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U.S. EPA - Region 09

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ATTORNEY FOR RESPONDENT  
KEITH WARD

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

<p>IN THE MATTER OF:</p> <p>Keith Ward</p> <p>Waimanalo, Hawaii,</p> <p style="text-align: center;">Respondent</p> <p style="text-align: center;">v.</p> <p>Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c).</p>	<p>Docket No. 13-00757</p> <p style="text-align: center;"><b>ANSWER TO PROPOSED ADMINISTRATIVE ORDER FOR PENALTIES AND COMPLIANCE (Administrative Complaint)</b></p>
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**ANSWER TO PROPOSED ADMINISTRATIVE ORDER FOR PENALTIES AND  
COMPLIANCE**

Respondent Keith Ward ("Keith", "Ward", or "Respondent") answers and responds to the allegations and the individually numbered paragraphs of the Proposed Administrative Order for Penalties and Compliance ("Administrative Complaint" or "Complaint") filed by the United States Environmental Protection Agency ("EPA" or "Complainant") by admitting, denying, and averring as follows:

### **REQUEST FOR ADMINISTRATIVE HEARING**

Respondent Keith Ward hereby requests a hearing upon the issues being raised in this proposed Complaint and his defenses, and in accordance with section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A) and 40 C.F.R. Section 22.15(c)

### **REQUEST FOR INFORMAL SETTLEMENT CONFERENCE**

Respondent Keith Ward hereby requests an informal settlement conference to resolve these matters in accordance with 40 C.F.R. Section 22.18(b).

### **PARTIES AND JURISDICTION**

1. Respondent agrees that the Regional Judicial Officer for EPA Region 9 is the Presiding Officer and has jurisdiction over this matter pursuant to the Rules of Practice, 40 C.F.R. Part 22, Subpart I, §§ 22.50(a)(2) and 22.51.
2. Respondent is a resident of Waimanalo in the State of Hawaii.
3. Respondent was born and raised on a self-sufficient family dairy farm. Respondent moved to the Windward community over thirty years ago and started working in the local fast food restaurant business.
4. Respondent is well known for hiring young immigrant workers and helping them to establish their own businesses. Two of those families employed by the Respondent have gone on to open their own restaurants.
5. Respondent has been an active member of the Kalama Valley Assembly of God church. During the holiday season Respondent donates turkeys and cooks for various homeless shelters and addiction centers.
6. Respondent has helped to train troubled youth in Power lifting, and has taken forty-two world championships and numerous national titles.

7. Respondent leases twenty acres of his agricultural land in Punalu'u Valley and does organic farm to table.

8. Respondent also owns a Styrofoam packaging company and has won numerous awards for his business being environmentally friendly.

9. Respondent also runs a catering business focusing on first year birthday luaus and environmentally conscious weddings.

10. Respondent employs approximately fifteen employees in his restaurant, farm, and catering business.

### **AFFIRMATIVE DEFENSES**

Respondent, for his affirmative defenses, states as follows:

11. Respondent purchased the property from a Trust. The Attorney for that trust, Alan H. Gifford, represented that the property had no known problems. Since this action has been filed, Attorney Gifford has confirmed that there were holding tanks on the property not cesspools.

12. Respondent located Sonny Baqui, formerly of RB services, who did the original installation over ten years ago. Mr. Baqui confirmed he installed holding tanks and not a cesspool. Mr. Baqui has provided the Respondent with a copy of the plans he followed.

13. First Quality Pumping misidentified the holding tanks as cesspools to the Respondent based on the type of covers originally observed.

14. First Quality Pumping had originally done work for the Post Office, Laundry Mat and Kenekes. For these reasons, the Respondent called them to look at Serg's Mexican Restaurant.

15. From the beginning, Respondent hired design professional engineer Wendell Ching to assist him in resolving this problem. The matter was delegated to a responsible engineer who assured the Respondent that he could design and obtain approval from the appropriate governmental authorities and resolve these issues.

