



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
FIVE POST OFFICE SQUARE – SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**VIA ELECTRONIC FILING**

Eurika Durr, Clerk of the Board  
Environmental Appeals Board  
U.S. Environmental Protection Agency

Re: NPDES Appeal Nos. 06-12, 06-13, 09-04  
NPDES Permit No. MA 0004898  
Mirant Kendall, LLC

December 22, 2010

Dear Ms. Durr,

Enclosed please find the Region's Status Report Regarding Final Permit Modification in the above-captioned case, with an attached certificate of service.

Sincerely,

*Ronald A. Fein*

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
Mailcode: ORA18-1  
617-918-1040  
Fax: 617-918-0040

cc: Ralph A. Child, Esq., Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C.  
Kristy A. Bulleit, Esq., Hunton & Williams LLP  
Peter Shelley, Esq., Conservation Law Foundation  
Robert Brown, Esq., Massachusetts Department of Environmental Protection

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

---

In re: Mirant Kendall, LLC	)	
Mirant Kendall Station	)	NPDES Appeal Nos. 06-12, 06-13, 09-04
	)	
NPDES Permit No. MA 0004898	)	
	)	

---

**REGION’S STATUS REPORT REGARDING FINAL PERMIT MODIFICATION**

Respondent United States Environmental Protection Agency, Region 1 (“Region”), provides this status report as required by the most recent order of the Environmental Appeals Board (“Board”) in this National Pollutant Discharge Elimination System (“NPDES”) permit appeal. As set forth below, the Region has issued a final NPDES permit modification for the GenOn Kendall (formerly Mirant Kendall) facility.<sup>1</sup>

These proceedings have been stayed for various reasons since 2007. On October 15, 2010, the parties moved for an extension of the stay of proceedings, and proposed a path for final resolution of the appeal. *See In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12, 06-13, & 09-04, Doc. No. 173 (Oct. 15, 2010) (Joint Status Report and Motion to Extend Stay of Proceedings) (“October 15 Motion”):

[A]ssuming that no petitions for review are filed with respect to the final permit modification, the parties anticipate that certain procedural steps must be undertaken before the Region can issue a “final permit decision” under 40 C.F.R. § 124.19(f)(1)(i). Specifically, the Region and Mirant anticipate that, assuming the final permit modification does not differ materially from the draft permit modification, then shortly after the expiration of the deadline for petitioning for review of the final permit modification under 40 C.F.R. § 124.19, Mirant will request the Board’s leave to withdraw NPDES Appeal Nos. 06-12 and 09-04. Similarly, CLF and CRWA anticipate requesting the Board’s leave to withdraw NPDES Appeal No. 06-13.

---

<sup>1</sup> Mirant Kendall, LLC changed its name to GenOn Kendall, LLC on December 3, 2010, and the final permit modification reflects this change. *See In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12, 06-13, & 09-04, Doc. No. 178 (Dec. 8, 2010) (Mirant Kendall, LLC’s Notice Of Name Change).

*Id.* at 5. On October 19, 2010, the Board extended the stay and ordered the parties to submit status reports upon the completion of various milestones in the process of modifying the challenged NPDES permit and resolving the outstanding appeals. *See In re Mirant Kendall, LLC, Mirant Kendall Station*, NPDES Appeal Nos. 06-12, 06-13, & 09-04 (EAB, Oct. 19, 2010) (Order Granting Extension of Stay and Rescheduling Status Conference) (“October 19 Order”). The October 19 Order provides that “[w]ithin five (5) business days after issuing a final permit modification, the Region shall notify the Board that it has issued said final permit modification.” *Id.* at 2.

The Region hereby notifies the Board that on December 17, 2010, the Region’s Director of the Office of Ecosystem Protection signed the final NPDES permit modification, with an effective date of February 1, 2011. The final permit modification does not differ materially from the draft permit modification.

The Region does not request any changes to the notification and stay schedule as set forth in the October 19 Order. However, the Region does note that there will only a short time between the deadline for appealing the final NPDES permit modification and the date upon which the final permit modification is scheduled to take effect absent an appeal. In order for the Region to be able to issue a final permit decision under 40 C.F.R. § 124.19(f)(1)(i) no later than February 1, 2011 (so that all provisions of the as-modified NPDES permit will take effect on the same date), the Region intends to request, upon petitioners’ anticipated filing of requests for leave to withdraw their appeals, that the Board consider and grant such requests on an expedited basis.

The Region represents that its undersigned counsel has discussed this status report with all petitioners' respective counsel, and that the petitioners assent to the report.

Respectfully submitted,

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1**

By its attorney,

*Ronald A. Fein*

Ronald A. Fein, Assistant Regional Counsel  
U.S. Environmental Protection Agency Region 1  
5 Post Office Square, Suite 100 ORA18-1  
Boston, MA 02109-3912  
December 22, 2010

Of Counsel:  
Richard T. Witt, Attorney-Adviser  
Office of General Counsel  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Status Report Regarding Final Permit Modification were sent today to the following persons in the manner described below:

Posted to CDX electronic system	Eurika Durr, Clerk of the Environmental Appeals Board
Copy by e-mail	Peter Shelley, Esq.
Copy by e-mail	Ralph A. Child, Esq.
Copy by e-mail	Kristy A. Bulleit, Esq.
Signed: December 22, 2010	<i>Ronald A. Fein</i>