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United States Environmental Protection Agency, Region IX

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:)	DOCKET NO. UIC-09-2017-0001
)	
United States Department of Navy,)	
)	
Respondent.)	
)	
Joint Base Pearl Harbor-Hickam, Hawaii)	CONSENT AGREEMENT
Facility)	AND
)	FINAL ORDER
)	
Proceedings under Section 1447(b) of the Safe)	
Drinking Water Act,)	
42 U.S.C. § 300j-6(b).)	

CONSENT AGREEMENT

I. AUTHORITY

1. This Consent Agreement is entered into and the Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 1447(b) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. § 300j-6(b).

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2. The Administrator has delegated the authority to enter into this Consent Agreement and issue a Final Order (“CA/FO”) to the Regional Administrator of EPA Region IX. In accordance with this authority 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 Regional Administrator of EPA Region IX (“Complainant”) and the United States Department of Navy (“Respondent”), together referred to as “the Parties,” hereby agree to the terms of this Consent Agreement and to the issuance of the Final Order.

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of this CA/FO commences this proceeding. In addition, pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final order by the Regional Judicial Officer or Regional Administrator.

4. Part II of this CA/FO contains a concise statement of the factual basis of the violations of the SDWA in accordance with 40 C.F.R. § 22.18(b)(2).

II. STIPULATIONS AND FINDINGS

5. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, Sections 1421 to 1429 of the SDWA, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (“UIC”) programs, to prevent underground injection that endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

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

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

8. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined

in 40 C.F.R. § 144.3. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do not include single family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day.

Id.

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

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

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

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

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

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

15. Respondent is a department, agency, and/or instrumentality of the United States and is thus a “Federal agency”. Therefore, Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and 40 C.F.R. § 144.3.

16. Respondent has owned and/or operated the military facility known as Joint Base Pearl Harbor-Hickam located at 850 Ticonderoga Street, Pearl Harbor, Hawaii 96860 (the "Property") since October 1, 2010.

17. Respondent owned and/or operated the following three (3) cesspools at the Property past the required LCC closure date of April 5, 2005:

- i. A cesspool servicing Buildings 3505 and 3510;
- ii. A cesspool servicing Building 2115; and
- iii. A cesspool servicing Building 3220.

18. The cesspools referred to in Paragraph 17, at all times relevant to this CA/FO, have had the capacity to serve 20 or more persons per day, and thus are considered LCCs pursuant to 40 C.F.R. § 144.81(2).

19. Therefore, Respondent is an "owner or operator" of an LCC, as that term is defined at 40 C.F.R. § 144.3, and was subject to the LCC closure requirements of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

20. On May 10, 2016, Respondent completed closure of the cesspool that was servicing Buildings 3505 and 3510. On September 8, 2016, Respondent completed closure of the cesspool that was servicing Building 2115. On February 1, 2017, Respondent completed closure of the cesspool servicing Building 3220.

21. From October 1, 2010 until May 10, 2016, Respondent was in violation of the requirement to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88 for the cesspool servicing Buildings 3505 and 3510.

22. From October 1, 2010 until September 8, 2016, Respondent was in violation of the requirement to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88 for the cesspool servicing Building 2115.

23. From October 1, 2010 until February 1, 2017, Respondent was in violation of the requirement to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88 for the cesspool servicing Building 3220.

24. Respondent certifies that all of the cesspools identified in Paragraph 17 of this CA/FO have been closed in accordance with EPA's Class V UIC injection well requirements set forth at 40 C.F.R. § 144.89.

25. Pursuant to Section 1447(b)(2) of the SDWA, 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. § 19.4, for violations occurring after January 12, 2009 through November 2, 2016, EPA may issue an order either assessing an administrative civil penalty of not more than \$32,500 per day per violation or requiring compliance, or both, against federal agencies who violate the SDWA or any requirement of an applicable UIC program. In accordance with the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016), for violations occurring after November 2, 2016, where the penalty is assessed on or after August 1, 2016, EPA may issue an order either assessing an administrative civil penalty of not more than \$37,561 per day per violation or requiring compliance, or both, against federal agencies who violate the SDWA or any requirement of an applicable UIC program.

III. SETTLEMENT TERMS

A. General Provisions

26. For the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2) neither admits nor denies the facts stipulated in this CA/FO; (3) consents to the assessment of the civil penalty and to the conditions contained in this CA/FO, and (4) waives any right to contest the allegations or to appeal the Final Order accompanying this CA/FO, once it becomes final. 40 C.F.R. § 22.18(b)(2).

27. Respondent also expressly waives any right to contest the allegations contained in this CA/FO and to appeal the Final Order under the SDWA or the Administrative Procedure Act, 5 U.S.C. §§ 701-706, including any right to confer with the EPA Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3) with regard to the matters specifically addressed in this CA/FO.

28. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's administrative civil penalty claim against Respondent for the specific SDWA violations identified in this CA/FO.

