***** NOT FOR PUBLICATION *****

NO. 25557

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

ASSOCIATION OF APARTMENT OWNERS OF THE MILOWAI-MAALAEA,
by and through its Board of Directors,
Plaintiff-Appellee,

vs.

SANDHILLS GANG PARTNERS, a Hawaiʻi limited partnership,
Defendant/Cross-Claimant-Appellant,

and

DEPARTMENT OF HEALTH of the State of Hawaiʻi,
Defendant/Cross-Claim Defendant-Appellee.

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 02-1-0109)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Defendant/Cross-claimant-Appellant Sandhills Gang Partners (SGP) appeals from the second circuit court's December 11, 2002 final judgment.[1] As points of error, SGP contends that the circuit court erred when it: (1) granted summary judgment in favor of defendant/cross-claim defendant-appellee Department of Health of the State of Hawaiʻi (DOH); and (2) denied SGP's motion for summary judgment.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we affirm the

[1] The Honorable Joel E. August presided over this matter.

circuit court's grant of summary judgment. Specifically, we hold as follows: (1) the circuit court correctly granted summary judgment as to SGP's claims that the "Underground Injection Control" (UIC) Rules are invalid as applied to SGP, because the circuit court does not have jurisdiction to hear "as applied" challenges to administrative rules actions brought pursuant to Hawai‘i Revised Statutes (HRS) § 91-7 (1993). Puana v. Sun, 69 Haw. 187, 189, 737 P.2d 867, 869 (1987) ("Although HRS § 91-7 does not give the circuit court jurisdiction to hear a challenge to the application of a rule, it clearly does provide for attacks on a rule's validity."); and (2) we affirm the circuit court's grant of summary judgment as to SGP's "facial" challenge to the UIC Rules. SGP's complaint alleges both "facial" and "as applied" challenges to the UIC Rules. Because SGP's opening brief states that "[SGP] does not make a 'facial' attack upon the UIC Rules," SGP has waived any objection to the circuit court's grant of summary judgment as to its claims of facial invalidity. Hawai‘i Rules of Appellate Procedure Rule 28(b)(7) ("Points not argued may be deemed waived."). However, even if this court were to construe SGP's opening brief as contesting the facial validity of the UIC rules, SGP's arguments are without merit. First, Hawai‘i Administrative Rules (HAR) §§ 11-23-12(b), 11-23-13(a)(6), and 11-23-16(d) operate prospectively only. None of the rules applies to wastewater injection that occurred in the

past; instead, the rules require a permit in order to "operate, modify or abandon an injection well or wells." HAR § 11-23-12(b). Put simply, the fact that the Association of Apartment Owners of the Milowai-Maalaea (AOAOMM) was able to inject wastewater without a permit between 1979 and 1984 does not authorize AOAOMM to inject wastewater indefinitely without a permit. Second, these administrative rules did not exceed the Department of Health's regulatory authority. See HRS chapter 340. Therefore,

IT IS HEREBY ORDERED that the circuit court's December 11, 2002 final judgment is affirmed.

DATED: Honolulu, Hawai'i, February 17, 2005.

On the briefs:

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for defendant/cross-
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Sandhills Gang Partners

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