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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2017-0003
)

12 Maui Varieties Investments, Inc.)
)

13 Respondent.)

CONSENT AGREEMENT
AND

14 Proceedings under Sections 1423(c) of the)
15 Safe Drinking Water Act,)
16 42 U.S.C. § 300h-2(c).)
)

[PROPOSED] FINAL ORDER

17 _____
18 **CONSENT AGREEMENT**

19 I. **AUTHORITIES AND PARTIES**

20 1. The United States Environmental Protection Agency Region IX (“EPA”) and
21 Maui Varieties Investments, Inc. (“Respondent”) (collectively the “Parties”) agree to settle this
22 matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”), which
23 commences this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).
24 Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final
25 order by the Regional Judicial Officer.

In re Maui Varieties Investments, Inc.

1 10. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
2 in 40 C.F.R. § 144.3.

3 11. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or
4 regional cesspools, or other devices that receive sanitary wastes containing human excreta, which
5 have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do not
6 include single-family residential cesspools or non-residential cesspools that receive solely
7 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

8 12. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
9 § 144.80(e).

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

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

14 15. The “owner or operator” of a Class V UIC well “must comply with federal UIC
15 requirements set forth at 40 C.F.R. Parts 144 through 147,” and must also “comply with any
16 other measures required by States or an EPA Regional Office UIC Program to protect
17 [underground sources of drinking water].” 40 C.F.R. § 144.82.

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

20 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
21 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
22 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or
23 both, against any person who violates the SDWA or any requirement of an applicable UIC
24 program.
25

III. ALLEGATIONS

1
2 18. Respondent is a corporation and thus qualifies as a “person” within the meaning
3 of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

4 19. Since at least April 5, 2005, Respondent has owned and operated the HouseMart
5 Ace Hardware store in Na‘alehu Hawaii (“Na‘alehu Store”), located at 95-5656 Mamalahoa
6 Highway, at the intersection of Mamalahoa Highway and Ka‘alaiki Road. Respondent also owns
7 several buildings located on an adjacent lot, including a multi-tenant office building, three small
8 single-tenant buildings, and two residential buildings.

9 20. Since at least April 5, 2005, there have been two cesspools at this location
10 receiving sanitary waste from the Na‘alehu Store and adjacent buildings.

11 21. Since at least April 5, 2005, Respondent has owned and operated the HouseMart
12 Ace Hardware Store located at 67-1149 Mamalahoa Highway at the intersection of Mamalahoa
13 Highway and Pukalani Road in Kamuela, Hawaii (“Kamuela Store”).

14 22. Since at least April 5, 2005, there has been one cesspool at this location receiving
15 sanitary waste from the Kamuela Store.

16 23. Since at least April 5, 2005, Respondent has owned the site located at 199
17 Kalanikoa Street in Hilo, Hawaii, and has leased the site to its tenant, Del’s Feed and Farm
18 Supply Store.

19 24. Since at least April 5, 2005, there has been one cesspool at this location receiving
20 sanitary waste from the Del’s Feed and Farm Supply Store.

21 25. Since at least April 5, 2005, Respondent has been the “owner or operator” of each
22 of the four cesspools referred to in Paragraphs 20, 22, and 24, within the meaning of 40 C.F.R.
23 § 144.3.
24
25

1 Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty of \$134,000 in
2 accordance with Section IV.C of this CA/FO, shall constitute full settlement of Respondent's
3 liability for federal civil claims for the SDWA violations specifically identified in this CA/FO.

4 31. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
5 officers, directors, agents, servants, authorized representatives, employees, and successors or
6 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
7 acting under, through or for Respondent shall not excuse any failure of Respondent to fully
8 perform its obligations under this CA/FO.

9 32. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
10 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
11 except with respect to those claims that have been specifically identified pursuant to Paragraph
12 27 above.

13 33. This CA/FO is not a permit or modification of a permit, and does not affect
14 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
15 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
16 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
17 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
18 except as specifically set forth herein.

19 34. EPA reserves any and all legal and equitable remedies available to enforce this
20 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
21 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO
22 shall be deemed a violation of applicable provisions of the SDWA.

