

Wastewater plant battle continues

ELLY ANDERSON

ST. CROIX — The struggle to get a submerged wetlands wastewater treatment system in place on the big island hasn't ended yet.

Stepping up to bat is the St. Croix Ocean Defense Group, which includes a number of individuals and civic groups from around the island, and is an outgrowth of Team St. Croix. Group members are advocating a constructed wetlands alternative to secondary wastewater treatment — as opposed to the mechanical plant already in the beginning stages of construction.

The St. Croix Ocean Defense Group is claiming that the mechanical treatment system which the VI government is building — under control of the VI Waste Management Authority (WMA), and being constructed by Veolia Water North America Caribbean, LLC, a stateside contractor — is in clear violation of federal and territorial law.

The group is represented by the law offices of Hamm & Barry, which have been in communication with the Environmental Protection Agency (EPA).

Attorney Edward Barry recently sent an initial letter to Donald Frankel, trial attorney for the Environment and Natural Resources Division of the EPA, explaining the stance of the St. Croix Ocean Defense Group.

"The Ocean Defense Group has a single objective: To compel the full and fair consideration by local and federal authorities of the constructed (submerged) wetlands/water recovery alternative to secondary wastewater treatment in St. Croix," Barry wrote in the letter.

He said that the letter to the EPA is a friendly one.

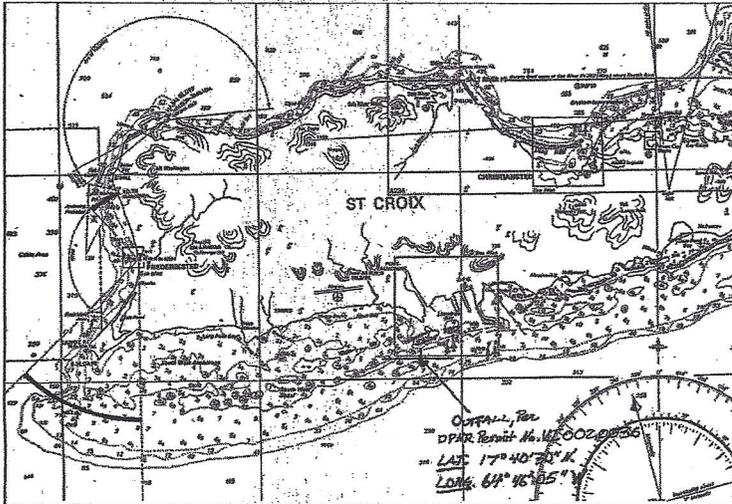
"We are in total agreement with the ultimate objective — compliance with the Clean Water Act," Barry said. "We want to go a step further and accomplish zero discharge, the elimination of all ocean pollution."

He said the St. Croix Ocean Defense Group will move for an injunction in the local court to stop the construction of the mechanical facility, and will move to intervene in the district court case, where the consent decree came out.

"Our position will be that all federal and territorial laws have to be complied with," Barry said.

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A map of St. Croix showing the area of the sewage outfall pipe, which is located in the South Shore area. Millions of gallons of wastewater are being discharged approximately 8,000 feet offshore and in depths of only 25 to 40 feet — directly impacting a fragile coral reef ecosystem and several endangered species.

wetlands sewage treatment would involve, first of all, zero discharge of pollutants into the ocean; secondly, allow for the reclamation of treated water suitable for farming and irrigation purposes; and third of all, operate efficiently, effectively and at a fraction of the cost of the mechanical secondary treatment facility.

And while the benefits of the wetlands system seem numerous, the mechanical system, on the flip side, is costly and doesn't operate nearly as efficiently.

"It's a terribly expensive, mediocre solution," Barry said. "The construction of the Anguilla mechanical secondary wastewater treatment facility... is illegal," Barry wrote. "The construction is being conducted in clear violation of federal and territorial law."

The laws in violation include the federal Clean Water Act, the VI Water Pollution Control Act, the National Environmental Policy Act and the Endangered Species

Act.

The VI Water Pollution Control Act, regulating the issuance of Territorial Pollution Discharge Elimination System (TPDES) permits, "clearly and unambiguously prohibits the construction, installation, modification, or operation of any disposal system... without a current permit" issued by the DPNR commissioner. The DPNR has not issued the required TPDES permit, according to Barry's letter.

"It is a 'dirty little secret' on this island that the existing sewage outfall pipe regularly, and in the ordinary course of island wastewater operations, discharges millions of gallons of sewage directly into a coral reef system at depths of only 25-40 feet," Barry wrote in his letter to the EPA.

