

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION 9**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2020-0057
5)
6 Hawai'i State Public Library System,)
7 Respondent.) **CONSENT AGREEMENT**
8) **AND**
9) **FINAL ORDER**
10 Proceedings under Sections 1423(c) of the Safe)
11 Drinking Water Act, 42 U.S.C. § 300h-2(c).)

12 **CONSENT AGREEMENT**

13 **I. AUTHORITIES AND PARTIES**

14 1. The United States Environmental Protection Agency (“EPA”), Region 9, and the
15 State of Hawai'i, Board of Education, State Library System (“HSPLS” or “Respondent”)
16 (collectively the “Parties”) agree to settle this matter and consent to the filing of this Consent
17 Agreement and Final Order (“CA/FO”). The CA/FO commences and concludes this proceeding
18 in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).

19 2. This is a civil administrative action brought by EPA Region 9 against Respondent
20 pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(c),
21 for violations of the SDWA and the Underground Injection Control (“UIC”) requirements set
22 forth at 40 C.F.R. Part 144.

23 3. Complainant is the Director of the Enforcement and Compliance Assurance Division,
24 EPA Region 9. The Administrator of EPA delegated to the Regional Administrator of EPA
25 Region 9 the authority to bring and settle this action under the SDWA. In turn, the Regional
Administrator further delegated the authority to bring this action and sign a consent agreement
settling this action under the SDWA to the Director of the Enforcement and Compliance
Assurance Division.

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1 4. Respondent is a department of the Hawai'i state government.

2 II. APPLICABLE STATUTES AND REGULATIONS

3 5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has
4 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC
5 programs to prevent underground injection that endangers drinking water sources.

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

8 7. "Well injection" means the subsurface emplacement of fluids through a well. 40
9 C.F.R. § 144.3.

10 8. "Well" means, in relevant part, a dug hole whose depth is greater than the largest
11 surface dimension. 40 C.F.R. § 144.3.

12 9. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined in
13 40 C.F.R. § 144.3.

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

19 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R. §
20 144.80(e).

21 12. Class V UIC injection wells are considered a "facility or activity" subject to
22 regulation under the UIC program. 40 C.F.R. § 144.3.

23 13. "Owner or operator" means the owner or operator of any "facility or activity" subject
24 to regulation under the UIC program. 40 C.F.R. § 144.3.

1 14. The “owner or operator” of a Class V UIC well must comply with Federal UIC
2 requirements in 40 C.F.R. Parts 144 through 147 and must also comply with any other measures
3 required by the owner’s and operator’s State or EPA Regional Office UIC Program to protect
4 underground sources of drinking water. 40 C.F.R. § 144.82.

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

7 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. §
8 147.601, EPA administers the UIC program in the State of Hawai’i. This UIC program consists
9 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

10 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
11 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
12 than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or
13 both, against any person who violates the SDWA or any requirement of an applicable UIC
14 program.

15 III. ALLEGATIONS

16 18. Respondent is a department of the State of Hawai’i and thus falls under the definition
17 of a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and
18 40 C.F.R. § 144.3.

19 19. Respondent operates the Waialua Public Library located at 67 Kealohanui Street,
20 Waialua, on a State-owned parcel of land (TMK (1) 6-7-016:002) on the Island of Oahu (the
21 “Waialua Library Property”), and the Kealakekua Public Library located at 81-6619 Mamalahoa
22 Highway, on a State-owned parcel of land (TMK 3-8-1-012-010) in Kealakekua, on the Island of
23 Hawaii (the “Kealakekua Library Property”). The Waialua Library Property and the Kealakekua
24 Library Property are referred to collectively as “the Properties.”
25

1 20. Respondent has operational control of the Waiialua Library Property pursuant to
2 Governor's Executive Order No. 3395, dated November 14, 1988, and operational control of the
3 Kealahou Library Property pursuant to Governor's Executive Order No. 2677, dated
4 September 18, 1973.

5 21. Since at least November 14, 1988, Respondent has operated at least one (1) LCC
6 located on the Waiialua Library Property that service the Waiialua Public Library's sanitary waste
7 disposal needs.

8 22. Since at least September 18, 1973, Respondent has operated at least one (1) LCC
9 located on the Kealahou Library Property that service the Kealahou Public Library's sanitary
10 waste disposal needs.