23 35. Unless otherwise specified, the Parties shall each bear their own costs and
24 attorneys' fees incurred in this proceeding.
25

1 36. This CA/FO may be executed and transmitted by facsimile, email or other
2 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
3 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
4 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
5 shall remain in full force and effect.

6 37. The undersigned representative of each party certifies that he or she is duly and
7 fully authorized to enter into and ratify this CA/FO.

8 B. Compliance Requirements

9 38. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and
10 consistent with the timeframes set forth below, Respondent shall:

11 a. Within six (6) months of the Effective Date of this CA/FO, close the two
12 LCCs located at the Na'alehu Store in accordance with 40 C.F.R.
13 §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable
14 requirements, including all Hawaii Department of Health (“HDOH”) closure,
15 conversion, and/or replacement requirements. Respondent shall install one or
16 more new Individual Wastewater Systems (“IWSs”) at this location.
17 Installation and operation of the IWS(s) shall comply with all applicable
18 HDOH requirements.

19 b. Within twelve (12) months of the Effective Date of this CA/FO, close the
20 LCC located at the Del’s Feed and Farm Supply Store by connecting to the
21 County of Hawaii sewer system. Respondent shall diligently pursue any
22 approvals necessary to effect closure of the LCC. Respondent shall close the
23 LCC in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a),
24 and all other applicable requirements, including all Hawaii Department of
25

1 Health (“HDOH”) closure, conversion, and/or replacement requirements.

2 c. Close the LCC located at the Kamuela Store by connecting to the local
3 wastewater utility known as the Waimea Wastewater Company, Inc.
4 (“WWCI”). Closure shall be completed within six (6) months of receiving
5 notice of approval from the Hawaii Public Utilities Commission
6 (“Commission”) to extend the service territory of WWCI to include the
7 Kamuela Store property. Respondent represents that a complete application to
8 thus extend the service territory is currently before the Commission and that
9 Respondent shall diligently pursue any additional approvals necessary to
10 effect closure of the LCC. Notwithstanding the foregoing, Respondent shall
11 ensure closure of the LCC at the Kamuela Store no later than eighteen (18)
12 months after the Effective Date of this CA/FO. Respondent shall close the
13 LCC in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a),
14 and all other applicable requirements, including all HDOH closure,
15 conversion, and/or replacement requirements.
16

17 d. Within forty-five (45) days of closure of each LCC, Respondent shall submit
18 to EPA a copy of the Backfill Closure Report(s) for the cesspool(s). For the
19 Na‘alehu Store, Respondent shall also submit a copy of HDOH’s approval to
20 operate any IWSs that are installed at that location. For the Kamuela Store and
21 Del’s Feed and Farm Supply Store, in addition to the Backfill Closure Report,
22 Respondent shall submit documentation confirming that the property has been
23 successfully connected to a wastewater utility system.
24
25

1 C. Penalty

2 39. Respondent agrees to the assessment of a civil penalty in the amount of One-
3 hundred and thirty-four thousand dollars (\$134,000).

4 40. Respondent shall pay the assessed penalty no later than thirty (30) days from the
5 Effective Date of this CA/FO.

6 41. Respondent may pay the penalty by check (mail or overnight delivery), wire
7 transfer, automated clearing house, or online payment. Payment instructions are available at:
8 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
9 check must be payable to the order of "Treasurer, United States of America" and delivered to the
10 following address:

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

15 42. Respondent must provide a letter with evidence of the payment made pursuant to
16 Paragraphs 40 and 41 above, accompanied by the title and docket number of this action, to the
17 EPA Region IX Regional Hearing Clerk, the EPA Region IX Enforcement Division Compliance
18 Officer, and the EPA Region IX Office of Regional Counsel attorney, via United States mail, at
19 the following addresses:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency
22 Region IX - Office of Regional Counsel
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

23 Jelani Shareem, Enforcement Officer
24 U.S. Environmental Protection Agency
25 Region IX - Enforcement Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

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2 Tessa Berman, Assistant Regional Counsel
3 U.S. Environmental Protection Agency
4 Region IX – Office of Regional Counsel
5 75 Hawthorne Street (ORC-3-4)
6 San Francisco, CA 94105

7 43. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
8 interest, penalty charges, and administrative costs will be assessed against the outstanding
9 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
10 penalty by the deadline specified in Paragraph 40.

