

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2010 MAR -1 AM 11:01

IN THE MATTER OF

County of Hawaii,
Department of Environmental Management,
Hilo, HI

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

U.S. DISTRICT COURT
REGIONAL HEARING CLERK
DOCKET NO. UIC-09-2010-0001

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

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

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

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

II. STIPULATIONS AND FINDINGS

Respondent stipulates, and EPA finds as follows:

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

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

9. On January 6, 2006, Respondent entered into a Consent Agreement and Final Order ("2006 CA/FO") with EPA requiring Respondent to close the two large capacity cesspools at the Komohana Heights Subdivision by January 1, 2009.
10. Respondent did not close the large capacity cesspools referred to in paragraph 8 by April 5, 2005 as required by 40 C.F.R. § 144.88, or by January 1, 2009, as set forth in the 2006 CA/FO.
11. Respondent submitted proof of closure of the two Komohana Heights LCCs on December 18, 2009.
12. Based on all the foregoing, Respondent has violated the requirement that all large capacity cesspools be closed by April 5, 2005, in violation of 40 C.F.R. § 144.88.

III. PROPOSED ORDER

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

A. Penalty

13. To account for the violations set forth in the Stipulations and Findings, Respondent agree to pay to the United States an administrative civil penalty of **forty thousand and seven hundred dollars (\$40,700)**, no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the "due date").
14. The administrative civil penalty referred to in paragraph 13 shall be made payable to the Treasurer, United States of America in accordance with any acceptable method of payment listed in Attachment A "EPA Region 9 Collection Information," which is incorporated by reference as part of this CA/FO.
15. Concurrent with the payment of any penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case, via certified mail to each of the following:

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

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

16. Payment must be received on or before the due date specified in paragraph 13.
17. If the full payment is not received on or before the due date, interest shall accrue on any overdue amount from the due date through the date of payment, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date. Respondent shall tender any interest, handling charges, or late penalty payments in the same manner as described above.
18. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 13 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

B. General Provisions

19. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondent waives any right to contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.
20. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
21. Respondent consents to the issuance of this CA/FO and the conditions specified herein, including payment of the administrative civil penalty in accordance with the terms of this CA/FO. Full payment of the penalty set forth in this CA/FO shall only resolve Respondent's liability for federal civil penalties for the Safe Drinking Water Act violations specifically alleged in the Consent Agreement.


22. This CA/FO does not waive, suspend or modify any requirements of the 2006 CA/FO, except to the extent that full compliance with this CA/FO resolves Respondent's liability for federal civil penalties for noncompliance with the deadlines set forth in paragraph 13.B (Komohana Heights Subdivision) of the 2006 CA/FO.
23. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
24. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.
25. Respondent shall not deduct the administrative civil penalty, nor any interest, handling fees, or late penalty payments provided for in this CA/FO from its federal, state, or local income taxes.
26. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation, or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.
27. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
28. Issuance of this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, regulations promulgated thereunder, and any order or permit issued thereunder.
29. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.
30. Except as stated in paragraph 29, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

C. Effective Date


31. The effective date of the Consent Agreement and Final Order shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For the County of Hawaii:

 - Date: FEB 16 2010
William P. Kenoi, Mayor
County of Hawaii
25 Aupuni Street
Hilo, HI 96720


RECOMMENDED APPROVAL

 - Date: February 4, 2010
Lono Tyson, Director
Department of Environmental Management

APPROVED AS TO FORM AND LEGALITY:

 - Date: 2/8/10
Deputy Corporation Counsel

For the United States Environmental Protection Agency:

 - Date: 24 February 2010
Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

ATTACHMENT A

In the Matter of County of Hawaii, Department of Environmental Management

DOCKET NO. UIC-09-2010-0001

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

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

CHECK PAYMENTS

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

OVERNIGHT MAIL

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

Contact: Natalie Pearson
314-418-4087