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ENVIR. APPEALS BOARD

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8 Attorney for the Guam Waterworks Authority

9 **BEFORE THE ENVIRONMENTAL APPEALS BOARD**
10 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
11 **WASHINGTON, D.C.**

12 In the Matters of:)

13 GUAM WATERWORKS AUTHORITY'S)
14 NORTHERN DISTRICT SEWAGE)
15 TREATMENT PLANT APPLICATION FOR)
16 A MODIFIED NPDES PERMIT UNDER)
17 SECTION 301(h) OF THE CLEAN WATER)
18 ACT (NPDES Permit No. GU0020141))

**MOTION FOR EXTENSION OF TIME
TO FILE PETITIONS FOR REVIEW**

19 and)

20 GUAM WATERWORKS AUTHORITY'S)
21 AGANA SEWAGE TREATMENT PLANT)
22 APPLICATION FOR A AMODIFIED NPDES)
23 PERMIT UNDER SECTION 301(h) OF THE)
24 CLEAN WATER ACT (NPDES Permit No.)
25 GU0020087))

26 Pursuant to 40 C.F.R. §§ 22.7 and 124.19, petitioner Guam Waterworks Authority
27 ("GWA") hereby moves for a thirty (30) day extension of time, up to and including December 7,
28 2009,¹ in which to file petitions for review of two separate Final Decisions of the Regional
29 Administrator of the U.S. Environmental Protection Agency ("EPA") denying GWA's requests
30 seeking variances for two wastewater treatment plants from the Clean Water Act's secondary
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32 ¹ December 5th falls on a Saturday, hence December 7th is the first working day following the current appeal date.

ORIGINAL

1 treatment requirements. Alternatively, GWA requests permission to file summary petitions for
2 review on the current due date. GWA requests permission to file summary petitions for review
3 on the current due date, November 5, 2009, followed by supplemental briefs on December 7,
4 2009.
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6 INTRODUCTION

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8 GWA operates two wastewater treatment plants that discharge into the Philippine Sea
9 (Pacific Ocean), the Northern District Sewage Treatment Plant (“NDSTP”) and the Hagåtña
10 Sewage Treatment Plant (“HSTP”) (collectively referred to as “the “Plants”). Before October 1,
11 2009, both Plants operated under National Pollutant Discharge Elimination System (NPDES)
12 permits that per section 301(h) of the Clean Water Act, exempted them from complying with the
13 Act’s secondary treatment requirements. On October 1, 2009, the EPA Regional Administrator
14 entered two separate Final Decisions, effective November 5, 2009, denying GWA’s requests to
15 continue the variances. Both Final Decisions are lengthy (each well in excess of 60 pages) and
16 are accompanied by extensive administrative records involving highly technical and disputed
17 data. Without an extension, petitions for review of both Final Decisions are due November 5,
18 2009. See 40 C.F.R. § 124.19(a).
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23 The facts about the two Plants, the procedural history of their permits, and the Regional
24 Administrator’s October 1st Final Decisions are quite different.² Even so, similar fundamental
25 errors affect both Decisions. Although it has not yet finally decided on all the issues it will
26 appeal, GWA presently believes it might file a consolidated petition for review, which focuses
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29 ² Compare for example under the Stipulated Order for Preliminary Relief (as amended) (“SO”) in Guam District
30 Court Civil Case No. 02-00035 there is a requirement that GWA install a diffuser at the NDSTP and perform a
31 series of repairs while the HSTP was to be completely refurbished. See also Paragraphs 35, 36, 39 and 42 of the
32 Order.

1 on those errors. To do so in a way that keeps the complicated issues clear while still addressing
2 issues unique to each Plant, GWA requests an additional thirty (30) days to prepare for EAB
3 review. The additional time is necessary in light of the length and complexity of the two Final
4 Decisions, their simultaneous schedule, and the prejudice GWA will suffer without the extra
5 time. The EPA has indicated that it would not oppose such an extension. Accordingly, the EAB
6 should grant GWA's motion to extend filing deadline until December 7, 2009. See 40 C.F.R. §
7 22.7 (the EAB may grant an extension of time for filing any document "upon timely motion of a
8 party to the proceeding, for good cause shown, and after consideration of prejudice to other
9 parties."). In the alternative, the EAB should permit GWA to file supplemental briefs by
10 December 7, 2009, after GWA files summary petitions for review by November 5, 2009. See *In*
11 *re Town of Marshfield, Mass.*, Order Denying Review at 8 n. 10, NPDES 07-03, available at
12 2007 WL 1221207 (EAB, March 27, 2007) ("The Town could have filed a timely petition
13 identifying all issues on appeal and moved for an extension of time to file a supplemental brief to
14 support the issues raised in the petition. The Board has, on occasion and for good cause shown,
15 granted this kind of motion and entertained such supplemental briefs.").

