



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

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William A. Kucharski, Director  
County of Hawai'i  
Department of Environmental Management  
345 Kekūanāo'a Street, Suite 41  
Hilo, HI 96720

**Subject: Federal Administrative Order on Consent  
EPA Docket No. SDWA-UIC-AOC-09-2017-0002  
Pāhala and Nā'ālehu Large Capacity Cesspools  
Approval to Modify the AOC Compliance Date for Pāhala Collection System Design**

Dear Director Kucharski:

On May 15, 2019, the County of Hawai'i Department of Environmental Management (the "County") submitted to the Environmental Protection Agency Region 9 ("EPA") a letter that details the cause of anticipated delay in the County's ability to meet the May 24, 2019, compliance provision deadline to complete design of the new Pāhala wastewater collection system, which is set forth in Paragraph 29(e) of the 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 unable to meet the compliance provision deadline because of the projected timeline 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 likely not be able to initiate the field investigations that are necessary to complete design of the new Pāhala collection system or to apply for the special permit that is required for the procurement of the preferred land parcel for the Pāhala wastewater treatment plant.

As follow-up to the May 15, 2019 letter, the County submitted a second letter to EPA on May 22, 2019. The purpose of the County's second letter was to provide EPA with details on its proposal to modify the original compliance deadline for designing the new Pāhala collection system by making it a dual phase design process. The County indicated it will be able to complete its proposed Phase 1 of the collection system design process within 15 months after SHPD's historic property review process is completed, and its proposed Phase 2 of the collection system design process within 22 months after SHPD's historic property review process is completed. This timeframe is proposed due to the need for additional geotechnical investigations, inspection of existing sewer laterals, and performance of a topographic survey, none of which, according to the County, can be initiated until the historic property review

process is complete. The County also requested that the proposed Phase 2 design project be changed to a non-enforceable milestone under the AOC.

EPA agrees that the information presented by the County supports a modification of the May 24, 2019, collection system design deadline due to circumstances beyond the County's control, however the revised schedule EPA is approving differs from that proposed by the County. It is EPA's understanding that state law provides the SHPD with 90 days to review a determination regarding historic properties, such as that presented in the AIS. EPA also understands from the County's letters that all collection system design work described in the County's proposal, (both that identified as proposed Phase 1 and proposed Phase 2), could be accomplished within 22 months of completion of the historic property review process. EPA is therefore extending the deadline for the complete design of the new Pāhala collection system by **25 months** from May 24, 2019, such that the new deadline for this milestone will be **June 24, 2021**. As such, EPA is not granting the County's request to convert the design elements described as Phase 2 in the County's May 22, 2019, letter into unenforceable milestones. However, the new deadline is designed to be achievable given the planning considerations raised in the County's letters, and to give the County discretion as to whether to pursue a phased approach to collection system design.

EPA is granting this extension based on the understanding that the County, as required by Paragraph 51 of the AOC, will adopt all reasonable measures to avoid or minimize delay, including diligently pursuing all required approvals. Please note as well that this approval does not extend or excuse compliance with any other deadlines in the AOC, but nothing in this letter precludes the County for good reason from seeking extensions for other requirements of the AOC as the project proceeds. Should 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](mailto:shareem.jelani@epa.gov). Legal questions should be addressed to Ms. Tessa Berman at (415) 972-3472 or [berman.tessa@epa.gov](mailto:berman.tessa@epa.gov).

Sincerely,

Thanne Berg “/s/” 5/24/2019

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