16. Respondent has repeatedly contacted Mr. Ching, paid him a deposit retainer for his services, and expected things to proceed in an orderly fashion.

17. There were delays that were not caused by the Respondent. Originally an IWS system was suggested to EPA, the City, and the Department of Health. This system was initially approved, but then after several conversations the City changed its position and required an Aerobic system.

18. This Aerobic system has been installed and the City and State of Hawaii has closed out all permits. Mr. Ching was present during the construction and confirmed with the contractor that there were holding tanks and not a cesspool.

#### **RESPONDENT'S ANSWERS TO COMPLAINT**

19. Respondent admits the allegations contained in paragraph 1 of the Complaint.

20. Respondent admits the allegations contained in paragraph 2 of the Complaint.

21. Respondent admits the allegations contained in paragraph 3 of the Complaint.

22. Respondent admits the allegations contained in paragraph 4 of the Complaint.

23. Respondent admits the allegations contained in paragraph 5 of the

Complaint.

24. Respondent admits the allegations contained in paragraph 6 of the Complaint, but in his defense he was not personally aware of this requirement, as there were no cesspools present to his knowledge.

25. Respondent has no knowledge of how the EPA delegates its authority to the State of Hawaii contained in paragraph 7 of the Complaint, but does not contest this issue.

26. Respondent admits to paragraph 8 of the Complaint that EPA is the appropriate authority but denies any liability for wrongdoing pursuant to this paragraph.

27. Respondent admits the allegations contained in paragraph 9 and will present evidence at the hearing and settlement discussions that will demonstrate when these six factors are applied to this case there is no justification to warrant a six-figure penalty against the Respondent.

28. Respondent admits the allegations contained in paragraph 10 of the Complaint.

29. Respondent admits the allegations contained in paragraph 11 of the Complaint.

30. Respondent admits the allegations contained in paragraph 12 of the Complaint.

31. Respondent admits the allegations contained in paragraph 13 of the Complaint.

32. Respondent admits the allegations contained in paragraph 14 of the Complaint, that the two restaurants are food and non-alcoholic beverage establishments.

The coffee house and Serg's have limited hours. Bathrooms are limited to customers and staff and are not open to the public.

33. Respondent denies the allegations contained in paragraph 15 of the Complaint that there were two cesspools on the property. At the time of purchase there was no disclosure of cesspools. Respondent was aware that he needed to have the holding tanks "pumped" on occasion, which he complied with by using three different companies to pump the tanks on a regular basis. There was no disclosure to the Respondent of any cesspools when he purchased the property, nor was there any indication that there was an outstanding EPA mandated requirements of closure of the holding tanks.

34. Respondent denies the allegations contained in paragraph 16 of the Complaint as he has no knowledge that there were any cesspools on the property at the time of purchase.

35. Respondent admits the allegations contained in paragraph 17 of the Complaint, that Respondent had the meeting and the caps were identified by EPA of those being cesspools. Respondent had no knowledge of what the caps looked like and followed the EPA's lead.

36. Respondent has insufficient knowledge to answer paragraph 18 of the Complaint, so Respondent neither admits nor denies the same.

37. Respondent has insufficient knowledge to answer paragraph 19 of the Complaint, so Respondent neither admits nor denies the same.

38. Respondent admits the allegations contained in paragraph 20 of the Complaint, that he did not receive letters and notified the EPA of the same.

39. Respondent admits the allegations contained in paragraph 21 of the Complaint. Based on limited investigation, the contractor took lids off and measured the contents with a string attached to a rock. Respondent in good faith relayed this information in the spirit of cooperation, as he did not know that these items were illegal.

40. Respondent admits the allegations contained in paragraph 22 of the Complaint. However, Respondent did not know that the prior owner had tried for years to connect the city main sewer line without success. Respondent spent months trying to work with the city, spending money for an engineer and going in circles. Respondent did not find out until much later when he spoke to the trust Attorney Gifford, who sold the property to the Respondent.

41. Respondent admits the allegations contained in paragraph 23 of the Complaint. This was a good faith attempt to solve the problem as identified by the EPA.

