that re-noticing these permit conditions for additional public comment is legally required, the Region clearly has the discretionary authority to take such action. After further consideration, and in view of the practical considerations raised by the Board at the status

conference with regard to disposition of the procedural issue, the Region has now decided that re-noticing the permit to provide additional opportunity for public comment would be desirable in this case.

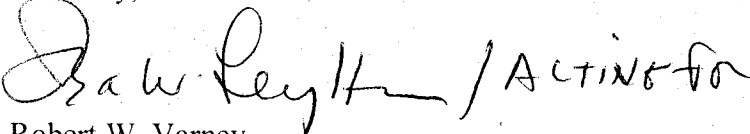
Therefore, in accordance with 40 C.F.R. § 124.19(d), Region 1 will re-notice the withdrawn permit provisions as draft permit conditions and provide the public an opportunity to comment on them. Specifically, the Region will withdraw provisions of the Final Permit that were based on Region 1's determination 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.

After the comment period closes, the Region will consider the comments received, provide written responses to the significant comments, and develop final permit conditions. In conjunction with this effort, Region 1 has, by separate motion, requested the Board to stay the existing permit appeal to allow time for the proceedings for the re-proposed permit conditions to be completed. Once Region 1 issues the final permit conditions, any person with standing can appeal those permit conditions to the Board and any such appeals may be consolidated with the existing appeal.

If you have any questions regarding this correspondence, please feel free to contact Mark Stein, the Region's legal counsel in this matter, at 617-918-1077.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Varney / Acting for". The signature is written in a cursive style.

Robert W. Varney
Regional Administrator

cc (by regular mail):

James N. Christman, Esq., Hunton & Williams (Counsel for Mirant)
Linell Grundman, Chairman, Board of Selectmen, Town of Sandwich, MA
Glenn Haas, MassDEP
Susan Snow-Cotter, MA CZM
Paul J. Diodati, MA Division of Marine Fisheries
Cindy Delpapa, MA Riverways Program
Patricia Kurkul, National Oceanic and Atmospheric Administration