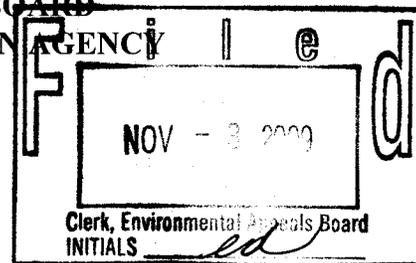


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)

Guam Waterworks Authority)
Northern District Sewage Treatment Plant)
NPDES Permit No. GU0020141)

&)
)

Guam Waterworks Authority)
Agana Sewage Treatment Plant)
NPDES Permit No. GU0020087)

NPDES Appeal Nos.
09-15 & 09-16

**ORDER GRANTING MOTION IN THE ALTERNATIVE TO TIMELY FILE
SUMMARY PETITIONS WITH EXTENSION OF TIME TO FILE
SUPPLEMENTAL BRIEFS**

On October 29, 2009, the Guam Waterworks Authority (“GWA”) filed a motion with the Environmental Appeals Board (“Board”) for a thirty-day extension of time to file petitions for review of two separate Final Decisions of the Acting Regional Administrator of the United States Environmental Protection Agency, Region 9 (“Region”), in which the Region denied GWA’s requests for variances from the Clean Water Act’s secondary treatment requirements at two of its wastewater treatment plants: Northern District Sewage Treatment Plant and Agana Sewage Treatment Plant (“the Plants”). *See generally* Mot. for Ext. of Time to File Pets. for Review (“Motion”). The Region signed the final decisions on September 30, 2009, and served them on October 1, 2009. *See* Region 9, U.S. EPA, *Notice of Final Decisions on Guam Waterworks Authority Agana Sewage Treatment Plant and Northern District Sewage Treatment Plant Application for Modified NPDES Permits under Section 301(h) of the Clean Water Act* (Sept. 30,

2009), available at <http://www.epa.gov/region09/water/npdes/pubnotices.html> [hereinafter Notice of Final Decisions]. Based on the deadline established in the Region's Notice of Final Decisions, both petitions for review must be filed with the Board by November 5, 2009.¹ *Id.*; see also Motion at 2. GWA requests leave to file the petitions on December 7, 2009, or in the alternative, to file summary petitions for review on the current due date followed by submission of supplemental briefs on December 7, 2009. *Id.* at 1-2.

In support of its motion, GWA states that both Final Decisions are lengthy, each in excess of 60 pages, and are accompanied by extensive administrative records containing highly technical and disputed data. *Id.* at 2. GWA also claims that the facts about the Plants, their procedural histories, and the Final Decisions are "quite different," *id.* at 2, thus making it more difficult to file petitions for review of the "complicated issues" on a "simultaneous schedule," *id.* at 3. GWA further argues that a one-month extension of time "mimics the amount of time GWA and its representatives would have to prepare separate petitions for review if EPA had not issued the Final Decisions on the Northern and Agana variances on the same day." *Id.* at 4. According to GWA, providing additional time will also allow it to determine whether it can consolidate the two petitions, which would ultimately save both time and resources for all the parties as well as the Board. *Id.* GWA additionally alleges that, in light of these factors, it will suffer prejudice if

¹ GWA has submitted one motion listing two permits in the caption and discussing two separate permit decisions by the Region. At this time, therefore, the Board considers the motion to reference two separate permit appeals and has consequently designated the first listed permit appeal "NPDES Appeal No. 09-15" (for the Northern District Sewage Treatment Plant permit) and the second appeal "NPDES Appeal No. 09-16" (for the Agana Sewage Treatment Plant permit). The Board has not yet determined whether it is appropriate to consolidate the two above-captioned matters. Nonetheless, because GWA submitted one motion referencing both permit appeals, the Board is issuing one order addressing that motion.

it is not granted extra time to file petitions. *Id.* at 3. GWA further notes that the Region does not oppose the motion. *See id.* at 5 & Attach. 1.