- 11 a. Interest on delinquent penalties will be assessed per 40 C.F.R. § 13.11(a)(1) at an
12 annual rate that is equal to the rate of current value of funds to the United States
13 Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published
14 by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal
15 Requirements Manual Bulletins.
- 16 b. A penalty charge will be assessed on all debts delinquent beyond ninety days. The
17 penalty charge will be at a rate of 6% per annum and will be assessed monthly per
18 40 C.F.R. § 13.11(c).
- 19 c. In addition, administrative costs for handling and collecting Respondent's
20 overdue debt will be based on either actual or average cost incurred, and will
21 include both direct and indirect costs, as provided in 40 C.F.R. § 13.11(b).

22 44. Failure to pay any civil administrative penalty by the deadline may also lead to
23 any or all of the following actions:

- 24 a. The debt being referred to a credit reporting agency, a collection agency, or to the
25 Department of Justice for filing of a collection action in the appropriate United

1 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
2 collection action, the validity, amount, and appropriateness of the assessed
3 penalty and of this CA/FO shall not be subject to review.

4 b. The department or agency to which this matter is referred (e.g., the Department of
5 Justice, the Internal Revenue Service) may assess administrative costs for
6 handling and collecting Respondent's overdue debt in addition to EPA's
7 administrative costs.

8 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii)
9 suspend or disqualify Respondent from doing business with EPA or engaging in
10 programs EPA sponsors or funds. 40 C.F.R. § 13.17.

11 45. Respondent shall tender any interest, handling charges, late penalty payments, and
12 stipulated penalties in the same manner as described in Paragraphs 41 and 42.

13
14 D. Stipulated Penalties

15 46. Respondent shall pay stipulated penalties in accordance with this Section for any
16 violations of this CA/FO.

17 47. If Respondent fails to meet the LCC closure requirements set forth in Paragraph
18 38, Respondent agrees to pay the following amounts for each cesspool that it fails to properly
19 close on time:

20 a. \$50 for each and every day for the first 90 days that Respondent fails to properly
21 close the cesspool;

22 b. \$100 for each and every day from days 91 through 365 that Respondent fails to
23 properly close the cesspool; and

24 c. \$200 for each and every day from day 366 and afterwards that Respondent fails to
25 properly close the cesspool.

1 48. If Respondent fails to pay the assessed civil administrative penalty specified in
2 Paragraph 39 by the deadline specified in Paragraph 40, Respondent agrees to pay a stipulated
3 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
4 penalty.

5 49. If Respondent fails to timely submit any reports in accordance with the timelines
6 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$50 for each day after
7 the report was due until it submits the report in its entirety.

8 50. Respondent agrees to pay any stipulated penalties within thirty (30) days of
9 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
10 first date of noncompliance, and shall continue to accrue through the date of completion of the
11 delinquent CA/FO requirement. Respondent will use the method of payment specified in
12 Paragraphs 41-42, and agrees to pay interest, handling charges and penalties that accrue for late
13 payment of the stipulated penalty in the same manner as set forth in Paragraphs 43 through 45.

14 51. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
15 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
16 deadlines set forth in this CA/FO.

17 52. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
18 administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties
19 and/or reduce or waive stipulated penalties due under this CA/FO.

20 53. Respondent shall exercise its best efforts to avoid or minimize any delay and any
21 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
22 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the
23 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,
24 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
25

1 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
2 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
3 by which those measures will be implemented. Failure to comply with the notice requirement of
4 this paragraph shall preclude Respondent from asserting any claim of force majeure.

