

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

November 6, 2009

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on October 15, 2009, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated September 15, 2009, the Department of the Corporation Counsel requested an opportunity to discuss the status of the Finding and Notice of Violation (Violation) issued by the United States Environmental Protection Agency (EPA) on June 5, 2007, related to alleged violations of the Clean Air Act (Act) at the Central Maui Municipal Solid Waste Landfill (Landfill). The Department also transmitted a copy of the Violation.

According to the Violation, the Landfill reached its maximum design capacity in 2004, triggering a requirement that a design plan for a gas control and collection system (System) be submitted to the EPA by January 2005, and that the System be installed by July 2006. The Violation asserts that the County failed to timely submit to the EPA an adequate design plan, and failed to timely install the System.

A Deputy Corporation Counsel informed your Committee that the System was installed by 2008; however, the EPA's deadlines had expired. The EPA and the County began negotiations on the amount of the penalty to be imposed.

The Deputy Corporation Counsel explained that, in some circumstances, the EPA will allow for the construction of a Supplemental Environmental Project (SEP) in lieu of, or to offset a portion of, a cash penalty. He said that the County has strongly advocated for an SEP in lieu of a cash penalty, or to supplement a significant percentage of a cash penalty, during its negotiations with the EPA. The Administration would prefer to construct an SEP over a cash penalty payable to the Federal government because of the environmental benefits an SEP will provide for the community. Due to the failure of the negotiations with the EPA to reach a proposed resolution, the Deputy Corporation Counsel requested the opportunity to discuss potential legal liabilities with your Committee in an executive meeting.

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Your Committee notes that the Act provides that the EPA may issue an order requiring compliance, issue an order assessing civil administrative penalties, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, the Act provides for criminal penalties in certain cases.

Your committee voted to convene in an executive meeting for the purposes of consulting with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Your Committee voted 6-0 to recommend the filing of the correspondence dated September 15, 2009, from the Department of the Corporation Counsel. Committee Chair Molina, Vice-Chair Mateo, and members Kaho'ohalahala, Nishiki, Pontanilla, and Victorino voted "aye". Committee members Baisa, Johnson, and Medeiros were excused.

Your Committee of the Whole **RECOMMENDS** that the correspondence dated September 15, 2009, from the Department of the Corporation Counsel, be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair