

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF)
MAUI ELECTRIC COMPANY)
LTD.'S PROJECT) ORDER RESPONDING TO PETITIONER'S
Permit No. 0067-01-C) REQUEST THAT THE ADMINISTRATOR
OBJECT TO ISSUANCE OF A STATE
OPERATING PERMIT
)
)

ORDER DENYING PETITION FOR OBJECTION TO PERMIT

On February 17, 1998, the Kawaihae Cogeneration Partners ("KCP" or "the Petitioner") filed a Petition requesting that the Environmental Protection Agency ("EPA") revise or revoke a PSD/Covered Source Permit, No. 0067-01-C, issued to Maui Electric Company, Ltd. ("MECO") for the construction and operation of two 20 megawatt ("MW") combustion turbine generators at MECO's Maalaea Generating Station at Maalaea, Maui, Hawaii ("the MECO Permit"). The MECO Permit, issued by the State of Hawaii Department of Health ("DOH") on January 6, 1998, constitutes both a construction permit issued pursuant to the Prevention of Significant Deterioration ("PSD") requirements of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7470-7479, and a state operating permit issued pursuant to Title V of the Act, 42 U.S.C. §§ 7661-7661f.

KCP has petitioned EPA to object to the MECO Permit pursuant to 40 CFR § 70.8(d). For the reasons set forth below, I deny KCP's request.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each state to develop and submit to EPA an operating permit program intended to meet the requirements of Title V. The State of Hawaii submitted a Title V program governing the issuance of operating permits (termed "Covered Source" permits by the State), which is contained in its Administrative Rules, Title 11, Chapter 60.1. On December 1, 1994, EPA granted interim approval to the State of Hawaii's Title V program. 59 Fed. Reg. 61,549; see also 61 Fed. Reg. 56, 368 (Oct. 31, 1996); 40 CFR Part 70, Appendix A. Major stationary sources of air pollution and other sources covered by

Title V are required to obtain an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. See CAA §§ 502(a) & 504(a).

Under section 505(b) of the CAA, the Administrator is authorized to review state operating permits issued pursuant to Title V and to veto permits that fail to comply with the applicable requirements of the Act. In particular, under section 505(b)(1) of the Act and the implementing regulations at 40 CFR § 70.8(c), EPA may object to the issuance of a Title V permit if it determines that the permit is "not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan." When EPA declines to veto a Title V permit on its own initiative, section 505(b)(2) provides that citizens may petition the Administrator to object to the issuance of a permit by demonstrating that the permit is not in compliance with applicable requirements. See 40 CFR § 70.8(d). For purposes of review by the Administrator pursuant to section 505(b), the applicable requirements include those of the relevant state or federal PSD program.

Sections 110(a)(2)(C) and 161 of the Act require each state to include a PSD program in its state implementation plan ("SIP"). If a SIP does not contain an approved PSD program, EPA promulgates a federal implementation plan, and the federal PSD regulations at 40 CFR § 52.21 governing permit issuance apply. EPA may in turn delegate its authority to the state to issue federal PSD permits on its behalf. See 40 CFR § 52.21(u).

Because Hawaii's state implementation plan lacks an approved PSD program, the applicable requirements governing the issuance of PSD permits in Hawaii are the federal PSD regulations at 40 CFR § 52.21. See 40 CFR § 52.632. Although EPA Region IX delegated administration of the PSD program in Hawaii to the State, 48 Fed. Reg. 51,682 (Nov. 10, 1983); 54 Fed. Reg. 23,978 (June 5, 1989), PSD permits issued by Hawaii are federal permits. Appeals of those permits are accordingly governed by 40 CFR § 124.19 and are heard exclusively by the Environmental Appeals Board. Furthermore, where a federal PSD permit is appealed to the Board, the permit is not effective and construction may not begin until the Board has disposed of the appeal. 40 CFR § 124.15

Because of the allocation of permit review authority to the Environmental Appeals Board in the case of federal PSD permits, I decline to review the merits of PSD issues with respect to such permits raised in a petition to veto under Title

V. As explained in two previous orders responding to petitions requesting EPA to object to DOH's issuance of a PSD/Covered Source Permit,

[W]here EPA is the PSD permitting authority (either directly or by virtue of a delegation agreement with a state or local government) and a party desiring to contest PSD issues could have brought those issues to the Environmental Appeals Board under 40 CFR § 124.19 . . . I will dispose of Title V veto petitions in a manner that preserves the Board's jurisdiction over PSD permit appeals. In contrast, where a state or local government has a SIP-approved PSD program and the Environmental Appeals Board lacks jurisdiction to entertain permit appeals, the merits of PSD issues are ripe for consideration in a timely veto petition under Title V.

In re Kawaihae Cogeneration Project (Order of the Administrator, March 10, 1997); In re Hawaii Electric Light Company Ltd.'s Project (Order of the Administrator, April 3, 1998).

