

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
BOSTON REGION

In the Matter of:

PUBLIC HEARING:

RE: NPDES DISCHARGE PERMIT FOR
MIRANT CANAL STATION
NPDES PERMIT NO. MA0004928

Forestdale School
Sandwich, Massachusetts

Wednesday
January 14, 2009

The above entitled matter came on for hearing,
pursuant to Notice at 7:00 p.m.

BEFORE:

DAVID WEBSTER, Chief, Industrial Permits Branch
SHARON DEMEO, Permit Writer
U.S. Environmental Protection Agency
New England Region I
One Congress Street, Suite 1100
Boston, MA 02114

PAUL M. HOGAN
Massachusetts Department of Environmental Protection

APEX Reporting
(617) 269-2900

ORIGINAL

I N D E XPANEL:PAGE

David Webster

3

SPEAKERS:PAGE

Ralph Child

18

Linnell Grundman

29

Andrea Adams

33

Robert Corbett

34

P R O C E E D I N G S

(7:12 p.m.)

HEARING OFFICER WEBSTER: Good evening, ladies and gentlemen.

My name is David Webster. I am the Chief of the Industrial Permits Branch with the New England Regional Office of the US Environmental Protection Agency, also known as EPA.

Co-chairing this public hearing with me is Paul Hogan from the Massachusetts Department of Environmental Protection, commonly referred to as MassDEP.

Also joining me here today is Sharon DeMeo, EPA's permit writer for the permit which is the subject of this hearing.

This hearing, concerning the National Pollutant Discharge Elimination System, or NPDES, or "nipsees" permit for the Mirant Canal Station shall come to order.

This permit is for the following facility, Mirant Canal Station, MA0004928.

This permit will be issued to Mirant Canal Station in final form upon consideration of comments received during the public comment period, which now closes on January 29, 2009.

In Massachusetts, EPA and MassDEP jointly issue permits.

1 Although the permit is a single document signed by
2 both agencies, legally, each agency issues a permit under
3 separate Federal and State authority, namely, the Federal
4 Clean Waters Act National Pollutant Discharge Elimination
5 System, or NPDES, and the Massachusetts Clean Waters Act
6 surface water discharge permit program.

7 The NPDES program issues permits to all facilities
8 that discharge into waters of the United States.

9 The permit writer develops effluent guidelines as
10 well as monitoring and reporting requirements based on
11 information from the facility, Federal regulations, State
12 water quality standards, technical guidance published by EPA
13 and the State, and State and Federal policy.

14 More information on the NPDES program is available
15 in the NPDES program summary handout titled Water Permitting
16 101 which was out at the desk when you came in. Copies are
17 available this evening.

18 Along with this document, there is a list of web
19 addresses where you can find additional information on the
20 NPDES program.

21 You may also let one of the EPA people here know
22 if you want to be on EPA's mailing list for future notices
23 regarding NPDES activities for this facility.

24 The development of this particular permit for the
25 Mirant Canal Station has taken some turns which are not

1 straightforward and may be confusing. So, I'm going to go
2 into a little more detail than usual in these opening
3 remarks to explain where EPA and MassDEP are in the process
4 of reissuing a NPDES permit for the facility, why we are
5 here, and where we're going to go from here after tonight's
6 public hearing. So, please bear with me.

7 On December 22, 2005, EPA's Region 1 office and
8 MassDEP issued for public review and comment a new draft
9 NPDES permit for Mirant Canal Station.

10 This draft permit, the 2005 draft permit, was
11 accompanied by a supporting fact sheet explaining the basis
12 for the proposed permit conditions, which I will refer to as
13 the 2005 fact sheet, including possible alternative
14 permitting approaches considered by the regulatory agencies.

15 On August 1, 2008, EPA Region 1 and MassDEP issued
16 Mirant Canal Station a final permit which I will refer to as
17 the August 2008 final permit, together with a supporting
18 response to comments, which I will refer to as the August
19 2008 response to comments.

20 Then, on September 2, 2008, Mirant Canal Station,
21 LLC, or Mirant, filed a petition for review appealing the
22 August 2008 final permit to EPA's Environmental Appeals
23 Board.

24 As a result of this appeal, the conditions of the
25 August 2008 final permit had been stayed and have not gone

1 into effect.

2 The pre-existing final permit, which was last
3 issued in July 23, 1989 remains in effect.

4 One important aspect of the NPDES permit for the
5 Mirant Canal Station involves the application of the Clean
6 Waters Act Section 316B, which requires that, "the location,
7 design, construction and capacity of cooling water intake
8 structures reflect the best technology available, or
9 sometimes referred to as BTA, for minimizing adverse
10 environmental impacts."

11 For the 2005 draft permit, EPA Region 1 and
12 MassDEP considered various alternative best technology
13 available options, including closed cycle cooling. All of
14 this was set forth in the 2005 fact sheet.

15 For the 2008 final permit, the permitting agencies
16 decided that closed cycle cooling was the best technology
17 available for reducing the entrainment of aquatic organisms
18 by Canal Station's cooling water intake structures.

