



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 9**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

IN THE MATTER OF:	)	Docket No. SDWA-UIC-AOC-2017-0002
	)	
<b>County of Hawaii,</b>	)	<b>[PROPOSED] ADMINISTRATIVE</b>
	)	<b>ORDER ON CONSENT</b>
	)	
Respondent.	)	Proceeding under Sections 1423(c) of the
	)	Safe Drinking Water Act, 42 U.S.C. § 300h-2(c).
	)	
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**I. INTRODUCTION**

1. The United States Environmental Protection Agency (“EPA”) and the County of Hawaii (“Respondent”) voluntarily enter into this Administrative Order on Consent (“Consent Order” or “AOC”). Respondent owns, controls, and operates seven large capacity cesspools (“LCCs”) located in the Pahala and Naalehu communities in Hawaii.

2. EPA alleges that Respondent has violated and continues to violate requirements of the federal Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, and 40 C.F.R. §§ 144.84(b)(2) and 144.88, which required owners or operators of existing large capacity cesspools (“LCCs”) to close them no later than April 5, 2005.

3. This Consent Order directs Respondent to remedy the ongoing violations relating to the continued operation of LCCs in the Pahala and Naalehu communities of Hawaii in accordance with the compliance schedules set forth in this Consent Order.

4. EPA and Respondent recognize that this Consent Order was negotiated in good faith and that Respondent has fully cooperated with the EPA.

## **II. JURISDICTION**

5. EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

6. The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region 9, through EPA Delegation 9-34 (May 11, 1994). This authority has been further delegated to the Director of EPA Region 9's Enforcement Division by Regional Delegation R9-9-34 (Feb. 11, 2013).

7. The Director of the Enforcement Division of EPA Region 9 and Respondent, together referred to as "the Parties," enter into this Consent Order voluntarily and hereby agree to the terms of and to the issuance of this Consent Order. Respondent agrees not to contest EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. This Consent Order constitutes an enforceable agreement between Respondent and EPA.

8. Respondent agrees to undertake and complete all actions required by this Consent Order. Respondent waives the opportunity to receive 30-days notice of this AOC, and to request a hearing on or to appeal this AOC under sections 1423(c)(3)(A) and 1423(c)(6) of the SDWA, 42 U.S.C. §§ 300h-2(c)(3)(A) and 300h-2(c)(6).

## **III. PARTIES BOUND**

9. This AOC shall bind Respondent and its officials, officers, directors, agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

10. The undersigned signatory for Respondent certifies that he or she is authorized to execute this Consent Order and legally bind the Respondent.

## **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. Pursuant to Part C of the Act, 42 U.S.C. § 300h through 300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control ("UIC") programs to

prevent underground injection that endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

12. “Underground injection” means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

13. “Well injection” means the subsurface emplacement of fluids through a well. 40 C.F.R. § 144.3.

14. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined in 40 C.F.R. § 144.3. “Large capacity cesspools” (“LCCs”) 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). LCCs do not include single family residential cesspools or non-residential cesspools that receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

15. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R. § 144.80(e).

16. Class V UIC injection wells are considered a “facility or activity” subject to regulation under the UIC program. 40 C.F.R. § 144.3.

17. “Owner or operator” means the owner or operator of any “facility or activity” subject to regulation under the UIC program. 40 C.F.R. § 144.3.

18. The “owner or operator” of a Class V UIC well “must comply with Federal UIC requirements in 40 C.F.R. parts 144 through 147,” and must also “comply with any other measures required by States or an EPA Regional Office UIC Program to protect [underground sources of drinking water].” 40 C.F.R. § 144.82.

19. Owners or operators of existing LCCs were required to have closed those LCCs no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

20. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 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.

21. Since at least April 30, 2010, Respondent has owned and operated two cesspools that serve the Pahala Community (i.e., community cesspools) on Tax Map Key parcels 3-9-6-016-041 and 3-9-6-002-024 (“Pahala Community Cesspools”). Respondent is an “owner or operator” of those cesspools as that term is defined at 40 C.F.R. § 144.3.

22. Since at least April 30, 2010, Respondent has owned and operated three community cesspools located in the Naalehu Community, two of which are located on Tax Map Key parcels 3-9-5-024-011 and 3-9-5-024-001, respectively, and the third of which is situated between Tax Map Key parcels 3-9-5-024-010 and 3-9-5-024-009 (“Naalehu Community Cesspools”). Respondent is an “owner or operator” of those cesspools as that term is defined at 40 C.F.R. § 144.3.

