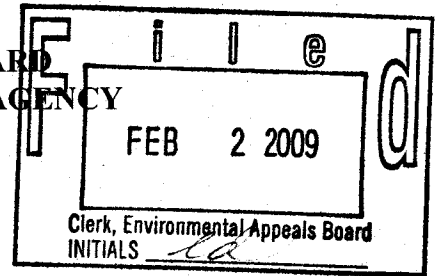


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

City & County of Honolulu)
Sand Island Wastewater Treatment Plant)
Honouliuli Wastewater Treatment Plant)

NPDES Permit Nos. HI0020117 & HI0020877)

NPDES Appeal No. 09-01

**ORDER GRANTING ALTERNATIVE MOTION FOR
EXTENSION OF TIME TO FILE PETITIONS FOR REVIEW**

On January 23, 2009, the City and County of Honolulu ("CCH") filed a motion for a thirty-day extension of time to file petitions for review of two separate Final Decisions of the Regional Administrator, both issued on January 5, 2009, denying CCH's requests for variances from the Clean Water Act's secondary treatment requirements at its Sand Island and Honouliuli Wastewater Treatment Plants. At present, the petitions for review must be filed with the Environmental Appeals Board by February 9, 2009. CCH requests leave to file its appeals on March 11, 2009, or, in the alternative, to file summary petitions for review on February 9, 2009, followed by supplemental briefs on March 11, 2009.

CCH states that both Final Decisions exceed 100 pages in length and are accompanied by extensive administrative records containing highly technical and disputed data. CCH also notes that because EPA issued the Final Decisions on the same day, it is burdened with the magnified task of preparing appeals for two separate facilities simultaneously rather than during separate thirty-day periods. In light of these factors, CCH contends it will suffer prejudice if it is not provided additional time to prepare its petitions.

CCH reports that EPA Region 9 declined to consent to this motion for an extension of time. The Region takes the position that further delays of these long-pending variance requests are not warranted and that extending the appeal deadline would require EPA to modify the effective dates of the Final Decisions, which would then require additional notice and opportunity for public comment. CCH claims to the contrary that a grant of this motion would not prejudice EPA in any way.

As a general matter, the Board strictly construes threshold procedural requirements and “will relax a filing deadline only where special circumstances exist.” *In re AES Puerto Rico LP*, 8 E.A.D. 324, 329 (EAB 1999); *In re Town of Marshfield*, NPDES Appeal No. 07-03, at 4-5 (EAB Mar. 27, 2007) (Order Denying Review); *In re BHP Billiton Navajo Coal Co.*, NPDES Appeal No. 08-06, at 2 (EAB Apr. 24, 2008) (Order Denying Extension of Time to File Petition for Review). Special circumstances have been found in cases where mistakes by the permitting authority or delivery service have directly precipitated delays in the appeal proceedings and in cases where delays result from natural disasters or possible terrorist threats. *E.g.*, *In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 703 n.6 (EAB 2002) (anthrax threat); *In re Hillman Power Co., LLC*, 10 E.A.D. 673, 680 n.4 (EAB 2002) (final permit decision not properly served); *AES Puerto Rico*, 8 E.A.D. at 328-29 (hurricane); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 123-24 (EAB 1997) (mistaken appeal filing instructions).

In the pending case, these types of special circumstances are not present. However, as CCH correctly observes, the Board has, on occasion and for good cause shown, granted motions seeking leave to file supplemental briefs to support the issues identified in timely petitions for review. *Town of Marshfield*, at 8 n.10. We perceive no prejudice to either CCH or the Region

from following this course in the instant case, and we find good cause for such a course in light of the burdens imposed by preparing two possibly complex appeals simultaneously.

Accordingly, CCH's motion in the alternative is hereby **GRANTED**. CCH must file its summary petitions for review of the Final Decisions on or before **Monday, February 9, 2009**, identifying all the issues CCH wishes to raise on appeal of these two permit decisions. CCH then must file supplemental briefs on or before **Wednesday, March 11, 2009**, presenting argument and information supporting the issues identified in the petitions for review.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 2/2/09

By: Charles J. Sheehan (for KAS)
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Granting Alternative Motion for Extension of Time to File Petitions for Review** in the matter of *City & County of Honolulu*, NPDES Appeal No. 09-01, were sent to the following persons in the manner indicated:

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Date: 3/2/2009


Annette Duncan
Secretary