19 EPA Region 1 and MassDEP explained in the August
20 2008 response to comments that they selected the closed
21 cycle cooling alternative as the best technology available
22 for entrainment reduction after considering the matter in
23 light of recent legal developments, public comments and
24 additional technical analyses as well as the analyses
25 presented in the 19 -- excuse me -- the 2005 fact sheet.

1 The August 2008 final permit did not actually
2 require the installation of closed cycle cooling, but
3 instead required entrainment reductions comparable to what
4 closed cycle coolings could achieve.

5 This meant that the facility could comply by using
6 closed cycle cooling or any other alternative that it
7 preferred to achieve comparable performance.

8 In its appeal to the EPA's Environmental Appeals
9 Board, Mirant argued, among other things, that EPA Region 1
10 should allow additional public comment to be received --
11 excuse me -- additional public comment on the revised
12 entrainment control provisions of the August 2008 final
13 permit because Mirant did not have an adequate opportunity
14 to comment on them, or the best technology available
15 determination underlying them.

16 EPA Region 1 concluded that, seeking additional
17 public comment -- is that okay?

18 I might backtrack just a minute here.

19 In its appeal to EPA's Environmental Appeals
20 Board, Mirant argued, among other things, that EPA should
21 have allowed additional public comment on the revised
22 entrainment control provisions of the August 2008 final
23 permit, because Mirant did not have an adequate opportunity
24 to comment on them and the best technology available
25 determination underlying them.

1 EPA Region 1 concluded that, seeking additional
2 public comment was not required because the final permit
3 conditions, based on an alternative evaluated for the draft
4 permit, were a logical outgrowth of the draft permit
5 proceedings, did not raise substantial new questions, and
6 was not desirable as a discretionary matter because, among
7 other things, a new Mirant Canal Station permit was long
8 overdue.

9 Meanwhile, the Town of Sandwich wrote to EPA
10 Region 1 requesting an additional opportunity to comment on
11 the new permit conditions related to the determination that
12 closed cycle cooling would represent the best technology
13 available for entrainment control at Canal Station.

14 During October 2008, EPA Region 1 and Mirant
15 completed preliminary briefings to EPA's Environmental
16 Appeals Board to address Mirant Canal's contention that it
17 was not provided an adequate opportunity to comment on the
18 contents of part 1A 13G, the part of the final permit
19 concerning the requirements to reduce the entrainment of
20 aquatic organisms, due to changes between the draft and the
21 final permit.

22 On November 19, 2008, EPA Region 1 and Mirant
23 attended a status conference before EPA's Environmental
24 Appeals Board in which logistical and practical issues
25 related to the possibility of allowing additional comment on

1 the new entrainment control provisions were discussed.

2 Following further consideration, in light of the
3 above events, EPA Region 1 and MassDEP have decided to
4 withdraw those provisions from the August 2008 final permit
5 that were based upon the agencies' determination that closed
6 cycle cooling is the best technology available for
7 entrainment reduction, and to re-propose those provisions as
8 draft permit conditions for public review and comment.

9 And that's basically why we are here tonight, to
10 listen to and receive your comments on those -- these draft
11 permit provisions.

12 The new draft permit conditions are accompanied by
13 a supporting fact sheet, which incorporates the August 2008
14 response to comments.

15 While the permitting agencies do not regard this
16 withdrawal or re-proposal to be legally required, they have
17 discretionary authority to take this action and have decided
18 that doing so will be desirable in order to provide Mirant,
19 the Town of Sandwich and any other interested person, an
20 additional opportunity to comment.

21 And the final permit may benefit from EPA and
22 DEP's consideration of additional public comments.

23 EPA Region 1 will consider all comments received
24 during the comment period, and then prepare a final permit
25 conditions and written response to all significant comments.

1 EPA Region 1 and MassDEP are only withdrawing and
2 re-proposing particular provisions of the August 2008 final
3 permit and are not seeking comments on other permit
4 provisions that are not withdrawn and re-proposed.

5 Specifically, EPA Region 1 and MassDEP have
6 withdrawn the provisions of the August 2008 final permit
7 that were based upon the agencies' determination that closed
8 cycle cooling is the best technology available for
9 entrainment reduction, and re-proposing those provisions as
10 draft permit requirements for public review and comment.

11 Nonetheless, the permitting agencies recognize the
12 possibility that a commentor might wish to comment on
13 additional permit conditions that the commentor believes are
14 inextricably intertwined with the BTA determination for
15 entrainment. Region 1 will consider and response to any
16 significant comments in this regard that it determines to be
17 within the scope of the proposed action.

18 EPA and MassDEP released the draft permit for
19 public notice for this facility on December 12, 2008, which
20 opened the original public comment period through January
21 15, 2009.

22 The legal notice for this hearing was published in
23 the Cape Cod Times on December 12, 2008.

24 Based on requests to extend the public comment
25 period, EPA and MassDEP have extended the comment period 14

1 days to January 29, 2009. Public notice of this extension
2 was published in the Cape Cod Times on January 12, 2009.