11 23. Respondent has yet to close the LCCs located on the Properties.

12 24. Respondent's failure to close the LCCs referenced in Paragraphs 21 and 22 by the
13 regulatory deadline of April 5, 2005 constitutes ongoing violations of 40 C.F.R. §§ 144.84(b)(2)
14 and 144.88.

15 **IV. SETTLEMENT TERMS**

16 **A. GENERAL PROVISIONS**

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

23 26. This CA/FO shall be the entire agreement between the Parties to resolve EPA's civil
24 claims and causes of action alleged under 40 C.F.R. §§ 144.84(b)(2) and 144.88. Full
25

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1 compliance with this CA/FO shall constitute settlement of Respondent's liability for federal civil
2 claims for the SDWA violations identified in Section III of this CA/FO.

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

8 28. Issuance of this CA/FO to Respondent does not in any manner affect the right of EPA
9 to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations
10 of law, except with respect to those claims against Respondent described in Paragraph 26 that
11 have been specifically resolved by this CA/FO.

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

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

21 31. Unless otherwise specified, the Parties shall each bear their own costs and attorneys'
22 fees incurred in this proceeding.

23 32. This CA/FO may be executed and transmitted by facsimile, email or other electronic
24 means, and in multiple counterparts, each of which shall be deemed an original, but all of which
25 shall constitute an instrument. If any portion of this CA/FO is determined to be unenforceable by

1 a competent court or tribunal, the Parties agree that the remaining portions shall remain in full
2 force and effect.

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

5 B. PENALTY

6 34. Respondent agrees to the assessment of a civil penalty in the amount of one-hundred
7 forty-three thousand nine hundred ninety dollars (**\$143,990**) for its failure to close the cesspools
8 identified in Paragraphs 21 and 22 in violation of the SDWA's UIC Program LCC requirements
9 as alleged in Section III of this CA/FO.

10 35. Respondent agrees that it will pay the assessed penalty no later than thirty (30) days
11 from the Effective Date of this CA/FO.

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

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

22 37. Concurrent with making the payment pursuant to this section of the CA/FO,
23 Respondent must provide a letter with evidence of the payment and the title and docket number
24 of this action, to the EPA Region 9 Regional Hearing Clerk, via United States mail, at:

25 Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

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1 Respondent shall also send copies of the letter to the EPA Region 9 Enforcement and
2 Compliance Assurance Division Enforcement Officer and the EPA Region 9 Office of Regional
3 Counsel attorney in accordance with the notice provisions of Section IV.F of this CA/FO.

4 38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
5 penalty charges, and administrative costs will be assessed against the outstanding amount that
6 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
7 deadline specified in Section IV.B of this CA/FO.

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

12 40. A penalty charge will be assessed on all debts more than ninety (90) days delinquent.
13 The penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §
14 13.11(c).

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

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

- 20 a. The debt being referred to a collection agency, a credit reporting agency, or to the
21 Department of Justice for filing of a collection action in the appropriate United
22 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection
23 action, the validity, amount, and appropriateness of the assessed penalty and of
24 this CA/FO shall not be subject to review.

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

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

8 43. Respondent shall tender any interest, handling charges, late penalty payments, and
9 stipulated penalties in the same manner as described in this Section IV.B.

10 C. COMPLIANCE

11 44. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and
12 consistent with the timeframes set forth below, Respondent shall close the LCCs identified in
13 Paragraphs 21 and 22 no later than eighteen (18) months from this CA/FO’s Effective Date as
14 required by and in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all
15 other applicable requirements, including all Hawai’i Department of Health (“HDOH”) closure,
16 conversion, and/or replacement requirements.

17 a. Within ninety (90) days of closure of each of the LCCs, submit to EPA a
18 description of how the LCC was closed and identify the contractor(s) providing
19 the service as well as copies of the cesspool Backfill Closure Report(s) for the
20 closure of the LCC.

21 b. Respondent shall also submit all related approvals, including for any replacement
22 systems, issued by HDOH within ninety (90) days of closure of each LCC,
23 provided that, should HDOH not issue any approval within ninety (90) days of
24 closure, Respondent shall submit HDOH’s approval to EPA within fourteen (14)
25 days of receipt of any approval.

