

## GET Committee

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**From:** Richelle Thomson <Richelle.Thomson@co.maui.hi.us>  
**Sent:** Tuesday, September 03, 2019 6:20 AM  
**To:** GET Committee  
**Subject:** Hawaii DOH response to questions. 9th Circuit Court's decision in Hawaii Wildlife v. County of Maui(GET-26)  
**Attachments:** Acrobat.pdf

Please see attached.

Begin forwarded message:

**From:** "Seto, Joanna L" <[joanna.seto@doh.hawaii.gov](mailto:joanna.seto@doh.hawaii.gov)>  
**Date:** September 2, 2019 at 7:45:11 PM HST  
**To:** "Richelle Thomson" <[Richelle.Thomson@co.maui.hi.us](mailto:Richelle.Thomson@co.maui.hi.us)>  
**Cc:** "Alec Y Wong" <[alec.wong@doh.hawaii.gov](mailto:alec.wong@doh.hawaii.gov)>, "Bruce S. PhD Anderson" <[Bruce.S.Anderson@doh.hawaii.gov](mailto:Bruce.S.Anderson@doh.hawaii.gov)>, "Keith E Kawaoka" <[keith.kawaoka@doh.hawaii.gov](mailto:keith.kawaoka@doh.hawaii.gov)>, "Sina L Pruder" <[sina.pruder@doh.hawaii.gov](mailto:sina.pruder@doh.hawaii.gov)>, "Edward G Bohlen" <[Edward.G.Bohlen@hawaii.gov](mailto:Edward.G.Bohlen@hawaii.gov)>  
**Subject:** RE: 9th Circuit Court's decision in Hawaii Wildlife v. County of Maui(GET-26)

Aloha Ms. Thomson – The Department of Health letter regarding your August 30, 2019 letter is attached for your use.

Mahalo,  
Joanna

Joanna L. Seto, P.E.  
Engineering Program Manager  
Safe Drinking Water Branch | State of Hawaii, Department of Health  
Uluakupu Building 4 | 2385 Waimano Home Road, Suite 110 | Pearl City, HI 96782-1400  
Phone: (808) 586-4258

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GOVERNOR OF HAWAII



BRUCE S. ANDERSON, Ph.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
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In reply, please refer to:

File: SDWB  
Thomson01.docx

September 2, 2019

Ms. Richelle M. Thomson  
Deputy Corporation Counsel  
Department of the Corporation Counsel  
County of Maui  
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Wailuku, Maui, Hawaii 96793  
[via [Richelle.Thomson@co.maui.hi.us](mailto:Richelle.Thomson@co.maui.hi.us) only]

Dear Ms. Thomson:

SUBJECT: County of Maui, Hawaii v. Hawai`i Wildlife Fund, et al. (U.S. Supreme Court 18-260) (GET-26)

Thank you for the questions you sent to the Department of Health (DOH) on Friday afternoon, August 30, 2019. The DOH is not taking a position on what action the County of Maui (County) should take regarding its legal appeal or whether the County should accept a possible settlement. DOH would, however, be willing to assist in settlement efforts, at the parties' request. As you know, DOH is the state entity that regulates National Pollutant Discharge Elimination System (NPDES) and other permits. It would be inappropriate at this time to speculate on what the Ninth Circuit decision "could" require.

In lieu of answering each of your specific questions, let me take this opportunity to make two additional points related to the issues being considered.

First, the NPDES program is not the appropriate tool to regulate injection wells. The Hawaii Safe Drinking Water Act, Hawaii Revised Statutes (HRS) Ch. 340E, and the Underground Injection Control (UIC) rules, Hawaii Administrative Rules (HAR) Ch. 11-23, provide authority to limit discharges into injection wells. DOH has reviewed permit applications for injection wells under that authority.

With regard to cesspools and septic tanks, DOH has for many years reviewed and approved individual wastewater disposal system applications under the Hawaii Water Pollution statute, HRS Ch. 342D, and rules, including HAR Ch. 11-62 (Wastewater Systems) without requiring NPDES permits for individual homeowners. We do not believe this additional permitting requirement is necessary or appropriate for septic tanks or cesspools.

Ms. Richelle M. Thomson  
September 2, 2019  
Page 2

Second, we strongly support the County's efforts to develop a wastewater reclamation system to provide a source of irrigation water for West Maui and to obviate the need to use the injection wells as a primary means of disposal. This appears to be the most practical way to limit discharges into the existing injection wells at the Lahaina Wastewater Reclamation Facility. Reclamation systems must have an alternative means of storage and/or disposal of treated water during periods of heavy rainfall and for other unforeseen events, but they should be used only as a "back-up" means of disposal.

Although we have not addressed all of your specific questions, I hope you find this information helpful. Thank you for understanding that, under these circumstances, DOH is constrained from speculating on the consequences of the outcome decisions at any level on this matter.

Sincerely,



Bruce S. Anderson, Ph.D  
Director of Health

BSA:js

- c: Mr. Edward Bohlen, Deputy Attorney General [via email only]
- Dr. Keith E. Kawaoka, Deputy Director for Environmental Health [via email only]
- Mr. Alec Wong, P.E., Clean Water Branch [via email only]
- Ms. Sina Pruder, P.E., Wastewater Branch [via email only]
- Ms. Joanna L. Seto, P.E., Safe Drinking Water Branch [via email only]