29. The provisions of this CA/FO shall apply to and be binding upon Respondent and its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or local, state or federal agencies, acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. No transfer of ownership or operation of the cesspools identified in Paragraph 17 will relieve Respondent of its obligation to comply with this CA/FO.

30. Full payment of the penalty amount in paragraph 37 and compliance with this CA/FO shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO.

31. This CA/FO is not a permit or modification of a permit and does not affect Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders, except as described in this CA/FO. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to

comply with all applicable requirements of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder, except as specifically set forth in this CA/FO.

32. 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, except as specifically set forth in this CA/FO.

33. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO. Violation of this CA/FO will be deemed a violation of the SDWA.

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

35. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

36. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and sign this Consent Agreement.

B. Penalty

37. Respondent agrees to the assessment of a civil penalty in the amount of NINETY-FOUR THOUSAND TWO HUNDRED TWELVE AND NO/100 DOLLARS (\$94,212.00) as full, final, and complete settlement of the civil claims alleged in Section II of this CA/FO.

38. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of the filing of the Final Order with the Regional Hearing Clerk. Payment may be made by check (regular mail or overnight delivery) or by electronic funds transfer (EFT). If

payment is made by check, it shall be by cashier's or certified check made payable to the "Treasurer, United States of America," and sent to the following address:

Regular Mail:

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

If payment is made by EFT, the Respondent has provided the following information and agrees that it is correct and appropriate for payments in Fiscal Year 2016 (payment information beyond Fiscal Year 2016 will require new information from Respondent):

Respondent's Fiscal Year 2016 Treasury Appropriation Fund Symbol (TAFS) for Commander, Navy Region Hawaii (CNRH) is 17 6 1804 52FA. Inquiries concerning this payment can be made to CNRH Code N822 (Accounting Department), Ms. Lesa Takekuma, who can be contacted at phone number (808) 473-2783.

Payment instructions for payment to EPA are available at:

<http://www2.epa.gov/financial/makepayment>. Promptly after this CA/FO is filed, Respondent shall send a transmittal letter, indicating Respondent's name, the case title, the docket number, along with a copy of the check or notification that the payment has been made, sent by one of the methods listed above, including proof of the date payment was made, to:

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

SDWA/FIFRA Section
Water & Pesticides Branch (ENF-3-3)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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39. As of the effective date of this CA/FO, Respondent has already sent payment of the civil penalty identified in Paragraph 37 via EFT to the EPA Cincinnati Finance Center. Processing of the payment is awaiting the finalization and filing of the CA/FO with the Regional Hearing Clerk.

40. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to pay the penalty identified in Paragraph 37 of this CA/FO. Nothing in this CA/FO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

IV. EFFECTIVE DATE AND TERMINATION

41. This CA/FO shall terminate only after Respondent has complied with all requirements of this CA/FO and after EPA has issued a written notice of termination.

42. 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, having been issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

FOR THE CONSENTING PARTIES:

UNITED STATES DEPARTMENT OF NAVY:



John V. Fuller, Rear Admiral
Commander, Navy Region Hawaii, U.S. Navy
850 Ticonderoga Street, Suite 110
JBPHH, Hawaii 96860-5101

Date: 17 MAR 17

In re: United States Department of Navy
Joint Base Pearl Harbor-Hickam

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

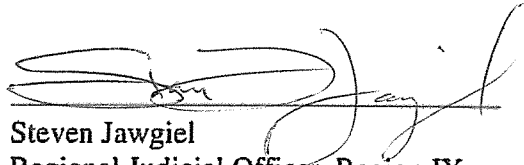


Alexis Strauss
Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Date: 22 March 2017

In re: United States Department of Navy
Joint Base Pearl Harbor-Hickam

This Final Order's Effective Date is the date that it is filed with the Regional Hearing Clerk. This Final Order constitutes full adjudication of the allegations in the CA/FO entered into by the Parties in this proceeding.



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

Date: 04/03/17

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in
3 the matter of the United States Department of Navy (UIC-09-2017-0001), dated
_____, was filed with the Regional Hearing Clerk and sent.

4
5 FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7015-1520-0001-5467-1863

6 Respondent

7 John V. Fuller
8 Rear Admiral
9 Commander, Navy Region Hawaii, U.S. Navy
850 Ticonderoga Street, Suite 110
JBPHH, Hawaii 96860-5101

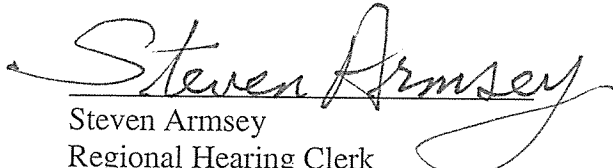
10 HAND DELIVERED

11 EPA Region IX Attorney:

12 Desean Garnett
13 Attorney-Advisor
14 United States Environmental Protection Agency
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Dated at San Francisco, California:

4-April-2017

18 
19 Steven Armsey
20 Regional Hearing Clerk
21 U.S. EPA, Region 9
22
23
24
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