Response to Comments from the Public on the Modification of an Underground Injection Control Permit for the Puna Geothermal Venture Class V Geothermal Permit #HI596002

This document responds to all comments received on the proposed modification of Puna Geothermal Venture's (PGV) Underground Injection Control (UIC) permit. EPA Region 9 received two comments during the public comment period. EPA Region 9 did not modify the draft permit in response to such comments. Responses to the comments received and explanations for EPA Region 9's final decision are found below.

Commenter 1, Penelope A. Shaver

Comment 1: Commenter asked EPA Region 9 to consider the need for a plan or procedure to notify schools and surrounding communities in case of an emergency at the PGV site.

Response: Although it is not a requirement of PGV's UIC permit, the facility currently has an Emergency Response Plan (ERP) intended to ensure the safety and protection of PGV plant personnel and the people in the surrounding community. The ERP does not include specific notification to schools; however, the Plan does include extensive notification requirements for the local police department, fire department, civil defense personnel, other state and local emergency responders, and an individual Community Liaison. PGV developed their ERP in accordance with the Emergency Planning and Community Right to Know Act (EPCRA), which is overseen by EPA Region 9 Superfund Program. For reference, we are providing the commenter an electronic copy of the Emergency Action Plan and Notification Guidelines, revised July 30, 2008, which was created specifically for the focus of the personnel working at the PGV plant so that they would "understand the uniform practices which are to be employed to provide quick and effective response to emergencies that might arise at the plant site." The full Emergency Response Plan may be obtained from any of the following entities:

Keaau Library
16-571 Keaau-Pahoa Rd.
Keaau, HI 96749
808-982-4281

Pahoa Library
15-3070 Pahoa-Kalapana Rd.
Pahoa, HI. 96778
808-965-2171

Michael Kaleikini
Puna Geothermal Venture
14-3860 Kapoho Pahoa Rd.
Pahoa HI 96778
808-965-2838

As noted above, an ERP is not a requirement of a UIC permit as provided under Part C of the Safe Drinking Water Act, the UIC Program. 42 U.S.C. §§ 300h - 300h-8. The purpose of the UIC program is to regulate the construction and operation of injection wells in order to protect underground sources of drinking water. 42 U.S.C. § 300h-3(b)(3); 40 C.F.R § 144.1. Thus, EPA's authority under the UIC program is limited to actions that are necessary to protect underground sources of drinking water. Moreover, EPA Region 9, in a prior UIC permit for PGV, included certain terms and conditions pertaining to an ERP. PGV appealed EPA's inclusion of these terms to the Environmental Appeals Board (EAB), an impartial body in the EPA that makes final decisions on administrative appeals of agency actions. *In re: Puna Geothermal Venture UIC Permit NO. HI596002*, 9 E.A.D. 243 (EAB 2000). In that case, the EAB remanded the permit and rejected EPA's arguments that the UIC permit conditions pertaining to an ERP were necessary to comply with the Safe Drinking Water Act or UIC regulations. *Id*. The EAB stated "a permit condition . . . is appropriate only as necessary to implement these statutory and regulatory requirements." *Id*. Based on this rationale, a permit condition requiring a comprehensive ERP as part of PGV's UIC permit is not, in this case, necessary to protect underground sources of drinking water, and thus, such a provision is inappropriate to include in the final permit.

Comment 2: Commenter requested a public hearing.

Response: EPA Region 9 declines to hold a public hearing because it finds that a "significant degree of public interest" does not exist concerning PGV's permit modification. Pursuant to 40 C.F.R. § 124.12, EPA shall hold a public hearing whenever it "finds, on the basis of requests, a significant degree of public interest in a draft permit." A determination of whether or not a "significant degree of public interest" exists is "largely discretionary." *In re Avery Lake Property Owners Assoc*., 4 E.A.D. 251, 252 (EAB 1992); *In re City of Fort Worth*, 6 E.A.D. 392, 407 (EAB 1996).

EPA Region 9 has found that the matter does not have a "significant degree of public interest." First, the permit modifications are narrow, and the comment received did not specifically address the permit modifications at issue. *See In the Matter of Spokane Regional Waste-to-Energy Project*, 3 E.A.D. 68 (EAB 1990) (Environmental Appeals Board (EAB) upheld EPA's decision not to hold public hearing because revision of pollutant limitation in air permit was narrow and comments did not address the specific pollutant limitation at issue). Second, EPA Region 9 received very few comments and only one request for a public hearing. *See In re City of Fort Worth,* 16 E.A.D. 392 (EAB 1996) (EAB upheld EPA's decision not to hold public hearing because only petitioner had participated in public comment period and requested a public hearing, although a city of 80,000 people was affected by the decision). Thus, because the public interest in this case was not significant, EPA has determined the proposed modification of PGV's UIC permit does not warrant a public hearing.

Commenter 2, Donald Thomas

Comment: Commenter supports the draft permit modifications and did not suggest any changes or request a public hearing. Commenter believes that the PGV's modified permit "should result in reduced risk to the shallow groundwater system" and "will minimize the adverse impacts of the ongoing maintenance and operation of the well field to the surrounding community."

Response: EPA Region 9 notes this comment and has not changed the draft permit in response because Commenter 2 supports the draft permit.