3 Thus, public comments will be accepted until up to
4 midnight January 29, 2009.

5 Since December 12, 2008, the draft permit, the
6 fact sheet explaining the draft permit, and the supporting
7 documents have been available for interested parties to
8 review and comment on.

9 Comments can be made by sending written comments
10 to EPA and/or by making comments during this hearing
11 tonight.

12 The draft permit also will be made available --
13 was made available on EPA's website. It still is. You have
14 probably received or seen copies of the draft permit and
15 fact sheet.

16 But, in case you have not, some are available at
17 the hearing tonight out at the desk out in the hallway, as
18 well as on EPA's website.

19 A fact sheet describing the type of facility, the
20 type and quantity of waste, a brief summary of the basis of
21 the draft permit conditions, the significant factual, legal
22 and policy questions considered in preparing the draft
23 permit, the particular draft permit conditions that EPA and
24 DEP are seeking comment on, and the permit application may
25 be reviewed and obtained at no cost at

1 www.epa.gov\region1\npdes\draft_permits_listing_ma, or by
2 writing or calling Sharon DeMeo at EPA.

3 If you want any of that after the meeting, talk to
4 myself, Sharon, or Olga and we'll give you the phone numbers
5 and web addresses for Sharon and myself.

6 Tonight's hearing is an informal
7 non-adversarial hearing providing interested parties with an
8 opportunity to make oral comments and/or to submit written
9 comments on the proposed permit.

10 There will be no cross examination of either the
11 panel or the commentors. Any question directed to a
12 commentor from a panel member will be for clarification
13 purposes only.

14 This public hearing is being recorded. The
15 transcription will become part of the official
16 administration record for the permit.

17 However, in order to ensure the record's accuracy,
18 we highly recommend that you submit written statements in
19 addition to your comments made tonight.

20 As previously mentioned, the public comment period
21 will close at midnight on January 29, 2009.

22 Following the close of the public comment period,
23 EPA will review and consider all comments received during
24 the public comment period both in writing and at tonight's
25 public hearing.

1 EPA and MassDEP will prepare a document known as
2 the response to comments, that will briefly describe and
3 address the significant issues raised during the comment
4 period and what provisions, if any, of the draft permit have
5 been changed and the reasons for the changes.

6 The response to comments will accompany the final
7 permit the Mirant Canal Station when the final permit is
8 issued.

9 Notice of the availability of both the response to
10 comments and the final permit will be mailed or e-mailed to
11 everyone who commented on the draft permit.

12 Anyone who wishes to contest the final permit must
13 file a petition for review or appeal with the Environmental
14 Appeals Board, also know as the EAB.

15 A couple of things to remember if you are
16 considering appealing the final permit.

17 First, the petition for review or appeal must be
18 received by the EAB within 30 days of the date that the
19 final permit is issued.

20 More information on exactly how to calculate this
21 period will be included as an attachment with the final
22 permit.

23 Second, only persons who file comments on the
24 draft permit during the public comment period, or who
25 provided comments during the public hearing, may petition

1 the EAB to review final permit conditions.

2 Third, any person seeking review of a permit
3 decision must raise all reasonably ascertainable issues and
4 submit all reasonably available arguments supporting their
5 position during the public comment period, including any
6 public hearing.

7 Issues or arguments that are not raised will not
8 be considered by the EAB on appeal.

9 There is one exception to the above. Any person
10 who failed to file comments or failed to participate in the
11 public hearing may petition the EAB only to the extent that
12 there were changes from the draft to the final permit.

13 More information on the appeals process can be
14 found on the EPA website and at the time of the final permit
15 decision.

16 Thank you. My co-chair, Paul Hogan, from the
17 MassDEP has some opening remarks.

18 MR. HOGAN: Thank you, David.

19 THE REPORTER: Paul, can you hold on for just one
20 second? Thank you.

21 For people who wish to speak, remember that the
22 microphone does not amplify your voice. It is just for me
23 to my recordings. Okay. So, you do need to speak up.

24 MR. HOGAN: Speak loud?

25 THE REPORTER: Yes. Thank you.

1 MR. HOGAN: You're welcome.

2 Good evening. My name is Paul Hogan and I
3 represent the Massachusetts Department of Environmental
4 Protection.

5 This is a joint public hearing being held under
6 the provisions of State as well as Federal laws and
7 regulations.

8 The Massachusetts Clean Waters Act, General Laws
9 Chapter 21, Sections 26 through 53, and the Code of
10 Massachusetts Regulations, 314 CMR 3.00 prohibit the
11 discharge of pollutants to waters of the Commonwealth,
12 unless authorized by a permit issued by the Massachusetts
13 Department Environmental Protection.

14 The Massachusetts -- the State of Massachusetts
15 and the US Environmental Protection Agency, New England
16 entered into an agreement on March 18, 1973 to cooperatively
17 process applications and jointly issue surface water
18 discharge permits.

