

## GET Committee

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**From:** Michael Spalding Realty, Inc. <spalding.realty@hawaiiintel.net>  
**Sent:** Monday, May 13, 2019 10:47 AM  
**To:** GET Committee  
**Cc:** Michael.Victorino@co.maui.hi.us; Maui\_County Council\_mailbox; Kelly King; Keani N. Rawlins; Tasha A. Kama; Riki Hokama; Alice L. Lee; Mike J. Molina; Tamara A. Paltin; Shane M. Sinenci; Yukilei Sugimura; sandy.baz@mauicounty.gov  
**Subject:** GET-26 Hawaii Wildlife vs. County of Maui, U.S. Supreme Court Docket No. 18-260  
**Attachments:** 2019-4-30 DOH Director Bruce Anderson.pdf

Dear Council Members:

I am writing as a resident of Maui County. I have a cesspool on property that my family owns near the shoreline in Hana, and I am aware of the new state law that requires me to close this cesspool by 2050. I am writing to express concern that I and other property owners in Hana will be forced to close our cesspools early and also that septic systems might not be acceptable either if the County withdraws its appeal from the U.S. Supreme Court in the lawsuit involving the Lahaina injection wells. My understanding is that this would mean that the Ninth Circuit Court of Appeals decision that systems like injection wells, cesspools, or septic systems that connect somehow to groundwater and to the ocean would have to obtain a federal Clean Water Act permit or be in violation of federal law. This is a huge burden for property owners, especially for those without financial resources.

I believe that it is very important to have the U.S. Supreme Court's ruling on this matter and I believe that they will agree that this should be left to the State Department of Health to oversee as it has traditionally done.

It is imperative to win the lawsuit at the Supreme Court. This in no way interferes with or lets us off the hook to solve the injection well issue in Kaanapali.

The County needs to work with the Department of Health to solve that problem. In order to get the State Department of Health's input on this matter, I had a meeting with Council Member Kama and we had Dr. Bruce Anderson on the phone. A partial transcript of our conversation is attached for your information, and it was recorded with Dr. Anderson's consent. Winning the lawsuit is a win for the State and the environment. The State can orderly and efficiently invest in protecting our environment.

I ask you to not withdraw the lawsuit.

Aloha,  
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Bruce Anderson, Director, State of Hawaii Department of Health

Via telephone April 30, 2019 – partial transcription of conversation with Director Anderson's consent

RE: GET-26 Hawaii Wildlife v. County of Maui, U.S. Supreme Court Docket No. 18-260

Having the U.S. Supreme Court's clarity on this issue will be helpful, especially if there's a good chance the court would rule in favor of the County and not require an NPDES permit. From a regulatory standpoint, and speaking from the State Health Department's standpoint, I would rather not have a court mandate that we have to issue an NPDES permits for injection wells, which is what the Ninth Circuit Court's decision amounts to. It is just another permitting requirement that would create nightmares for the State Department of Health, in terms of trying to figure out what effluent limits might be required, how we're going to set up monitoring program, et cetera. I think our collective energies could be much better used going toward trying to find environmental beneficial uses for the recycled water on land as the reclamation plants were designed to do.

Keep in mind, this case sets a huge precedent, and the Ninth Circuit's decision would mean that an NPDES permit would be required not just for the County but for hundreds of other similar types of sources in Hawaii, most of which are along the coastline. If DOH has to implement the Ninth Circuit's decision, this will set precedent for how we will deal with many of those other situations. These types of sources are best regulated through the UIC permit program.

The NPDES permit program never contemplated something like this, and honestly, I don't know how we would even write an NPDES permit for an injection well. How do you determine the assimilative capacity of the groundwater you might be injecting into? How do you establish a zone of mixing? What effluent limits would you be applying, and many other concerns that we don't have answers for now.

I would rather that we not be encumbered by some legal mandate and that we figure this out in a more reasonable and thoughtful way, and come up with better waste management options and evaluate those thoroughly and move forward in that direction, rather than settle a case and get forced into something that may ultimately not make much sense.

My understanding is that the real issue for the Supreme Court is whether Maui County needs an NPDES permit for the use of injection wells that dispose of treated recycled water into groundwater. From a regulatory standpoint, I prefer that the court find that is not necessary and that we deal with this issue in a much more proactive way. We can limit the use of injection wells and the amount of injectate through the UIC permit, as well as address other issues, including concerns with ocean water quality impacts.

We can address the problem if we're not being forced to do so in a court order. So, the long and short of it is that I agree with Corp Counsel that you should take this to the Supreme Court. Make the arguments that you're effectively dealing with the issue and that an NPDES permit would not solve the problem.

For example, the Ho Honua biomass plant on the Hamakua Coast of the Big Island will be injecting hot water right next to the ocean. The question isn't whether it's going to get into the ocean, it's whether it's going to cause harm in terms of increased temperature. DOH administrative rules say you can't increase temperatures more than a degree. There's no question that the effluent is getting into the

ocean there, the real question is whether it is going to cause any harm, and we regulate that through our UIC permit. I'd much rather that than try to issue both a UIC permit and an NPDES permit. It just gets to be a nightmare, and that's just one of hundreds of injection wells around the state.

I believe having the U.S. Supreme Court's clarity on this issue is the best course of action.