1 c. Respondent may request an extension of this paragraph’s 18-month deadline to
2 close the LCCs identified in Paragraphs 21 and 22 upon written notification to
3 EPA that Respondent’s award of a public procurement contract to close the LCCs
4 has been contested in a bid protest made pursuant to the State of Hawaii’s public
5 procurement laws and that the bid protest is likely to result in a delay of
6 Respondent’s closure of the LCCs in accordance with the requirements of this
7 paragraph. Respondent shall make any such request to EPA in writing within ten
8 (10) business days of the State of Hawaii’s receipt of the bid protest. Extension of
9 this paragraph’s compliance deadline as the result of a bid protest shall only
10 become effective upon approval by EPA and would be contingent upon the State
11 of Hawaii’s good faith efforts to expeditiously resolve the bid protest. Any EPA-
12 approved extension of time of this paragraph’s compliance deadline shall only last
13 as long as the time taken to resolve the bid dispute and award a public
14 procurement contract pursuant to Hawaii’s public procurement laws to close the
15 LCCs.

16 45. Respondent shall perform a compliance audit (“Audit”) in accordance with
17 Paragraphs 47-52 below of its properties in the state of Hawai’i to identify and close all
18 identified LCCs in accordance with Paragraph 49 below.

19 46. The Parties agree that violations reported or otherwise disclosed to EPA and corrected
20 under, and in accordance with, this CA/FO and the applicable provisions of EPA’s Incentives for
21 Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (“Audit Policy”),
22 65 Fed. Reg. 19,618 (Apr. 11, 2000), shall be eligible for 100% mitigation of gravity-based
23 penalties. The Parties further agree that they intend this CA/FO to serve the objectives of, and be
24 interpreted in harmony with, the Audit Policy. In the event of an actual or perceived conflict
25 between the terms of this CA/FO and of the Audit Policy, the Parties agree that the terms of this

1 CA/FO shall prevail in regard to whether or not the criteria set forth in the Audit Policy have
2 been met.

3 47. Respondent shall comply with the following Audit requirements:

4 a. **Choose an Auditor to Conduct LCC Inspections.** No later than 180 calendar
5 days following the Effective Date of this CA/FO, Respondent shall notify EPA in
6 writing of Respondent's choice of a proposed Auditor who has experience with
7 LCCs to conduct LCC inspections required under this CA/FO. Respondent shall
8 provide with the notification a curriculum vitae and list of past cesspool projects
9 performed by the proposed Auditor. Within fifteen (15) calendar days of EPA's
10 receipt of Respondent's notice of its choice of an Auditor, EPA will respond in
11 writing to Respondent's nomination with any questions or concerns with
12 Respondent's choice. If Respondent chooses at its sole discretion to nominate a
13 different Auditor, then Respondent shall have an additional thirty (30) days in
14 which to provide EPA with written notification of Respondent's secondary
15 Auditor choice along with the curriculum vitae and list of past cesspool projects
16 performed by the secondary Auditor.

17 i. Respondent shall ensure that the Auditor: supervises the preparation of
18 and signs the Inspection Completion Reports as required by Paragraph 48
19 of this CA/FO; and prepare and sign the Final LCC Closure Reports as
20 required under Paragraph 50 of this CA/FO.

21 ii. Recordkeeping: Respondent shall include in its written agreement with the
22 Auditor a provision requiring the Auditor to prepare and maintain
23 contemporaneous records when supervising or assisting in the conduct of
24 the Audit. The Auditor's records of the Audit shall be made available to
25 EPA upon request.

1 **b. Develop a List of Target Properties to be Inspected:** No later than 180 calendar
2 days following the Effective Date of this CA/FO, Respondent shall submit for
3 EPA’s approval a list of Target Properties to be inspected pursuant to
4 Subparagraph c of this Paragraph as well as a list of Non-Target Properties that
5 Respondent proposes not to inspect. The following definitions apply:

6 i. Target Properties. Target Properties include all properties owned and/or
7 operated by Respondent in Hawai’i that contain or potentially contain an
8 LCC and are not otherwise excluded as Non-Target Properties. All
9 Properties owned and/or operated by Respondent in the state of Hawai’i
10 shall be treated as Target Properties for purposes of this Audit unless
11 Respondent finds Sufficient Documentation that the property is properly
12 classified as a Non-Target Property pursuant to Subparagraph a.ii of this
13 Paragraph directly below.

