

1 SYLVIA QUAST  
Regional Counsel  
2 United States Environmental Protection Agency, Region IX  
JANET MAGNUSON  
3 Assistant Regional Counsel  
United States Environmental Protection Agency, Region IX  
4 75 Hawthorne Street  
San Francisco, California 94105  
5 (415) 972-3887

6 Attorneys for Complainant

7 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
8 **REGION IX**  
9 75 Hawthorne Street  
San Francisco, California 94105

10 IN THE MATTER OF: )

DOCKET NO. UIC-09-2018-0001

11 Uilani Associates, Inc., )

12 Respondent. )

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

13 Proceedings under Sections 1423(c) of the )  
14 Safe Drinking Water Act, )  
15 42 U.S.C. §§ 300h-2(c). )  
16 )  
17 )

18 **CONSENT AGREEMENT**

19 **I. AUTHORITIES AND PARTIES**

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

**\*\* FILED \*\***  
U.S. EPA - Region IX  
05 JAN 2018 - 04:30 PM

1 22.45(b). Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of  
2 a final order by the Regional Judicial Officer.

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

7 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The  
8 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority  
9 to initiate and settle this action under SDWA. The Regional Administrator of EPA Region IX  
10 has further delegated the authority to enter into a consent agreement settling this action under  
11 SDWA to the Director of the Enforcement Division.

12 4. Respondent is a corporation headquartered at 25312 Bowspirit Drive, Dana Point,  
13 California 92629-1419.

14  
15 II. APPLICABLE STATUTES AND REGULATIONS

16 5. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has  
17 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC  
18 programs to prevent underground injection that endangers drinking water sources.

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

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

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



1 18. Since at least September 17, 1990, there has been one cesspool located at and  
2 servicing the Uilani Plaza located at 64-1035 Mamalahoa Highway, Kamuela, Hawaii.

3 19. Since at least September 17, 1990, Respondent has owned and operated at the  
4 Uilani Plaza, including the cesspool receiving sanitary waste from those businesses operating at  
5 the Plaza.

6 20. Since at least September 17, 1990, Respondent has been the "owner or operator"  
7 of the cesspool referred to in Paragraph 18, within the meaning of 40 C.F.R. § 144.3.

8 21. Since at least April 5, 2005, the cesspool referred to in Paragraph 18 had the  
9 capacity to serve 20 or more persons per day, and thus is considered an LCC pursuant to 40  
10 C.F.R. § 144.81(2).

11 22. Since at least April 5, 2005, Respondent failed to close the cesspool referred to in  
12 Paragraph 18 in violation of the requirement for owners and operators to close all LCCs by that  
13 date, as set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

14 23. On July 7, 2016, Respondent commenced the work to close the cesspool referred  
15 to in Paragraph 18, and on October 5, 2016, Respondent completed the work to clean, backfill  
16 and close the LCC in accordance with 40 C.F.R. §§ 144.84(b)(2) and 144.88 and Hawaii  
17 Department of Health requirements.

18 24. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40  
19 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more  
20 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or  
21 both, against any person who violates the SDWA or any requirement of an applicable UIC  
22 program.

#### 23 IV. SETTLEMENT TERMS

##### 24 A. General Provisions

1           25.     Consistent with the requirements of 40 C.F.R. § 22.18(b)(2), for the purposes of  
2 this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2)  
3 neither admits nor denies the specific factual allegations contained in this CA/FO; (3) consents to  
4 the assessment of the penalty and to the specified compliance obligations contained in this  
5 CA/FO, and (4) and waives any right to contest the allegations or to appeal the Final Order  
6 accompanying this CA/FO.

7           26.     Respondent expressly waives any right to contest the allegations contained in the  
8 Consent Agreement and to appeal the Final Order under the SDWA or the Administrative  
9 Procedures Act, 5 U.S.C. §§ 701-706, including any right to confer with the EPA Administrator  
10 under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).

