

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

K. Taniguchi, Ltd.

Hilo, Hawaii

Proceedings under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. § 300h-2(c)

DOCKET NO. UIC-09-2009-0002

**CONSENT AGREEMENT
AND
[PROPOSED] FINAL ORDER**

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order (“CA/FO”) is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the “SDWA” or the “Act”), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, and with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the Director of the Water Division, EPA Region IX, hereby issues, and K. Taniguchi, Ltd. (“Respondent”) hereby agrees to the issuance of, this CA/FO.

Respondent and Complainant (the “Parties”) agree that settlement of the matters at issue without litigation will save time and resources, is in the public interest, is consistent with the provisions and objectives of the Act and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.

II. STIPULATIONS AND FINDINGS

Respondent stipulates, and EPA finds as follows:

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (“UIC”) programs, to prevent underground injection which endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

2. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.
3. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are required to be closed no later than April 5, 2005. "Large capacity cesspools" include "multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides". 40 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.* A "cesspool," is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3
4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.
5. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than \$11,000 for each day of each violation occurring before January 12, 2009 and not more than \$16,000 for each day of each violation occurring after January 12, 2009, up to a maximum penalty of \$177,500, or requiring compliance, or both, against any person who violates the Act or any requirement of an applicable UIC program. In assessing a penalty for such violations, EPA must take into account: (1) the seriousness of the violations; (2) the economic benefit resulting from the violations; (3) the history of such violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
6. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the requirements of the Act to submit information relating to such person's compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).
7. K. Taniguchi, Ltd. is a corporation. Thus, Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.
8. Respondent owns and operates five (5) large capacity cesspools at 50 E. Puainako St., Hilo, HI.
9. The large capacity cesspools referred to in paragraph 8 were not closed by April

5, 2005, as required by 40 C.F.R. § 144.88.

10. Respondent has initiated steps to close the remaining large capacity cesspools and intends to complete closure of all large capacity cesspools referred to in paragraph **8** by **September 1, 2009**.
11. Based on all the foregoing, Respondent has violated the requirement that all large capacity cesspools be closed by April 5, 2005.

III. PROPOSED ORDER

Respondent and EPA agree to issuance of the following, which, upon issuance of the Final Order, shall become effective:

A. Compliance Requirements

12. Prior to closure (i.e. conversion to Individual Wastewater Systems (“IWS”)) of the remaining large capacity cesspools, Respondent shall submit a completed application for conversion of the five large capacity cesspools referred to in paragraph **8** to the Hawai’i Department of Health’s (“DOH”) Safe Drinking Water Branch.
13. Respondent shall properly close (i.e., convert to IWS) the five large capacity cesspools referred to in paragraph **8**, in accordance with 40 C.F.R. § 144.89(a), no later than **September 1, 2009**. The five large capacity cesspools will be considered properly closed when the procedures set forth in paragraph **14** are met.
14. Respondent shall comply with DOH’s LCC conversion and abandonment procedures and techniques and any other requirements of DOH’s UIC program. Respondent shall notify DOH when replacement of the five large capacity cesspools with IWS is complete. The large capacity cesspools will be considered closed when either: (a) DOH issues an Approval to Use after receipt of an IWS final inspection report, “Certification of Construction” for the IWS, and As Built Plans for the IWS; (b) Respondent submits to EPA a completed “Large Capacity Cesspool Backfilling Final Completion Report;” or (c) Respondent submits to EPA the Certification of Construction, the As Built Plans for the IWS, and a certified letter stating that the large capacity cesspools have been closed and converted, if the DOH has not yet issued the Approval to Use. Under option (c), Respondent shall submit the Approval to Use to the EPA immediately upon receipt from the DOH.
15. If Respondent installs a new IWS, installation and operation of the IWS shall comply with DOH’s wastewater requirements.

