

In re: Chiyono Trust UIC-09-2025-0025
SUZANNE ANDREWS
Acting Regional Counsel
United States Environmental Protection Agency, Region 9

JULIA JACKSON
Assistant Regional Counsel
United States Environmental Protection Agency, Region 9

Attorneys for Complainant



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Grant T. Kobayashi, Successor Trustee of the
Chiyono Kobayashi Trust.

Respondent.

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

DOCKET NO. UIC-09-2025-0025

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency, Region 9 ("EPA") and the Chiyono Kobayashi Trust ("Respondent") (collectively the "Parties") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO is an administrative action commenced and concluded under Section 1423(c)(1) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at 40 C.F.R. Part

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9. The Administrator of EPA delegated the authority to bring and settle this action under the SDWA to the Regional Administrator of EPA Region 9. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division

3. Respondent is Grant T. Kobayashi, Successor Trustee of the Chiyono Kobayashi Trust.

4. Respondent is the “owner” or “operator” of a large capacity cesspool at the following location: 79-7422-B Mamalahoa Highway Kealahou, Hawai‘i, 96750 (“the Property”).

5. Where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order. See 40 C.F.R. § 22.13(b).

6. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of \$2,000.

II. JURISDICTION AND WAIVER OF RIGHT TO JUDICIAL REVIEW AND HEARING

8. Consistent with 40 C.F.R. § 22.18(b), for purposes of the proceeding, Respondent admits the jurisdictional allegations of the CA/FO; neither admits nor denies specific factual allegations contained in the CA/FO; consents to the assessment of any stated civil penalty, and

to any conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h- 2(c)(3); its right to seek federal judicial review of the CA/FO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and its right to appeal this CA/FO under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CA/FO without further adjudication.

III. STATUTORY AND REGULATORY AUTHORITY

10. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping, and reporting requirements, for state underground injection control (“UIC”) programs to prevent underground injection from endangering drinking water sources.

11. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

12. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h- 1,

respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147

(Subpart M), and 148.

13. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells, and all owners or operators of these injection wells must be authorized either by permit or rule.

14. Section 1401(6) of the SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

15. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

16. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.

17. 40 C.F.R. § 144.3 defines “well” to mean, in relevant part, a dug hole whose depth is greater than the largest surface dimension.

18. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which is a type of “well” that is completed above the water table.

19. 40 C.F.R. § 144.81(2) defines “large capacity cesspools” (“LCCs”) to include “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides.” LCCs do not include single-family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than twenty (20) persons per day. *Id.*

20. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V injection wells.

21. 40 C.F.R. § 144.3 defines Class V injection wells as a “facility or activity” subject to regulation under the UIC program.

22. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). See also 40 C.F.R. § 144.3.

23. 40 C.F.R. § 144.3 defines “owner or operator” to mean the owner or operator of any “facility or activity” subject to regulation under the UIC program.

24. Pursuant to 40 C.F.R. § 144.82, the “owner or operator” of a Class V well “must comply with Federal UIC requirements in 40 C.F.R. Parts 144 through 147,” and must also “comply with any other measures required by States or an EPA Regional Office UIC Program to protect [underground sources of drinking water].”

25. 40 C.F.R. §§ 144.84(b)(2) and 144.88 requires owners or operators of existing LCCs to have closed them by April 5, 2005. New LCCs were prohibited as of April 5, 2000. *Id.*

26. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, EPA administers the UIC program in the State of Hawai‘i.

27. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

28. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$27,894 for each day of violation, up to a maximum administrative penalty of \$348,671, for violations occurring after November 2,

2015, where penalties are assessed on or after December 27, 2023, and issue an order requiring compliance.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

29. Respondent, Grant T. Kobayashi, is an individual and the Successor Trustee of the Chiyono Kobayashi Trust, and thus qualifies as a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

30. Respondent, Grant T. Kobayashi, as Successor Trustee of the Chiyono Kobayashi Trust, owns the Property identified as Club Rehab, located at 79-7422-B Mamalahoa Highway Kealahou, Hawai‘i, 96750 (TMK: 3-7-9-007-003). The Property has been in the Chiyono Kobayashi Trust’s ownership since at least April 5, 2005.

31. The Property is used as a physical therapy office and gym.

32. The Property has one cesspool that collects sanitary wastewater from two restrooms.

33. EPA alleges that the cesspool that services the Property meets the regulatory criteria of a LCC, as that term is described at 40 C.F.R. § 144.81(2), in that the cesspool has the capacity to serve twenty (20) or more persons per day.

34. EPA alleges that each day that Respondent failed to close the alleged LCC at the Property after April 5, 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

35. Respondent closed the LCC at the Property and filed a Backfilling Final Completion Report with the Hawai‘i Department of Health (DOH) on August 14, 2024. Respondent installed a 1,500-gallon septic tank at the Property which was inspected and approved by the DOH on August 29, 2024. The tank was approved for use by the DOH on September 16, 2024.

36. Respondent provided copies of all approvals related to the closure of the LCC and the replacement septic tank issued by DOH, Hawai'i County, or any other agency.

37. Respondent is thus in compliance with the SDWA at the Property.

V. SETTLEMENT TERMS

A. Civil Penalty

38. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of the SDWA.

39. The consideration of the economic impact of the penalty in this case included an Ability-To-Pay analysis of the Respondent, conducted by the EPA. This analysis informed the civil penalty.