42. Respondent has insufficient knowledge to answer paragraph 24 of the Complaint, so Respondent neither admits nor denies the same. Respondent is not sure about the date, but he did keep EPA informed of the problems he was having attempting to connect the city sewer line that runs parallel to the main highway fronting the rest of the property.

43. Respondent admits the allegations contained in paragraph 25 of the Complaint. Respondent admits that he hired Mr. Ching to work on this problem and to design a system that would meet EPA, State, and City of Honolulu approval.

44. Respondent admits the allegations contained in paragraph 26 of the Complaint, as he believes that his engineer Mr. Ching attempted to solve this problem and keep the EPA informed.

45. Respondent admits the allegations contained in paragraph 27 of the Complaint. Respondent deferred this matter to his design professional and was informed that he was working on the problem and getting the proper permits. Respondent does not know whether his engineer was communicating with the EPA during this time period.

46. Respondent admits the allegations contained in paragraph 28 of the Complaint. Respondent does not recall the date, but knows EPA was willing to discuss a settlement. Respondent was acting in good faith. He bought the property not knowing there were any problems. Once the Respondent was told there was a violation, he attempted to connect with the city sewer. When Respondent was not able to connect to the city sewer, he hired a design professional to design a system that would be approved by the EPA. Respondent did not have control over Mr. Ching. Respondent called Mr. Ching and requested status reports and was given the impression that matters were being handled.

47. Respondent admits the allegations contained in paragraph 29 of the Complaint. Respondent is not sure of the date, but believes that Mr. Ching submitted plans to the DOH Waste Water Division.

48. Respondent admits the allegations contained in paragraph 30 of the Complaint. Respondent admits Mr. Ching submitted plans but he does not know the details. Respondent believes at that time was everyone was assuming that the two tanks were cesspools as opposed to holding tanks, because of the lid covers. The discovery the tanks were in fact holding tanks did not happen until the actual construction removal of the tanks and installation of the new system. Upon this discovery, Mr. Ching informed Respondent that the tanks were not cesspools. Respondent then contacted

Attorney Alan Gifford and was told that the tanks were holding tanks, and he believed he had the drawings. Respondent then tracked down the former contractor Sonny Baqui of RB services in Waimanalo, and Mr. Baqui confirmed that he installed holding tanks and also believed that he had the original plans.

49. Respondent, although unsure of the date, admits the allegations contained in paragraph 31 of the Complaint.

50. Respondent, although unsure of the date, admits the allegations contained in paragraph 32 of the Complaint. Respondent informed EPA of the positive findings that there were no cesspools, but rather holding tanks. Engineer Ching and contractor Pono can confirm this. All parties had been assuming the tanks were cesspools due to the nature of the lids. Once the actual construction was undertaken, it was discovered that the tanks were not cesspools but holding tanks. Respondent had used 3 companies to service the tanks. Aqua Pumping, First Quality, and A&E Kinney Auvaa the latter of which has since gone out of business. In addition, Serg's restaurant and the coffee shop share one bathroom which is used for employees and customers only, not for the public.

51. Respondent admits the allegations contained in paragraph 33 of the Complaint. Respondent admits that his Counsel sent photos that were provided to him to the EPA. Respondent was informed of the findings of holding tanks with the installation of the new system.

52. Respondent has insufficient knowledge to answer paragraph 34 of the Complaint, so Respondent neither admits nor denies the same. However, Respondent can admit that Mr. Ching told him that all government authorities were consulted and informed of the findings of holding tanks and the installations of the new system.

53. Respondent admits the allegations contained in paragraph 35 of the Complaint. Respondent has closed the holding tanks, installed the new systems, and informed the EPA. At Respondent's requested hearing, he will present an email from the EPA indicating that they know the work has been completed. Respondent will ask Mr. Ching and the contractor to be present at the requested hearing to testify to their actions and observations. Therefore, Respondent has not been in violation of EPA laws as the holding tanks were misidentified as cesspools because of the cap covers.

