

2007 FEB 20 AM 11: 51

ENVIR. APPEALS BOARD  
February 8, 2007

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

Re: In re: Mirant Kendall, LLC, NPDES Permit No. MA000-4898

Dear Sir/Madam:

This letter covers the electronic filing of the Errata to Mirant Kendall's Supplemental Petition for Review, a paper copy of which will be mailed to the Board this day.

I hereby certify that copies of this filing have been sent this day by e-mail to counsel of record. Paper copies of the filings also will be mailed today.

Very truly yours,



Ralph A. Child

/encl.

cc: Ronald Fein, EPA Region I  
Kristy Bulleit, Hunton & Williams, LLP  
Carol Lee Rawn, CLF

LIT 1602628v.1

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

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Errata to Mirant Kendall's Supplemental Petition for Review

<u>Page</u>	<u>Now Reads</u>	<u>Should Read</u>
76	The first sentence of the second paragraph reads: A similar way that the data discredit the 81° F avoidance finding is to focus in on the time period in the summer when temperatures first rose above the purported avoidance level of 81° F at one of the sampling stations in the lower basin.	A similar way that the data discredit the 81° F avoidance finding is to focus in on the time period in the summer when temperatures were above the purported avoidance level of 81° F at one or more of the sampling stations in the lower basin.
149	The first sentence of the second full paragraph reads: The primary problem with this compliance scheme is that Mirant Kendall commented -- and the Region acknowledged -- that both yellow perch and alewives are absent from the upper six feet of the water column during the daytime hours.	The primary problem with this compliance scheme is that Mirant Kendall commented -- and the Region acknowledged -- that both yellow perch and alewives are largely absent from the upper six feet of the water column during the daytime hours.
151	The first sentence of the second full paragraph reads: Mirant Kendall commented that the data from its gill net, push-net, and beach seine data demonstrated that there were no yellow perch caught during the daytime in the upper water column in the lower basin -- both inside and outside of the ZPH -- during any of the sampling events.	Mirant Kendall commented that the data from its gill-net and push-net sampling demonstrated that there were no yellow perch caught during the daytime in the portions of the upper water column selected by the Region to represent compliance points in the lower basin -- both inside and outside of the ZPH -- during any of the sampling events.
<b><u>Endnote</u></b>		
6	A copy of the order staying the state permit and staying the appeal in MassDEP Docket No. 06-165 is provided as Exhibit ___ within the Appendix to this Supplemental Petition.	A copy of the order staying the state permit and staying the appeal in MassDEP Docket No. 06-165 is provided as Exhibit 3 within the Appendix to this Supplemental Petition.

15	A copy of the 1988 Fact Sheet is provided as Exhibit 10 within the Appendix to this Supplemental Petition.	A copy of the 1988 Fact Sheet is provided as Exhibit 11 within the Appendix to this Supplemental Petition.
38	TMDL modeling framework, Task 4. A copy of the TMDL modeling framework is EPA Doc. #530 on the 10/12/06 A.R. Index.	TMDL modeling framework, Task 4. A copy of the TMDL modeling framework is EPA Doc. #629 on the 10/12/06 A.R. Index.
45	<u>See</u> Meeting Handouts re: Fisheries Management Report (October 1, 1985), EPA Doc. #183 on the 10/12/06 A.R. Index.	<u>See</u> Meeting Handouts re: Fisheries Management Report (October 1, 1985), EPA Doc. #193 on the 10/12/06 A.R. Index.
47	EPA Doc. #162 on the 10/12/06 A.R. Index.	EPA Doc. #615 on the 10/12/06 A.R. Index.
54	MassDEP's comment letter of June 23, 2000 on the FEIR is provided as Exhibit 18 within the Appendix to this Supplemental Petition. The Region's comment letters of June 23, 2000 on the FEIR is provided as Exhibit 19 within the Appendix to this Supplemental Petition.	MassDEP's comment letter of June 23, 2000 on the FEIR is provided as Exhibit 19 within the Appendix to this Supplemental Petition. The Region's comment letters of June 23, 2000 on the FEIR is provided as Exhibit 18 within the Appendix to this Supplemental Petition.
69	<u>See</u> MassDEP's June 23, 2000 letter on the FEIR is provided as Exhibit 18 within the Appendix to this Supplemental Petition.	<u>See</u> MassDEP's June 23, 2000 letter on the FEIR is provided as Exhibit 19 within the Appendix to this Supplemental Petition.
112	<u>See</u> Exhibit 22.	<u>See</u> Exhibit 24, EPA Responses to Comments ("September 2006") that Cite to Response to Comment C3.