In general, “the Board strictly construes threshold procedural requirements and ‘will relax a filing deadline only where special circumstances exist.’”² *In re City & County of Honolulu*, NPDES Appeal No. 09-01, at 2 (EAB Feb. 2, 2009) (Order Granting Alternative Motion for Extension of Time to File Petitions for Review) (quoting *In re AES Puerto Rico L.P.*, 8 E.A.D. 324, 329 (EAB 1999), *aff’d sub nom. Sur Contra la Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000); accord *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); *In re Town of Marshfield*, NPDES Appeal No. 07-03, at 4-5 (EAB Mar. 27, 2007) (Order Denying Review). The Board has found “special circumstances” to exist in cases where the permitting authority has made mistakes or provided misleading information that directly led to the delays. *E.g.*, *In re Hillman Power Co., L.L.C.*, 10 E.A.D. 673, 680 n.4 (EAB 2002) (final permit decision not properly served); *In re Kawaihae Cogeneration Project*, 7 E.A.D. 107, 123-24 (EAB 1997) (appeal filing instructions incorrect). The Board has also relaxed the deadline where the delay “stemmed from extraordinary events, such as natural disasters and response to terrorist threats, or from causes not attributable to the petitioner, such as problems with the delivery service.” *Town of Marshfield*, at 5; *see, e.g., In re Avon Custom Mixing Servs., Inc.*, 10 E.A.D. 700, 703 n.6

² Such practice is “consistent with the well-settled principle that ‘it is always within the discretion of an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.’” *Town of Marshfield*, at 5 n.4 (quoting *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970)); *see also In re Marine Shale Processors, Inc.*, 5 E.A.D. 751, 763 n.11 (EAB 1995), *aff’d*, 81 F.3d 1371 (5th Cir. 1996), *cert. denied*, 513 U.S. 1148 (1997); *In re Genesee Power Station*, 4 E.A.D. 832, 837 n.6 (EAB 1993).

(EAB 2002) (delivery delay due to U.S. Postal Service anthrax sterilization procedures); *In re Minergy Detroit, L.L.C.*, PSD Appeal Nos. 02-01 & 02-02, at 1 n.2 (EAB Mar. 1, 2002) (Order Denying Review) (same), *appeal dismissed per stipulation sub nom. Riehl v. EPA*, No. 02-3501 (6th Cir. Oct. 31, 2003); *AES Puerto Rico*, 8 E.A.D. at 328-29 (delays due to hurricane and to aircraft problems experienced by overnight carrier).

Special circumstances similar to those described above are not present in the pending case. Nevertheless, as GWA correctly notes, 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. *E.g.*, *City & County of Honolulu*, at 2-3 (granting alternative motion that would require timely filing of “summary petitions,” but allow additional time to file supplemental briefs); *In re Desert Rock Energy Co., LLC*, PSD Appeal Nos. 08-03 to -06, at 3-4 & n.2 (EAB Aug. 21, 2008) (Order Granting Desert Rock’s Motion to Participate, Granting a 30-Day Extension of Time, and Denying a Stay of Briefing on Certain Issues) (granting two petitioners extensions of time to file briefs supplementing already-filed timely petitions); *Town of Marshfield*, at 8 n.10. Upon consideration of the foregoing, the Board finds that GWA has demonstrated good cause, especially in light of the burden imposed upon it by preparing two potentially complex appeals simultaneously. Furthermore, because the Region does not oppose the motion, the Board sees no prejudice here to either GWA or the Region.

Accordingly, GWA’s motion in the alternative is **GRANTED**. GWA must file its summary petitions for review of the Final Decisions on or before **Thursday, November 5, 2009**, identifying all the issues GWA wishes to raise on appeal of these two permit decisions. GWA

then must file supplemental briefs on or before **Monday, December 7, 2009**, presenting arguments and information supporting the issues it identified in the petitions for review.

So ordered.

Dated: *November 3, 2009*

ENVIRONMENTAL APPEALS BOARD

By: *Kathie A. Stein*

Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion in the Alternative to Timely File Summary Petitions with Extension of Time to File Supplemental Briefs in the matter of Guam Waterworks Authority Northern District Sewage Treatment Plant, NPDES Appeal No. 09-15, and in the matter of Guam Waterworks and Agana Sewage Treatment Plant, NPDES Appeal 09-16, were sent to the following persons in the manner indicated:

By Pouch Mail and FAX:

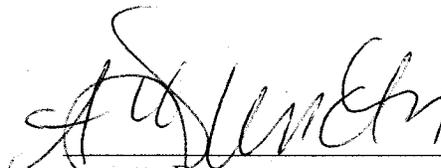
Laura Yoshii
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Guam Waterworks Authority
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Dated: NOV - 3 2009


Annette Duncan
Secretary