22 ARGUMENT

23 I. GWA Has Good Cause For a Thirty (30) Day Extension

24 A slight thirty (30) day extension will allow GWA fully to prepare for review. The two
25 Final Decisions and Responses to Comments issued on October 1, 2009, are long and technically
26 complicated and the EPA knows that GWA has limited resources to respond to such a request in
27 light of the amount of time that GWA is spending trying to plan for the impending military
28 buildup that is scheduled to take place on Guam in the very near future. The Northern District
29 Sewage Treatment Plant Final Decision is filled with reasoning and supporting data; the Agana
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1 Sewage Treatment Plant Final Decision is similarly complicated. The great detail of the
2 Decisions and Responses to 37 Comments covers a wide range of substantive issues. While
3 some of the issues have been percolating since at least the January 5, 2009, Tentative Decision
4 Documents recommending denial of GWA's variances, there are many issues original to the
5 October 1st filings. In order to give full consideration to each issue presented in the Final
6 Decisions and Responses To Comments, GWA, its experts, and its attorneys need more than
7 thirty (30) days prescribed by the rules to file a consolidated petition for review. Under the
8 circumstances, the risk that GWA will be prejudiced in the absence of an extension is substantial.
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12 GWA plans to put those 30 days to good use. Although it has not yet finally decided on
13 the issues it will appeal, GWA already envisions consolidating its petitions for review because a
14 few fundamental errors affect both of the Regional Administrator's Final Decisions. A
15 consolidated petition will take additional time to prepare at the outset, especially because it will
16 still have to address other issues unique to each Plant. But it will ultimately save GWA, EPA
17 and the EAB time and resources by eliminating duplicative issues.
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20 A one-month extension is reasonable. It mimics the amount of time GWA and its
21 representatives would have to prepare separate petitions for review if EPA had not issued the
22 Final Decisions on the Northern and Agana variances on the same day. .
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25 A 30-day extension, in sum, effectively maintains the status quo, ensures that GWA will
26 not be pressed to overlook potentially worthwhile appellate issues, and will likely result in a
27 concise, consolidated petition for review.
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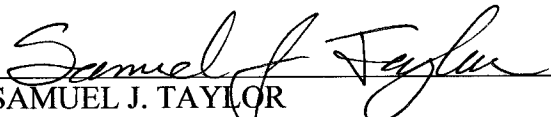
1 **II. EPA Will Not Be Prejudiced By A 30-Day Extension**

2 In an e-mail dated October 22, 2009 (received by GWA on October 23, 2009), the EPA
3 indicated that it would not oppose GWA's request for consent to an extension of the time in
4 which GWA has to file petitions for review of the Regional Administrator's Final Decisions. (A
5 copy of that e-mail is attached to this motion.) As such, GWA requesting an additional 30-days
6 is reasonable under the circumstances and poses no risk of prejudice to EPA or anyone else.
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10 **CONCLUSION**

11 Because GWA has good reason for a one-month extension, and because EPA will suffer
12 no prejudice by it, the EAB should grant GWA request to extend the date for filing petitions for
13 review in Agana and Northern matters until December 7, 2009, to file a supplemental brief that
14 presents complete arguments in support of the issues identified in timely-filed, summary
15 petitions for review. Because the alternative course would require GWA to identify all the issues
16 for review by November 5, 2009, it does not go as far as a full 30-day extension toward
17 addressing the reasons why GWA is seeking to extend the filing deadline. Even so, the
18 alternative course greatly reduces the risk of prejudice to GWA presented by the current
19 schedule.
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25 RESPECTFULLY SUBMITTED this 27th day of October, 2009.
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29 SAMUEL J. TAYLOR
30 GWA Legal Counsel
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CERTIFICATE OF SERVICE

I, Samuel J. Taylor, hereby certify that on October 28, 2009, Wednesday, I will cause to be served a true and correct copy of the foregoing Motion For Extension of Time to File Petitions For Review via Federal Express courier to the below listed persons.

