



REGION 9
SAN FRANCISCO, CA 94105



In the Matter of:)	
)	
NSHE HI Narcissus, LLC,)	
Kahuku, Hawaii,)	Docket No. UIC-09-2022-0058
)	
Respondent.)	

ORDER GRANTING MOTION TO WITHDRAW COMPLAINT WITHOUT PREJUDICE

The Environmental Protection Agency (“EPA” or “Complainant”) filed a Penalty Complaint and Notice of Opportunity for Hearing in this matter on August 2, 2022. In the Complaint, EPA alleged NSHE HI Narcissus, LLC, (“Respondent”) violated 40 C.F.R. § 144.88—a requirement of an applicable underground injection control program, actionable under Section 1423(a)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(a)(2)—by owning or operating a large capacity cesspool after April 5, 2005. On August 29, 2022, Respondent filed an Answer in this matter and requested a hearing. Pursuant to 40 C.F.R. § 22.50(a)(2), 40 C.F.R. §§ 22.50 – 52 apply to all proceedings for “[t]he assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)....” Furthermore, 40 C.F.R. § 22.51 states, “The Presiding Officer shall be the Regional

Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until the initial decision has become final or has been appealed.”

The Region 9 Regional Judicial Officer (“Presiding Officer”) issued a Prehearing Order on December 6, 2022, which set forth a schedule for the exchange of information and a prehearing conference. On December 9, 2022, Complainant filed a Motion for Extension of Time, which requesting the dates in the Prehearing Order be extended to January 2023 to allow Complainant time to file a motion for accelerated decision on the liability issues in this matter. Respondent informed the presiding Officer it concurred with Complainant’s Motion for Extension of Time. On December 19, 2022, the Presiding Officer granted Complainant’s Motion for Extension of Time. On January 13, 2023, Complainant filed its Motion for Accelerated Decision on Liability. On January 31, 2023, Respondent filed its Opposition to Complainant’s Motion for Accelerated Decision on Liability. Complainant filed its Reply to Respondent’s Opposition on February 8, 2023.

On August 28, 2023, the Presiding Officer issued a Partial Accelerated Decision on Liability granting Complainant’s Motion for a Partial Accelerated Decision on Liability. In the process of preparing for a penalty hearing in this matter, the parties agreed to participate in a mediation process with the Regional Judicial Officer in Region 1. The mediation took place on August 4, 2024, but did not resolve the disputed penalty issues. On August 20, 2024, Respondent’s counsel moved to withdraw as Respondent’s representatives in this matter. The Presiding Officer granted the request and continued the prehearing dates on August 21, 2024. The Presiding Officer allowed Duke Pontin to enter his appearance as Respondent’s representative.

On September 3, 2024, Respondent filed and served its Motion to Dismiss, requesting the Presiding Officer to dismiss this matter with prejudice. Respondent argued proceeding in this administrative forum violated Respondent's Constitutional rights and that the matter should have been properly adjudicated in a "court of law." On September 17, 2024, Complainant filed its Motion to Withdraw Complaint Without Prejudice and Response to Motion to Dismiss. Complainant requested permission to withdraw the Complaint pursuant to 40 C.F.R. § 22.14(d) indicating its intent to pursue its claims in federal district court. Complainant further argued withdrawing the Complaint will render Respondent's Motion to Dismiss moot. On September 25, 2024, Respondent filed a document titled, "My answer because EPA had no opposition but instead filed a Motion to Withdraw." Here, Respondent argued Complainant did not properly respond to its Motion to Dismiss. Therefore, the Presiding Officer should dismiss the matter with prejudice. Respondent further stated Complainant's Motion to Withdraw attempts to move this dispute to federal district court "where it should have been in the first place." On October 4, 2024, Complainant filed its Reply In Support of Motion to Withdraw Complaint Without Prejudice. Respondent subsequently filed a document titled "Clarification to EPA's sleight of hand interpretation of my answer." Here, Respondent explained he did not answer Complainant's Motion to Withdraw Complaint. Instead, Respondent filed an opposition to Complainant's opposition to the Motion to Dismiss.

Respondent repeatedly acknowledges in its moving papers that this matter could have been properly adjudicated in federal district court. Without acquiescing to Respondent's argument that the administrative forum is improper, Complainant agreed to withdraw its Complaint in the administrative forum and to adjudicate its claims against Respondent in

federal district court. Pursuant to 40 C.F.R. § 22.14(d), I find good cause to allow Complainant to withdraw its Complaint in the above-referenced matter and to proceed with this matter in federal district court, which both parties consider a proper adjudicatory forum. I also agree with Complainant's position that the withdrawal of its Complaint renders Respondent's Motion to Dismiss moot. I do not find good cause to prevent this matter from proceeding in federal district court. Therefore, I am allowing Complainant to withdraw its Complaint without prejudice.

ORDER

I hereby **GRANT** Complainant's Motion to Withdraw the Complaint Without Prejudice. All upcoming hearing dates are effectively canceled.

STEVEN
JAWGIEL

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JAWGIEL
Date: 2024.10.22 16:05:57 -07'00'

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

CERTIFICATE OF SERVICE

This is to certify a true and correct copy of the Fourth Prehearing Order in In the Matter of NSHE HI Narcissus, LLC (UIC-09-2022-0058) was sent to the following parties via electronic mail, as indicated below:

COMPLAINANT'S REPRESENTATIVE:

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