



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIRONMENTAL APPEALS BOARD

June 8, 2010

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Mr. Richard T. Witt, Esq.
U.S. Environmental Protection Agency
Office of General Counsel, Mail Code 2355A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *In re Mirant Kendall, LLC*, NPDES Appeal Nos. 06-12, 06-13 & 09-04;
Notice of Receipt of Non-Party Letter

Dear Counsel,

On June 7, 2010, the Environmental Appeals Board received a letter from Mr. Rae Stiening of Cambridge, Massachusetts, pertaining to the above-captioned case. A copy of the letter has been placed in the Board's official docket for this case, and a courtesy copy is enclosed for your information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eureka Durr".

Eureka Durr
Clerk of the Board

Enclosure

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U.S. E.P.A.

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ENVIR. APPEALS BOARD

June 2, 2010

Ms. Kathie A. Stein
Environmental Appeals Board (MC 1103B)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Dear Judge Stein,

I am concerned about the glacial rate of progress of the Mirant Kendall NPDES permit currently before the Environmental Appeals Board. The Mirant Kendall power plant has been operating without a NPDES permit since 1993. This case is egregious because the capacity of the plant was greatly expanded in 2001 and it continued to operate without a permit. A Mirant SEC 8-K filing on April 26, 2001 asserted that a *"Renewal application [was] made and deemed administratively complete [on] 6/17/93. Submitted timely renewal application; currently in USEPA review. Operating under existing Permit. It is typical for plants to operate under conditions of expired permits while renewal applications are under review."*

The EPA's legally questionable¹ practice of administratively continuing expired permits provides the holder of an expired permit with the option of employing delaying tactics to postpone the issuance of a potentially more restrictive permit with higher compliance costs.

Mirant Kendall is now the third oldest unresolved case before the Environmental Appeals Board. On May 18, 2010 the EAB granted an extension of the current stay until October 29, 2010. I am particularly concerned about this extension as ownership of the Kendall plant may change from Mirant to GenOn Energy later this year. The new management may want to renegotiate whatever understandings Mirant had with the EPA and thus further delay the issuance of a permit.

Sincerely yours,



(Mr.) Rae Stiening
75 Cambridge Parkway E903
Cambridge, MA 02142
stiening@stiening.com

Copy: Charles Duhigg, The New York Times

1. Of Zombie Permits and Greenwash Renewal Strategies...; Karl S. Coplan, Pace Environmental Law Review Volume 22, Number 1, Spring 2005