



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



In the Matter of: )  
)  
NSHE HI Narcissus, LLC, )  
Kahuku, Hawaii, )  
)  
Respondent. )

Docket No. UIC-09-2022-0058

PREHEARING ORDER

The United States Environmental Protection Agency (“Complainant or EPA”) filed this Administrative Complaint with a proposed civil penalty on August 2, 2022, pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits, 40 C.F.R. Part 22 (“Rules”), which govern this proceeding. Complainant served the Complaint on NSHE HI Narcissus, LLC (“Respondent”) on August 3, 2022. In its Complaint, Complainant notified Respondent of the opportunity to request a hearing, which will not be subject to Section 554 or 556 of the Administrative Procedures Act, 5 U.S.C. §§ 554 and 556, but will provide a reasonable opportunity to be heard and to present evidence. The hearing will be governed by Subpart I of the Rules at 40 C.F.R. Part 22. Complainant also informed Respondent that 40 C.F.R. § 22.15(a) required Respondent to file its Answer with the Regional Hearing Clerk withing thirty (30) days after service of the Complaint.

Respondent filed an Answer to the Complaint on August 29, 2022. In its Answer, Respondent stated the circumstances or arguments that it believes serve as grounds for its defense, the facts it disputes, and the basis for opposing the proposed relief. Respondent also requested a hearing.

Pursuant to 40 C.F.R. § 22.51, I am the Presiding Officer who will conduct the hearing and rule on all motions until an initial decision has become final or has been appealed.

### ALTRENATE DISPUTE RESOLUTION

Agency policy strongly supports settlement. The procedures regarding documenting settlements are set forth in 40 C.F.R. § 22.18. Each party is reminded the resolution of this matter through a hearing and a possible appeal will require the expenditure of significant amounts of time and financial resources. Each party should realistically consider the risk of not prevailing in the proceeding despite such expenditures. Resolution through settlement negotiations allows the parties to control the outcome of this matter. Similarly, pursuing settlement through alternate dispute resolution may expedite the finalization of this matter and avoid unnecessary litigation costs. Therefore, I strongly encourage the parties to pursue alternate dispute resolution in this matter.

If the parties would like to agree to alternate dispute resolution, they should notify me of their agreement in writing. Thereafter, I will assign the matter to a Regional Judicial Officer (RJO) outside of Region 9 who will serve as a neutral mediator. If the parties reach a settlement agreement, the terms and conditions of the settlement shall be recorded in a written Consent Agreement signed by all parties in accordance with 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, I will execute a Final Order ratifying the parties' Consent Agreement. If the parties

do not reach an agreement, the mediator RJO will not share the content of the settlement negotiations with me as the Presiding Officer and the matter to proceed to a hearing.

### INFORMATION EXCHANGE

I direct the parties' attention to Subpart I of 40 C.F.R. Part 22, particularly Rule 22.50(b) ("Relationship to other provisions" in Part 22) and Rule 22.52 ("Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from the alleged violations and information concerning respondent's ability to pay a penalty."). 40 C.F.R. §§ 22.50(b) and 22.52.

**Prehearing Exchange:** Pursuant to Section 22.19(a) of the Rules of Practice, each party shall file with the Regional Hearing Clerk, and serve on the opposing party, a prehearing information exchange that complies with the requirements set forth in 40 C.F.R. § 22.19. Except as provided in § 22.22(a), **any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify.** Therefore, each party should thoughtfully prepare its prehearing exchange. The parties shall file their prehearing exchange of information by **December 21, 2022.**

**Discovery:** After the parties' prehearing information exchange, the parties may seek limited discovery on the issues of Respondent's economic benefit from the alleged violations and information regarding Respondent's ability to pay a penalty. Either party may request additional discovery and will only be allowed to propound additional discovery with permission of the Presiding Officer.

PREHEARING CONFERENCE

A prehearing video conference is scheduled for **Thursday, December 29, 2022 at 1:00 p.m. (PST) / 11:00 a.m. (HST)**. Region 9's Regional Hearing Clerk shall provide the parties with instruction on how to access the video conference. If either party needs to have the prehearing conference rescheduled, that party shall contact the Regional Hearing Clerk no later than **December 16, 2022**, with a request to reschedule. The party making the request shall propose an alternate date and time for the prehearing conference and specify whether the opposing party agrees to the date and time being proposed. During the prehearing conference, the parties shall be prepared to discuss:

1. Settlement of the case;
2. Simplification of issues and stipulation of facts not in dispute;
3. The necessity or desirability of amendments to pleadings;
4. The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
5. The limitation of the number of expert or other witnesses;
6. The time and place of the hearing; and
7. Any other matters which may expedite the disposition of the hearing.

**STEVEN** Digitally signed by  
**JAWGIEL** STEVEN JAWGIEL  
Date: 2022.12.05  
18:42:00 -08'00'

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

1 **CERTIFICATE OF SERVICE**

2 In the Matter of NSHE HI Narcissus, LLC  
3 EPA Docket No. UIC-09-2022-0058

4 This is to certify that the foregoing Prehearing Order was filed with the Regional Hearing Clerk,  
5 U. S. EPA, Region 9 and that a true and correct copy was sent to the parties as follows:

6 Respondent (via Email):

7 Charles W. Gall  
8 First Hawaiian Center  
9 999 Bishop Street, Suite 2600  
10 Honolulu, Hawaii 96813  
11 Telephone: (808) 535-5700  
12 Facsimile: (808) 535-5799  
13 Email: CWG@ksglaw.com

14 Complainant (via Email):

15 Kimberly Wells  
16 Office of Regional Counsel  
17 U.S. Environmental Protection Agency, Region 9  
18 75 Hawthorne Street (mail code: ORC 2-3)  
19 San Francisco, CA 94105  
20 Phone: (415) 972-3056  
21 Wells.Kimberly@epa.gov

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Regional Hearing Clerk, USEPA - Region 9

**In re: NSHE HI Narcissus, LLC**  
**UIC-09-2022-0058**