



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

Via Electronic Mail

Brenda Iokepa-Moses, Deputy Director
County of Hawai'i
Department of Environmental Management
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**Subject: Federal Administrative Order on Consent
EPA Docket No. SDWA-UIC-AOC-09-2017-0002
Pāhala Community Large Capacity Cesspools Closure Project**

Dear Deputy Director Iokepa-Moses:

On May 24, 2021, the County of Hawai'i Department of Environmental Management (the "County") requested that the Environmental Protection Agency, Region 9 ("EPA") extend the deadlines set forth in Paragraphs 29(c) and (f) of the June 2017 Federal Administrative Order on Consent ("AOC") between EPA and the County in relation to the County's Pāhala and Nā'ālehu Large Capacity Cesspool ("LCC") closure projects. Paragraphs 29(c) and (f) of the AOC require the County to acquire land for the proposed Pāhala Wastewater Treatment Facility ("WWTF") and complete design of the proposed Pāhala WWTF. These actions are prerequisite to completing the remaining compliance provisions in the AOC, including closure of the Pāhala LCCs by no later than April 18, 2023.

The AOC compliance provision deadlines to acquire land and complete design of the proposed WWTF are based on the Environmental Assessment for the Pāhala project prepared jointly by EPA and the County pursuant to the National Environmental Policy Act and Hawai'i state law. The Environmental Assessment, which was signed by EPA on February 20, 2020, evaluated a variety of alternatives, and identified the WWTF alternative selected by the County. The AOC compliance provision deadlines were previously extended by EPA's September 9, 2019 letter approving the County's August 26, 2019 request to extend all of the remaining Pāhala project compliance provision deadlines. The compliance provision deadline to acquire land was extended once more by EPA's October 29, 2020 letter approving the County's October 12, 2020 request to extend this deadline. Paragraph 29(c) of the extended AOC compliance schedule requires the County to acquire land for the proposed Pāhala WWTF by June 28, 2021, and Paragraph 29(f) of the extended AOC compliance schedule requires the County to complete design of the proposed Pāhala WWTF by July 24, 2021. The County is now requesting an additional nine months to complete the process of land acquisition and an additional twelve months to complete design of the proposed WWTF.

Concerning the County's request to extend the compliance provision deadline that is listed in Paragraph 29(c) of the AOC, the County noted that while its Office of Corporation Counsel has started the process of drafting the legal documentation for property acquisition, it is requesting an extension of the revised

deadline of June 28, 2021 to March 28, 2022 because the County “cannot anticipate if there will be any delays” in completing the friendly condemnation proceedings that are required for the County to procure a portion of Tax Map Key (3) 9-6-002:018 from the Bernice Pauahi Bishop Estate Trust for the proposed Pāhala WWTF.

Regarding the County’s request to extend the compliance provision deadline that is listed in Paragraph 29(f) of the AOC, the County is requesting an extension of the revised deadline of July 24, 2021 to July 24, 2022¹ because Hawai‘i’s State Historic Preservation Division (“SHPD”) notified the County on February 20, 2020 that it needed to prepare an archeological monitoring plan prior to conducting the geotechnical feasibility investigations to determine whether the preferred land parcel could support the proposed WWTF. The County’s archeological monitoring plan was approved by SHPD on November 4, 2020.² According to the County, this pushed back the timing of preparing the design plans, as the drafting of the plan could only be initiated after SHPD’s approval of the project.

The County has also informed EPA that while it is committed to properly closing the Pāhala LCCs, it is no longer planning to construct the WWTF that was selected in the Environmental Assessment and will be submitting a new proposal for addressing the LCCs.³

EPA has determined that approving the requested extensions on the respective project milestones is not warranted at this time because it is not yet clear how the County intends to meet the remaining AOC compliance provisions, including the provision to complete closure of the Pāhala LCCs by no later than April 18, 2023.

Property acquisition is necessary for construction of the WWTF that was selected by the County in the Environmental Assessment. The County asserts that property acquisition will take an unknown length of time but has not presented a compelling explanation of why property acquisition has taken longer than expected or how the delay in property acquisition will affect compliance with the remaining AOC provisions. Additionally, it is also not clear to EPA what type of WWTF the County intends to design or how the proposed 12-month extension for completing design of the Pāhala WWTF will affect the County’s ability to meet the remaining AOC compliance provisions. As the design requirement is only one small component of meeting the overall compliance deadline for the AOC, it is not possible to extend it without clarification or understanding as to the overall nature of the WWTF. Therefore, the June 28, 2021 compliance provision deadline to acquire land for the proposed Pāhala WWTF and the July 24, 2021 compliance provision deadline to complete design of the proposed Pāhala WWTF remain in effect and are enforceable by EPA. However, please note that while EPA has determined that extensions on the respective project milestones are not warranted at this time, nothing in this letter precludes the County from submitting its updated plans for coming into compliance with the Safe Drinking Water Act and its LCC closure requirements for EPA’s consideration. Furthermore, EPA continues to urge the County to pursue compliance with the AOC deadlines as expeditiously as possible, whether or not project milestones have been missed.

¹ While the County’s May 24, 2021 letter used July 28, 2021 as the required date of compliance for the milestone listed in Paragraph 29(f), the actual date of compliance is July 24, 2021, which is the date that is 15 months after the date the County completed the historic preservation consultation process.

² See SHPD’s November 4, 2020 acceptance letter of the County’s Archeological Monitoring Plan.

³ On January 15 and January 22, 2021, the County informed EPA that instead of pursuing the selected alternative that was identified in the final Environmental Assessment, it intends to investigate alternative wastewater options to replace the two (2) large multi-residential LCCs plus 65 small capacity cesspools serving the Pāhala community.

If you have any questions about this letter, please feel free to contact Mr. Jelani Shareem at (415) 972-3095 or via email at shareem.jelani@epa.gov. Legal questions should be addressed to Ms. Kimberly Wells at (415) 972-3056 or wells.kimberly@epa.gov.

Sincerely,

for

Thanne Berg
Assistant Director
Water Branch
Enforcement and Compliance Assurance Division