23. Since at least July 31, 1985, Respondent has owned two cesspools serving the Pahala Elderly Apartments, located on Tax Map Key parcel 3-9-6-017-038 (“Pahala Elderly Apartments Cesspools”). Respondent is an “owner” of those cesspools as that term is defined at 40 C.F.R. § 144.3.

24. EPA alleges that each of the cesspools referred to in Paragraphs 21, 22, and 23, at all times relevant to this Consent Order, served multiple dwellings, and thus each is considered an LCC pursuant to 40 C.F.R. § 144.81(2).

25. Respondent failed to close the LCCs referenced in Paragraph 23 by April 5, 2005, as required by 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1). In addition, Respondent failed to close the LCCs referenced in Paragraphs 21 and 22 by April 30, 2010.

26. EPA therefore alleges that Respondent is in continuing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

27. Pursuant to section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), EPA may issue an order requiring compliance against any person who violates the SDWA or any requirement of an applicable UIC program.

**V. COMPLIANCE PROVISIONS**

28. Based on the foregoing findings and pursuant to EPA's authority under section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), Respondent agrees and is hereby ORDERED to complete the following work:

**A. Pahala Community Cesspool Closure Project**

29. Respondent shall take appropriate measures to fully and properly comply with the SDWA with respect to the Pahala Community Cesspools identified in Paragraph 21, including constructing a secondary wastewater treatment facility to serve the Pahala community ("Pahala Wastewater Treatment Facility"), closing the Pahala Community Cesspools, and replacing and expanding the wastewater collection system serving Pahala Community. As soon as practicable, but no later than the deadlines specified herein, Respondent shall complete the following milestones to achieve compliance with the SDWA:

- a. By August 27, 2017, complete a Phase 1 Environmental Site Assessment ("ESA") and Preliminary Engineering Report. If required, a Phase 2 ESA shall be completed by May 18, 2018;
- b. By December 15, 2017, hold initial public meeting with affected community;
- c. By July 5, 2018, acquire land for Pahala Wastewater Treatment Facility;
- d. By September 11, 2018, complete Environmental Information Document ("EID") for Pahala Wastewater Treatment Facility and submit EID to EPA;
- e. By May 24, 2019, complete design of new collection system;
- f. By September 18, 2019, complete design of Pahala Wastewater Treatment Facility. The Pahala Wastewater Treatment Facility shall be designed in accordance with good engineering practices and capable of servicing all residential properties currently connected to the Pahala

Community Cesspools, plus a minimum of sixty-five (65) additional properties, to be identified by Respondent. Design will be considered complete when Respondent receives approval from DOH to begin construction;

g. By May 20, 2021, complete construction of the Pahala Wastewater Treatment Facility in accordance with Paragraph 36 of this Consent Order.

h. By June 30, 2021, connect the existing wastewater collection system to the Pahala Wastewater Treatment Facility, and properly close (i.e., “abandon” as that term is defined by the Hawaii Department of Health (“DOH”) the Pahala Community Cesspools in accordance with Paragraph 37 of this Consent Order and 40 C.F.R. § 144.89. The Pahala Wastewater Treatment System shall be fully operational and capable of treating all wastes collected via the existing wastewater collection system by this date.

i. By December 16, 2021, replace the wastewater collection system serving the properties currently connected to the Pahala Community Cesspools and connect the new collection system to the Pahala Wastewater Treatment Facility. A minimum of sixty-five (65) additional properties shall be made accessible to the wastewater collection system in accordance with and as that term is defined in Chapter 21 of the Hawaii County Code. All properties that are thus made accessible to the wastewater collection system and that are used for human occupancy, employment, recreation, or other purposes will be required to connect to the wastewater collection system by no later than January 25, 2022. Respondent shall take all feasible and appropriate actions to ensure that all such properties are connected by that date.

30. Respondent has developed the Pahala Compliance Plan, included as Attachment A to this Consent Order, which includes a description of, and schedule for activities necessary to carry out the work required by Paragraph 29 (a) through (i). Respondent shall implement the Pahala Compliance Plan in accordance with the deadlines specified in this Consent Order.

