From: David Albright
To: Paul Achitoff
Subject: Re: Lahaina/401 certification
Date: 10/21/2009 03:02 PM

Hi Paul,

Thanks for the reference. I appreciate you sharing your perspective with us. As I noted on the call, we will be looking further at this issue as we proceed. Please don't hesitate to contact me if you have other questions or issues to discuss.

David
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David Albright
Manager, Ground Water Office

USEPA, Region IX
75 Hawthorne Street
Mail Code: WTR-9
San Francisco, CA 94105

Phone: 415.972.3971
Fax: 415.947.3549
Email: albright.david@epa.gov

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▼ Paul Achitoff ---10/21/2009 02:46:14 PM---David: Thanks for taking the time to speak with me. The document to which I was referring is EPA, W

From: Paul Achitoff <achitoff@earthjustice.org>
To: David Albright/R9/USEPA/US@EPA
Cc: Alexis Strauss/R9/USEPA/US@EPA
Date: 10/21/2009 02:46 PM
Subject: Lahaina/401 certification

David:
Thanks for taking the time to speak with me. The document to which I was referring is EPA, Water Quality Standards Handbook § 7.6.3, p. 7-10 (2d ed. 1994). http://www.epa.gov/waterscience/standards/handbook/chapter07.html
Notably, the handbook states:
"The language of section 401(a)(1) is very broad with respect to the activities it covers," and EPA underscores the terms "may" and "any discharge" in quoting the statutory language: "[A]ny activity including, but not limited to, the construction or operation of facilities, which may result in any discharge...." After noting that EPA has identified certain types of permits that may trigger the need for certification, it goes on to say this list is not exclusive: "There are likely other Federal permits and licenses, such as permits for activities on public lands, and Nuclear Regulatory Commission licenses, which may result in a discharge and thus require 401 certification."
It also asserts: "Congress intended for the States to use the water quality certification process to ensure that no Federal license or permits would be issued that would violate State standards or become a source of pollution in the future."

(emphasis added).
And:
"[I]t is imperative for a State review to consider all potential water quality impacts of the project, both direct and indirect, over the life of the project." (emphasis added).
With due respect, I think you'll agree EPA would be hard pressed to maintain that the likelihood that this well could result in "any" discharge to navigable waters is so remote that it falls outside this "very broad" requirement.
Paul

Paul H. Achitoff
Earthjustice
223 South King Street #400
Honolulu, HI 96813
(808) 599-2436