

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)	NPDES Appeal Nos.
)	09-15 & 09-16
&)	
)	
Guam Waterworks Authority)	
Agana Sewage Treatment Plant)	
NPDES Permit No. GU0020087)	

**ORDER GRANTING REGION'S MOTION FOR EXTENSION OF TIME
TO FILE A RESPONSE TO PETITION**

On February 23, 2010, United States Environmental Protection Agency, Region 9 ("Region") filed a motion with the Environmental Appeals Board ("Board") requesting the Board grant it a two-week extension of time to file its response to Guam Waterworks Authority's ("GWA's") consolidated petition for review of two final decisions of the Acting Regional Administrator. The Board had previously issued an Order establishing a filing date of February 26, 2010. *See* Order Granting Joint Motion to Establish Filing Date for Region's Response (Dec. 16, 2009). GWA has filed an opposition to the Region's request.

In its motion, the Region requests additional time for several reasons. *See* Motion for Extension of Time to File Response to Petition at 1-2. The Region states that its permit writer

for this permit, as well as the manager of the NPDES Permits Office, will both be away on official travel the week that the response is currently due. *Id.* at 1. Consequently, they would not be able to assist in completing the response or closely coordinating with their counsel. *Id.* The Region further explains that review and coordination between the Region and EPA Headquarters was interrupted “due to recent inclement weather causing a week-long closure of federal government offices.” *Id.* The Region also notes that no other entity has filed a request for or been granted amicus status in this proceeding, and thus no other party would be prejudiced by the parties’ motion. *Id.* at 2. The Region asserts that GWA would not be prejudiced by the short two-week delay “because the terms of the Region’s decisions challenged in this Petition do not become effective, and therefore cannot adversely affect the Petitioner until after a decision by the Board.” *Id.*

GWA opposes the Region’s motion for several reasons. *See* GWA’s Opposition to the USEPA’s Motion for Extension of Time to File Response to Petition at 1-3. GWA first points out that the Region has already received extra time to file its response. *Id.* at 2. GWA questions why the Region could not have completed any necessary coordination with the permit writer and NPDES Permits Office manager earlier in the sixty-day period. *Id.* GWA further questions why any necessary coordination with Headquarters counsel could not have occurred prior to the snowstorm. *Id.* GWA states that it is “perplexing [to GWA] as to how a one week delay in D.C. and a one week trip ends up requiring a two week extension since there is no indication as to why the affected parties could not have otherwise been working on the matter following the one week delay.” *Id.* GWA also argues that the Region had opposed Petitioner’s obtaining more than a

30-day extension to file its petitions and therefore “sees no valid reason why the [Region], who has more resources than Petitioner” should get more than sixty days. *Id.* Finally, GWA argues that if the Region receives more time to work on its response than had been provided to Petitioner, then Petitioner will be prejudiced by this time differential. *Id.* at 3.

Upon consideration of the parties’ arguments, the Board finds that the Region has provided sufficient good cause for its motion. In particular, the Board recognizes that the necessary coordination between the Region and EPA Headquarters would likely have been substantially impacted by the unprecedented weather conditions in the Washington D.C. area earlier this month. The Board further finds that there will be little if any prejudice to GWA in granting this relatively short extension for the reasons described by the Region. Moreover, the Board notes that, under the permit regulations and the Board’s standard practice, permit issuers typically do receive more time to file their responses than do petitioners to file their petitions (forty-five days versus thirty). This is due, in part, to the fact that permit issuers generally must also provide a certified index of the administrative record as well as any copies of relevant administrative record documents that are referenced on appeal. *See* EAB Practice Manual at 36 (June 2004). Thus, the Board disagrees with GWA’s arguments that it would be unfairly prejudiced if the Region were granted more time to prepare its response than GWA had to prepare its petition.¹ Accordingly, the Region’s motion for extension of time to file its response

¹ The Board further notes that, in this case, it granted Petitioner a rare thirty-day extension of time for it to file its arguments in support of its petition. *See* Order Granting Motion in the Alternative to Timely File Summary Petitions with Extension of Time to File Supplemental Briefs (Nov. 3, 2009).

in this consolidated matter is **GRANTED**. The Region's response to GWA's consolidated petitions for review of the final decisions is due on or before **Friday, March 12, 2010**.

So ordered.

Dated: *February 24, 2010*

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 Region's Motion for Extension of Time to File a Response to Petition 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:

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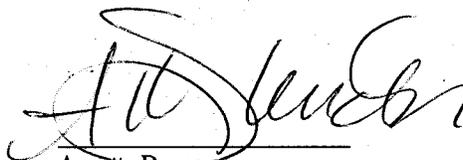
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Dated: FEB 24 2010


Annette Dunear
Secretary