19 The permits issued under this program are
20 developed to conform to both State and Federal water
21 pollution control laws and regulations. Each agency has the
22 independent right to enforce the terms and conditions of the
23 permits.

24 Thus, the Department of Environmental Protection
25 will also fully consider all written and oral comments

1 received at this hearing in addition to written comments
2 submitted during the public comment period to the agencies.

3 The Environmental Protection Agency New England
4 has requested, in a letter dated December 10, 2008, that the
5 department certify the draft NPDES permit for Mirant Canal
6 LLC - Canal Station, NPDES permit number MA0004928, which is
7 the subject of his hearing, in accordance with the
8 provisions of Section 401A1 of the Federal Clean Waters Act
9 and pursuant to 40 CFR sections 124.53 through 124.55.

10 No final decision concerning this 401
11 certification will be made until all comments received
12 during the public comment period and at this hearing have
13 been reviewed.

14 The permit can be certified in its current form,
15 certified with modifications based upon public comment,
16 certified with specific State certification requirements, or
17 the department can waive certification.

18 The Massachusetts Department of Environmental
19 Protection welcomes the opportunity for this hearing to
20 gather additional information that will assist the
21 department in making decisions concerning the final NPDES
22 discharge permit for the Mirant Canal LLC - Canal Station,
23 NPDES permit number MA0004928.

24 Thank you.

25 HEARING OFFICER WEBSTER: Thank you, Paul.

1 To begin hearing your comments, I will first allow
2 the permit applicant, Mirant Canal Station LLC to make a
3 short concise presentation if they wish.

4 And I see that there is a representative that is
5 going to do that.

6 I will then request comments from Federal, State
7 and local officials and members of the public audience.

8 I will use the attendance cards to call on people
9 who wish to make comments. These cards will be used to
10 notify people of our subsequent final permit decision.

11 Speakers should come to the podium to speak. I
12 ask that when you begin your statement, please identify
13 yourself and your affiliation for the record.

14 I think we have a moderate crowd.

15 In order to make sure we get as many participants
16 as possible, or make sure that all are allowed to express
17 your views, I ask that you try to limit your comments to 10
18 minutes or so. But, I don't think that's going to be a
19 problem tonight.

20 If, at any time, you are asked to stop, but you
21 have not finished, I will ask you to defer the remainder of
22 your comments until each person has had an initial
23 opportunity to comment.

24 Then, if there is time at the end of the evening,
25 we will give you a short opportunity to finish up your

1 comments.

2 If you have written comments, you may read them,
3 if it can be done within that time frame, if not, I'll ask
4 you to summarize your statement.

5 In either case, I encourage you to submit written
6 comments tonight or before the close of the public comment
7 period on January 29, 2009.

8 Okay. I will first call on Ralph Child.

9 MR. CHILD: Good evening. My name is Ralph Child.
10 I am an attorney from Boston with the law firm of Mintz,
11 Levin and have been retained by Mirant Canal to help them in
12 their legal proceedings associated with this permit.

13 Mirant Canal appreciates this opportunity to
14 comment on the provisions within the final NPDES permit that
15 EPA issued and DEP issued on August 1, 2008 to the extent
16 that those provisions are reopened for further comments in
17 this proceeding by Mirant Canal and the public.

18 Mirant Canal's comments tonight will focus on part
19 1A13G of the final permit, which would require reduction of
20 entrainment levels at the Canal Station comparable to those
21 that could be obtained by replacing the current once through
22 cooling system at the station with the installation of a
23 closed cycle cooling system.

24 Mirant Canal is preparing more extensive written
25 comments for submission by the comment deadline on January

1 29th.

2 Let me start by describing the Canal Station.

3 The Canal Station is a 1120 megawatts fossil fuel
4 burning electrical generation station that generates
5 electricity utilizing two 560 megawatt steam turbine units.

6 Unit 1 began commercial operation in 1968. And
7 Unit 2 begin commercial operation in 1976.

8 Mirant Canal has owned the station since 1999.

9 Unit 1 combusts only low sulfur fuel oil and is
10 equipped with an electrostatic precipitator for particulate
11 control and a selective catalytic reduction unit or oxides
12 of nitrogen control, NOx control.

13 Unit 2 also combusts low sulfur fuel oil and
14 natural gas and is equipped also with an electrostatic
15 precipitator for a particulate to control and a selective
16 non-catalytic reduction unit for NOx control.

17 Mirant Canal has 84 highly trained professionals
18 working at the Canal Station, invests significant funds in
19 local and regional nonprofit organizations and adds over
20 \$2.4 million a year in tax revenue to the Town of Sandwich.
21 Mirant Canal is the single largest taxpayer in the Town of
22 Sandwich.

23 Now, let me talk about the permitting background.

24 The water intake and wastewater facilities at the
25 Canal Station currently operate pursuant to the NPDES permit

1 issued by the agencies in 1989.

2 Under that permit, the current once through
3 cooling system was determined to constitute the best
4 technology available to minimize adverse environmental
5 impacts from the station's cooling water intake structures.

