

FILED

UNITED STATES COURT OF APPEALS

SEP 02 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CITY AND COUNTY OF HONOLULU,

No. 10-72575

Petitioner,

NPDES Appeal No. 09-01

v.

ORDER

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and UNITED
STATES ENVIRONMENTAL APPEALS
BOARD,

Respondents.

Before: LEAVY, HAWKINS and THOMAS, Circuit Judges.

To the extent petitioner seeks review of the United States Environmental Appeals Board's ("EAB") August 16, 2010 order denying a stay of proceedings, a review of the record reflects that the court may lack jurisdiction over such a petition.

To the extent petitioner seeks a writ of mandamus, the petition raises issues that warrant a response. *See* Fed. R. App. P. 21(b).

Accordingly, within 21 days after the filing date of this order, petitioner shall move for voluntary dismissal of the petition for review or show cause why it

should not be dismissed for lack of jurisdiction. If petitioner elects to show cause, respondent United States Environmental Protection Agency (“EPA”) shall respond within 14 days after service of petitioner’s memorandum. Respondent EPA’s response shall include a response to issues raised by petitioner’s alternate petition for a writ of mandamus.

The EAB may also file a response if it so desires. The EAB’s response may be filed within 14 days after service of the petitioner’s response to this order to show cause. Petitioner may file a reply within 7 days after service of the response(s).

If petitioner fails to comply with this order, the Clerk shall dismiss this petition for failure to prosecute. *See* 9th Cir. R. 42-1.

The temporary stay of proceedings granted in this court’s August 24, 2010 order shall remain in effect pending disposition of this order to show cause.

If necessary, the court will set a briefing schedule upon disposition of this order to show cause and the stay motion.

The Clerk shall serve a copy of this order on the United States Environmental Appeals Board at the following address: U.S. Environmental Protection Agency, Clerk of the Board, Environmental Appeals Board (MC

1103B), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C.
20460-0001.