

Comments on Agenda Item VII Director's Informational Report, #4 Wastewater, #3 Hilo WWTP
For Hawai'i County Environmental Management Commission
9 AM Tuesday, February 28, 2023, Puna Conference Room, Hawai'i County Building
From Cory Harden

Thank you for your volunteer service.

I urge that you take action to ensure that an Environmental Assessment (EA) is done for two Department of Environmental Management (DEM) projects. The first is the Hilo Wastewater Treatment Plant (HWWTP) Rehabilitation and Replacement project. The second is sewer system rehabilitation and line extensions to collection pipes.

I applaud the efforts of the DEM on these two projects, which are a major step towards addressing the deterioration of the HWWTP and four other County plants that have improperly discharged millions of gallons of polluted water for years. As you know, the situation is so serious that senior staff from the Environmental Protection Agency came to Hawai'i Island to meet with County officials.

However, when DEM lists the HWWTP project as exempt from HAR 11.200.1 – 15(c), this does not seem to be justified. [1]

The DEM exemption notice cites exemption Class 2 #7. But this does not apply. The existing HWWTP has NPDES permit #0021377 from Department of Health [2] and presumably the new plant would require a similar permit.

Exemption Class 2

Replacement or reconstruction of existing structure and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

#7 Essential utilities, including but not limited to: wastewater systems, drainage systems, water systems, electrical systems, communication systems, SCADA systems [3], and fuel systems, except where a State Department of Health permit is required. [4] *[underline added]*

The DEM exemption notice also cites exemption Class 3 #30, but this only covers fencing, curbing, walls, and gates.

Exemption Class 3

Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including but not limited to...

30. Fencing, curbing, walls, and gates.[5]

The DEM exemption list also requires a "program to encourage public input", but I am not aware of any such program. The project has been discussed at the Environmental Management Commission, but these meetings occur on workdays and are not well advertised.

The following types of projects will not be exempt...

4. Major projects without a program to encourage public input into the design or siting of the project. [6] *[underline added]*

Note that any EA must consider the two projects together, to avoid illegal segmentation.

Hawai'i Administrative Rules 11-200.1 – 10 states:

Multiple or phased actions. A group of actions shall be treated as a single action when:

(1) the component actions are phases or increments of a larger total program...

The Hawai'i Supreme Court ruled that "a project may be improperly segmented from other projects even if it has some independent utility" in *Kia'i Wai o Wai'ale'ale vs. the Kaua'i Water Department*. [7]

The first project, the HWWTP Rehabilitation and Replacement, will cost \$100 million. DEM has already chosen a consultant, written a contract, and prepared a design plan. DEM has also started the design process for the second project, the sewer system rehabilitation and line extensions to collection pipes. [8]

All this has been done without an EA to do a thorough analysis of problems, explore alternative solutions, and reveal impacts. The outcome may be millions of dollars of taxpayer money spent for projects that turn out to be seriously flawed, and the County left vulnerable to legal action.

Mahalo for your attention to these concerns.

Notes

[1] exemption notice: https://files.hawaii.gov/dbedt/erp/List_Ex_Notice/2023-02-08-COH-DEM-List-of-Exemptions-Jan-2023.pdf

[2] <https://drive.google.com/drive/folders/1RRmtMdysSNjcoOA8kdOnuYMSvHjJCsCG>

[3] A generic name for a computerized system that is capable of gathering and processing data and applying operational controls over long distances. Typical uses include power transmission and distribution and pipeline systems. SCADA was designed for the unique communication challenges (e.g., delays, data integrity) posed by the various media that must be used, such as phone lines, microwave, and satellite. Usually shared rather than dedicated.

https://csrc.nist.gov/glossary/term/Supervisory_Control_and_Data_Acquisition

[4] DEM exemption list, https://files.hawaii.gov/dbedt/erp/Agency_Exemption_Lists/Hawaii-Department-of-Environmental-Management-Exemption-List-2019-01-08.pdf

[5] Ibid.

[6] Ibid.

[7] 517 P.3d 725 (2022)

KIA'I WAI o Wai'ale'ale, an unincorporated community association, PlaintiffAppellant,
v. DEPARTMENT OF WATER, County of Kaua'i, applicant and accepting agency of the subject
environmental assessment, Defendant-Appellee
SCAP-20-0000487
September 23, 2022

[8] draft minutes of Environmental Management Commission, January 17, 2023, PDF p. 18,
<https://records.hawaiicounty.gov/weblink/1/edoc/121743/23-01-17%20EMC%20minutes%20draft.pdf>