6 That finding was issued under Section 316B of the
7 Federal Clean Waters Act, which remains in effect today
8 without any change.

9 In the draft renewal permit that EPA and MassDEP
10 proposed in December of 2005, the agencies proposed
11 extensive studies and monitoring to determine what now might
12 constitute the best technology available to minimize impacts
13 of the intake on small aquatic life forms that can be
14 carried or entrained through the once through cooling
15 system.

16 While the draft permit also proposed significant
17 changes to the station's cooling water intake structures, it
18 did not propose to require installation of cooling towers or
19 equivalent technology.

20 The final permit -- renewal permit issued by the
21 agencies last August, however, requires the Canal Station to
22 install cooling towers or equivalent technology.

23 Even though none of the studies proposed by the
24 draft permit had been performed, and also, that requirement
25 in the final permit, came without any advance notice or

1 opportunity for comment by Mirant Canal or the public.

2 That requirement would impose a very significant
3 cost burden on Mirant Canal.

4 So, Mirant Canal and the Town of Sandwich both
5 requested an opportunity to comment on that change.

6 As stated at the outset, Mirant Canal appreciates
7 the agencies' decision to provide that opportunity. Mirant
8 Canal hopes and expects that the agencies will receive these
9 comments in the constructive spirit intended.

10 Let's talk about cooling towers.

11 The cost of cooling towers at Canal can reach
12 \$200,000,000. And to say it right up front, a requirement
13 in the NPDES renewal permit that, in effect, means that the
14 existing station could not operate without installation of
15 cooling towers, will have a crippling economic impact on the
16 operational viability of the station.

17 To understand the implication of cooling towers,
18 it is important to understand the Canal's current use of sea
19 water from the Cape Cod Canal.

20 Essentially sea water is drawn into the Canal
21 Station and used to condense the steam from the steam
22 turbines back down to water for the boilers. The condensate
23 is then recycled back through the boiler steam turbine
24 process, while the sea water, somewhat warmer than it had
25 been, is returned to the Cape Cod Canal via a long

1 temperature disbursing discharge flume and sub aqueous
2 diffuser located at the bottom of the Cape Cod Canal.

3 In mechanical terms, exhaust steam from the
4 station's turbines flows around the outside of a set of
5 tubes through which Canal water flows into what's called a
6 condenser.

7 The cooler canal water in the condenser tubes
8 receives heat from the exhaust steam, causing the steam to
9 condense back to water.

10 And the steam is condensed to water, that water
11 falls to the bottom of the condenser where it is collected
12 and reused in the power generating cycle.

13 The condensate from the station, which is boiler
14 process water, does not mix with the sea water from the Cape
15 Cod Canal.

16 The current and the pending renewal permit
17 authorize Mirant Canal to use a small fraction of the tidal
18 flows coursing through the Canal for the purposes of this
19 cooling function.

20 The thermal limits in the existing NPDES permit
21 have ensured that the somewhat warmer temperatures of the
22 discharge have not caused any adverse impacts in the Canal.

23 The station intake does involve some entrainment
24 and impingement of aquatic organisms. And the purpose of
25 the studies proposed in the draft permit was to identify the

1 best technology available to reduce those impacts.

2 Mirant Canal's written comments will include an
3 assessment of those impacts prepared by qualified aquatic
4 biologists that indicates that the station's existing
5 operations under the current permit have not had any
6 significant adverse environmental impacts on the local or
7 regional populations of lobster or 17 species of fish.

8 Still, the purpose of now adding cooling towers at
9 Canal is to minimize even those small entrainment and
10 infringement impacts, however great or small they are, by
11 substantially reducing the amount of water needed from the
12 Canal.

13 Specifically, rather than using once through sea
14 water, the steam condensers would use sea water that is
15 recycled through the cooling towers.

16 A cooling tower works to extract waste heat from a
17 water stream by exposing it to the atmosphere.

18 A direct or open circuit cooling tower is an
19 enclosed structure with internal means to distribute the
20 warm water fed to it over a labyrinth like packing or fill.

21 The fill may consist of multiple, mainly vertical,
22 wetted surfaces upon which a thin film of water spreads.
23 The thin water film has direct contact with the air which
24 cools the water.

25 The cooler water falls to the bottom of the

1 cooling tower where it is recirculated to the condenser for
2 reuse.

3 At the Canal Station, if the permit requirements
4 were to be met by two natural draft cooling towers, they
5 would be an estimated 255 feet in diameter and 500 feet
6 tall.

7 The addition of cooling towers would not eliminate
8 all issues of entrainment and impingement however, and also
9 would raise other environmental issues, even without
10 factoring in the costs.

11 That is why Mirant Canal did not oppose the
12 agencies' proposal in the earlier draft permit to studies
13 and monitoring of aquatic organisms to accurately determine
14 the conditions at the facility, and ultimately, the
15 technologies that would be best suited for those conditions.

16 Mirant Canal respectfully requests that the
17 agencies afford the opportunity for the facility to complete
18 the analysis that was originally proposed.

