

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of  
Articles 3, 17 & 71 of the Environmental Conservation Law  
("ECL"), Article 12 of the Navigation Law of the State of New  
York and Title 6 of the Official Compilation of Codes, Rules and  
Regulations ("6 NYCRR") of the State of New York

**CONSENT  
ORDER**

by:

Mirant Bowline, LLC,

*Respondent.*

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Case Number: 3-1680

**WHEREAS**

1. The New York State Department of Environmental Conservation (the "Department") is an agency of the State of New York authorized, pursuant to Article 12 of the Navigation Law which provides for the licensing of Onshore Major Oil Storage Facilities ("MOSF") and is further authorized, pursuant to Titles 3 and 10 of Article 17 of the Environmental Conservation Law ("ECL"), to regulate the storage and handling of petroleum in the State of New York.

2. The provisions of 6 NYCRR Part 610 apply to the Department's certification of a MOSF seeking a license or the renewal of a license to operate or cause to be operated, a MOSF in New York State.

3. 6 NYCRR Parts 612 through 614 authorize the Department to regulate the storage and handling of petroleum in the State of New York.

4. ECL § 71-1929 provides for a penalty up to Thirty Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of titles 1 through 11 inclusive and title 19 of Article 17 and the rules and regulations promulgated thereto by the Commissioner of the Department.

5. On September 19, 2005, the Department issued a Major Petroleum Facility License (License Number 3-1680) ("MPFL") for the Bowline Pt. Generating Station, located at 140 Samsondale Ave., West Haverstraw, N.Y. 10993 ("Facility") and the stated expiration date for the MPFL is March 31, 2006.

6. Respondent, Mirant Bowline, LLC, is the owner and operator of Facility.

7. On February 8, 2006, the Respondent submitted an application for the renewal of the MPFL which Respondent alleges meets the requirements of a complete application pursuant to 6 NYCRR Parts 610, 612-614 and 621 ("Application").

8. The Application is currently under review by the Department and the Department reserves any right it may have to renew, deny, suspend or modify the MPFL.

9. On December 21, 2005, the Department conducted an inspection ("Inspection") of the Facility to determine whether it was in compliance with 6 NYCRR Parts 612 thru 614 and the terms and conditions of its MPFL.

10. As a result of the Inspection, on January 4, 2006 the Department issued a Notice of Violation ("NOV") to the Respondent which alleges, among other things, that the Respondent has violated various provisions of 6 NYCRR Parts 612 thru 614, and further alleges that Respondent is not in complete compliance with the terms and conditions of its MPFL.

11. On February 7, 2006, the Respondent submitted a letter to the Department which responded to the violations alleged in the NOV and presented a proposal for demonstrating compliance with 6 NYCRR Parts 612 thru 614 and the terms and conditions of its MPFL.

12. The Department is currently reviewing the Respondent's Compliance Proposal and reserves its rights to accept or reject the Compliance Proposal.

13. On March 29, 2006 the Department and the Respondent entered into a Consent Order ("March 29, 2006 Consent Order") which authorized the continued operation of the Facility pursuant to the terms and conditions of its MPFL for a period of sixty (60) days beyond the MPFL's expiration date.

14. On May 23, 2006, the Department extended the authority for the Respondent to continue operation under the terms and conditions of its MPFL, pursuant to the March 29, 2006 Consent Order, until August 1, 2006.

15. Without admitting or denying the allegations made by the Department in the NOV and solely for the purposes of entering into this Consent Order, Respondent has waived its right to a hearing herein as provided by law and has consented to the issuing and entering of this Consent Order ("Order") pursuant to the provisions of Article 17 and 71 of the ECL and has agreed to be bound by the provisions, terms and conditions herein.

**NOW, having considered this matter and being duly advised, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:**

**I. MPFL EXTENDED EXPIRATION DATE**

Pending the Department's review of the Respondent's Application, Respondent is hereby authorized to continue the operation of the Facility under this Order, pursuant to the terms and conditions of its MPFL, until such time as the Department has rendered a final decision on such Application. In accordance with the continued operation authorized under this Consent Order, Respondent is deemed to have made a timely, sufficient and complete application for renewal of its MPFL in accordance with 6 NYCRR Parts 610, 612-614 and 621, and all other applicable requirements.

**II. PENALTIES**

The Respondent is hereby assessed the civil penalty in the amount of Twenty Thousand and No/100ths (\$20,000.00) Dollars which shall be payable within thirty (30) days of the approval of the terms of this Order by the Bankruptcy Court for the Northern District of Texas ("Bankruptcy Court") in accordance with Article X herein.