Although the outfall pipe is located more than 8,000 feet offshore, the sewage is still being dumped in shallow water, instead of deep, fast-moving water, where it is supposed to be. The South

sewage disposal is estimated to be about 4,000 years old, according to Barry's letter.

Although the mechanical facility currently under construction would lessen the harm being done to the coral reefs and would meet the EPA standards, there would still be harm being done, Barry explained.

"That alternative will nevertheless commit St. Croix to a continued course of ocean pollution for decades to come," he wrote. "It will commit the island to a continued course of coral reef degradation and death. The constructed wetlands/water reclamation alternative will permit the affected coral reef habitat to heal and rehabilitate."

In addition to the damage being done to the coral reefs in the area, the sewage disposal is also negatively affecting two endangered species — the hawksbill and green sea turtles, according to Barry.

"The Endangered Species Act... prohibits federal agencies from authorizing or funding any action adversely affecting these species, or jeopardizing their habitat," he wrote, noting that the U.S. Virgin Islands is one of the few places that have nesting populations of the hawksbill turtle. "The South Shore coral reef system into which the sewage is now discharged, and would continue to be discharged under the intended WMA course of action, is the habitat of both... the turtles."

One of the St. Croix Ocean Defense Group's goals is to "force the local and federal government to go through a proper environmental impact statement protocol," Barry said, explaining that this requires a very careful, meticulous study of the environmental impact of building a wastewater treatment facility on the island — including how it would impact coral reefs and endangered species.

A "environmental assessment report" was conducted by the Maguire Group — a firm that stands to profit as Veolia's engineering design subcontractors for the mechanical facility, according to Barry. However, nowhere does the report "clearly and explicitly disclose that the discharge of sewage is occurring into a shallow water reef system," nor does it mention that the practice will continue with the new facility — even though the sewage will

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be more filtered than it currently is.

The report does not mention any alternative to the mechanical process, nor does it discuss cost, according to the letter.

The Clean Water Act has a national goal of eliminating the discharge of all pollutants into navigable waters, according to Barry.

"Not reduced. Eliminated," he said. "The constructed wetlands alternative, coupled with the intended reclamation of effluent for agricultural and related purposes, would accomplish this objective. Completely."

In conclusion, Barry surmised that the VI sewage system and the South Shore reefs are facing problems "that have reached critical mass."

The newly-formed WMA is attempting to tackle these problems, but unfortunately on a crisis management basis. Lacking in this process are careful and methodical forethought, and rigorous compliance with the law, including complex and cumbersome administrative regulations," Barry wrote to the EPA.

"But it is not too late. Constructed wetlands technology offers a viable solution. It represents a perfect opportunity to solve a major component of the island's sewage treatment issues, without discharging a single ounce of pollution into the sea."

Barry has also sent a letter to DPNR Commissioner Dean Flasket, outlining the legal violations that have been committed, and requesting a meeting.

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Warring Sides Settle, Wastewater-Disposal Plan Called 'Win-Win'

by Barbara Birt, **ST. CROIX SOURCE**

Jan. 8, 2008 -- Before attorney Edward L. Barry takes on an injury claim, he will visit the person's home, witness the supposed effect the injuries have on the individual's life and assess for himself the allegations.

So, when a group of individuals from St. Croix approached him in 2005 about suing the V.I. government for damaging coral reefs thanks to discharge practices at the Anguilla Wastewater Treatment Facility, he wanted to see for himself. An avid scuba diver, he geared up, motored out some 8,400 feet from shore where the discharge pipe emptied onto a coral reef, and dove in.

"I wasn't expecting Chanel No. 5," Barry quipped. "But, it was really, really terrible. Very distressing." If you look at the satellite image of the site using Google Earth, he added, "... you can see a very unsightly brown stream extending out a couple miles from the island."

Thanks in part to a recently signed agreement announced this week, that unsightly brown stream will eventually vanish, and Barry will once again dive down to enjoy an ancient coral reef that two years ago prompted him to all but plug his nose underwater.

The St. Croix Sea-Change Accord, as it's known, marks the settlement of a lawsuit filed in 2005 against then Gov. Charles Turnbull, two of his commissioners, the Department of Public Works, the Department of Planning and Natural Resources and the Waste Management Authority (WMA).

The suit alleged that discharge from the Anguilla plant was pouring on top of what is believed to be a 4,000 year-old coral reef, damaging the reef and threatening wildlife, including the hawksbill and green sea turtles.