**B. Naalehu Community Cesspool Closure Project**

31. Respondent shall take appropriate measures to fully and properly comply with the SDWA with respect to the Naalehu Community Cesspools including constructing a secondary wastewater treatment facility to serve the Naalehu community (“Naalehu Wastewater Treatment Facility”), closing the Naalehu Community Cesspools identified in Paragraph 22, and replacing and expanding the existing wastewater collection system serving Naalehu Community. As soon as practicable, but no later than the deadlines specified herein, Respondent shall complete the following milestones to achieve compliance with the SDWA:

a. By January 4, 2018, complete Phase 1 ESA. The need to perform a Phase 2 ESA based on information discovered during Phase 1 shall be considered a *force majeure* event, as defined in Paragraph 50 of this Consent Order. If a Phase 2 ESA is required, the County shall notify EPA of any anticipated delay in compliance with the requirements of this Consent Order following the procedures specified in Paragraph 51 of this Consent Order, and shall diligently and expeditiously pursue its completion. Upon notification of anticipated delay, EPA may approve in writing an extension of deadlines included in this Consent Order that are affected by the delay in accordance with Paragraph 52 of this Consent Order.

b. By May 28, 2018, hold initial public meeting with affected community;

c. By June 27, 2018, acquire land for Naalehu Wastewater Treatment Facility;

d. By October 25, 2018, complete Preliminary Engineering Report;

e. By October 5, 2019, complete Environmental Assessment for Naalehu Wastewater Treatment Facility in accordance with H.R.S. Chapter 343;

f. By June 28, 2020, complete design of Naalehu Wastewater Treatment Facility. The Naalehu Wastewater Treatment Facility shall be designed in accordance with good engineering practices and capable of servicing all residential properties currently connected to the three Naalehu Community Cesspools, plus a minimum of thirty (30) additional properties, to be identified by

Respondent. Design will be considered complete when Respondent receives approval from DOH to begin construction;

g. By July 21, 2020, complete design of new collection system;

h. By February 28, 2022, complete construction of the Naalehu Wastewater Treatment Facility in accordance with Paragraph 36 of this Consent Order.

i. By April 17, 2022, connect the existing wastewater collection system to the Naalehu Wastewater Treatment Facility, and properly close (i.e., “abandon” as that term is defined by DOH) the Naalehu Community Cesspools in accordance with Paragraph 37 of this Consent Order and 40 C.F.R. § 144.89. The Naalehu Wastewater Treatment System shall be fully operational and capable of treating all wastes collected via the existing wastewater collection system by this date.

j. By September 30, 2022, replace the wastewater collection system serving the properties currently connected to the Naalehu Community Cesspools, and connect the new collection system to the Naalehu Wastewater Treatment Facility. A minimum of thirty (30) additional properties shall be made accessible to the wastewater collection system in accordance with and as that term is defined in Chapter 21 of the Hawaii County Code. All properties that are thus made accessible to the wastewater collection system and that are used for human occupancy, employment, recreation, or other purposes will be required to connect to the wastewater collection system by no later than November 29, 2022. Respondent shall take all feasible and appropriate actions to ensure that all such properties are connected by that date.

32. Respondent has developed the Naalehu Compliance Plan, included as Attachment B to this Consent Order, which includes a description of, and schedule for activities necessary to carry out the work required by Paragraph 31 (a) through (j). Respondent shall implement the Naalehu Compliance Plan in accordance with the deadlines specified in this Consent Order.

**C. Pahala Elderly Apartments Cesspool Replacement Project**

33. Respondent shall take appropriate measures to fully and properly comply with the SDWA with respect to the Pahala Elderly Apartments Community Cesspools described in Paragraph 23, including



replacing the Pahala Elderly Apartments Cesspools with one or more individual wastewater systems (“IWSs”) that comply with DOH requirements as soon as practicable, but by no later than September 28, 2018. Also by that date, Respondent shall properly close (i.e., “abandon” as that term is defined by DOH) the Pahala Elderly Apartment Cesspools in accordance with Paragraph 37 of this Consent Order.

34. Respondent has developed the Pahala Elderly Apartments Compliance Plan, included as Attachment C. Respondent shall implement the Pahala Elderly Apartments Compliance Plan in accordance with the deadlines specified in this Consent Order.

