

SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region 9

ERIN BREWER
Assistant Regional Counsel
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3362



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

IN THE MATTER OF:)
)
Eric Hauck, individually and as trustee of the)
Acton Holding Trust,)
)
)
Respondent.)
)
Proceedings under Section 1423(c) of the Safe)
Drinking Water Act, 42 U.S.C. § 300h-2(c).)
_____)

DOCKET NO. UIC-09-2023-0029

**MEMORANDUM IN SUPPORT OF
COMPLAINANT’S MOTION FOR A
PARTIAL DEFAULT ORDER
ON LIABILITY**

I. INTRODUCTION

The Environmental Protection Agency (EPA), Region 9, Enforcement and Compliance Assurance Division (Complainant or EPA Region 9), by and through EPA Region 9’s Office of Regional Counsel, moves for an order finding Eric Hauck (Respondent) in default for failing to answer EPA’s Administrative Complaint and liable for violations of the Safe Drinking Water Act’s (SDWA) underground injection control (UIC) program, 40 C.F.R. Part 144. Complainant submits this memorandum of law in support of its motion.

II. BACKGROUND

A. EPA Region 9 Filed A Complaint And Served The Respondent.

On February 15, 2023, EPA Region 9 filed a Complaint against the Respondent for violations of the SDWA UIC program, (Complaint) in accordance with SDWA section 1423(c), 42 U.S.C. § 300h-2(c), and the *Consolidated Rules of Practice (Consolidated Rules)*, 40 C.F.R. Part 22.¹ A true and correct copy of the Complaint is attached as Exhibit A. The Complaint alleges that Respondent, individually and as trustee of the Acton Holding Trust, owns and/or operates two large capacity cesspools located at the Cactus Creek Mobile Home Park in Acton, California, in violation of the UIC regulatory ban on such systems that took effect on April 5, 2005. Compl. ¶ 28; *see also* 40 C.F.R. § 144.88. The Complaint further alleges that the cesspools are, and have been in service since at least December 2019, when the Los Angeles Regional Water Quality Control Board inspected the property. Compl. ¶¶ 18-24.

On March 4, 2023, through a registered process server, EPA Region 9 served Respondent with the Complaint and *Consolidated Rules*. Declaration of Christopher Chen In Support of Motion for a Partial Default Order on Liability (Chen Decl.), ¶ 5, Ex. A. In addition to informing Respondent of EPA Region 9's allegations against him, the Complaint explained that, to avoid being found in default upon motion by Complainant, a written answer, which could include a request for a hearing, had to be filed with the Regional Hearing Clerk within thirty days of the Complaint's receipt—i.e., by April 3, 2023.² Compl. ¶¶ 39-42. The Complaint further advised Respondent that “[t]he answer must clearly and directly admit, deny, or explain each of the

¹ Complainant electronically filed the Complaint with EPA Region 9's Regional Hearing Clerk in accordance with the Regional Judicial Officer's May 14, 2020, standing order, *Designation of EPA Region IX Part 22 Electronic Filing System*.

² The cover letter transmitting the Complaint likewise informed Respondent of the need for an answer and the risks of default.

factual allegations contained in the Complaint,” and that “Respondent’s failure to admit, deny, or explain any material factual allegation . . . constitutes an admission of the allegation.” *Id.* ¶ 38.

Respondent did not file an answer within the required time or at any point thereafter.³ Chen Decl. ¶ 16. Nor did he serve Complainant with any documents in this proceeding. *Id.*; see 40 C.F.R. § 22.15(a) (requiring that answers be filed with the Regional Hearing Clerk and served on other parties).

B. EPA Region 9 Made Further Effort to Contact the Respondent.

Given the failure to timely file an answer with the Regional Hearing Clerk, on April 18, 2023, EPA Region 9 staff contacted Respondent by telephone to remind him of the need for an answer and notify him of EPA’s intent to move for default if he failed to file one. Chen Decl. ¶ 7. During the telephone call Respondent conferenced in an individual he identified as James Roberts, whom he claimed to be an “administrative manager” or “liaison” for the Respondent and the Acton Holding Trust. *Id.* Neither Respondent nor Mr. Roberts explained why Respondent failed to file an answer by the April 3 deadline. *Id.* Instead, Mr. Roberts indicated that legal counsel for the Acton Holding Trust was working on a formal answer to the Complaint, and that in the meantime, he would contact EPA Region 9 via email with additional information, including contact information for both himself, and for legal counsel. *Id.*