II. PSD ISSUES

Under the PSD program, a physical change or change in the method of operation at a major stationary source which would result in a significant net emissions increase of any regulated pollutant constitutes a "major modification" of the source, and the owner or operator must obtain a PSD permit that meets the requirements of section 165 of the Act. See 40 CFR §§ 52.21(b)(2)(i) & 52.21(i)(2). In particular, the permit must require the application of the best available control technology ("BACT") to control emissions of pollutants emitted in significant amounts. 40 CFR § 52.21(j).

KCP's petition to object to the issuance of the MECO Permit alleges that the PSD permit's requirement of water injection and low sulfur fuel oil is not BACT for oxides of nitrogen and sulfur dioxide. KCP further objects that it is improper to determine the applicability of BACT based on a demonstration project that was being conducted by MECO.

Because of the Environmental Appeals Board's exclusive authority to review PSD determinations, including determinations regarding BACT, with respect to federal permits, I deny KCP's request that EPA revise or revoke the MECO Permit on the basis of the allegations relating to the BACT determination. As noted in

Kawaihae Cogeneration Project and the Hawaii Electric Light Company Project, such a disposition of PSD issues in an appeal under Title V is not intended to address the merits of a petitioner's claims regarding PSD issues.

In reaching this conclusion, I further note that the merits of KCP's claims with respect to the BACT determination reflected in MECO's permit have been addressed by the Environmental Appeals Board. See In re Maui Electric Co., PSD Appeal No. 98-2, slip op. (EAB, Sept. 10, 1998). KCP's corporate partner, Waimana Enterprises, Inc. ("Waimana") made substantially the same allegations made here in its appeal to the Board.¹ The Board has reviewed these allegations and denied Waimana's petition for review of the MECO permit. Id.

CONCLUSION

For the reasons set forth above, I deny KCP's petition requesting the Administrator to object to the issuance of the MECO Permit pursuant to CAA section 505(b).

June 16, 1999

Date

Carol M. Browner
Administrator

¹ In Maui Electric Co., Waimana was substituted as the petitioner in KCP's appeal to the Environmental Appeals Board requesting that the Board review the MECO permit. The Board authorized the substitution of Waimana for KCP, observing among other things, that (1) there is a close corporate relationship between the two entities, (2) U.S. EPA Region IX treated the two entities as the same entity, and (3) no party denied having used the names KCP and Waimana interchangeably. See In re Maui Electric Co., PSD Appeal No. 98-2 (Order on Motion to Dismiss) (EAB, Apr. 3, 1998).

EXHIBIT 9.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS PER FACILITY

Type of facility	Burden hours				Cost		
	Managerial \$41.68	Technical \$30.96	Clerical \$19.41	Total burden	Capital	O&M	Total
Existing:							
Small	0.3	3.8	0.8	4.9	\$0	\$0	\$147
Medium	0.3	6.1	0.9	7.4	0	0	222
Large	0.3	12.5	0.9	13.8	0	0	419
New:							
Small	6.0	28.8	4.6	39.4	67	0	1,232
Medium	6.0	49.1	6.6	61.7	67	0	1,899
Large	6.0	85.8	8.6	100.4	67	0	3,074

Total Annual Expected Facility Burdens

The total annual burdens for all existing facilities and all new facilities are shown in Exhibit 10. The

approximately 460,027 existing facilities will incur a combined burden of about 2.6 million hours and \$42.0 million. In addition, around 4,600 new facilities will incur a combined burden of about 208,740 hours at a cost of \$6.5 million.

The total annual reporting and recordkeeping burden to the regulated community as a result of the SPCC Program is estimated to be approximately 2.8 million hours at a cost of about \$48.5 million.

EXHIBIT 10.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS-ALL FACILITIES

Type of facility	Burden hours				Cost		
	Managerial \$41.68	Technical \$30.96	Clerical \$19.41	Total burden	Capital	O&M	Total
Existing:							
Small	120,987	1,370,233	282,445	1,773,666	\$4,333	0	\$17,413,617
Medium	28,434	519,585	80,109	628,129	1,195	0	18,828,671
Large	4,610	171,923	12,988	189,521	287	0	5,767,959
New:							
Small	21,686	104,204	16,622	142,511	240,935	0	4,452,849
Medium	5,097	41,701	5,605	52,402	56,626	0	1,612,362
Large	826	11,817	1,184	13,827	9,182	0	423,298

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR part 9.

Send comments regarding these matters, or any other aspects of information collection, including suggestions for reducing the burden, to the address listed above under ADDRESSES near the top of this document.

Dated: August 24, 1999.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 99-22934 Filed 9-1-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6432-5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Maui Electric Company, Limited for the Maalaea Generating Station Units M17 & M19 (Hawaii CSP No. 0067-01-C) at Maalaea, Maui, Hawaii

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: Pursuant to Clean Air Act Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator is hereby denying a petition to object to a state operating permit issued by the Hawaii Department of Health to Maui Electric Company, Limited for the Maalaea Generating Station Units M17 & M19 at Maalaea, Maui, Hawaii. This order constitutes final action on the petition submitted by Kawaihae Cogeneration Partners (KCP). Pursuant to Section 505(b)(2) of the Clean Air Act ("Act"),

petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, California, 94105. The final order is also available electronically at the following address: http://www.epa.gov/ttn/nsr/poly_gui.html.

