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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-09-2019-0057

12 Kamuela Management LLC)
13 79-7393 Hawaii Belt Road)
Kealakekua, Hawaii 96750)

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

14)
15 Respondent.)

16)
17 Proceedings under Sections 1423(c) of the)
Safe Drinking Water Act,)
18 42 U.S.C. §§ 300h-2(c).)

19 **CONSENT AGREEMENT**

20 **I. AUTHORITIES AND PARTIES**

21 1. The United States Environmental Protection Agency (“EPA”), Region IX and
22 Kamuela Management LCC (“Respondent”) (collectively the “Parties”) agree to settle this
23 matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”). This
24 CA/FO commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b),
25 22.18(b)(2) and 22.45(b).

In re Kamuela Management LCC

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

6 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
7 § 144.80(e).

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

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

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

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

18 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
19 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists
20 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

21 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
22 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
23 than \$22,927 per day per violation up to a maximum of \$286,586, or requiring compliance, or
24 both, against any person who violates the SDWA or any requirement of an applicable UIC
25 program.

1 III. ALLEGATIONS

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

4 19. Respondent owns and operates the commercial property identified on the Tax
5 Map Key as 3-7-9-009-021 located at 79-7393 Hawaii Belt Road, Kealakekua, Hawaii
6 (“Facility”).

7 20. Since at least January 1, 2017, Respondent has owned and operated a cesspool
8 located at the Facility receiving sanitary wastewater from a building located onsite that has the
9 capacity to serve twenty or more persons per day.

10 21. The cesspool identified in Paragraph 20 meets the definition of LCC as that term
11 is defined at 40 C.F.R. § 144.81(2).

12 22. Respondent’s failure to close the LCC at the Facility by April 5, 2005 or anytime
13 thereafter constitutes an ongoing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

14 IV. SETTLEMENT TERMS

15 A. General Provisions

16 23. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
17 allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations
18 contained in this CA/FO, (3) consents to the assessment of the penalty and to the specified
19 compliance obligations contained in this CA/FO, and (4) waives any right to contest the
20 allegations or to appeal the final order accompanying this consent agreement. 40 C.F.R. §
21 22.18(b)(2).

22 24. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
23 agreement between the Parties to resolve EPA’s civil claims against Respondent for the alleged
24 violations of the SDWA identified in Section III of this CA/FO. Full compliance with this
25 CA/FO, which includes (1) bringing the LCC at the Facility into compliance with the UIC

1 requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a) and in
2 accordance with Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty
3 of \$30,000 in accordance with Section IV.C of this CA/FO; shall constitute full settlement of
4 Respondent's liability for federal civil claims for the alleged SDWA violations specifically
5 identified in Section III of this CA/FO.

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

11 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
12 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
13 except with respect to the claim described in Paragraph 20 that has been specifically resolved by
14 this CA/FO.

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

21 28. EPA reserves any and all legal and equitable remedies available to enforce this
22 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
23 any actions against Respondent for noncompliance with this CA/FO.

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

1 30. 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 31. 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 32. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the
9 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.B (Compliance
10 Requirements) is restitution or required to come into compliance with law.

11 B. Compliance Requirements

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

14 a. By March 31, 2021, close the LCC located at the Facility in accordance with
15 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable
16 requirements, including all Hawaii Department of Health (“HDOH”) closure,
17 conversion, and/or replacement requirements. If Respondent installs one or
18 more replacement wastewater systems, such as Individual Wastewater
19 Systems (“IWSs”), then installation and operation of such systems shall
20 comply with all HDOH requirements; and

21 b. Within thirty (30) days of closure of the LCC, submit to EPA a description of
22 how the LCC was closed and identify the contractor(s) providing the service
23 as well as copies of the cesspool Backfill Closure Report(s) for the closure of
24 the cesspool. Respondent shall also submit all related approvals, including for
25 any replacement systems, issued by HDOH within thirty (30) days of closure

1 of the LCC, provided that, should HDOH not issue any approval within thirty
2 (30) days of closure, Respondent shall submit HDOH's approval to EPA
3 within fourteen (14) days of receipt of any approval.

