

Section XI Supplemental Permitting and Time of Year Restrictions

Comment XI.A:

Mirant comments that:

Several proposed changes to the existing permit either directly (*e.g.*, new fish return lines) or indirectly (*e.g.*, likely need to replace the entire traveling screen systems and their housings; likely need to install additional wastewater lagoon) would require Mirant Canal to seek and obtain supplemental permits from other federal, state, local or regional agencies before it could proceed with installation and operation of those improvements. There can be no guarantee that Mirant Canal would be successful in obtaining such permits within any particular time period or at all.

Also, some of the potential work may be subject to permit conditions on the appropriate time of year for conducting dredging or other permitted activities in waterways or wetlands. Those time of year restrictions also may affect when such work may be completed and become operational.

Accordingly, the final permit should not contain any deadlines or effective dates (a) for installations of such modifications, or (b) for compliance with permit conditions that can be met only through obtaining all necessary permits and making the installations operational, unless those deadlines or effective dates take appropriate account of the applicable, supplemental permitting requirements, including the real potential for appeals of those permits.

Response XI.A:

The contingencies described by the Permittee are more effectively dealt with through an administrative compliance order, which the Region expects to issue shortly after issuance of the Final Permit. Therefore, the deadlines for construction activities, including those cited in the Permittees comment have been removed from the Final Permit. *See* Response to Comment X.A.

Comment XI.B:

Mirant comments that:

Alternatively, the final permit should abjure rigid deadlines while placing an obligation on Mirant Canal periodically to report on progress.

Specifically, at least the following supplemental permit proceedings may be necessary.

- Permits from U.S. Army Corps of Engineers for any structures affecting the Cape Cod Canal, which is a public waterway owned and controlled by the Corps. These permits under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act may apply to the revised fish return system, and may also affect modifications to the traveling screens and to the dredging of the build-up on the sill of the Unit Two intake.

- Water quality certificate and waterways license from Massachusetts DEP. A water quality certificate from DEP under Section 401 of the Clean Water Act, as well as a waterways license from DEP for any new structures or changed uses in the Cape Cod Canal, may be required with respect to any activities in the Canal or along its banks. These requirements affect at least the modified fish return system.
- Approval by the Cape Cod Commission of modifications to a Development of Regional Impact (“DRI”). Past improvements to the Canal Station have been reviewed by the Cape Cod Commission as DRIs. All of the exterior modifications to the Canal Station resulting from the final NPDES permit may be subject to the Commission’s review, including any dredging and any activities in areas of wetlands resources or their buffer zones.
- Certificate of Appropriateness from the Old King’s Highway Regional Historic District Commission. Canal Station lies within a historic district, and past changes to its visual appearance have involved review and approval by this commission. Alterations to the structures housing the traveling screens and the new fish return system, at least, may require this approval.
- Order of conditions from the Sandwich Conservation Commission. Any activities within wetland resource areas or their buffer zones in the vicinity of the Canal Station will require a determination of applicability or an order of conditions from the Sandwich Conservation Commission. The Commission’s determinations are appealable by and to the DEP under DEP’s Wetlands Regulations at 310 CMR 10, and are also appealable to Superior Court under the Town of Sandwich’s Wetlands Bylaw. The requirements for the Commission’s approvals apply to all of the modifications noted above, including a new lagoon, which most likely would be sited near the existing lagoons within the buffer zone to existing bordering vegetated wetlands near the Canal Station.

Response XI.B:

See Response to Comment X.A.