40. Within thirty (30) days of the Effective Date of this CA/FO, Respondents must pay a civil penalty of TWO THOUSAND DOLLARS (\$2,000) by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

41. After payment, Respondent shall immediately provide proof of payment to the

Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, ORC-1
75 Hawthorne Street
San Francisco, CA 94105
r9HearingClerk@epa.gov

Respondent shall also send notice of payment and a transmittal letter via email to the contacts for Complainant identified in Paragraph 63.

42. This civil penalty represents an administrative civil penalty and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Paragraphs 47-48, Respondent must pay the following on any penalty amount overdue under this CA/FO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

44. If Respondent does not pay timely the civil penalty due under Paragraph 36 and/or any stipulated penalties due under Paragraphs 47-48, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expense for the collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

B. Stipulated Penalties

45. Respondent shall pay stipulated penalties in accordance with this Section for any violations of this CA/FO.

46. If Respondent fails to make the payment specified in Section V.A., Respondent agrees to pay a stipulated penalty of \$300 per day per violation for each day the Respondent is late meeting the applicable requirements.

47. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in Paragraph 36 and agree to pay interest, handling charges and penalties that accrue for late payment of the stipulated penalty in the same manner as set forth in Paragraph 46.

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

49. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies for violations of this CA/FO in addition to or in lieu of assessing stipulated penalties and/or reduce or waive stipulated penalties due under this CA/FO.

VI. SUBMISSIONS REQUIREMENTS

50. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA

In re: Chiyono Trust UIC-09-2025-0025

electronically, to the extent possible. If electronic submittal is not possible, submissions may be made by certified mail (return receipt requested). The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Electronic or mailed submissions shall be sent to the individuals identified below:

EPA Region 9 Enforcement and Compliance Assurance Division
Dominic Giardina
U.S. Environmental Protection Agency, ECAD-3-3
75 Hawthorne Street
San Francisco, CA 94105
giardina.dominic@epa.gov

and

EPA Region 9 Office of Regional Counsel
Julia Jackson
U.S. Environmental Protection Agency, ORC-2-3
75 Hawthorne Street
San Francisco, CA 94105 jackson.julia@epa.gov

51. All reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

52. If Respondent finds at any time after submitting information that any portion of

that information is false or incorrect, the signee must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondent to criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

53. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

54. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

55. The information required to be submitted pursuant to this CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

VII. GENERAL PROVISIONS

56. Full payment of the penalty as described in Section V.A. above shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in Section IV of this CA/FO. Violation of this CA/FO shall be deemed a violation of the SDWA for purposes of Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

57. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

58. The Parties consent to service of this CA/FO by e-mail at the following valid e - mail addresses: giardina.dominic@epa.gov and jackson.julia@epa.gov (for Complainant) and charlotte@graham-hawaii.com (for Respondent).

59. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties.

60. The provisions of this CA/FO shall apply to and be binding upon Respondent and its officers, directors, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO except for extensions of time to complete such obligations provided by EPA pursuant to Paragraph 55.

61. Full compliance with this CA/FO does not in any manner effect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violation of law, except with respect to the claims described in Section IV that have been specifically resolved by this CA/FO.

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

63. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO.

64. Unless otherwise specified, the Parties shall each bear their own costs and attorney fees in this action.

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

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

67. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section V.B. is restitution or required to come into compliance with law.

VIII. EFFECTIVE DATE

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

69. The Parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4), which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

70. 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.

Consent Agreement and Final Order

In the Matter of: Chiyono Kobayashi Trust Docket No. UIC-09-2025-0025

For Respondent:

A handwritten signature in cursive script, appearing to read "Charlotte E. Graham", written over a horizontal line.

Charlotte E. Graham

Authorized Representative

of Grant T. Kobayashi,

Successor Trustee, Chiyono Kobayashi Trust

Date: 12/11/2024

For Complainant U.S. Environmental Protection Agency, Region 9

JOEL JONES

Digitally signed by JOEL JONES
Date: 2025.02.19 15:30:01
-08'00'

Date: _____

For/Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Grant T. Kobayashi, Successor Trustee of the
Chiyono Kobayashi Trust.

Respondent.

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

DOCKET NO. UIC-09-2025-0025

**CONSENT AGREEMENT AND
FINAL ORDER**

FINAL ORDER

The United States Environmental Protection Agency Region 9 (“EPA”) and Grant T. Kobayashi, Successor Trustee of the Chiyono Kobayashi Trust (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-9-2025-0025) be entered;
2. Respondent pay an administrative civil penalty of \$2,000 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent comply with all other requirements of the Consent Agreement.

This Consent Agreement and Final Order, as agreed to by the Parties, shall become effective on the date that it is filed with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18, 22.31, and 22.45.

IT IS SO ORDERED.

Beatrice Wong
Regional Judicial Officer, Region 9
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Grant T. Kobayashi, Successor Trustee of the Chiyono Kobayashi Trust, (Docket No. UIC-09-2025-0025) was filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

RESPONDENT: Francis L. Jung, Counsel
Grant T. Kobayashi, Successor Trustee of the
Chiyono Kobayashi Trust
Kuakini Tower
75-5722 Kuakini Highway, Suite 100
Kailua-Kona, HI 96740
Frank@Jungvassar.com

COMPLAINANT: Julia Jackson, Assistant Regional Counsel
United States Environmental Protection Agency
Region IX – Office of Regional Counsel (ORC-2-4)
75 Hawthorne Street
San Francisco, CA 94105
Jackson.Julia@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA – Region IX