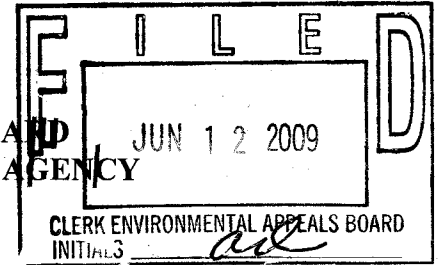


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
)  
)  
City & County of Honolulu ) NPDES Appeal No. 09-01  
Sand Island Wastewater Treatment Plant )  
Hono-uli-uli Wastewater Treatment Plant )  
)  
NPDES Permit Nos. HI0020117 & HI0020877 )  
)

**ORDER DENYING STAY AND  
ESTABLISHING FURTHER BRIEFING SCHEDULE**

On April 23, 2009, Region 9 of the U.S. Environmental Protection Agency, along with the City and County of Honolulu ("CCH"), filed a joint motion seeking a stay, until October 15, 2009, of further proceedings in the above-captioned matter. The parties cited as grounds for the stay the existence of active, ongoing litigation between them over Freedom of Information Act ("FOIA") requests made by CCH in 2007 and 2009. CCH believes the FOIA litigation, which is pending before the U.S. District Court for the District of Hawaii, may result in the production of documents that are relevant to its petition for review in this case. The Region disagrees but does not object to the proposed stay.

On June 9, 2009, the Environmental Appeals Board held a status conference to discuss the parties' joint motion and related matters. The Board observed that if CCH is successful in obtaining the documents it seeks through the FOIA litigation, CCH would still be obliged to prove, under 40 C.F.R. § 124.18 and Board precedents such as *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490 (EAB 2006), that those documents should be part of the administrative record for the Clean Water Act permitting decisions at issue in this case. The

Board noted that, as a general matter, these authorities create a high threshold for the admission of supplemental documents to permitting records. CCH conceded that it would have to carry the burden of showing that any new documents it wishes to rely upon should be included in the records.

Upon consideration of the parties' motion and the information provided at the status conference, the Board hereby **DENIES** the motion for a stay of proceedings. In the event CCH decides it wishes to file a reply to Region 9's response to the petition for review, the Board directs CCH to file such a brief with the Board on or before **Wednesday, July 15, 2009**. Should the Region decide it wishes to file a surreply to CCH's reply, such a brief must be filed with the Board on or before **Monday, August 17, 2009**.

So ordered.<sup>1</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: June 12, 2009

By: Kathie A. Stein  
Kathie A. Stein  
Environmental Appeals Judge

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<sup>1</sup> This order does not preclude CCH's filing of a motion to supplement the administrative records for the two wastewater treatment plant permits at issue here, based on any documents obtained in the FOIA litigation against EPA. However, as indicated in the text above, any such motion would be expected to demonstrate how each claimed document properly falls within the boundaries of the administrative record, pursuant to 40 C.F.R. § 124.18 and Board decisions interpreting the extent of the administrative record in permitting cases (such as *Dominion Energy*, 12 E.A.D. at 511-34). In the event CCH files such a motion, Region 9 would be given an appropriate opportunity to respond to it. The Board declines at this time to establish specific dates for any such filings, but it reserves its authority to set suitable deadlines at a later time.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Denying Stay and Establishing Briefing Schedule** 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:         JUN 12 2009        

  
Annette Duncan  
Secretary