EPA Region 9 did not receive either the email from Mr. Roberts or a copy of the Answer. Chen Decl. ¶ 8. EPA Region 9 staff attempted to contact the Respondent via telephone again on April 20, 2023. *Id.* EPA Region 9 staff was not able to reach the Respondent, and instead left a voicemail. *Id.* EPA Region 9 staff then contacted Mr. Roberts and spoke with him over the phone, reminding him that the Respondent had an obligation to file an answer to the Complaint,

³ On July 11, 2023, EPA Region 9 staff confirmed with the Regional Hearing Clerk that the Respondent had not yet filed an answer to the Complaint. Chen Decl. ¶ 16.

and that EPA Region 9 intended to file a motion for default if Respondent failed to do so. *Id.* Mr. Roberts again claimed that an email with additional information, including contact information for both himself and legal counsel, would be forthcoming. *Id.* Later that day, Mr. Roberts called EPA Region 9 staff back and stated that an answer to the Complaint would be filed by April 26, 2023. Chen Decl. ¶ 9.

On April 26, 2023, Mr. Roberts called EPA Region 9 and stated that Respondent would submit an Answer by April 27, 2023. Chen Decl. ¶ 10. Respondent did not file an answer to the Complaint on April 27, 2023. Chen Decl. ¶ 11.

On May 11, 2023, EPA Region 9 staff again attempted to contact the Respondent by phone but was unable to reach him and instead left a voicemail, explaining that if the Respondent failed to file an answer to the Complaint by May 26, 2023, EPA would file a motion for default judgment. Chen Decl. ¶ 12. EPA also contacted Mr. Roberts via phone and reiterated the May 26, 2023 deadline to him. *Id.* Mr. Roberts did not explain why Respondent had failed to file an Answer by April 27, but stated that an answer would be filed by the May 26 deadline. *Id.* Following these conversations, EPA Region 9 staff sent a letter via certified mail to the Respondent at the address at which he was served, which reiterated that if Respondent failed to file an answer to the Complaint by May 26, 2023, EPA Region 9 would file a motion for default judgment. Chen Decl. ¶ 13.⁴ A copy of the letter was also sent to Mr. Roberts via email at an email address he provided. *Id.*

On May 26, 2023, EPA Region 9 staff received a phone call from Mr. Roberts, who stated that an answer to the Complaint was forthcoming. Chen Decl. ¶ 14. Contrary to Mr. Robert's statements over the phone, Respondent did not file an answer to the Complaint. Since

⁴ On June 22, 2023, EPA Region 9 staff received notification that the letter to Respondent had been returned. Chen Decl. ¶ 15.

the May 26, 2023 telephone call, EPA Region 9 has had no further contact with the Respondent or Mr. Roberts. *Id.* ¶¶ 14, 16.

Respondent's deadline to file an answer to the Complaint expired April 3, 2023, more than three months ago, and the Respondent has neither filed a formal answer to the Complaint nor made any effort to contact EPA Region 9 by phone or by email. Further, while Mr. Roberts indicated that the Acton Holding Trust may be engaging legal counsel in this matter, EPA Region 9 staff has not been contacted by anyone purporting to represent Respondent or the Acton Holding Trust in this proceeding.⁵ EPA Region 9 staff has made numerous attempts to engage the Respondent, and has repeatedly explained to the Respondent and his representative that he has an obligation to file an answer to the Complaint and there are potential consequences for failing to do so. Because the Respondent refused to file an answer to the Complaint, or to otherwise participate meaningfully in this action, EPA moves for entry of a default judgment against Respondent.

III. ARGUMENT

Because Respondent failed to timely or otherwise answer the Complaint, EPA Region 9 respectfully requests a partial default order deeming him liable for owning and/or operating two large capacity cesspools in violation of the SDWA UIC program.

⁵ It is not clear at this time whether Respondent has retained legal counsel in this matter. *See* Chen Decl. ¶¶ 7-8. However, even if Respondent is proceeding *pro se* in this matter, this should not excuse his inaction or preclude entry of a default judgment. The Environmental Appeals Board has upheld default judgments against *pro se* respondents, noting that while “both the federal courts and the Agency have adopted the approach that more lenient standards of competence and compliance apply to *pro se* litigants . . . a litigant who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance.” *In re Rybond, Inc.*, 1996 WL 691675, *10 (EAB 1996) (upholding default judgment where *pro se* litigant had been carefully apprised of the due date).

