



**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

January 25, 2011

Dear Ms. Durr,

Enclosed please find the Region's assented-to Motion for Expedited Dismissal of Petitions in the above-captioned case, with an attached certificate of service. The motion requests that the Board dismiss the petitions on an expedited basis, and I would appreciate your conveying this motion to the Board as quickly as possible for expedited decision.

Sincerely,

Ronald A. Fein

Ronald A. Fein, Assistant Regional Counsel
U.S. Environmental Protection Agency Region 1
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cc: Ralph A. Child, Esq., Mintz, Levin, Cohn, Ferris Glosky 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 MOTION FOR EXPEDITED DISMISSAL OF PETITIONS

Respondent United States Environmental Protection Agency, Region 1 (“Region”), with the assent of petitioners GenOn Kendall, LLC (“GenOn”),¹ Conservation Law Foundation (“CLF”), and Charles River Watershed Association (“CRWA”) (collectively, “Petitioners”) requests that that Petitioners’ recently-filed requests for dismissal of their respective petitions be granted on an expedited basis.

While this matter has been pending before the Board for several years, the structure of the protocol for settling the appeal that the Region and Petitioners have negotiated counsels in favor of the Board immediately granting Petitioners’ requests and issuing a final notice to the parties that review has been denied under 40 C.F.R. § 124.19(f)(1)(i). The Region’s recently-issued permit modification, which modifies some but not all provisions of the National Pollutant Discharge Elimination System (“NPDES”) permit that is the subject of this appeal, takes effect by its own terms on February 1, 2011. The Region and the parties desire that those provisions of the appealed permit that have *not* been modified take effect at the same time as the newly revised provisions, so that all provisions take effect simultaneously on February 1, 2011. In order to accomplish this,

¹ 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).

Region 1's Regional Administrator must issue a "final permit decision" under 40 C.F.R. § 124.19(f)(1) by February 1, which he cannot do until "the Environmental Appeals Board issues notice to the parties that review has been denied." *Id.* § 124.19(f)(1)(i).

In order to effectuate an orderly disposition of these longstanding appeals and of the permit itself, and because there is no reason not to dismiss the petitions now that Petitioners have so requested, the Region respectfully requests that the Board dismiss all three petitions forthwith.

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

Respectfully submitted,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 1

By its attorney,

Ronald A. Fein

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January 25, 2011

Of Counsel:
Richard T. Witt, Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
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CERTIFICATE OF SERVICE

I, Ronald A. Fein, hereby certify that copies of the foregoing Motion for Expedited Dismissal of Petitions 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: January 25, 2011

Ronald A. Fein