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ENVIR. APPEALS BOARD

October 27, 2006

Via FedEx

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

Re: In re: Mirant Kendall, LLC, NPDES Permit No. MA0004898

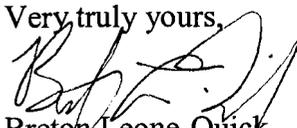
Dear Sir/Madam:

I have enclosed the original and five copies of each of the following documents for filing with and consideration by the Environmental Appeals Board:

1. Joint Scheduling Motion; and
2. Petition for Review of a NPDES Permit Issued by EPA Region 1.

Please do not hesitate to contact me with any questions about these filings. Thank you for your attention.

Very truly yours,



Breton Leone-Quick

cc: Ronald A. Fein, EPA Region 1
Carol Lee Rawn, Conservation Law Foundation
Shawn Konary, Mirant Kendall

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

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

ENVIR. APPEALS BOARD

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

JOINT SCHEDULING MOTION

Mirant Kendall, LLC ("Mirant Kendall") 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 Mirant Kendall's Petition for Review, and the Region's response to that Petition, as set forth below. The requested modification is necessary and appropriate due to the manifold complicated issues raised by, and the substantial administrative record associated with, the issuance of NPDES Permit No. MA0004898, and will ensure that Mirant Kendall as the petitioner and the Region as the respondent both are 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. Mirant Kendall owns and operates the Kendall Station, a 256-megawatt power plant located in Cambridge, Massachusetts on the Lower Basin of the Charles River. The Kendall Station has existed from the 1950s, and has held NPDES Permit No.

MA0004898 since the commencement of permitting under the Clean Water Act. The Station is currently operating under the permit issued in 1988.

2. In February 2001, Mirant Kendall submitted an updated renewal application to the Region and sought to modify its NPDES permit in several respects.

3. In June 2004, the Region issued a draft NPDES permit.

4. Mirant Kendall and others submitted comments on the draft NPDES permit by the end of the public comment period, which was October 15, 2004.

5. 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.

6. Subsequently, the Region compiled an index of the administrative record, which includes approximately 676 documents comprising thousands of pages. Many of those documents were created or added to the record after the close of public comments on the draft permit and were not available for review by Mirant Kendall until after issuance of the final permit.

7. Concurrently with the filing of this motion, Mirant Kendall is filing a timely Petition for Review of NPDES Permit No. MA0004898. That Petition itemizes the provisions of the permit that Mirant Kendall asserts are the result of clear error by the Region or otherwise warrant review by the EAB.

8. Providing full and appropriate bases for Mirant Kendall's Petition, however, requires additional time for Mirant Kendall to review the permitting record described above. In order to distill and crystallize its arguments in a manner that is sufficient to allow the EAB to provide meaningful review of its Petition, Mirant Kendall must review,

analyze, and synthesize the original comments, response to comments, and administrative record. Because of the significant size of the record, and the number of issues included in Mirant Kendall's Petition, meaningful preparation would not be possible under the typical briefing schedule. Mirant Kendall accordingly seeks leave to file a supplement to the Petition as described below.

9. Likewise, in order to fully address whether Mirant Kendall has satisfied the requirements for obtaining review under 40 C.F.R. §124.19(a), and to fully respond to the arguments presented by Mirant Kendall's petition and the expected supplement to the Petition, the Region must undertake the same extensive review and analysis of the significant record in light of Mirant Kendall's Petition and the supplement thereto. The Region therefore seeks additional time to respond to Mirant Kendall's Petition and the supplement thereto, in order to best advise the EAB whether the matters the matters raised by Mirant Kendall should be reviewed, and to provide full and complete responses to Mirant Kendall's contentions.

10. 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 petitions and the Region's responses thereto.

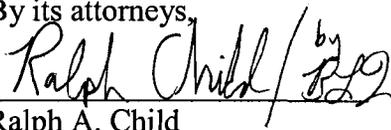
WHEREFORE, Mirant Kendall and the Region respectfully request that the EAB modify the schedule for the petition process as follows:

- On or before December 15, 2006, Mirant Kendall will submit a Supplement to its Petition for Review;
- On or before the 120th day following the Region's receipt of Mirant's Supplement to its Petition for Review, the Region will submit its response to the Petition for Review and the Supplement to the Petition for Review; and
- Mirant Kendall 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,

MIRANT KENDALL, LLC

By its attorneys,



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Dated: October 27, 2006