4 C. Penalty

5 34. Respondent agrees to the assessment of a civil penalty in the amount of THIRTY
6 THOUSAND DOLLARS (\$30,000) for the violations at the Facility of the SDWA alleged in
7 Section III of this CA/FO.

8 35. Respondent shall pay the assessed penalty no later than thirty (30) days from the
9 Effective Date of this CA/FO.

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

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

20 37. Concurrent with making the payment, Respondent must provide a letter with
21 evidence of the payment made pursuant to Paragraphs 34 and 35, accompanied by the title and
22 docket number of this action, to the EPA Region IX Regional Hearing Clerk, the EPA Region IX
23 Enforcement Division Compliance Officer, and the EPA Region IX Office of Regional Counsel
24 attorney, via United States mail, at the following addresses:

25 Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX - Office of Regional Counsel

1 75 Hawthorne Street (ORC-1)
2 San Francisco, CA 94105

3 Christopher Chen, Enforcement Officer
4 U.S. Environmental Protection Agency
5 Region IX – Enforcement and Compliance Assurance Division
6 75 Hawthorne Street (ENF-3-3)
7 San Francisco, CA 94105

8 Sara Goldsmith, Attorney Advisor
9 U.S. Environmental Protection Agency
10 Region IX – Office of Regional Counsel
11 75 Hawthorne Street (ORC-3)
12 San Francisco, CA 94105

13 38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
14 interest, penalty charges, and administrative costs will be assessed against the outstanding
15 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
16 penalty by the deadline specified in Paragraph 35.

17 39. Interest on delinquent penalties will be assessed at an annual rate that is equal to
18 the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
19 account rate), as prescribed and published by the Secretary of the Treasury in the Federal
20 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).

21 40. A penalty charge will be assessed on all debts more than 90 days delinquent. The
22 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §
23 13.11(c).

24 41. In addition, administrative costs for handling and collecting Respondent's
25 overdue debt will be based on either actual or average cost incurred, and will include both direct
and indirect costs. 40 C.F.R. § 13.11(b).

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

- a. The debt being referred to a credit reporting agency, a collection agency, or to

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

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

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

12 43. Respondent shall tender any interest, handling charges, late penalty payments, and
13 stipulated penalties in the same manner as described in Paragraphs 36 and 37.

14 D. Stipulated Penalties

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

17 45. If Respondent fails to pay the assessed civil administrative penalty specified in
18 Section IV.C of this CA/FO by the deadline specified in that section, or fails to meet the
19 compliance deadline for closure of the cesspool at the Facility by the deadline specified in
20 Section IV.B of this CA/FO, unless subject to an approved extension under Paragraph 51,
21 Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$250 per day
22 for each day the Respondent is late in making the penalty payment and/or meeting the closure
23 deadline for the Facility's LCC.

24 46. If Respondent fails to timely submit any reports in accordance with the timelines
25 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after
the report was due until it submits the report in its entirety.

1 47. Respondent agrees to pay any stipulated penalties within thirty (30) days of
2 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
3 first date of noncompliance, and shall continue to accrue through the date of completion of the
4 delinquent CA/FO requirement. Respondent will use the method of payment specified in
5 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for
6 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through
7 42.