16. Within ten (10) days of receipt, Respondent shall submit to EPA copies of (1) DOH approval of IWS Plans to replace existing LCCs, and (2) DOH approval to operate the IWS. Documents should be sent to the LCC Project Coordinator, at the address specified in paragraph 41.

B. Penalty

17. To settle this matter, Respondent agrees to pay to the United States an administrative civil penalty of **eighty-two thousand dollars (\$82,000)** no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the “due date”).
18. The administrative civil penalty referred to in paragraph **17** shall be made payable to the Treasurer, United States of America, in accordance with any acceptable method of payment listed in Attachment A “EPA Region 9 Collection Information,” which is incorporated by reference as part of this CA/FO.
19. Concurrent with the payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case, via certified mail, to each of the following:

Steven Armsey
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Nicholas Vidargas
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

20. Payment must be received on or before the due date specified in paragraph **17**.
21. If the full payment is not received on or before the due date, interest shall accrue on any overdue amount from the due date through the date of payment, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date. Respondent shall tender any interest, handling charges, or late penalty payments in the same manner as described above.

22. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 17 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

C. General Provisions

23. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondent waives any right to contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.
24. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
25. Respondent neither admits nor denies the allegations set forth in the Stipulations and Findings set forth in the Consent Agreement.
26. Respondent consents to the issuance of this CA/FO and the conditions specified herein, including payment of the administrative civil penalty in accordance with the terms of this CA/FO. Full payment of the penalty set forth in this Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the SDWA violations specifically alleged in the Consent Agreement.
27. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
28. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.
29. Respondent shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large capacity cesspools referred to in paragraph 8. Such transfer, however, shall have no effect on Respondent's obligation to comply with Section III.B. this CA/FO. Respondent shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in

paragraph 8.

30. Respondent shall not deduct the administrative civil penalty, nor any interest, late penalty payments, or administrative handling fees provided for in this CA/FO from its federal, state, or local income taxes.
31. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.
32. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, nor does it affect Respondent's rights to contest any such action by EPA.
33. This CA/FO is not a permit or modification of a permit. It shall not affect Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder.
34. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.
35. Except as stated in paragraph 34, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.
36. If any event occurs which causes or may cause delays reaching the deadline for closure of the large capacity cesspools, as set forth in Part III.A. of this CA/FO, Respondent or its attorney shall, within 48 hours of the delay or within 48 hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify by telephone the EPA Region 9 LCC Project Coordinator or, in her/his absence, the Manager of the EPA Region 9 Ground Water Office. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

37. If EPA agrees that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for a period of no longer than the delay resulting from the circumstances causing the delay. In such event, EPA shall grant, in writing signed by the Manager of the EPA Region 9 Ground Water Office, the extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.
38. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays will not be excused.
39. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.
40. "Force majeure," for purposes of this Consent Agreement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors, that delays or prevents the performance of any obligation under this CA/FO despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Agreement, financial or business difficulties of Respondent's, and normal inclement weather.
41. Written communications, including any requests for extension of time, shall be sent to the following address:

LCC Project Coordinator
Water Division
Ground Water Office, WTR-9
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Fax: (415) 947-3545

42. The person signing Respondent's submissions shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

EFFECTIVE DATE

43. The effective date of the CA/FO shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For K. Taniguchi, Ltd.:

Barry K. Taniguchi

Date: _____

For the United States Environmental Protection Agency:

Alexis Strauss, Director

Date: _____

Water Division

ATTACHMENT A

In the Matter of K. Taniguchi, Ltd.

DOCKET NO. UIC-09-2009-0002

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency “

CHECK PAYMENTS

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

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42 U.S.C. § 300h-2(c)

DOCKET NO. UIC-09-2009-0002

[PROPOSED]
FINAL ORDER

The United States Environmental Protection Agency Region IX (“EPA”), and K. Taniguchi, Ltd. (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2009-0002) be entered; and
2. Respondent shall pay an administrative civil penalty of eighty-two thousand dollars (\$82,000) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.

Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: _____