14 ii. Non-Target Properties: Non-Target Properties include those that (A) are
15 connected to a sewer system; (B) contain an on-site wastewater treatment
16 facility permitted by HDOH; (C) contain an HDOH-permitted Individual
17 Wastewater System (“IWS”) that is not a cesspool; or (D) are residential
18 properties that contain one or fewer single-family residences or are non-
19 residential properties that have the capacity to serve fewer than 20 persons
20 per day.

21 iii. Sufficient Documentation: Respondent shall rely on Sufficient
22 Documentation that a particular property is a Non-Target Property and does
23 not otherwise contain an LCC. For the purposes of this CA/FO, Sufficient
24 Documentation means:
25

- 1 1. For Properties connected to a sewer: written confirmation of the
2 connection from the county or private sewer operator; building plans
3 documenting the connection to a county or private sewer system; or
4 a sewer bill from the past year.
- 5 2. For properties that contain an on-site wastewater treatment system:
6 an HDOH permit or written documentation from HDOH of approval
7 to operate the wastewater treatment system.
- 8 3. For properties that contain a non-cesspool IWS: an IWS permit from
9 HDOH or written documentation from HDOH showing that the IWS
10 is permitted.
- 11 4. For properties that contain one or fewer single-family residences and
12 non-residential properties that have the capacity to serve fewer than
13 20 persons per day: a Tax Map Key code showing that the property
14 contains one or fewer single-family residences, or a certified
15 statement from Respondent's representative.

16 iv. If EPA disapproves of a Non-Target Property determination for any
17 property and determines the property is instead a Target Property that should
18 be inspected then EPA shall provide its rationale in writing to Respondent
19 within thirty (30) calendar days. Upon receipt of EPA's written Non-Target
20 Property disapproval, Respondent shall reexamine its Non-Target Property
21 determination and provide EPA with a written response within thirty (30)
22 days of receiving EPA's Non-Target Property disapproval that either
23 confirms EPA's Target Property determination or reaffirms Respondent's
24 initial Non-Target Property determination.
25

1 v. Respondent shall, at EPA's request, make available the documentation
2 relied upon for any purposes set forth in this Audit. With the exception of
3 information obtained through databases maintained by a government entity,
4 Respondent shall maintain the relied-upon documentation until the Audit is
5 complete and at least three (3) years after any violations identified have
6 been resolved by formal settlement in accordance with the Audit Policy, 65
7 Fed. Reg. 19,624 and 19,626. Where Respondent obtains information
8 through databases maintained by a government entity, Respondent shall
9 provide EPA with the name of the database and a certified statement from a
10 representative of Respondent documenting when the information was
11 obtained.

12 vi. Each list of Target and Non-Target Properties must be certified by
13 Respondent pursuant to Paragraph 67.

14 c. **Inspect the Target Properties:**

15 i. The Auditor shall inspect each of the Target Properties for the presence of
16 an LCC. Each inspection shall include an on-site visual inspection of the
17 Target Property. Additionally, inspections may include, but are not limited
18 to, a review of property records, permits, water use records, and/or other
19 documentation, and interviews with Respondent's employees, occupants,
20 tenants and/or lessees, as needed to confirm the presence (or absence) and
21 location of an LCC.

22 ii. All work will be in accordance with accepted standards of professional
23 engineering procedures as practiced by members of the local engineering
24 profession currently practicing in Hawai'i under similar conditions.
25

1 iii. Inspection Completion Date. No later than 14 months following
2 Respondent's certification of its final list of Target Properties, all
3 inspections conducted by the Auditor in accordance with this Paragraph
4 must be completed.

5 **48. Inspection Completion Reports: No later than 120 days of the Inspection**
6 **Completion Date**, the Auditor shall sign and submit an Inspection Completion Report to EPA
7 documenting the findings of the Auditor's Target Properties inspections. The Inspection
8 Completion Report shall include:

- 9 a. A description of how the Audit Procedures were followed in completing the
10 Audit.
- 11 b. The number of LCCs located on Target Properties, a description of each LCC,
12 and a description of how the LCC was identified and/or confirmed.
- 13 c. For those Target Properties that were determined not to contain an LCC, a
14 description of how it was determined that the property did not contain an LCC
15 and what, if any, other wastewater treatment system is being used.