19 But, with respect to retrofitting the cooling
20 towers to the existing power station, the high cost and
21 limited benefits of requiring the retrofitting of the
22 existing power plants with cooling towers have raised
23 significant concerns for those charged with the nation's and
24 the region's electric systems.

25 For example, ISO New England is initiating a study

1 to estimate the potential adverse effects on reliability if
2 Section 316B of the Federal Clean Waters Act is interpreted
3 to require generation units within New England that are
4 currently using once through cooling towers all to install
5 cooling towers.

6 ISO New England is the regional transmission
7 organization serving Connecticut, Maine, Massachusetts, New
8 Hampshire, Rhode Island and Vermont, and is responsible for
9 maintaining electric reliability in New England.

10 From information supplied by ISO New England that
11 Mirant Canal will provide with its written comments, it
12 appears that about 90 generating units, with an aggregate of
13 12,177 megawatts of generation capacity, or the equivalent
14 energy to power 12,177,000 homes, could be affected should
15 the agency determine that cooling towers are the only
16 technology to reduce entrainment and impingement at these
17 plants.

18 ISO New England's study will gather information to
19 understand the potential impacts on the power plants
20 affected, identify the time frame of those impacts,
21 determine the proper assessment techniques to gauge the
22 potential impacts on electric reliability, report the
23 findings to the US Department of Energy and the North
24 American Electric Reliability Corporation, and incorporate
25 the results and findings into applicable decision-making.

1 More importantly, even EPA has recognized that
2 installing cooling towers at existing power plants, such as
3 the Canal Station, may not be justified.

4 EPA's so-called Phase 2 rules reflected its
5 long-standing view that costs and benefits may be taken into
6 account when determining what is required under Section
7 316B. And EPA has interpreted that interpretation -- has
8 reiterated that interpretation in litigation over those
9 rules.

10 In the final renewal permit issued in August 2008,
11 however, EPA and MassDEP declined to conduct any serious
12 analysis comparing the costs and benefits of cooling towers.

13 Instead, EPA claimed it was bound to disregard
14 comparison of costs and benefits due to the Riverkeeper
15 decision by the Second Circuit Court of Appeals, even though
16 the Seacoast decision by the First Circuit Court of Appeals
17 authorized such analysis and should be controlling in
18 Massachusetts.

19 In any event, the Second Circuit's Riverkeeper
20 decision is on appeal to the US Supreme Court, which will
21 issue a decision by June 2009 to resolve the split in
22 authority.

23 EPA and MassDEP should defer any decision on the
24 issue for the Canal Station until the Supreme Court rules.
25 And then, before making any final decision, should provide

1 Mirant Canal and the public an opportunity to comment to the
2 agencies on what the Court's ruling means for this permit.

3 Finally, in considering the permit, the agencies
4 should take account of the fundamental operational change
5 anticipated for the Canal Station.

6 The station has operated at reduced capacity
7 factors over the last few year.

8 But when it has run, it has been primarily for the
9 purpose of local system reliability rather than because it
10 was the lowest cost generation available to be dispatched.

11 ISO New England has continually evaluated that
12 reliability issue and the need to call on the Canal Station
13 to operate for reliability purposes.

14 NSTAR Electric Company is currently improving its
15 local transmission system. And these upgrades will obviate
16 the need to dispatch the Canal Station as often as it has
17 occurred in recent years.

18 Indeed, ISO New England estimates that after
19 NSTAR's short term upgrades are completed in this fall of
20 2009, the occasions on which the station operates for the
21 purposes of system reliability will drop by a dramatic 90
22 percent.

23 In the very near term, in other words, as Mirant
24 Canal's written comments will document, the operation of the
25 station will change very substantially.

1 Any realistic assessment of whether cooling towers
2 present an available technology at the Canal Station must
3 take those changes into account.

4 In light of the above, and considering the
5 station's more limited future operation, an expenditure of
6 \$200,000,000 is not economically feasible for the Canal
7 Station.

8 To conclude, the draft permit's original proposal
9 to initiate comprehensive studies to determine the current
10 status of impingement and entrainment of aquatic organisms
11 from the Cape Cod Canal is more appropriate than ever.

12 The station's use of the Canal will be
13 significantly reduced with a lesser requirement for the
14 station to operate for the purpose of reliability.

15 There is regional and national concern over the
16 impact of system reliability and costs of requiring existing
17 generating stations to employ closed cycle cooling.

18 Most significantly, the installation of cooling
19 towers at the station will have a crippling effect on the
20 economic viability of the facility and in turn, on the Town
21 of Sandwich.

22 Thank you for the opportunity to present these
23 comments. As mentioned earlier, more extensive comments
24 will be filed by January 29th to further demonstrate to the
25 concerns of Mirant Canal.