**III. FORCE MAJEURE**

If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**IV. DEPARTMENT'S RESERVATION OF RIGHTS**

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to:

- (a) require performance of further investigations and/or remedial action(s);
- (b) exercise any summary abatement powers with respect to any person, including Respondent;

(c) exercise any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever which the Department may have against anyone other than Respondent, its agents, officials, non-employee agents, successors and assigns;

(d) enforce administratively, at law or in equity, the terms, provisions and conditions of this Order, against Respondent, its officials, non-employee agents, successors, and assigns in the event that Respondent shall fail to comply with any of the provisions hereof; and

(e) to bring any future action, either administrative or judicial, for any other violations of the Navigation Law, the Environmental Conservation Law, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent.

B. Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future cleanup and removal costs or such other costs or damages arising from the contamination at the site as may be provided by law.

#### **V. INDEMNIFICATION**

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

#### **VI. COMMUNICATIONS**

All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

To Respondent:      Mirant Bowline, L.L.C.  
                            Leslie G. Alden  
                            Senior Environmental Engineer  
                            Mirant Corporation  
                            9 Freezer Road  
                            Training Center  
                            Sandwich, Massachusetts 02563

With a copy to: Frank V. Bifera, Esq.  
Hiscock & Barclay, LLP  
50 Beaver Street  
Albany, New York 12207

To the Department: Department of Environmental Conservation  
Division of Environmental Enforcement  
Attn: Ben Conlon  
Associate Attorney  
625 Broadway, 14th Floor  
Albany, New York 12233-5550

Department of Environmental Conservation  
Region 3  
Attn: Dan Bendell  
21 South Putt Corners Road  
New Paltz, NY 12561-1620

Or such other people as the Department may designate.

#### **VII. RESPONDENT'S RESERVATION OF RIGHTS**

Nothing contained in this order shall impair or effect any rights the Respondent may have to contest or oppose any action the Department may take or fail to take in the processing of Respondent's Application.

#### **VIII. STANDARD PROVISIONS**

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

#### **IX. MISCELLANEOUS**

Compliance with all material terms of this Order shall release and satisfy Respondent's outstanding liability for the violations described herein. Respondent's failure to so comply may subject it to additional penalties for violations of the ECL occurring either before or after the date of this Order.

#### **X. BANKRUPTCY COURT APPROVAL**

A. The parties acknowledge and agree that the terms of this Consent Order are subject to approval by the Bankruptcy Court for the Northern District of Texas "Bankruptcy Court". To obtain said approval, Respondent must file a motion with the Bankruptcy Court under Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking approval of the Consent Order

(the "9019 Motion"). A summary of the terms of this Consent Order shall be included in the provisions of the 9019 Motion.

B. This Consent Order shall be binding upon the Respondent and the Department as of the effective date hereof, subject to the entry of the Bankruptcy Court's order ("Approval Order"), after notice and hearing, approving the terms of this Consent Order.

C. The Respondent shall use its best efforts to obtain the approval and entry of the Approval Order.

Dated: Albany, 2006  
July 20, New York

DENISE M. SHEEHAN  
Commissioner  
New York State Department of Environmental  
Conservation

By: Denise Sheehan

## CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, and agrees to be bound by the terms, conditions and provisions contained in this Order.

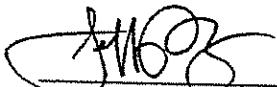
Mirant Bowline, LLC, Respondent.

By (Signature):

Print Name:

Title:

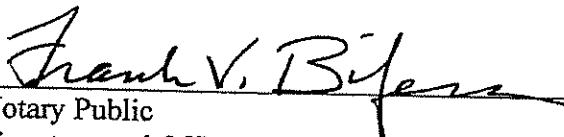
Date:

  
\_\_\_\_\_  
JEFFREY R. PERRY  
PRESIDENT  
7/20/06

## ACKNOWLEDGMENT

STATE OF New York )  
COUNTY OF ALBANY ) ss:

On the 20<sup>th</sup> day of July in the year 2006 before me personally came Jeffrey R. Perry to me known, who being by me duly sworn, did depose and say that he resides in Virginia; that he is the President of Mirant Bowline, LLC, the corporation described in and which executed the above instrument; and that he signed his/her name thereto by authority of the board of said corporation.

  
\_\_\_\_\_  
Notary Public

Signature and Office of Individual Taking Acknowledgment

Comm Expires 5/31/10  
No. 02B14625305

## STANDARD PROVISIONS

**Payment.** Any penalty or oversight cost assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Division of Environmental Enforcement, Attn: Ben Conlon, 14th Floor, 625 Broadway, Albany, New York 12233-5550. Unpaid penalties and oversight costs imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

**Duration.** Subject to Article X (Bankruptcy Court Approval) this Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or her designee, and shall expire when the Department notifies the Respondent that the Respondent has substantially complied with the requirements of this Order.

**Access.** For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** Except in relation to changes to the Department-approved remedial activities and Schedule A, which may be modified by agreement between the parties without amendment to this Order, no change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner or her designee, being made either upon written

application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Other Rights.** Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

**Entire Agreement.** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Multiple Respondents.** If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.