11           27.     This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire  
12 agreement between the Parties to resolve EPA's civil claims against Respondent for the specific  
13 SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes  
14 payment of an administrative civil penalty of \$6,000 in accordance with Section IV.B of this  
15 CA/FO shall constitute full settlement of Respondent's liability for federal civil claims for the  
16 SDWA violations specifically identified in this CA/FO.

17           28.     The provisions of this CA/FO shall apply to and be binding upon Respondent, its  
18 officers, directors, agents, servants, authorized representatives, employees, and successors or  
19 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations  
20 acting under, through or for Respondent shall not excuse any failure of Respondent to fully  
21 perform its obligations under this CA/FO.

22           29.     Issuance of this CA/FO does not in any manner affect the right of EPA to pursue  
23 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,  
24 except with respect to those claims that have been specifically resolved pursuant to Paragraph 27  
25 above.

1           30.     This CA/FO is not a permit or modification of a permit, and does not affect  
2 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,  
3 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,  
4 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements  
5 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,  
6 except as specifically set forth herein.

7           31.     EPA reserves any and all legal and equitable remedies available to enforce this  
8 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in  
9 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO  
10 shall be deemed a violation of the SDWA.

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

13          33.     This CA/FO may be executed and transmitted by facsimile, email or other  
14 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all  
15 of which shall constitute an instrument. If any portion of this CA/FO is determined to be  
16 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions  
17 shall remain in full force and effect.

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

20           B. Penalty

21          35.     Respondent agrees to the assessment of a civil penalty in the amount of SIX  
22 THOUSAND DOLLARS (\$6,000). EPA considered the nature, circumstances, extent, and  
23 gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of  
24 culpability, and any economic benefit or savings accruing to Respondent as a result of the  
25 violations. EPA determined that Respondent had a limited ability to pay a penalty greater than  
the one assessed in this CA/FO.

1           36.     Respondent shall pay the assessed penalty identified in Paragraph 35 no later than  
2 thirty (30) days from the Effective Date of this CA/FO.

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

8                     U.S. Environmental Protection Agency  
9                     Fines and Penalties  
10                    Cincinnati Finance Center  
11                    P.O. Box 979077  
12                    St. Louis, Missouri 63197-9000

13           38.     Respondent must provide a letter with evidence of the payment made pursuant to  
14 this CA/FO, accompanied by the title and docket number of this action, to the EPA Region IX  
15 Regional Hearing Clerk, the EPA Region IX Enforcement Division Compliance Officer, and the  
16 EPA Region IX Office of Regional Counsel attorney, via United States mail, at the following  
17 addresses:

18                     Regional Hearing Clerk  
19                     U.S. Environmental Protection Agency  
20                     Region IX - Office of Regional Counsel  
21                     75 Hawthorne Street (ORC-1)  
22                     San Francisco, CA 94105

23                     Jelani Shareem, Compliance Officer  
24                     U.S. Environmental Protection Agency  
25                     Region IX - Enforcement Division  
                      75 Hawthorne Street (ENF-3-3)  
                      San Francisco, CA 94105

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

1           39.    In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13  
2 interest, penalty charges, and administrative costs will be assessed against the outstanding  
3 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative  
4 penalty by the deadline specified in Paragraph 36.

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

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

13          c.    In addition, administrative costs for handling and collecting Respondent's  
14                overdue debt will be based on either actual or average cost incurred, and will  
15                include both direct and indirect costs, as provided in 40 C.F.R. § 13.11(b).

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

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

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

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

4 41. Respondent shall tender any interest, handling charges, late penalty payments, and  
5 stipulated penalties in the same manner as described in Paragraphs 37 and 38.

6 C. Stipulated Penalties

7 42. If Respondent fails to pay the assessed civil administrative penalty specified in  
8 Paragraph 35 by the deadline specified in Paragraph 36, Respondent agrees to pay a stipulated  
9 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed  
10 penalty.