**D. General Requirements**

35. Respondent shall inform the EPA in writing if any new information or circumstances cause Respondent to modify any planned actions or schedule for achieving compliance with this Consent Order. Respondent may, where appropriate, petition for an extension of any deadline contained in Paragraph 29 (a) through (i), Paragraph 31 (a) through (j), or Paragraph 33. Any such request should be made according to the procedures set forth in Subsection F of this Consent Order. Modification of any particular deadline shall only become effective upon approval by EPA and shall not affect any other deadlines under this Consent Order not specifically addressed in the approved modification.

36. In complying with Paragraphs 29(e)-(g) and 31(f)-(h) of this Consent Order (design and construction of collection systems and wastewater treatment facilities), Respondent must follow any applicable Hawaii state or local requirements for design, construction, operation, and permitting of such facilities. Construction of the Pahala Wastewater Treatment Facility and the Naalehu Wastewater Treatment Facility shall be considered complete once DOH issues Respondent an approval to operate.

37. In complying with Paragraphs 29(h), 31(i), and 33 of this Consent Order (cesspool closures), Respondent must follow DOH’s well abandonment procedures and techniques and any other requirements of DOH’s UIC program. Respondent shall notify DOH when closure of each LCC is complete. EPA will consider the LCCs to be closed when either (a) DOH issues an Injection Well Cesspool Backfilling Final Completion Report, or (b) Respondent submits to EPA a completed Large Capacity Cesspool Backfilling Final Completion Report.

38. Respondent shall submit to EPA copies of DOH's "Injection Well Cesspool Backfilling Final Completion Report" for each cesspool referenced in this AOC within ten (10) days of receipt from DOH. Documents should be sent to the EPA Region 9 Compliance Officer, and the EPA Region 9 LCC Project Coordinator at the addresses specified in Paragraphs 61 and 62 of this Consent Order.

39. Respondent shall diligently pursue all necessary federal and state permits and approvals, including but not limited to compliance with the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), and the Endangered Species Act ("ESA"), as appropriate.

40. Subject to delays associated with *force majeure* as described in Subsection F, Respondent shall fully implement each requirement of this Consent Order, including meeting the deadlines contained in Paragraph 29 (a) through (h), Paragraph 31(a) through (k), and Paragraph 33. Respondent's failure to fully implement all requirements of this Consent Order in the manner and timeframe required shall be deemed a violation of this Consent Order.

41. Respondent's failure to comply with all of the applicable requirements of the SDWA and 40 C.F.R. Part 144 may subject Respondent to additional enforcement actions, including but not limited to judicial or administrative actions.

42. Where work under this AOC is being performed using federal grant money directly administered by EPA, including funds provided in Congressional Earmark Grant XP-96942401, Respondent shall ensure that the project schedule under such grant is consistent with the requirements and schedules included in this Consent Order.

**E. Stipulated Penalties**

43. If Respondent fails to comply with any provision of this Consent Order, Respondent agrees to pay upon EPA's demand the stipulated penalties set forth in this paragraph unless EPA has excused Respondent's delay according the procedures provided in Subsection F of this Consent Order. Stipulated penalties shall begin to accrue on the date performance is due, and are calculated as follows:

- a. \$150 per day per violation for the first through the thirtieth day of noncompliance;

b. \$300 per day per violation for the thirty-first through the sixtieth day of noncompliance;

c. \$500 per day per violation for the sixty-first day of violation and beyond.

44. Respondent must pay the stipulated penalty within thirty (30) days of receipt of EPA's stipulated penalty demand, according to the process provided in the demand. If any payment is not received within thirty (30) calendar days of being due, interest, handling charges, and late payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11.

45. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent of the obligation to comply with any requirement or deadline of this Consent Order.

46. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in lieu of assessing some or all of the stipulated penalties due under this Consent Order.

47. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties due under this Consent Order.

48. Respondent may pay the stipulated penalty by check (mail or overnight delivery), wire transfer, Automated Clearing House (ACH), or online payment. Payment instructions are available at <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America," and delivered to the following address:

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

49. Respondent shall provide notice of stipulated penalty payments made pursuant to Paragraph 48, accompanied by the title and docket number of this action, to the EPA Region 9 Compliance Officer at the address provided in Paragraph 61 below.