5 54. If EPA agrees in writing that the delay or anticipated delay in compliance with
6 this CA/FO has been or will be caused by circumstances entirely beyond the control of
7 Respondent, the time for performance may be extended for a period of no longer than the delay
8 resulting from the circumstances causing the delay. In such event, EPA will grant in writing an
9 extension of time. Respondent may seek relief under the provisions of this paragraph for any
10 delay in performance resulting from a failure to obtain, or a delay in obtaining, any permit,
11 approval, or easement required to fulfill Respondent's obligations under this CA/FO, provided
12 that Respondent has submitted a timely and complete application and has taken all other actions
13 necessary to obtain such permit or approval. This provision shall apply to regulatory approvals
14 by the Hawaii Public Utilities Commission concerning the expansion of a wastewater utility's
15 service area, and to the granting of easements or other interests in property, both as may be
16 necessary for Respondent to connect to the wastewater utility's system. An extension of the time
17 for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself,
18 extend the time for performing a subsequent obligation.

19
20 55. Any time period covered by an extension of time granted by EPA pursuant to
21 Paragraph 54 to complete any tasks or items required by this CA/FO shall be excluded by EPA
22 in its determination of whether to assess stipulated penalties or how much in stipulated penalties
23 to assess.
24
25

1 E. Notices

2 56. Respondent must send any written communications and/or submittals, including
3 any requests for extensions of time to meet the compliance deadlines, to the following:

4 Jelani Shareem, Enforcement Officer
5 U.S. Environmental Protection Agency
6 Region IX - Enforcement Division
7 75 Hawthorne Street (ENF-3-3)
8 San Francisco, CA 94105
9 shareem.jelani@epa.gov

10 Tessa Berman, Assistant Regional Counsel
11 U.S. Environmental Protection Agency
12 Region IX – Office of Regional Counsel
13 75 Hawthorne Street (ORC-3-4)
14 San Francisco, CA 94105
15 berman.tessa@epa.gov

16 For each written communication and/or submittal, Respondent shall identify the case name, the
17 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
18 submission is being made.

19 57. Respondent shall include the following signed certification made in accordance
20 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

21 *I certify under penalty of law that this document and all attachments
22 were prepared under my direction or supervision in accordance with
23 a system designed to assure that qualified personnel properly gather
24 and evaluate the information submitted. Based on my inquiry of the
25 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 fines and
imprisonment for knowing violations.*

58. EPA must send any written communications to the following addresses:

Guy Kamitaki, President
Maui Varieties Investments, Inc.
2810 Paa Street, Building A
Honolulu, HI 96819

V. EFFECTIVE DATE

59. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to public notice and comment at least 40 days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

60. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the final order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

61. This CA/FO shall terminate only after Respondent has complied with all requirements of the CA/FO, including payment of any interest and late fees, and after EPA has issued a written notice of termination.

FOR THE CONSENTING PARTIES:

MAUI VARIETIES INVESTMENTS, INC.:

Guy Kaitaki “/s/”

Date: August 11, 2017

Guy Kamitaki, President
Maui Varieties Investments, Inc.
2810 Paa St., Building A
Honolulu, HI 96819.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Kathleen H. Johnson “/s/”

Date: August 16, 2017

Kathleen H. Johnson, Director
Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

In re Maui Varieties Investments, Inc.

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2017-0003
5)
6 Maui Varieties Investments, Inc.)
7 Respondent.) **CONSENT AGREEMENT**
8) **AND**
9 Proceedings under Sections 1423(c) of the) **[PROPOSED] FINAL ORDER**
10 Safe Drinking Water Act,)
42 U.S.C. § 300h-2(c).)
_____)

11 **FINAL ORDER**

12 The United States Environmental Protection Agency Region IX (“EPA”), and
13 Respondent Maui Varieties Investments, Inc. (“Respondent”), having entered into the foregoing
14 Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and
15 proposed Final Order regarding the matters alleged therein,
16

17 **IT IS HEREBY ORDERED THAT:**

- 18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
19 2017-0003) be entered;
- 20 2. Respondent pay an administrative civil penalty of \$134,000 dollars to the
21 Treasurer of the United States of America in accordance with the terms set forth in the Consent
22 Agreement;
- 23 3. Respondent close four LCCs in accordance with the terms set forth in Paragraph
24 38 of the Consent Agreement;
- 25

5. Respondent comply with all other requirements of the Consent Agreement.

This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

Date: _____

Regional Judicial Officer, Region IX
U.S. Environmental Protection Agency