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Attorney for Respondent
NSHE HI Narcissus, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF:

NSHE HI Narcissus, LLC,

Kahuku, Hawaii,

Respondent.

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

DOCKET NO. UIC-09-2022-0058

ANSWER TO ADMINISTRATIVE
COMPLAINT DATED AUGUST 1, 2022

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Respondent, NSHE HI NARCISSUS, LLC, by and through their attorneys Kobayashi Sugita & Goda, LLP, for it's answer to the Complaint filed by Complainant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9 on August 1, 2022 ("Complaint") in the above-entitled action allege and aver as follows:

FIRST DEFENSE

1. Respondent admits the allegations contained in the following paragraphs of the Complaint. 1, 2, 4, 5, 6, 7, 8, 10, 11, 15, 22, 29, 31, 32, 33, 34, 37, 38, 40, 41, and 44.
2. With respect to the allegations set forth in Paragraph 3 of the Complaint, Respondent admits that promulgated the specified regulations but states that his property is below the UIC line and is not situated where contamination of drinking water sources is possible.
3. With respect to the allegations of Paragraph 9 of the Complaint, Respondent admits NSHE Hi Narcissus is a Hawaii Domestic LLC, Respondent denies the remaining allegations of the Complaint on the basis that an LLC is not “incorporated”
4. With respect to the allegations of Paragraph 12 of the Complaint, Respondent admits that the property has a small commercial building and a parking lot, but denies the remaining allegations of the Paragraph.
5. With respect to the allegations of Paragraph 13 of the Complaint, Respondent denies the allegations and affirmatively states that when Respondent purchased the property, the restrooms were not usable.
6. With respect to the allegations of Paragraph 14 of the Complaint, Respondent admits that the restrooms were connected to a single cesspool, but affirmatively states that the restrooms were closed for repairs or inoperative for portions of the identified time period.

7. With respect to the allegations of Paragraph 16, Respondent denies the commercial building on the property is mid-size., Further, Respondent denies that the commercial building was in use or occupied during the entire identified time frame. Respondent further denies the allegations on the bases that that the allegation is speculative.
8. With respect to the allegations of Paragraph 17 of the Complaint, Respondent denies the allegations. Respondent admits that for some portions of the time frame identified, persons visiting the small commercial building on the property had access to only one of the restrooms. Respondent denies the remaining allegations of the Paragraph.
9. With respect to the allegations of Paragraph 18 of the Complaint, Respondent admits that Jenny's Shrimp Truck occupied the parking lot, but affirmatively states that it did not operate continuously. Respondent denies the remaining allegations of the Paragraph.
10. With Respect to the allegations of Paragraph 19 of the Complaint, Respondent is without knowledge as to who or in what capacity people operated the shrimp truck . Respondent admits that the shrimp truck served food.
11. With respect to the allegations of Paragraph 20 of the Complaint, Respondent is without knowledge as to the number of people served per day and further states that the shrimp truck was not in continuous operation during the identified time period. On that basis, Respondent denies the allegations of the Paragraph.
12. With respect to the allegations of Paragraph 21 the Complaint, Respondent admits that for some portions of the identified time period customers and workers at the

shrimp truck had access to only one bathroom on the property. Respondent denies the remaining allegations of the Paragraph.

13. With respect to the allegations of Paragraph 22 of the Complaint, Respondent admits that Island Fresh Takeout operated on the premises for apporportion of the identified time period. Respondent denies the remaining allegations of the Paragraph.
14. With respect to the allegations of Paragraph 23 of the Complaint, Respondent has no knowledge as to the status of individual(s) operating the Island Fresh Takeout truck and on that basis denies the allegations of the Paragraph. Respondent admits that food was served during a portion of the identified time period.
15. With respect to the allegations of Paragraph 24 of the Complaint, Respondent does not know the number of patrons served and denies the allegations on that basis. Respondent further alleges that Island Fresh Takeout did not operate continuously during the identified time period.
16. With respect to the allegations of Paragraph 25 of the complaint, Respondent denies the allegations of the Complaint and alleges that no bathroom access was ever given to Fresh Island takeout.
17. With respect to the allegations of Paragraph 26, Respondent denies the allegations of that Paragraph.
18. With respect to the allegations of Paragraph 27, Respondent denies the allegations and further states that the Paragraph inaccurately states the law in that the capacity in question is that of the cesspool and not the facility which is served by the cesspool

19. With respect to the allegations of Paragraph 28 of the complaint, Respondent denies the allegations.
20. With respect to the allegations of Paragraph 30 of the Complaint, Respondent admits the allegation of the Paragraph but affirmatively states the EPA has failed to take into account the identified factors and has abused the process by threatening the maximum penalty with no analysis of the identified factors in an attempt to force Respondent to settle.
21. With respect to the allegations in Paragraph 35 of the Complaint, Respondent admits the allegations of the Paragraph and hereby requests a hearing on the matter.
22. With respect to the allegations of Paragraph 42 of the Complaint, Respondent admits the allegations but affirmatively states that entering into a Consent Agreement is not an admission of liability.