16 **49. LCCs Closure and Schedule Plan:**

- 17 a. With the Inspection Completion Report, Respondent shall also submit for EPA's
18 approval an LCC Closure Plan and Schedule. The LCC Closure Plan and
19 Schedule shall provide a schedule for the closure of any identified LCCs as soon
20 as possible, subject to Section F of this CA/FO (Force Majeure). The proposed
21 schedule for closure of the LCCs may incorporate the time it takes to contract for
22 the work, contingent upon Respondent's timely and diligent effort to prepare the
23 competitive bid and award the contract. The LCC Closure Plan and Schedule
24 shall include any contracts awarded to close the identified cesspools.

- 1 b. If EPA disapproves of the LCC Closure Plan and Schedule proposed by
2 Respondent, EPA shall provide its rationale in writing to Respondent within
3 thirty (30) calendar days. Upon receipt of EPA’s disapproval of the LCC Closure
4 Plan and Schedule, Respondent shall provide EPA with a revised LCC Closure
5 Plan and Schedule that addresses EPA’s concerns. Respondent shall provide any
6 Revised LCC Closure Plan and Schedule to EPA by email within thirty (30)
7 calendar days of receiving EPA written disapproval.
- 8 c. Within twelve (12) months of submission of the Inspection Completion Report,
9 Respondent shall either submit construction plans for an IWS to HDOH for
10 approval or apply for a sewer connection.
- 11 d. LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a)
12 and 144.89(a), and all applicable federal, state, and local closure requirements.

13 50. **Final LCC Closure Reports**: Within thirty (30) days of obtaining HDOH approval
14 of the Backfill Closure Report for each identified LCC, the Auditor shall sign and submit a Final
15 LCC Closure Report for that particular LCC briefly describing and documenting completion of
16 the LCC closure steps to EPA that includes, at a minimum, the following:

- 17 a. HDOH permit to operate an IWS or approval to connect to sewer;
18 b. A copy of the approved LCC backfill closure report; and
19 c. A description of how the LCC was closed and identify the contractor(s) providing
20 the service

21 51. The Audit shall not affect EPA’s right to bring a claim or cause of action other than
22 those specified in Section III of this CA/FO, including a claim or cause of action for an LCC
23 violation that could have been, but was not, reported and closed as part of the Audit.

24 52. Respondent shall bear all costs associated with the Audit.

1 D. THIRD-PARTY LIABILITY

2 53. This CA/FO does not alter the rights, obligations, or liabilities of any party other than
3 EPA or Respondent.

4 E. STIPULATED PENALTIES

5 54. If Respondent fails to pay the assessed civil administrative penalty specified in
6 Section IV.B of this CA/FO by the deadline specified in that section, Respondent agrees to pay
7 in addition to the assessed penalty, a stipulated penalty of \$250 per day for each day it is late in
8 making the penalty payment.

9 55. If Respondent fails to meet the compliance deadline for closure of LCCs at the
10 Properties by the deadline specified in Section IV.C of this CA/FO, Respondent agrees to pay a
11 stipulated penalty of \$250 per day for each day Respondent is late in meeting the closure
12 deadline.

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

16 57. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of
17 EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of
18 noncompliance and shall continue to accrue through the date of completion of the delinquent
19 CA/FO requirement. Respondent will use the method of payment specified in Section IV.B of
20 this CA/FO and agree to pay interest, handling charges and penalties that accrue for late payment
21 of the stipulated penalty in the same manner as set forth in Section IV.B of this CA/FO.

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

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

4 F. FORCE MAJEURE

5 60. For purposes of this CA/FO, *force majeure* is defined as any event arising from
6 causes that are beyond the control of Respondent, any entity controlled by Respondent, or
7 Respondent’s contractors, which delays or prevents the performance of any obligation under this
8 CA/FO despite Respondent’s reasonable best efforts to fulfill the obligation. The requirement
9 that Respondent exercise “reasonable best efforts to fulfill the obligation” includes using
10 reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts
11 to address the effects of any such event (a) as it is occurring and (b) after it has occurred to
12 prevent or minimize any resulting delay to the greatest extent possible. Examples of *force*
13 *majeure* events include, but are not limited to, unforeseen environmental, geological, or
14 archaeological conditions; labor or equipment shortage; and delays caused by third-party tenants
15 or landowners. Examples of events that are not *force majeure* include, but are not limited to,
16 increased costs or expenses of any work to be performed under this CA/FO and normal
17 inclement weather.

