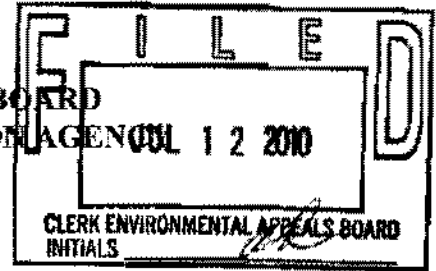


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
)
City & County of Honolulu)
Sand Island Wastewater Treatment Plant) NPDES Appeal No. 09-01
Honouliuli Wastewater Treatment Plant)
)
NPDES Permit Nos. HI0020117 & HI0020877)
)

ORDER REGARDING STATUS CONFERENCE

On June 30, 2010, the Environmental Appeals Board issued an order requiring the parties, U.S. Environmental Protection Agency Region 9 (“Region”) and the City and County of Honolulu (“CCH”), to submit a status report by July 6, 2010, and to appear for a status conference on July 19, 2010. Specifically, the Board ordered counsel for CCH and the Region to “advis[e] the Board of any impacts any tentative settlement [of an enforcement case] may have on NPDES Appeal No. 09-01, and why the parties did not apprise the Board of the existence of settlement talks.” Order Scheduling Status Conference at 2.

The Board has now received the parties’ joint status report. The parties assert that the terms of a settlement in principle the Region and the Mayor of Honolulu announced to the public on June 28, 2010, “are presently both tentative and confidential. The parties did not address them in the June 28th announcement, and the Region and CCH cannot discuss them in this Status Report. If they are made public prior to the [Board’s] Status Conference on July 19, 2010, the impacts that these terms may have on NPDES Appeal No. 09-01 may be addressed at the Status Conference, and counsel would be prepared to do so at that time.” Joint Status Report at 2-3.

The parties acknowledge that “the settlement included provisions for CCH to upgrade its

Honouliuli and Sand Island Wastewater Treatment Plants to secondary treatment.” *Id.* at 2.

Thus, they confirm that the settlement includes the relief that is at the heart of CCH’s appeal in this case of the Region’s denial of renewed secondary treatment waivers for these plants.

The parties evidently believe themselves exempt from any responsibility to timely inform the Board of matters that bear on the petition, notwithstanding that not communicating these matters could cause the Board to needlessly devote its limited resources to resolution of this case, necessarily deferring its handling of other cases in which the Agency, states, other parties, and the public are awaiting resolution. The parties claim they did not inform the Board of the existence of settlement talks “because of the nature of those discussions, which is itself confidential.” *Id.* They suggest that unless the settlement terms are made public following a July 14 briefing for the Honolulu City Council, they are not prepared to discuss at the July 19 status conference the impacts of any tentative settlement on this appeal.

The parties’ failure to apprise the Board of the pendency of settlement negotiations has already resulted in the Board’s investing considerable staff and judicial time in a complex matter that may become moot or be unnecessary to decide, to the detriment of its ability to resolve other pressing matters. While the Board has not sought and is not seeking to learn the specific terms of settlement that have not been publically disclosed, it is concerned about the implications of the proposed settlement on how best to proceed with the petition before it.

Therefore, prior to or at the status conference on July 19, the parties shall provide the Board with meaningful information to assist the Board in its determination of whether or not to stay this case because of the prospects or pendency of settlement. With or without such input, following the status conference on July 19, the Board shall make its own determination of how to

proceed and will resolve or stay this case as the Board deems appropriate under the totality of the circumstances.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 12, 2010

By: Kathie A. Stein (per CTS)
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Regarding Status Conference** in the matter of *City & County of Honolulu*, NPDES Appeal No. 09-01, were sent to the following persons in the manner indicated:

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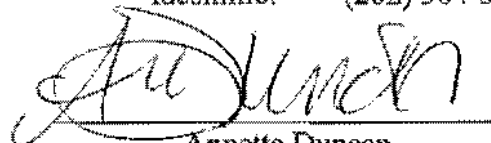
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Date: JUL 12 2010



Annette Duncan
Secretary