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Honolulu spending millions fighting environmental lawsuit

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By [Johnny Brannon](#)
Advertiser Staff Writer

As Honolulu awaits federal directives that could require \$1.2 billion in upgrades to O'ahu's two largest sewage treatment plants, the city is spending millions of dollars to fight a 2004 lawsuit by environmental groups over alleged violations at one of the facilities.

The plaintiffs — the Sierra Club, Hawai'i's Thousand Friends and Our Children's Earth Foundation — have also intervened in a second federal lawsuit that produced a \$300 million sewer pipe upgrade deal the city struck in May with the U.S. Environmental Protection Agency and state Health Department.

The move could sink the agreement or force it to include additional work.

The disputes illustrate how years of neglect amid continuing urban growth have badly strained O'ahu's sewage infrastructure, created potential threats to the environment and public health, and have left expensive problems that could take decades to solve.

City attorneys contend in court papers that the environmentalists are unnecessarily complicating negotiations that could settle all of Honolulu's sewage-related disputes with the EPA and the state.

"Global settlement negotiations have not commenced under the (May) agreement due to plaintiffs' efforts to derail" the deal, according to one city court filing.

The claims in the 2004 suit "are duplicative of issues that will be addressed in the global negotiations," according to the city.

MONITORING SOUGHT

The environmentalists say they want to ensure the city follows through on badly needed work after it failed to comply with an earlier EPA court agreement and other federal directives.

"People have to keep paying attention to this," said plaintiffs attorney William Tam. "This is fairly critical infrastructure. The problem is, no politician puts their name on a sewer system, and no one knows you've spent money to put something under ground. It doesn't get votes, so you can understand why it tends to get neglected."

The crumbling sewage collection system became a top EPA priority after a major Waikiki sewer pipe ruptured last year and sent nearly 50 million gallons of filth into the Ala Wai Canal. The disaster prompted the temporary closure of nearby beaches and gave the island's tourism industry a painful black eye.

The May deal — still awaiting court approval — focuses on the Waikiki pipe and five similar pressurized "force mains."

The agreement would require the city to build at least three new force mains over 11 years, in Waikiki, Ala Moana and Kane'ohe/Kailua. Backup force mains would also be required for those pipes, and one on Hart Street.

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In addition, the city would have to create a monitoring and repair program for the force mains and devise a contingency plan to contain any future sewage spills from those pipes.

But the environmental groups say the proposed agreement is "narrow, skewed and not a systematic response to the most pressing problems."

Even if the city implements all repairs required by the deal, "sewage spills will continue on a frequent basis," the groups allege.

That's because most spills are caused by problems the agreement doesn't address, such as clogs or stormwater runoff in smaller, unpressurized sewer lines that are poorly maintained, they say.

69 FORCE MAINS IGNORED

The deal would also ignore O'ahu's 69 other force mains, including three that a city-commissioned study found were in critical need of backup lines, the groups point out. The three are known as the Kamehameha, Kailua Heights and Lualualei force mains.

"Over in Kailua, there are other force mains where there are no backup systems, and if those go, you're going to have raw sewage on the windward side in the water," Tam said. "That's not going to work."

The Lualualei pipe "is old, subject to corrosion, and located such that a major failure would likely lead to a large, uncontrollable spill," the environmentalists said in court papers.

The groups want the court to reject the May deal and instead require a prioritized repair plan that includes additional pipes and other sewage infrastructure across the island.

PRIORITIES AN ISSUE

Targeting problems that pose the greatest risk would be a more cost-effective way to reduce sewage spills than focusing only on six force mains, the groups say.

"The choice of the sequence of the work is going to be important, because we all recognize that there's a limited amount of money," Tam said. "Even if you issued new bonds, you can't spend all the money right away. There's not enough engineering firms in town. Some things will get put off, there's no question about that, so the speed and the sequence the work gets done is our primary concerns."

The Justice Department has urged the court to approve the original deal between the city and EPA, and to limit ways the environmental groups could intervene.

"The parties reached this settlement after careful consideration of both the costs, risks and inherent delays that litigation would entail, and the benefits of settlement, including the reduction of risk to human health," the department said in court papers. The deal "is fair, reasonable, and in the public interest."

The environmentalists' 2004 suit over the treatment plant problems is also heating up.

The suit charges that the city violated effluent limitations at the Sand Island Wastewater Treatment Plant, violated a wastewater discharge permit by failing to build a new disinfection facility on time, and failed to comply with operation, maintenance and monitoring conditions required by the permit.

City Corporation Counsel Carrie Okinaga declined to discuss the case. The city contends in court papers that the EPA has addressed those issues in other enforcement actions, making the suit unnecessary.

A judge recently denied the city's request to sidetrack the case while the "global" negotiations with the EPA over all sewage issues are pending.

The Sept. 11 ruling by U.S. District Judge David Ezra could stall those talks and put the environmentalists in a stronger position as they seek to expand the collection system repair plan and play a direct role in enforcing its requirements.

The city has spent more than \$3 million on attorneys to oppose the 2004 suit. The City Council agreed on Wednesday to spend up to \$4.2 million in total, but that figure may be increased later.

PUBLIC WILL PAY

City environmental services director Eric Takamura said the continued litigation could lead to further hikes in residential city sewer fees, which rose 25 percent this year and are scheduled to go up 18 percent more in each of the next three years.

Meanwhile, the EPA is expected to soon require that the Sand Island plant and another at Honouliuli be upgraded to a level known as "full secondary treatment," which is required at nearly all other U.S. plants.

The city has argued that the \$1.2 billion in upgrades are unnecessary because the Sand Island and Honouliuli plants discharge wastewater into deep ocean waters far offshore after enhanced primary treatment.

Most other U.S. plants discharge effluent into shallow coastal waters, rivers and lakes after secondary treatment, which removes organic matter and disinfects sewage.

The City Council has authorized spending up to \$1.2 million to oppose the EPA on the issue, but that amount could later increase substantially.

The federal agency recently found that bacteria levels around the Honouliuli plant's discharge outfall were higher than national standards adopted in 2004 to protect swimmers, surfers and others from gastrointestinal diseases.

The agency also found that the plant's effluent often proves toxic to sea urchins, and produces excess ammonia that can harm other aquatic organisms.

But the city contends that those conclusions "are often arbitrary, conclusory, speculative" and not supported by monitoring data.

The Environmental Protection Agency is now evaluating the city's arguments, along with comments from scientists and the general public. A final decision on the Honouliuli upgrades, and a tentative ruling on the Sand Island facility, could be issued by the end of the year.

Reach Johnny Brannon at jbrannon@honoluluadvertiser.com.

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