



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SEP 09 2019

Sent via Certified Mail (7018 0360 0000 6461 2178) and Electronic Mail:
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William A. Kucharski, Director
County of Hawai'i
Department of Environmental Management
345 Kekūanāo'a Street, Suite 41
Hilo, Hawaii 96720

**Subject: Federal Administrative Order on Consent
EPA Docket No. SDWA-UIC-AOC-09-2017-0002
Pāhala Large Capacity Cesspools Closure Project
Approval to Modify the Remaining Pāhala Compliance Milestone Due Dates**

Dear Director Kucharski:

On August 26, 2019, the County of Hawai'i Department of Environmental Management (the "County") submitted to the Environmental Protection Agency, Region 9 ("EPA") a request to modify the remaining Pāhala compliance milestone due dates that are listed in Paragraph 29 (c), and (e) through (i) in 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.

The County explained that it is necessary to modify the Pāhala compliance milestone due dates because of the projected timeframe for Hawai'i's State Historic Preservation Division ("SHPD") to review and approve the County's March 13, 2019, draft archeological inventory survey ("AIS"). The County acknowledged that pending the completion of SHPD's historic property review process, it will not be able to apply for the special permit that is required for the procurement of the preferred land parcel for the Pāhala wastewater treatment plant ("WWTP"), conduct the field investigations that are necessary for completing design of the new collection system and WWTP, or execute the contract to begin the dual phase approach for construction of the WWTP and new collection system.

In its request, the County sought extensions to the current Pāhala compliance milestone due dates and provided a summary of new proposed milestone due dates and a description of the causes for delay associated with each milestone. Given the circumstances that have contributed to the delays in the County's ability to meet the remaining Pāhala milestone due dates, EPA agrees with the County that extensions to the Pāhala compliance schedule are necessary and reasonable for the County to complete all the measures that are required for compliance with the AOC. However, the County's request relies upon an assumed processing time for the completion of the SHPD historic property review and the Final Environmental Assessment. To the extent that these can be accomplished more quickly than currently contemplated by the County, EPA expects that the milestones will be met as quickly as feasible.

Therefore, EPA is requiring that the remaining milestones be achieved within a set period of time following completion of prerequisite activities, such as completion of SHPD historic property review or the Final Environmental Assessment. EPA is also accepting the final compliance dates proposed by the County as backstop dates, meaning that the milestones must be completed no later than the dates specified.

Under the new schedule, compliance with each milestone will be due on the earlier of the two dates listed in the table below under “New Proposed Milestone Due Date.” Please note that this letter serves only to extend the deadlines for each identified provision; it does not change the substantive requirements of any of the provisions specified.

Pāhala Large Capacity Closure Cesspools Closure Project Schedule			
AOC Milestone	Current Due Dates	New Milestone Due Date	Backstop Date
<i>Phase 1 Environmental Site Assessment and Preliminary Engineering Report (Paragraph 29.a)</i>	August 27, 2017	Not Applicable (Completed on August 25, 2017)	
<i>Initial Public Meeting (Paragraph 29.b)</i>	December 15, 2017	Not Applicable (Completed on December 12, 2017)	
<i>Submit Environmental Information Document (Paragraph 29.d)</i>	September 11, 2018	Not Applicable (Completed on September 11, 2018)	
<i>Design of New Collection System (Phases 1 and 2) (Paragraph 29.e)</i>	June 24, 2021 ¹	Phase 1 – within 15 months of completion of the historic preservation consultation process ² Phase 2 – within 22 months of completion of the historic preservation consultation process	Phase 1 to be completed no later than June 24, 2021 Phase 2 to be completed no later than January 27, 2022
<i>Acquire Land for WWTP (Paragraph 29.c)</i>	September 10, 2019 ³	Within 8 months of publication of the Final Environmental Assessment	To be completed no later than January 24, 2021
<i>Design of WWTP (Paragraph 29.f)</i>	September 18, 2019	Within 15 months of completion of the historic preservation consultation process	To be completed no later than September 2, 2021
<i>Complete Construction of WWTP (Paragraph 29.g)</i>	May 20, 2021	Within 20 months of WWTP design completion	To be completed no later than March 09, 2023
<i>Connect existing collection system and close LCCs (Phase 1) (Paragraph 29.h)</i>	June 30, 2021	Within 650 calendar days of WWTP <u>and</u> Phase 1 collection system design completion (both designs are required to complete this AOC compliance milestone)	To be completed no later than April 18, 2023
<i>Replace collection system serving LCCs and connect new collection system to WWTP (Phase 2) (Paragraph 29.i)</i>	December 16, 2021	Replace collection system, connect new system to WWTP, and connect existing properties within 19 months of	To be completed no later than September 15, 2024

¹ Extended from original AOC compliance date by EPA approval letter dated May 24, 2019.

² For purposes of this extension request only, the historic preservation consultation process shall be considered complete upon acceptance by the Hawaii State Historic Preservation Division of a final Archaeological Inventory Survey for the project. The Archeological Inventory Survey for the Pahala LCC Replacement Project was originally submitted to the Hawaii State Historic Preservation Division by the County on March 13, 2019.

³ Extended from original AOC compliance date by EPA approval letter dated June 22, 2018.

Pāhala Large Capacity Closure Cesspools Closure Project Schedule			
AOC Milestone	Current Due Dates	New Milestone Due Date	Backstop Date
		connecting existing collection system and closing LCCs	
<i>A minimum of 65 additional properties shall be made accessible to the new collection system, and will be required to connect in accordance with County Code (Paragraph 29.i)</i>	January 25, 2022	In accordance with County Code	In accordance with County Code

Please note that while EPA is not, through this letter, specifying a date by which the County must issue notices to newly accessible properties that require connection to the new collection system, the AOC requirement that the new collection system be capable of serving 65 properties (in addition to those currently connected to the LCCs) remains in effect. EPA expects that these properties will connect to the new collection system within the timeframe allowed under applicable County Code.

EPA's approval of the County's extension request is based on EPA's understanding that the County will be able to complete closure of the Pāhala Large Capacity Cesspools by no later than **April 18, 2023**. In addition, all terms and conditions of the AOC, including the new proposed compliance schedule, shall remain enforceable by EPA.

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. Tessa Berman at (415) 972-3472 or berman.tessa@epa.gov.

Sincerely,

Thanne Berg, Acting Assistant Director
 Enforcement and Compliance Assurance Division
 U.S. EPA Region IX