1 Thank you.

2 THE REPORTER: David, I'm sorry to interrupt.
3 That mic is still not perfect. I still need to fix it.

4 HEARING OFFICER WEBSTER: Thank you.

5 MR. CHILD: Oh, you could have interrupted me at
6 any time.

7 THE REPORTER: I'm sorry. I didn't want to
8 disturb you.

9 HEARING OFFICER WEBSTER: Thank you, Mr. Child.

10 Okay. I call on Linnell Grundman from the Town of
11 Sandwich.

12 MS. GRUNDMAN: Good evening. I am Linnell
13 Grundman, and I am the chairman of the Board of Selectman,
14 Sandwich.

15 And I have prepared a brief statement on behalf of
16 the Town of Sandwich.

17 I'd just like to preface that by saying that,
18 obviously, the Town of Sandwich is concerned about the
19 condition and the future of the Mirant Plant, because they
20 are our largest taxpayer.

21 And so, this reflects an ongoing conversation
22 about that concern. And I am happy to have this
23 opportunity.

24 The Town is the host community for the facility.

25 The draft permit, is finalized and implemented --

1 if the draft permit is finalized and implemented as drafted,
2 it could have adverse aesthetic, economic, environmental and
3 energy related impacts on the town.

4 Mirant had already provided a good overview of the
5 key issues. You just heard that, and problems with the
6 draft permit. So, the Town will focus on the aesthetic and
7 -- excuse me -- and economic impacts.

8 While the current appearance of the Mirant Canal
9 Station is not aesthetically pleasing, the new towers will
10 add significant visual blight to the area.

11 The two cooling towers required by the draft
12 permit would be an estimated 255 feet in diameter and 500
13 feet tall. They will have a negative aesthetic impact on
14 the region.

15 Installation of the cooling towers could also
16 adversely impact property values.

17 Mirant projects -- projects that implementation of
18 the draft permit will cost approximately \$200,000,000.

19 Mirant has concluded that these costs will make
20 continued operation of the Mirant Canal Station cost
21 prohibitive.

22 Closure of the Mirant Canal Station would be
23 economically devastating to the Town. Mirant has been
24 making annual tax payments to the Town well in excess of
25 \$2,000,000 each year.

1 Mirant currently accounts for 5.5 percent of the
2 Town's tax base and is the Town's single largest taxpayer.

3 Loss of the Mirant tax revenue could result in
4 large increases -- tax increases for residents and
5 businesses located in Sandwich and/or further cuts in
6 municipal services.

7 The timing could be devastating to the town as
8 State and Federal aid to the Town continues to be reduced in
9 these difficult economic times.

10 The Town is very concerned about the resolution of
11 several pending legal matters that could affect the draft
12 permit.

13 First, there are proceedings at ISO New England
14 regarding transmission matters. The final determination in
15 this matter will affect how important the Mirant Canal
16 station is to the region's energy supply.

17 Second, EPA is considering implementing new rules,
18 the so-called Phase 2 rules, that would change numerous
19 aspects of the draft permit and could very well eliminate
20 the cooling towers requirement.

21 Finally, there is a pending Supreme Court case
22 that could affect the draft.

23 Mirant Canal Station's future, as I and other
24 commenters have said, is uncertain.

25 The Town believes the greatest benefit to the

1 environment, the local and regional economy, and the
2 regional and New England wide energy planning perspective is
3 dis-served by implementation of the draft permit.

4 In the longer term, the Town is committed to a
5 solution from Mirant Canal Station that maximizes
6 environmental and energy planning objectives and, in turn,
7 recognizes the role of a generating plant in meeting Cape
8 and regional needs.

9 To the extent the process of determining how to
10 best achieve those objectives is ongoing, a precipitous rush
11 to require cooling towers at the Mirant Canal Station would
12 cripple, if not kill that process.

13 In summary, the Town is very concerned about
14 implementing the draft permit before these legal
15 uncertainties are resolved.

16 The Town's fiscal planning and economic
17 development projects depend, in no small way, on the
18 operation of the Mirant Canal plant.

19 The Town, therefore, respectfully requests that
20 EPA and MassDEP delay the finalizing of the draft permit
21 until these legal uncertainties are resolved.

22 Thank you very much.

23 HEARING OFFICER WEBSTER: Thank you very much,
24 Ms. Grundman.

25 MS. GRUNDMAN: Thank you. And think you for

1 coming to Sandwich.

2 HEARING OFFICER WEBSTER: It's a pleasure.

3 I next call on Andrea Adams with Cape Cod
4 Commission.

5 MS. ADAMS: Just again, for the record, my name is
6 Andrea Adams, Senior Regulatory Planner with the Cape Cod
7 Commission.

8 I'd just note for the record, that the Commission
9 staff, under signature of Paul Niedzwiecki, the Executive
10 Director sent a letter to your attention, Mr. Webster, about
11 the NPDES permit.

12 I'll just summarize it by saying that, the letter
13 points out important visual impacts, historic, community
14 character issues related to the location of the plant in
15 Sandwich, and that the Cape Cod Commission, as the regional
16 land use planning agency, understands the need to protect
17 the nation's waters through the Clean Waters Act and the
18 State, but also, very much looks to the DEP and the EPA to
19 balance the Clean Waters Act concerns with key important
20 impacts to community character resources, historic
21 resources, and economic resources in the town of Sandwich.