SECOND DEFENSE

23. Respondent requests a hearing on this matter.

THIRD DEFENSE

24. Respondent intends to rely on the defense that the cesspool did not have the physical capacity to service 20 or more persons per day and the EPA must take into account the physical capacity of the cesspool in determining if a cesspool is a LCC subject to EPA regulation.

FOURTH DEFENSE

25. Respondent intends to rely on the defense that the EPA did not take into account the physical capacity of the cesspool in issuing the complaint as required by law

and has no evidence to support its erroneous determination that the cesspool was a LLC subject to EPA regulation.

FIFTH DEFENSE

26. Respondent intends to rely on the defense that for a large portion of the identified time period the small commercial building on the property was vacant, unoccupied and/or not used.

SIXTH DEFENSE

27. Respondent intends to rely on the defense that allegations regarding use are speculative.

SEVENTH DEFENSE

28. Respondent intends to rely on the defense that both food trucks did not occupy the property and/or operate for the entire identified period.

EIGHTH DEFENSE

29. Respondent intends to rely on the defense that for a portion of the identified time period only one toilet was operating.

NINTH DEFENSE

30. Respondent intends to rely on the defense that the property is located makai of the state of Hawaii UIC injection line and is not above a drinking water aquifer and therefore the cesspool was incapable of polluting the aquifer.

TENTH DEFENSE

31. Respondent intends to rely on the defense that Respondent immediately closed the toilets upon notification by the EPA that the EPA believed the Cesspool was in violation and needed to be closed.

ELEVENTH DEFENSE

32. Respondent intends to rely on the defense that upon the EPA informing Respondent it believed the cesspool was in violation and needed to be closed, Respondent had the cesspool pumped out immediately that same day.

TWELFTH DEFENSE

33. Respondent intends to rely on the defense that that Respondent filled and closed the cesspool as quickly as possible and within a reasonable time following being advised that the EPA believed that the cesspool was required to be closed

THIRTEENTH DEFENSE

34. Respondent intends to rely of the defense that the cesspool is not a LCC and had the right to use the limited capacity of the cesspool, and the EPA violated Respondent's rights by erroneously forcing its closure.

FOURTEENTH DEFENSE

35. Respondent intends to rely on the defense that the alleged violation was not serious and there was no actual or threatened impact to the aquifer and environment.

FIFTEENTH DEFENSE

36. Respondent intends to rely on the defense that it received little to no economic benefit from the alleged violation.

SIXTEENTH DEFENSE

37. Respondent intends to rely on the defense that Respondent has no prior violations.

SEVENTEENTH DEFENSE

38. Respondent intends to rely on the defense that Respondent promptly and without delay prevented further discharge from the toilets and closed the cesspool upon notification by the EPA that the EPA believed the cesspool needed to be closed.

EIGHTEENTH DEFENSE

39. Respondent intends to rely of the defense that a penalty would have a significant negative impact on Respondent.

NINETEENTH DEFENSE

40. Respondent intends to rely on the defense that he is a steward of the environment and when he became manager of the Kahuku Water Association in 2013 he identified an approximate 5,000,000 gallons of water being wasted a month through leaks in the system and used his own resources to repair the aging water system and stopped the annual leakage of 60,000,000 gallons of water which has reduced the amount of water pumped from the aquafer by that same amount.

WHEREFORE, Respondent prays for relief as follows:

1. That a hearing be held on the matter;
2. That the Complaint be dismissed;
3. That no penalty be accessed;

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4. That should any penalty be assessed that it be of a reasonable amount under the circumstances and take into account the mitigating factors and facts as required by law.
5. Such other relief as Respondent may be entitled to.

DATED: Honolulu, Hawaii, August 29, 2022.

/s/ Charles W. Gall

CHARLES W. GALL

Attorney for Respondent
NSHE HI NARCISSUS, LLC