Plaintiffs in Pugh vs. Turnbull were the St. Croix Ocean Defense Group, St. Croix Environmental Association, St. Croix Commercial Fisherman's Association, CRABBS Dive Club, Michelle Pugh, Edward and Molly Buckley, Sharon Prudoff, Elizabeth Goggins, Edward Schuster Sr. and Robert and Margo Wesley.

"I think it's great," said Pugh, a veteran diver and owner of Dive Experience in Christiansted. "But at the same time I feel like, why do you have to take the government to court to do something that should have been done in the first place? We are damaging the ocean so quickly, and no one really sees it unless you do go diving or go snorkeling."

Under the Sea-Change Accord agreement, the discharge of sewage into the ocean from the Anguilla plant will end completely and the effluent will be highly treated and recycled for irrigation use by farmers, developers, resorts and others. The government will design, plan and install a piping system to transport the recycled water to entities in need, while enjoying some revenues along the way.

"The economics of this are pretty self-sustaining," Barry speculated. "They should be, because right now we're discharging 2 million gallons a day and water on St. Croix is 2 cents a gallon. If this were all clean water, that would be \$40,000 per day."

"That's as good a guesstimate as any," said Iver Stridiron, the attorney for the WMA, although he said no price has yet been set. Negotiations are now in process with businesses on St. Croix interested in using the treated water.

Pugh and her fellow plaintiffs filed their suit on top of a 1984 Environmental Protection Agency (EPA) consent decree mandating that the territory's sewage-treatment facilities and practices come into compliance. The order required that the territory move to a secondary level of wastewater treatment from the basic level that had been used for years, where solids were being culled from the wastewater, but very little treatment was occurring before discharge.

Finally, in response to the consent decree, upgrades began at the Anguilla facility in 2005 and at the Red Point Wastewater Treatment facility on St. Thomas. However, plaintiffs in Pugh vs. Turnbull argued that the secondary treatment level wasn't sufficient, and called for a tertiary level of treatment and no effluent discharge into the ocean.

"People assumed that because the end of the (discharge) pipe was 8,400 feet offshore that it was being discharged into real fast-moving water and wouldn't affect the local reefs," Barry explained. "But in fact it's only 40 feet deep out there and it's right in the middle of a reef system ... and some scientists have said that reef system is 4,000 years old."

EPA spokesman Jim Casey acknowledges the Sea-Change Accord is a positive step, but he pointed out the EPA has been pushing for significant improvements along these lines for 20 years.

"Frankly, this has been a long-standing, ongoing issue which has taken a long time to come to this point," he said. "We would not consider (the accord) as something that exceeds expectations. The fact is, it has been a collaborative effort in terms of working with the Waste Management Authority and the Department of Public Works under the auspices of the court."

Regardless of where the victory lies, Stridiron says everyone benefits.

"Basically we reached an accord which was satisfactory to all sides," he said. "It accomplishes what the plaintiffs wanted -- to stop discharging effluent into the ocean -- and we see it as a win-win because we can deliver (the effluent) from the ocean to beneficial uses on land."

The recently concluded upgrades to the Anguilla plant feature an ultraviolet disinfection system and special screening methods. They cleanse the wastewater to the point that, while not potable, it's perfectly suited for foliage and crops. The recycled water reduces reliance on cisterns and costly desalination methods.

The accord needs the approval of the District Court, but that's apparently a given, Stridiron said.

"Normally when we reach this sort of accord, it's pro forma, especially with both sides saying they're absolutely satisfied," Stridiron said.

The next step involves public hearings, sponsored by the DPNR, according to Stridiron, followed by the issuance of a territorial pollution elimination discharge system permit, or TPEDS. Within 18 months of the issuance of the TPEDS, the government is obligated to begin the design, planning and construction of a distribution infrastructure, and within 3 years of the issuance of the permit the wastewater treatment system must be fully operational.

While the Sea-Change Accord allows the government 18 months to establish the distribution system for the recycled water, the territory will be wrangling for much longer with another distribution system.

Of some 68 items that required compliance under the federal consent decree,

Stridiron said all but one -- the replacement of the territory's sewer lines -- has been addressed. While he's intending to ask the court to vacate the consent decree given the progress made to date, he acknowledges that the remaining task is daunting.

The sewer lines are between 50 and 75 years old, the system needs to be mapped and, once replacement efforts begin, the lines need to be diverted to remain operational during the process.

"It's huge," Stridiron said, adding that there are more than 3,000 manholes on St. Croix alone. "We're talking about hundreds of miles of sewer lines, and of course you have to keep the system running while you replace the lines."

Stridiron estimated the replacement project will take years and cost millions: "So it's quite a project, but it's one that has to be done."

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