**F. Delays**

50. “*Force majeure*,” for purposes of this Consent Order, is defined as any event arising from causes beyond Respondent’s control, the control of any entity controlled by Respondent, or the control of Respondent’s contractors, which delays or prevents the performance of any obligation under this Consent Order, despite Respondent’s reasonable best efforts to fulfill the obligation. The requirement that Respondent exercise “reasonable best efforts to fulfill the obligation” includes using reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event as it is occurring and/or after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Examples of events that are not *force majeure* include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order, failure to diligently pursue funding source(s) for work to be performed under this Consent Order including federal and state funding sources, or normal inclement weather.

51. Respondent shall notify EPA in writing, within 10 business days, of any event that occurs that causes or is likely to cause delay in compliance with any deadline specified in this Consent Order. The notification should explain whether the delay was caused by *force majeure*, as defined in Paragraph 50, should describe the measures Respondent has taken and/or will take to prevent or minimize the delay, and should specify the timetable by which Respondent intends to implement these measures to ensure compliance with the applicable requirement or deadline. Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not, by itself, extend any deadline or timeframe in this Consent Order.

52. If, upon receiving notice required under Paragraph 51, EPA agrees that the delay or anticipated delay in compliance with this Consent Order has been or will be caused by circumstances that constitute *force majeure* as defined in Paragraph 50, and upon request by Respondent, EPA may extend the applicable compliance deadline. Modification of any particular deadline shall not affect any other deadlines under this Consent Order unless expressly authorized in writing by EPA.

53. Respondent has a burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by *force majeure*, that the duration of the delay was, or will be warranted under the circumstances, that Respondent exercised or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this subsection.

54. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Order has been or will be caused by *force majeure*, EPA will notify Respondent in writing of EPA's decision and any delays will not be excused. EPA may demand stipulated penalties for unexcused delay, as set forth in Subsection E.

## **VI. REPORTING REQUIREMENTS**

55. Semiannual Reports. Respondent shall submit compliance reports to the EPA Region 9 Compliance Officer and the EPA Region 9 LCC Project Coordinator twice per year, with the first report (covering the period January 1, 2017 through June 30, 2017) due on July 3, 2017, and the second report due on January 1, 2018. Subsequent reports shall be due on the first business day following each six-month period thereafter. Each compliance report shall discuss Respondent's progress toward meeting the milestones associated with each of the three projects identified in this AOC (the Pahala Community Cesspool closure project, the Naalehu Community Cesspool closure project, and the Pahala Elderly Apartments Cesspool closure project). Upon notification to Respondent, EPA may require additional status reports, or fewer status reports, and/or request additional documentation to support the compliance reports for purpose of documenting compliance with this AOC. Respondent shall continue to submit semiannual compliance reports until this AOC has been terminated pursuant to the terms of Section XIV (Termination) of this Consent Order.

56. Each compliance report must be accompanied by a certification from Respondent's authorized representative that Respondent has met each milestone identified in this AOC that falls within the preceding quarter, or, if a milestone was missed, the compliance report must describe why that milestone was missed and the date certain by which it will be met.

57. Quarterly Meetings. Respondent must convene quarterly meetings (by teleconference or at a centralized meeting location) with EPA to discuss Respondent's progress in complying with the requirements and schedules of this Consent Order. Respondent shall be responsible for scheduling meetings required under this paragraph to occur no later than twenty (20) days after the last day of every calendar quarter (i.e., by April 20th for the period January through March, by July 20th for the period April through June, by October 20th for the period July through September, and by January 20th for the period October through December). Respondent shall provide the EPA Compliance Officer and the EPA LCC Coordinator with notice of the proposed meeting date at the addresses listed in Paragraphs 61 and 62 of this Consent Order at least fifteen (15) days in advance of the proposed meeting. The first quarterly meeting shall take place no later than July 20, 2017.

## **VII. SUBMISSIONS AND NOTIFICATIONS**

58. All information and documents submitted pursuant to this Consent Order shall be signed by a duly authorized representative of the County of Hawaii.

59. The person signing Respondent's submissions under this Consent Order 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 information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that 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.*

60. Submissions by Respondent shall be deemed made on the date they are sent electronically, or on the date postmarked if sent by U.S. mail. Electronic submissions are preferred.