114	The Region relied on its analysis in Response to Comment C3, which was also the analysis it relied upon for a finding of appreciable harm, as basis for its selection of an avoidance temperature. As discussed above, the Region cited to this analysis extensively to support rebut several of Mirant Kendall's comments with respect to appropriate thermal limits. <u>See</u> List of Citations to Responses in the RTC Document That Cite Response to Comment C3, provided as Exhibit 24 within the Appendix to this Supplemental Petition.	The Region relied on its analysis in Response to Comment C3, which was also the analysis it relied upon for a finding of appreciable harm, as basis for its selection of an avoidance temperature. As discussed above, the Region cited to this analysis extensively to support rebut several of Mirant Kendall's comments with respect to appropriate thermal limits. <u>See</u> EPA Responses to Comments ("September 2006") that Cite to Response to Comment C3, provided as Exhibit 24 within the Appendix to this Supplemental Petition.
134 & 135	<u>Id.</u> (referencing Exhibit 22).	Transmittal of 2004 and 2005 Field Data (August 30, 2005), EPA Doc. #557 on the 10/12/06 A.R. Index.
136	<u>See</u> Exhibit 13.	Transmittal of 2004 and 2005 Field Data (August 30, 2005), EPA Doc. #557 on the 10/12/06 A.R. Index.
158	<u>See</u> Exhibit ____ [summary chart].	<u>See</u> Exhibit 25.
166	In fact, yellow perch are almost entirely absent from ZPH in general.	In fact, yellow perch are increasingly absent from the ZPH as stratification persists.
181	Mirant Kendall has continuous temperature readings since 2002 from a thermistor in a location that would be the future location of the two-foot compliance point for Monitoring Station 3.	Mirant Kendall has continuous temperature readings during 2002 from a thermistor in a location that would be the future location of the two-foot compliance point for Monitoring Station 3.
218	<u>See</u> Salinity Delta Graphs and Perch Decline Graphs, provided as Exhibits 34 and 35, respectively, within the Appendix to this Supplemental Petition.	<u>See</u> Salinity Delta Graphs and Near Bottom Salinity and DO at MIT, Deep Diffuser, and Hyatt, provided as Exhibits 34 and 35, respectively, within the Appendix to this Supplemental Petition.

219	<u>Id.</u> (referencing Exhibits 34 and 35).	<u>See</u> Transmittal of Additional Field Data (November 13, 2003), EPA Doc. #470 on the 10/12/06 A.R. Index; Depth Distribution Information (November 5, 2002), EPA Doc. #244 on the 10/12/06 A.R. Index.
249 & 250	<u>Id.</u> (referencing RTC, Response to Comment E16, at p. E33; Review of Oxygenation Techniques (January 1, 2004), EPA Doc. #511 on the 10/12/06 A.R. Index.	<u>See</u> Letter from S. Konary re: Eutrophication Data and Diffuser Proposal (Dec. 17, 2003), EPA Doc. #467 on the 10/12/06 A.R. Index.
289 & 290	February 2001, Supplemental Application, February 14, 2001), EPA Doc. #279 on the 10/12/06 A.R. Index.	RTC, Response to Comment J2, at J2.

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