54. Respondent denies the allegations contained in paragraph 36 of the Complaint.

55. Respondent denies the allegations contained in paragraph 37 of the Complaint. The proposed penalty is excessive and would result in bankruptcy. It is also unjust penalty for the misidentification of holding tanks lids and the presumption of cesspools, which in fact we will prove were never there. The property was purchased in 2006. Attorney Gifford will testify that attempts were made by the Trust to hook into the main sewer line. When they were unable to connect to the sewer line, holding tanks were installed, regular pumping services were used for the bakery property, and limited services were used on the property because there were no public restroom. The contractor Sonny Baqui of RB services will confirm the installation of the holding tanks by the Trust and that they were not cesspools.

56. Respondent denies the allegations contained in paragraph 38 of the Complaint. Respondent will offer evidence that once the 6 factors are examined in detail a fine of \$186,500.00 should be denied. Respondent has acted in good faith. Respondent tried to get the City sewer hook up and that attempt failing, retained an engineer to design a system and then have that system approved and installed.

Respondent could not control the speed in which these actions were taken given the engineers timetable, government plan approval review process, or the availability of a contractor to undertake the removal and installation.

57. Respondent denies the allegations contained in paragraph 39 of the Complaint. There is no evidence of the waste materials entering the ground table at any time. So continuing violation is an assumption not a fact. There are no facts to support that the ground table water was ever at risk or contaminated.

58. Respondent denies the allegations contained in paragraph 40 of the Complaint. Respondent should not have to make a payment.

59. Respondent denies the allegations contained in paragraph 41 of the Complaint. Respondent denies that he should give notice for a payment that he should never have to make.

60. Respondent denies the allegations contained in paragraph 42 of the Complaint. Respondent will provide evidence that holding tanks have been closed and a new system is in fact in place. In the hearing or informal settlement discussions will ask Mr. Ching to provide copies of all plans and confirm what was installed and approved by the State of Hawaii and City and County.

61. As to paragraph 43, Respondent will comply with any such order if issued.

62. As to paragraph 44, Respondent will comply with any such order if issued.

63. As to paragraph 45, Respondent will comply with any such order if issued.

64. As to paragraph 46, Respondent will comply with any such order if issued.

65. As to paragraph 47, Respondent will comply with any such order if issued.

66. As to paragraph 48, Respondent disagrees and will file his answer with

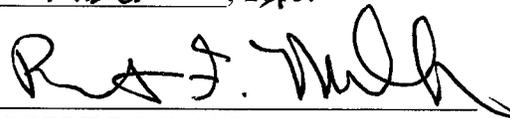
EPA and Attorney Moffatt.

**REQUEST FOR RELIEF**

**WHEREFORE**, Respondent requests judgment in his favor, as follows:

1. For an order dismissing the Complaint and all claims against Respondent with prejudice and on the merits, and ruling that Complainants should take nothing thereby;
2. If order of dismissal is not granted, Respondent requests an informal settlement conference. If settlement unsuccessful, Respondent requests an administrative hearing.
3. For an award of Respondent's reasonable attorneys' fees and costs of Court; and
4. For such further and other relief as the Court deems proper.

DATED this 20<sup>th</sup> day of November, 2015.



ROBERT F. MILLER  
ATTORNEY FOR RESPONDENT  
KEITH WARD

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ANSWER TO PROPOSED ADMINISTRATIVE ORDER FOR PENALTIES AND COMPLIANCE** was sent via electronic mail and standard mail on NOV 20, 2015, to the following:

Original and one Copy:      Regional Hearing Clerk  
   U.S. Environmental Protection Agency, Region 9  
   75 Hawthorne Street  
   San Francisco, CA 94105

Copy:                                Brett Moffatt  
   Office of Regional Counsel  
   U.S. Environmental Protection Agency, Region 9  
   75 Hawthorne Street  
   San Francisco, CA 94105

DATED this 20<sup>th</sup> day of NOVEMBER, 2015.



ROBERT F. MILLER  
ATTORNEY FOR RESPONDENT  
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