61. All submissions made pursuant to this Consent Order shall be sent to the EPA Region 9 Compliance Officer at the following address:

Mr. Jelani Shareem  
U.S. EPA Region 9  
SDWA/FIFRA Enforcement Office (ENF 3-3)  
75 Hawthorne Street  
San Francisco, CA 94105  
[shareem.jelani@epa.gov](mailto:shareem.jelani@epa.gov)

62. Where the Consent Order so specifies, submissions shall also be sent to the EPA Region 9 LCC Project Coordinator, at the following address:

Ms. Kate Rao  
U.S. EPA Region 9  
Drinking Water Protection Section (WTR 3-2)  
75 Hawthorne Street  
San Francisco, CA 94105  
[rao.kate@epa.gov](mailto:rao.kate@epa.gov)

#### **VIII. RECORD PRESERVATION**

63. Until five (5) years after termination of this Consent Order, the Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this Consent Order. Until five years after termination of this Consent Order, the Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this Consent Order.

#### **IX. SCOPE OF CONSENT ORDER**

64. This Consent Order is not and shall not be construed to be a permit under the SDWA, nor shall it in any way relieve or affect Respondent's obligations under the SDWA, or any other applicable federal or State laws, regulations, or permits. Compliance with this Consent Order shall not be a defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

65. Issuance of this Consent Order is not an election by EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek

penalties, fines, or other appropriate relief under the SDWA. EPA reserves all available legal and equitable rights and remedies to enforce any violation cited in this Consent Order, and the right to seek recovery of any costs and attorney fees incurred by EPA in any actions against Respondent for non-compliance with this Consent Order.

66. This Consent Order shall in no way affect the rights of EPA or the United States against any person not a party hereto.

#### **X. WAIVER**

67. Respondent waives any and all remedies, claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of the Consent Order under the Administrative Procedures Act. 5 U.S.C. §§ 701-708.

#### **XI. INTEGRATION**

68. This Consent Order, and any schedules, documents, plans, etc. that will be developed pursuant to this Consent Order and become incorporated into this Consent Order, constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understanding relating to the settlement other than those expressly contained in this Consent Order.

#### **XII. SEVERABILITY**

69. The provisions of this Consent Order shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

#### **XIII. MODIFICATIONS OF CONSENT ORDER**

70. Modification of this Consent Order including any plans or schedules developed pursuant thereto shall be in writing and shall take effect only when agreed to in writing by both Parties.



Any agreed upon Modification may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute the Modification.

#### **XIV. TERMINATION**

71. Upon completing the requirements set forth in Section V of this Consent Order, including any Modifications thereto, Respondent shall submit a final written certification of completion documenting the actions taken and that Respondent has complied with the requirements of this Consent Order. Respondent's final written certification of completion shall comply with the requirements set forth above in Paragraph 56. This Consent Order shall terminate when EPA issues a written approval of Respondent's written certification that Respondent has fully completed all work required under this Consent Order.

#### **XV. PUBLIC NOTICE**

72. EPA's consent to this Consent Order is subject to the requirements of section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), that EPA provide public notice of, and reasonable opportunity to comment on, any proposed Consent Order. EPA will publicly notice this Consent Order and provide the opportunity to the public to comment for thirty (30) days prior to it becoming effective pursuant to Paragraph 73. EPA reserves the right to withdraw or seek modification to this Consent Order in response to public comments on the proposed Order. In such case, Respondent will have no obligations under this Consent Order unless and until a revised Consent Order is agreed upon by the Parties and finalized by EPA. Until such time, EPA may pursue any and all enforcement options provided by law.

#### **XVI. EFFECTIVE DATE**

73. This Consent Order shall become effective no sooner than the end of the 30-day comment period after signature by both EPA and Respondent, in accordance with Section XV, and upon written notice to the Respondent identifying the Effective Date of the Order.

IT IS SO AGREED AND ORDERED:

For the County of Hawaii:

Mayor Harry Kim “/s/”  
Mayor Harry Kim  
Mayor, County of Hawai'i  
25 Aupuni Street  
Hilo, HI 96720

May 31, 2017  
Date

For U.S. Environmental Protection Agency, Region 9:

Claire Trombadore “/s/” for  
Kathleen H. Johnson  
Director, Enforcement Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

June 22, 2017  
Date