

February 7, 2009

U.S. Environmental Protection Agency
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

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EPA ENVIRONMENTAL APPEALS BOARD

Subject: 1) Final Decision on City and County of Honolulu's Sand Island Wastewater Treatment Plant Application for a Modified NPDES Permit under Section 301(h) of Clean Water Act (CWA)and

2) Final Decision on City and County of Honolulu's Sand Island Wastewater Treatment Plant Application for a Modified NPDES Permit under Section 301(h) of Clean Water Act

Dear Environmental Appeals Board,

We request a review of the subject final decisions signed by Environmental Protection Agency (EPA) Regional Administrator, Wayne Nastri, on January 5, 2009, and served on January 6, 2009. We provided our comments to EPA Tentative Decision Document for both the Sand Island and the Honouliuli Wastewater Treatment Plant Applications for modified NPDES permits under Section 301(h) of the CWA. We feel that the EPA has cavalierly dismissed our comments which were made in good faith and, we believe, on the basis of protecting the public health and the total environment at the least cost, both financially and with regard to detrimental secondary impacts on the environment.

Every action taken has consequences, some of which are good or beneficial and some of which are harmful. Because the consequences may not be directly related to the problem that triggers the need for action, a thoughtful, comprehensive and holistic evaluation must be performed. Then and only then can a rational and best decision on what action should be taken. If the good outweighs the bad, the action should be taken. If not, other alternative actions should be investigated until the best solution is found.

In a recent memo to EPA employees, EPA Administrator, Lisa P. Jackson stated "Science must be the backbone for EPA programs. The public health and environmental laws that Congress has enacted depend on rigorous adherence to the best available science. The President believes that when EPA addresses scientific issues, it should rely on the expert judgment of the Agency's career scientists and independent advisors. When scientific judgments are suppressed, misrepresented or distorted by political agendas, Americans can lose faith in their government to provide strong public health and environmental protection."

She further stated "EPA must follow the rule of law. The President recognizes that respect for Congressional mandates and judicial decisions is the hallmark of a principled regulatory agency. Under our environmental laws, EPA has room to exercise discretion, and Congress has often looked to EPA. to fill in the details of general policies. However EPA needs to exercise policy

discretion in good faith and in keeping with the directives of Congress and the courts.” She cautioned, however, that “The laws that Congress has written and directed EPA to implement leave room for policy judgments. However: policy decisions should not be disguised as scientific findings. I pledge that I will not compromise the integrity of EPA’s experts in order to advance a preference for a particular regulatory outcome.”

Jackson continues with “EPA’s actions must be transparent. In 1983, EPA Administrator Ruckelshaus promised that EPA would operate "in a fishbowl" and “will attempt to communicate with everyone from the environmentalists to those we regulate, and we will do so as openly as possible.”” and “As your Administrator, I will uphold the values of scientific integrity, rule of law and transparency every day. If ever you feel I am not meeting this commitment, I expect you to let me know.” This certainly was not the case for these denials.

These statements were based on President Obama’s outline of the environmental program for his administration. A key element of his program is reduction of greenhouse gas emissions which EPA had ignored until reminded by the US Supreme Court in a decision rendered in April 2008 that under the Clean Air Act EPA had the duty to consider regulation of greenhouse gases.

As noted in our comments to the two TDDs, construction of a secondary treatment process is akin to construction of a greenhouse gas factory. It is a matter that requires serious consideration.

In responding to our comments to the two TDDs, EPA takes the position that it is not allowed any discretion in making its decisions. Although we have not done a comprehensive review of the CWA or other environmental laws, it appears that the following examples indicate that EPA can exercise discretion.

Example 1:

SEC. 217 [33 U.S.C. 1297] Cost-Effectiveness Guidelines

Any guidelines for cost-effectiveness analysis published by the Administrator under this title shall provide for the identification and selection of cost effective alternatives to comply with the objective and goals of this Act and sections 201(b), 201(d), 01(g)(2)(A), and 301(b)(2)(B) of this Act.

Example 2:

Sec. 304(b)(1)(B) states:

Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 301 of this Act shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application,..."

Further, as noted in the quotations from Administrator Jackson’s memo, EPA does have room to exercise discretion.

We believe that the EPA has not performed a rigorous evaluation of the costs and benefits of its action of denying the two applications from the City and County of Honolulu. We therefore

request that reconsideration be allowed and that the EPA be mandated to perform a comprehensive evaluation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor D. Moreland". The signature is fluid and cursive, with a long horizontal stroke at the end.

For :

James K. Honke, PE

Hans J. Krock, PhD, PE

James S. Kumagai, PhD, PE

Victor D. Moreland, PhD, PE