

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

In the Matter of: )  
 )  
CITY OF TWIN FALLS ) NPDES Appeal Nos. 09-12 & 10-08  
 )  
 )  
NPDES Permit No. ID-002127-0 )  
\_\_\_\_\_ )

**EPA REGION 10’S MOTION TO CONSOLIDATE PETITIONS FOR REVIEW AND  
FOR EXTENSION OF TIME**

The United States Environmental Protection Agency, Region 10 (“Region”) respectfully requests that the Environmental Appeals Board (“Board”) consolidate the above-captioned matters. Should the Board consolidate the matters, the Region further requests an extension until September 30, 2010, to file a single response to the petitions for review filed by the City of Twin Falls (“City”). The Region has conferred with counsel for the City, who does not oppose this motion.

The Region issued NPDES Permit No. ID-002127-0 to the City on September 22, 2009. The City and the Idaho Conservation League (“ICL”) filed separate petitions for review of the permit on October 21, 2009, and October 26, 2009, respectively. By order dated March 10, 2010, the Board dismissed ICL’s petition as moot because the challenged permit conditions were withdrawn. *In re City of Twin Falls*, NPDES Appeal No. 09-13 (EAB Mar. 10, 2010) (Order

EPA REGION 10’S MOTION TO  
CONSOLIDATE AND FOR EXTENSION  
OF TIME- 1  
NPDES Appeal Nos. 09-12 & 10-08

U.S. ENVIRONMENTAL PROTECTION AGENCY  
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Dismissing Petition). As to the City's petition, assigned NPDES Appeal No. 09-12, the Region requested, and the Board granted, multiple extensions of time in which to file a response. In its most recent request for an extension, the Region stated that an extension would allow the Region to propose a permit modification that did not include the withdrawn permit conditions, the City to comment on that proposal, the Region to finalize that proposal, and the City to file a petition for review with the Board, which the Board could then consolidate with the City's pending petition. Motion to Dismiss Petition for Review and Request for Extension (Mar. 2, 2010). Presently, the Region's response is due September 8, 2010. *In re City of Twin Falls*, NPDES Appeal No. 09-12 (EAB Mar. 10, 2010) (Order Granting Extension of Time).

After proposing and receiving comments on a permit modification, the Region issued a final modification of NPDES Permit No. ID-002127-0 on June 24, 2010, and served notice to the City on June 25, 2010. The City filed with the Board a petition for review, dated July 24, 2010, of the permit modification. The Board assigned this petition NPDES Appeal No. 10-08. By letter to the Region dated July 29, 2010, the Board established a September 13, 2010 response date to the City's July 24, 2010 petition. Letter from Eurika Durr, Clerk of the Board, Environmental Appeals Board, U.S. EPA to David Allnutt, Acting Regional Counsel, U.S. EPA Region 10 (July 29, 2010).

NPDES Appeal Nos. 09-12 and 10-08 involve the same parties, as well as the same permit and its modification. Thus, consolidation of the appeals and a single response deadline will further the interests of judicial economy. Furthermore, the Region recognizes and is

appreciative that the Board has previously extended the deadline to respond to the petition filed in NPDES Appeal No. 09-12. Due to the issues raised in the City's petitions, the Region will need to continue extensive coordination with EPA Headquarters in preparing the responses to the petitions. Pre-existing scheduled leave of critical personnel between now and September 13 will hinder such coordination. Finally, this case was reassigned this week to an attorney on detail to the Office of Regional Counsel, who will need time to become familiar with the case.

The requested extension, which is not opposed by the City, will not result in unreasonable or unnecessary delay. Accordingly, the Region requests that the Board consolidate NPDES Appeal Nos. 09-12 and 10-08 and set a single deadline, September 30, 2010, for the response to the City's petitions.

Dated this 4th day of August, 2010.

Respectfully submitted,

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/s/

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EPA REGION 10'S MOTION TO  
CONSOLIDATE AND FOR EXTENSION  
OF TIME- 3  
NPDES Appeal Nos. 09-12 & 10-08

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**CERTIFICATE OF SERVICE**

I certify that the foregoing EPA Region 10's Motion to Consolidate Petitions for Review was sent to the following persons, in the manner specified, on the date below:

**By CDX, to:**

Ms. Eurika Durr, Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
Colorado Building, Suite 600  
1341 G Street, NW  
Washington, D.C. 20005

**One copy by fax and first class U.S. mail, to:**

Fritz Wonderlich  
Wonderlich & Wakefield  
Attorney at Law  
P.O. Box 1812  
Twin Falls, Idaho 83303-1812  
Fax: (888) 789-0935  
Phone: (208) 352-0811

Dated: August 4, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
Stephanie Yu  
Assistant Regional Counsel  
U.S. EPA, Region 10