From: Brett Moffatt
To: Edward.G.Bohlen@hawaii.gov
Subject: Re: WQC 0000787 - Lahaina WWRF Deputy AG Legal Advice
Date: 10/25/2010 03:49 PM

Hi Ted,

Following up on our discussion about the County of Maui's CWA 401 water quality certification application, I drafted some language to move forward, accounting for the facts that the discharge is ongoing, the permit renewal has been pending for several years, and that we expect further study of the effluent's impacts to occur over the next year or two - while preserving the State's ability to take appropriate action if information obtained in the future indicates that a water quality certification for the injection activity should be conditioned (e.g., additional effluent limitations) or be denied.

I did not include the requests for additional information that DOH has contemplated including in its response. We support this effort, provided that the requests are not characterized as a request for the County to complete the pending application.

I would appreciate it if you could let me know by tomorrow if you see any problems with this suggested approach, or need more information. I understand that there will be a discussion on Thursday between our Water Division management and DOH management which will include the 401 certification status.

Thanks,
Brett

The Department has considered the following factors:

The LWRF has been injecting treated domestic wastewater effluent into groundwater at a depth of 85-255 feet below ground surface for more than 30 years. The current rate of injection averages approximately five million gallons per day.

EPA issued UIC Permit No. HI596001, for this injection, on June 11, 1996. UIC Permit No. HI596001 expired in June 2005, but has been administratively extended, pending a final decision on EPA's proposed UIC Permit No. HI50710003.

EPA's proposed UIC Permit No. HI50710003 contains injection fluid limitations that are more protective of the water quality of the ground water than those contained in UIC Permit No. HI596001.

The Department did not receive a Section 401 WQC application for UIC Permit No. HI596001, and therefore did not evaluate the existing discharge pursuant to the water quality certification provisions of Hawaii Administrative Rules (HAR), Chapter 11-54.

HAR, Chapter 11-54 applies to surface waters of the State, including the marine waters along the Lahaina coast. HAR, Chapter 11-54 does not apply directly to groundwater.

As reported in "***A Multitracer Approach to Detecting Wastewater Plumes from Municipal Injection***

Wells in Nearshore Marine Waters at Kihei and Lahaina, Maui, Hawaii" Scientific Investigations Report 2009–5253, prepared by the U.S. Department of the Interior U.S. Geological Survey (USGS) (downloadable from http://pubs.usgs.gov/sir/2009/5253/), injected wastewater plumes were detected in marine waters along the Lahaina coast, with positive detection across multiple inherent wastewater tracers. This study did not determine concentrations or mass of any pollutants of wastewater origin in the marine waters.

On January 27, 2010, EPA directed the County to conduct an introduced tracer study and an effluent and coastal seep sampling program to assess the potential impacts of the LWRF on marine waters. The County did not initiate these studies. The Department, in conjunction with EPA and the US Army Corps of Engineers, are taking steps to conduct the introduced tracer study. EPA has issued a second letter on October 12, 2010, directing the County to conduct the effluent and coastal seep sampling program.

EPA cannot issue final UIC Permit No. HI50710003 until the Department acts on, or waives its right to act on, the County's Section 401 WQC application.

Proposed UIC Permit No. HI50710003, Part III.B.1, provides that EPA may, for cause, modify, revoke and reissue, or terminate the permit in accordance with 40 CFR §§ 124.5, 144.12, 144.39, and 144.40. 40 CFR §§ 124.5 and 40 CFR § 144.39 provide that any interested person may request a modification of a permit. 40 CFR § 144.39 provides that cause for modification may exist if there is new information that was not available at the time of permit issuance which would have justified the application of different permit conditions at the time of issuance. 40 CFR § 144.40 provides that a permit can be modified or terminated upon a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

HAR, 11-54-9.1.01(d) provides that the Director, after consideration of information pertaining to a discharge, may modify or revoke an issued water quality certification or waiver.

HAR, 11-54-9.1.02(f) provides that for a project or activity requiring a federal permit of license that may involve the discharge of a pollutant or pollutants, and which has been initiated or completed without a water quality certification, the Director may issue an After the Fact water quality certification effective from the date forward of issuance, provided that the requirements set forth in HAR, 11-54-9.1.02(f) are met.

Therefore, in consideration of the ongoing nature of the injection activity, the need for more information regarding the impacts of the activity on marine waters, the more protective injection limitations contained in the proposed permit, and subject to the Department's right to reevaluate this activity and revise its determination based on new information, as set forth in HAR, 11-54-9.1.01(d) and 11-54-9.1.02(f), the Department hereby waives its right to approve or deny the County's May 7, 2010 application for a CWA Section 401 water quality certification for the operation of the LWRF. The Department may require the County to submit a new Section 401 WQC application as additional information about the impacts of the injection activity becomes available.

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▼ Edward.G.Bohlen---10/06/2010 04:45:34 PM---Yes. After noon PDT.
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From: Edward.G.Bohlen@hawaii.gov
To: Brett Moffatt/R9/USEPA/US@EPA
Date: 10/06/2010 04:45 PM
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Yes. After noon PDT.

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