22 And I'd note, just for the people in the audience,
23 that the letter was also sent to the Sandwich Town
24 Administrator, the Sandwich representative on the Cape Cod
25 Commission, the Town Planner, Ian Bowles, Mass Secretary of

1 Energy and Environmental Affairs, Laurie Burt at MassDEP and
2 Mr. Varney, EPA Region 1 administrator.

3 So, it's available. If other people would like
4 copies of it, you can certainly contact me and I'd be happy
5 to send it to you.

6 But really, I am here as -- to listen and learn,
7 as I was the project manager on the power plant when it came
8 through commission review.

9 So, again, if anybody would like the detailed
10 comments, I certainly can provide them.

11 HEARING OFFICER WEBSTER: Thank you, Ms. Adams. I
12 did receive and read the letter.

13 Robert Corbett?

14 MR. CORBETT: Hi. My name is Robert Corbett.

15 I used to live in Sandwich. I just moved
16 recently. I am a boilermaker by trade. I work quite a bit
17 down on the Sandwich plant.

18 My understanding, I was unaware they were talking
19 about cooling towers.

20 Personally, cooling towers, I think it would be
21 definitely an aesthetic downfall. Option -- option to that
22 note would be air cool condensers.

23 I don't know cost issues on those, but I know, as
24 a closed system, you could do a little more as far as
25 aesthetics with an air cooled condenser versus a cooling

1 tower.

2 I can't imagine two cement monstrosities, as tall
3 as a stack, sitting on the property.

4 You know, I was under the impression that they
5 were talking about air cooled condensers.

6 I think that we do need the power in the area.
7 And that, as the lady from the Selectmen said about the tax
8 base, that is a big issue as far as that goes.

9 That's pretty much all I have to say on that.

10 But, you know, I -- I appreciate that you have
11 these open meetings for such issues.

12 And so, that's all I have to say.

13 Thank you.

14 HEARING OFFICER WEBSTER: Thank you very much. I
15 appreciate you coming forward.

16 That's the last person who indicated -- filled out
17 a card to do some speaking.

18 But, I'd ask now if there is anybody else who has
19 not had an opportunity to speak that wishes to make a
20 comment for the record for our consideration in making the
21 decision on the final permit. Feel free to introduce
22 yourself.

23 Okay. We advertised this public hearing to go
24 from 7:00 to 9:00.

25 And what I'm going to do is temporarily close the

1 meeting. And if other people come in wishing to speak, I
2 will reopen the meeting.

3 If not, I will reopen the meeting at around 9:00
4 o'clock to -- to close the meeting at that point.

5 If people leave, I do appreciate you coming out.
6 You've given us a lot of things to think about and consider
7 in here too.

8 And I appreciate the thoughtful comments and the
9 community members coming out from the Town, the Cape Cod
10 Commission, and the citizens as well, as well at the plant
11 coming out tonight.

12 And again, you have until midnight December 29th
13 to get comments in, if you want to talk about --

14 MR. HOGAN: January.

15 HEARING OFFICER WEBSTER: Excuse me. January 29th
16 -- thank you, Paul -- to get the comments in.

17 And if you have any other logistical questions
18 about how to do that or, you know, availability, or you
19 know, website questions, please feel free during this
20 suspension of the public hearing, to talk to one of us about
21 that.

22 So, with that, I am going to temporarily close the
23 meeting to be reopened a little bit later. Thanks.

24 (Off the record from 7:43 p.m. to 8:51 p.m.)

25 HEARING OFFICER WEBSTER: Good evening, ladies and

1 gentlemen. My name is David Webster.

2 And at this time, I am reopening the public
3 hearing for the Mirant Canal Station NPDES permit.

4 It's just a little bit before 9:00 o'clock.

5 And I'd like to ask if there is anybody here that
6 did not make a comment that would wish to make a comment for
7 the record on the Mirant Canal Station NPDES permit?

8 And seeing no one, I thank you for coming out here
9 tonight. And for your interest in the permit.

10 Please remember that the public comment period
11 ends on midnight, January 29, 2009. And you'll need to send
12 in written comments any time up until then.

13 Thank you very much and this closes the public
14 hearing.

15 (Whereupon, at 8:53 p.m., the hearing was
16 concluded.)

CERTIFICATE OF REPORTER AND TRANSCRIBER

This is to certify that the attached proceedings
before: U.S. ENVIRONMENTAL PROTECTION AGENCY
in the Matter of:

MIRANT CANAL STATION

NPDES PERMIT NO. MA0004928

Place: Sandwich, Massachusetts

Date: January 14, 2009

were held as herein appears, and that this is the true,
accurate and complete transcript prepared from the notes
and/or recordings taken of the above entitled proceeding.

M. Rossi

01/14/09

Reporter

Date

M. Rossi

02/10/09

Transcriber

Date