Clerk of the Board
United States Environmental Protection Agency
Environmental Appeals Board
1341 G. Street, N.W.
Suite 600
Washington, D.C. 20005

Laura Yoshii
Acting Regional Administrator
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dated this 27th day of October, 2009.



SAMUEL J. TAYLOR

Taylor, Samuel

From: VonVacano.Marcela@epamail.epa.gov
Sent: Thursday, October 22, 2009 10:33 AM
To: Taylor, Samuel
Subject: RE: 301(h) appeals
Attachments: EAB order granting alternative relief.pdf

Mr. Taylor,

I understand that there has been some discussion regarding the possibility of incorporating into the Stipulated Order under negotiation a schedule for Northern District and Agana to go to secondary. My understanding is that these discussions are very preliminary. Accordingly, we would not feel comfortable representing to the EAB that resolution of these issues is imminent. Thus, we would not join GWA in a motion for extension of time in regards to the filing of GWA's appeal(s). However, we would not oppose such a motion.

Alternatively, as with the CCH appeal, GWA could request that the EAB allow a procedure whereby the Petitioner (GWA) can summarily identify the issues it wants to challenge in a cursory "petition," and then later file a "supplemental brief" that actually argues the matters. I am attaching the EAB order allowing this type of alternative relief.

If you would like to discuss this issue further, I am available after 5 p.m. tomorrow California time, which I understand is 10 a.m. Friday morning for you. I am also available next week any time after 4 p.m. Thank you for your attention to this matter.

Marcela von Vacano
Office of Regional Counsel
U.S. EPA, Region 9
75 Hawthorne, 16th Floor
San Francisco, CA 94105
Telephone 415-972-3905
Facsimile 415-947-3570

From: "Taylor, Samuel" <staylor@guamwaterworks.net>
To: Marcela VonVacano/R9/USEPA/US@EPA
Cc: "annborja@guamwaterworks.org" <annborja@guamwaterworks.org>
Date: 10/20/2009 03:55 PM
Subject: RE: 301(h) appeals

Marcela,

GWA is interested in discussing with USEPA issues of mutual interest relative to the 301(h) waiver. Specifically, we are interested in exploring the possibility of amending the existing Stipulated Order (or some other mechanism satisfactory to both parties) to accommodate a schedule for all projects that the USEPA feels GWA needs to accomplish going forward, including scheduling priorities based on GWA's Master Plan relative the decision by the USEPA to force GWA into secondary treatment. Funding and capacity to build the projects are major issues for us. Apparently GWA has been talking to Nancy Woo and others about how to best work the problem without forcing GWA to file an appeal on the 301(h) issue. However, in order to work out any agreement on the subject this would require the USEPA granting some additional time to file an appeal so that we can work these issues out. Is the

USEPA amenable to such an arrangement?

Sam Taylor
GWA Legal Counsel

From: VonVacano.Marcela@epamail.epa.gov [mailto:VonVacano.Marcela@epamail.epa.gov]
Sent: Wednesday, October 21, 2009 4:13 AM
To: staylor@ite.net; Taylor, Samuel
Cc: annborja@guamwaterworks.org
Subject: 301(h) appeals

Mr. Taylor,

My colleague Gary Hess informed me, based on a conversation that you had with DOJ, that you are interested in discussing GWA's potential appeals of EPA's recent 301(h) decisions to deny GWA's applications for waivers from secondary treatment. I am the attorney tasked to working on the appeals and I will be glad to discuss any issues of concern to you and GWA. If you are interested, I suggest that we have a conference call this week. I am available this Thursday, October 22 between 5 and 6 p.m., San Francisco time. If you are not available at this time, which I believe is 11 a.m., Friday October 23 Guam time, perhaps we can speak next week. I am available any day from October 26 to October 30 after 4 p.m., San Francisco time. Thank your for your attention.

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