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

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

14 E. Force Majeure

15 50. Respondent shall exercise its best efforts to avoid or minimize any delay and any
16 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
17 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the
18 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,
19 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
20 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
21 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
22 by which those measures will be implemented. Failure to comply with the notice requirement of
23 this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

24 51. If EPA agrees in writing that the delay or anticipated delay in compliance with
25 this CA/FO has been or will be caused by circumstances entirely beyond the control of

1 Respondent, the time for performance may be extended for the period of the delay resulting from
2 the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of
3 time. An extension of the time for performing an obligation granted by EPA pursuant to this
4 paragraph shall not, of itself, extend the time for performing a subsequent obligation. EPA also
5 retains discretion to grant extensions for reasons other than those established as *force majeure*
6 events. For instance, Respondent has been in active discussions with the County of Hawaii on
7 obtaining an easement for a replacement wastewater system to be located on a property adjacent
8 to the Facility that is owned by the County of Hawaii. If Respondent experiences or anticipates
9 delay entirely beyond its control in obtaining the easement or other County or State of Hawaii
10 approvals necessary to meet the compliance deadline, EPA may consider such a circumstance as
11 supporting an extension of time for closure of the Facility's LCC under this Paragraph.

12 52. EPA will not impose stipulated penalties for performance of a task during any
13 time period covered by an extension of time for that task granted pursuant to Paragraph 51.

14 F. Notices

15 53. Respondent must send written communications and/or submittals under this
16 CA/FO, including any requests for extensions of time to meet the compliance deadlines, to the
17 following:

18 Christopher Chen, Enforcement Officer
19 U.S. Environmental Protection Agency
20 Region IX – Enforcement and Compliance Assurance Division
21 75 Hawthorne Street (ENF-3-3)
22 San Francisco, CA 94105
23 Chen.Christopher@epa.gov

24 Sara Goldsmith, Attorney Advisor
25 U.S. Environmental Protection Agency
Region IX - Office of Regional Counsel
75 Hawthorne Street (ORC-3)
San Francisco, CA 94105
Goldsmith.Sara@epa.gov

For each written communication and/or submittal, Respondent shall identify the case name, the

1 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
2 submission is being made.

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

5 *I certify under penalty of law that this document and all attachments*
6 *were prepared under my direction or supervision in accordance with*
7 *a system designed to assure that qualified personnel properly gather*
8 *and evaluate the information submitted. Based on my inquiry of the*
9 *person or persons who manage the system, or those persons directly*
10 *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.

11 55. EPA must send any written communications under this CA/FO to the following
12 address:

13 Kamuela Management LLC
14 5381 Kapaka Street
15 Princeville, Hawaii 96722

16 V. EFFECTIVE DATE

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

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

1 FOR THE CONSENTING PARTIES:

2 Kamuela Management LCC:

3

4 Raymond Miller “/s/” _____ Date: _____

5 Raymond Miller
6 Kamuela Management LCC Manager/Owner

6

7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

8 Joel Jones “/s/” for _____ Date: _____

9 Amy C. Miller
10 Director, Enforcement and Compliance Assurance Division
11 Region IX
12 U.S. Environmental Protection Agency
13 75 Hawthorne Street
14 San Francisco, CA 94105

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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-09-2019-0057

5)
6 Kamuela Management LLC)
79-7393 Hawaii Belt Road)
7 Kealakekua, Hawaii 96750)

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

8)
9 Respondent.)

10 Proceedings under Sections 1423(c) of the)
Safe Drinking Water Act,)
11 42 U.S.C. §§ 300h-2(c).)

12 **FINAL ORDER**

13 The United States Environmental Protection Agency Region IX (“EPA”), and the
14 Respondent Kamuela Management LCC (“Respondent”), having entered into the foregoing
15 Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and
16 Final Order regarding the matters alleged therein,

17 IT IS HEREBY ORDERED THAT:

- 18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
19 2019-0057) be entered;
- 20 2. Respondent pay an administrative civil penalty of **\$30,000** dollars to the Treasurer
21 of the United States of America in accordance with the terms set forth in the Consent Agreement;
- 22 3. Respondent close one LCC by March 31, 2021 in accordance with the terms set
23 forth in Paragraph 33 of the Consent Agreement; and
- 24 4. Respondent comply with all other requirements of the Consent Agreement.
- 25

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

4
5 _____ Date: _____

6 Steven L. Jawgiel
7 Regional Judicial Officer, Region IX
8 U.S. Environmental Protection Agency
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