18 61. If any event occurs that causes or is likely to cause delay in the achievement of any
19 requirement or time frame specified in this CA/FO, Respondent shall notify EPA in writing,
20 within ten (10) business days after learning of such event, of the anticipated length and cause of
21 the delay, whether Respondent believes the delay or anticipated delay constitutes a *force majeure*
22 event, as defined in Paragraph 60, the measures Respondent has taken and/or will take to prevent
23 or minimize the delay, and the timetable by which Respondent intends to implement these
24 measures and achieve the requirement or meet the time frame. Respondent shall adopt all
25 reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this

1 paragraph does not by itself extend the deadline or timeframe for any requirement specified in
2 this CA/FO.

3 62. If, upon receiving the notice required by this section, EPA agrees that the delay or
4 anticipated delay in compliance with this CA/FO has been or will be caused by circumstances
5 that constitute a *force majeure* event as defined in this section, EPA may grant an extension of
6 time for compliance for a period of time no longer than any delay resulting from the
7 circumstances causing the delay or anticipated delay. EPA also retains discretion to grant
8 extensions for reasons other than those established as *force majeure* events.

9 63. Respondent has the burden of demonstrating that the actual or anticipated delay has
10 been or will be caused by a *force majeure* event, that the duration of the delay was or will be
11 warranted under the circumstances, that Respondent exercised or is using its best efforts to avoid
12 and mitigate the effects of the delay or anticipated delay, and that Respondent complied with the
13 requirements of this CA/FO.

14 64. In the event that EPA does not agree that a delay or anticipated delay in achieving
15 compliance with the requirements of this CA/FO has been or will be caused by a *force majeure*
16 event, EPA will notify Respondent in writing of EPA's decision and the delay or anticipated
17 delay will not be excused.

18 G. NOTICES

19 65. Unless otherwise specified elsewhere in this CA/FO, all written communications
20 required by this CA/FO shall be addressed as follows:

21 For EPA:

22 Christopher Chen, Enforcement Officer
23 U.S. Environmental Protection Agency
24 Region 9 – Enforcement and Compliance Division
25 600 Wilshire Blvd Suite 940 (ENF-3-3)
Los Angeles, CA 90017

Alexa Engelman, Attorney Advisor
U.S. Environmental Protection Agency

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1 Region 9 – Office of Regional Counsel
2 75 Hawthorne Street (ORC-2-3)
 San Francisco, CA 94105

3 For Respondent:

4 Stacey A. Aldrich, State Librarian
5 Hawai'i State Public Library System
6 44 Merchant Street
 Honolulu, HI 96813

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

10 66. Respondent shall submit to EPA such additional documents and information as EPA
11 may reasonably request to determine Respondent's compliance with this CA/FO.

12 67. Respondent shall include the following signed certification made in accordance with
13 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

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

24 V. EFFECTIVE DATE

25 68. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to a 30-day public notice
and comment period at least forty (40) days prior to it becoming effective through the issuance of
the final order by EPA Region 9's Regional Judicial Officer.

 69. 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

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1 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
2 Regional Hearing Clerk.

3 FOR THE CONSENTING PARTIES:

4 FOR RESPONDENT HAWAI'I STATE PUBLIC LIBRARY SYSTEM:

5
6 Stacy A. Aldrich "/s/"
7 Stacey A. Aldrich, State Librarian
8 Hawaii State Public Library System

Date: August 14, 2020

1 For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2
3 Amy C. Miller-Bowen “/s/”

Date: August 20, 2020

4 Amy C. Miller-Bowen, Director
5 Enforcement and Compliance Assurance Division
6 U.S. Environmental Protection Agency, Region 9
7

8 Of counsel:

9 Richard Campbell
10 Office of Regional Counsel
11 U.S. Environmental Protection Agency, Region 9
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FINAL ORDER

1
2 It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. UIC-
3 09-2020-0057) be entered and that Respondent shall pay a civil penalty in the amount **\$143,990**
4 in accordance with the terms of this Consent Agreement and Final Order.
5

6
7 Date: _____

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region 9