From:	Jeffrey H. Schwartz
Reply To:	jeff@kelaassociates.com
To:	Alexis Strauss/R9/USEPA/US@EPA; David Albright/R9/USEPA/US@EPA
Subject:	Fwd: Two Items on Injection Wells in Maui
Date:	01/26/2010 11:13 AM
Attachments:	1-25-10 statement of objections, request for reconsideration and appeal - Maui Planning Commission.doc Dailer et al, Marine Pollution Bulletin Article.pdf

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Aloha Ms. Strauss and Mr. Albright,

There are two items we thought you should be aware of.

1) The first is a petition filed today by the DIRE Coalition of Maui and Save Kahului Harbor to request reconsideration and/or appeal of the decision of the County Planning Director to grant the Department of Environmental Management a Special Management Area exemption and an exemption from preparation of an Environmental Assessment for the construction of two new injection wells (which the county characterizes as "replacement wells") at the Wailuku-Kahului wastewater treatment plant. We believe this demonstrates the intention of the County Department of Environmental Management to keep injecting wastewater that is below R-1 levels at Kahululi (as well as at Lahaina and Kihei).

2) The second is a study (attached) that is soon to be published in Marine Pollution Bulletin. This article definitively establishes the hydrologic linkage between the injection well effluent in Lahaina and the algae growing in near shore waters that is so harmful to Maui's reefs. The study goes so far as to permit mapping of the injection well plume as it emerges from groundwater and enters near shore ocean water. In press: Dailer, M.L., et al. Using δ15N values in algal tissue to map locations and potential sources of anthropogenic nutrient inputs on the island of Maui, Hawai'i, USA. Marine Pollution Bulletin (2010), doi:10.1016/j.marpolbul.2009.12.021.

In our view, the latter (as well as the former) presents important enforcement issues for EPA and the State of Hawaii, because for each facility it is now clear that the effluent is being discharged into the ocean through the wells (via groundwater) without NPDES permits. We hope you will call these materials to the attention of your colleagues in the Water Enforcement Branch. We would be interested as to their views on whether, under applicable case law, the Clean Water Act point source pollution discharge prohibition without an NPDES permit applies to discharges to waters that are hydrologically connected to surface waters (such as the ocean), which are "waters of the United States"?

We appreciate the opportunity to present this information, and wanted to close by asking whether you have ever received a follow up letter from the Mayor or the Department of Environmental Management after our December 8 meeting with them on Maui? We have received no response to date to our follow up letter.

All the best,
Jeff Schwartz
for the DIRE Coalition