11 43. Respondent agrees to pay any stipulated penalties within thirty (30) days of  
12 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the  
13 first date of noncompliance, and shall continue to accrue through the date of completion of the  
14 delinquent CA/FO requirement. Respondent will use the method of payment specified in  
15 Paragraphs 37 and 38, and agrees to pay interest, handling charges and penalties that accrue for  
16 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 37 and 38.

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

20 45. EPA may, in the unreviewable exercise of its discretion, reduce or waive  
21 stipulated penalties due under this CA/FO.

22 D. Notices

23 46. EPA must send any written communications to the following addresses:

24 Helene Fukamizu  
25 25312 Bowspirit Drive  
Dana Point, California 92629-1419

David L. Brault  
Law Offices of David L. Brault

68 Liberty, Suite 240  
Aliso Viejo, California 92656

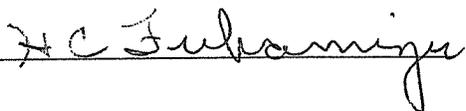
IV. EFFECTIVE DATE

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

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

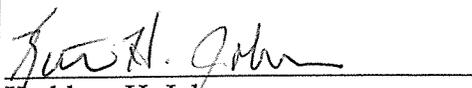
CONSENTING PARTIES:

For Respondent Uilani Associates, Inc.



Date: 10-11-17

For Complainant U.S. Environmental Protection Agency, Region IX:



Date: 11-7-17

Kathleen H. Johnson  
Director, Enforcement Division, Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION IX

75 Hawthorne Street  
San Francisco, California 94105

3 IN THE MATTER OF: )

DOCKET NO. UIC-09-2018-0001

4 Uilani Associates, Inc. )

5 Respondent. )

6 FINAL ORDER

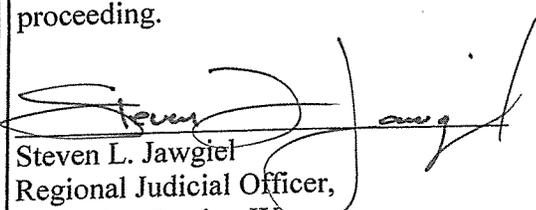
7 Proceedings under Section 1423(c) of the Safe )  
8 Drinking Water Act, 42 U.S.C. § 300h-2(c). )  
9 )

10 FINAL ORDER

11  
12 The United States Environmental Protection Agency Region IX ("EPA"), and  
13 Respondent Uilani Associates, Inc. ("Uilani") (collectively the "Parties"), having entered into the  
14 foregoing Consent Agreement, and EPA having duly publicly noticed the Consent Agreement  
15 and Final Order.

16 It is Hereby Ordered that this Consent Agreement and Final Order (Docket No. UIC-09-  
17 2018-0001) be entered and that Respondent shall pay a civil penalty in the amount of \$6,000  
18 dollars, in accordance with the terms of this Consent Agreement and Final Order.

19  
20 This Final Order is effective on the date that it is filed. This Final Order constitutes full  
21 adjudication of the allegations in the Consent Agreement entered into by the Parties in this  
22 proceeding.

23  
24   
25 Steven L. Jawgiel  
Regional Judicial Officer,  
U.S. EPA, Region IX

Date: 01/04/18

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of Uilani Associates, Inc. (UIC-09-2018-0001), dated 2018-01-04, was filed with the Regional Hearing Clerk and sent.

FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7016 1370 0000 0748 5544

Respondent

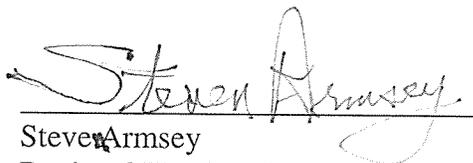
Helene K. Fukamizu, President  
Uilani Associates, Inc.  
25312 Bowsprit Drive  
Dana Point, CA 92629

HAND DELIVERED

EPA Region IX Attorney:

Janet A. Magnuson  
Assistant Regional Counsel  
Office of Regional counsel, ORC-2  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, California: 2018-01-05



Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region 9