FOR FURTHER INFORMATION CONTACT: Robert Baker (AIR-3), U.S. Environmental Protection Agency, Region 9, Telephone (415) 744-1258, E-mail Baker.Robert@epa.gov. Interested parties may also contact the Hawaii Department of Health, Clean Air Branch, 919 Ala Moana Blvd.—Room 203, Honolulu, Hawaii 96814.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting

authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Kawaihae Cogeneration Partners (KCP) submitted a petition to the Administrator on February 17, 1998, seeking EPA's objection to the PSD/Covered Source Permit issued to Maui Electric Company (MECO) for the construction and operation of two 20 megawatt combustion turbine generators at MECO's Maalaea Generating Station at Maalaea, Maui, Hawaii. KCP's petition alleges that the Covered Source Permit's requirement of water injection and low sulfur fuel oil is not BACT for oxides of nitrogen and sulfur dioxide. The order denying this petition explains the reasons behind EPA's conclusion that the petitioner has failed to demonstrate that the Maui Electric permit is not in compliance with the requirements of the Clean Air Act.

Dated: August 22, 1999.

Nora L. McGee,

Acting Regional Administrator, Region 9.
[FR Doc. 99-22931 Filed 9-1-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6432-3]

Futures Forum Discussion of Source Water Protection; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a one-day public meeting from 1:00 to 4:00 on September 13, 1999 in Washington, DC. The purpose of this meeting is to discuss the protection of drinking water sources in the next 25 years, and how protection helps to provide the public with safe drinking water at the tap. Discussion of this question is part of the Safe Drinking Water Act 25th Anniversary Futures Forum.

The purpose of the Drinking Water Futures Forum is to evaluate the

challenges facing the nation in ensuring a safe supply of drinking water in 25 years, and develop a plan to meet these challenges. The overall question of the futures forum is: How should we ensure safe drinking water in 25 years? There are 7 sub-questions on: treatment technologies, source water quality and quantity, sensitive subpopulations, cost, small systems, unserved populations, and research.

The discussion on September 13 will focus on source water protection. The proposed vision is that in 25 years, all public drinking water supplies will have source water protection measures in place as the first step of a multi-barrier approach to provide safe drinking water to the public. What needs to happen over the next 25 years to reach this vision? Issues related to source water protection include: Do we need to reach national consensus on a definition of source water protection? Is public health protection significantly enhanced by source water protection, or is treatment technology more effective and economical? Are there adequate institutional frameworks for protecting sources of drinking water given the diversity of authorities responsible for contaminant sources, water supply and water quality? What are the catalysts that will accomplish protection at a local level, and integration of source water protection into a public water systems' management plan?

DATES: The meeting will be held on September 13, 1999 from 1 to 4 p.m.

ADDRESSES: The meeting will be held at the EPA Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20004, Room 4045.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact the Safe Drinking Water Hotline at 1-800-426-4791 or 703-285-1093 between 9:00 a.m. and 5:30 p.m. EDT. For specific meeting information, please contact Betsy Henry by telephone at 202-260-2399 or by e-mail at henry.betsy@epa.gov.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99-22935 Filed 9-1-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6432-2]

Drinking Water Futures Forum—Discussions on the Future of Drinking Water Protection; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a one-day public meeting from 9:00-4:00 on September 24, 1999 in Washington, DC. The purpose of this meeting is to discuss questions related to the Drinking Water Futures Forum.

The purpose of the Drinking Water Futures Forum is to evaluate the challenges facing the nation in ensuring a safe supply of drinking water in 25 years, and develop a plan to meet these challenges. The question to be discussed is: How should we ensure safe drinking water in 25 years? To help discussion, this all-encompassing question has been broken into 7 sub-questions on: treatment technologies, source water quality and quantity, vulnerable subpopulations, cost, small systems, unserved populations, and research. In discussions to date, several cross-cutting themes have emerged, and these will be the focus of the September 24 meeting.

Some of the questions to be discussed on September 24 include: What are the potential challenges to drinking water protection in 2025? What potential impact does the distribution system have on drinking water quality, and are there approaches to address any negative impact? What incentives can be created to promote voluntary programs that move beyond the baseline, either in treatment or pollution prevention? How do we promote comprehensive water supply planning?

DATES: The meeting will be held on September 24, 1999 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency's Ariel Rios Building, 1200 Pennsylvania Avenue, NW, in Room 6226.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact the Safe Drinking Water Hotline at 1-800-426-4791 or 703-285-1093 between 9:00 a.m. and 5:30 p.m. EDT. For specific meeting information, please contact Ron Bergman at 202-260-6187