A. Respondent Has Defaulted For Failing To Answer The Complaint

Under the *Consolidated Rules*, a party “may be found to be in default, after motion, upon failure to file a timely answer to the complaint.” 40 C.F.R. § 22.17(a). To be timely, an answer must be filed within thirty days of the respondent’s receipt of a properly served complaint. *Id.* § 22.15(a); *In the Matter of Medzam, Ltd.*, 4 E.A.D. 87, at *4 (EAB 1992) (discussing the “threshold” issue of valid service). When no answer is filed, and “the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c). Moreover, while default orders are disfavored, the Environmental Appeals Board “has not hesitated to enter or affirm” them when warranted. *In re Four Strong Builders, Inc.*, 12 E.A.D. 762, at *4 (EAB 2006) (collecting cases).

Default is warranted here due to Respondent’s failure to file an answer to EPA Region 9’s properly served Complaint with the Regional Hearing Clerk. Service is proper when effectuated by, among other means, “any reliable commercial delivery service that provides written verification of delivery.” 40 C.F.R. § 22.5(b)(1)(i). Respondent was personally served at his home address by Nausir Firas, a registered California process server working for Lowest Rates Process Server.⁶ *See* Chen Decl. ¶ 5, Ex. A. Consistent with the *Consolidated Rules*, Mr. Firas provided proof of service in the form of an affidavit, which Complainant promptly submitted to the Regional Hearing Clerk. *See id.*; 40 C.F.R. § 22.5(b)(1)(iii).

As the process server’s affidavit shows, service occurred on March 4, 2023, making Respondent’s answer due thirty days later, on April 3, 2023. *See* Chen Decl. ¶ 5, Ex. A; *see also* 40 C.F.R. §§ 22.15(a) (defining timeliness), 22.17(a) (computing time). Respondent, however,

⁶ Skip N Serve’s Christopher Demirdjian, another registered California process server, made several unsuccessful attempts to serve Respondent. *See* Chen Decl. ¶ 5, Ex. A.

has yet to file an answer, move for an extension, or otherwise participate in this proceeding, notwithstanding Complainant's numerous attempts to remind him and his representative of the risks of not doing so. As Respondent refuses to engage meaningfully in this action, an entry of default on the issue of liability⁷ is warranted.

B. Respondent Is Liable Under The SDWA And UIC Program.

A respondent's default constitutes "admission of all facts alleged in the complaint and a waiver of [the] respondent's right to contest such factual allegations." 40 C.F.R. § 22.17(a); accord *In re Four Strong Builders*, 12 E.A.D. at *2 n.1. The Complaint alleges facts that, now deemed admitted because of Respondent's failure to file an Answer, establish Respondent's liability for violating the SDWA UIC program. The UIC regulations at 40 C.F.R. § 144.88(a) prohibit new large capacity cesspools and required owners and operators of existing large capacity cesspools to close them no later than April 5, 2005, in accordance with the closure specifications contained in 40 C.F.R. § 144.89. The UIC regulations define "large capacity cesspools" to mean cesspools that receive sanitary waste from "multiple dwellings, community or regional cesspools, or other devices," but exclude single family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. 40 C.F.R. § 144.81(2). In other words, with respect to residential cesspools, a person is liable under the SDWA for violating the ban on large capacity cesspools where (1) the "person" (2) owns or operates a cesspool after April 5, 2005, (3) that receives sanitary waste from multiple dwellings. *Id.* As explained below, the facts alleged in the Complaint, which are deemed true, establish a *prima facie* case for violations of the SDWA UIC program for the failure to close two large capacity cesspools.

⁷ As stated above, EPA Region 9 is seeking an entry of partial default solely on the issue of liability. EPA Region 9 does not seek to resolve the issue of penalties through this motion.

i. Respondent is a “Person”.

First, the Complaint alleges that Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300(f) and 40 C.F.R. § 144.3 because he is an individual. Compl. ¶ 26.

ii. Respondent owned and operated a cesspool after April 5, 2005.

Second, the Complaint alleges that Respondent owned or operated a cesspool after April 5, 2005. Under the UIC regulations, “owner or operator” is defined as “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.” 40 C.F.R. § 144.3. A “facility or activity” is defined as “any UIC ‘injection well,’ or another facility or activity that is subject to regulation under the UIC program.” *Id.* A “cesspool” is one type of injection well. *Id.* The Complaint alleges (1) that Respondent, in his capacity as trustee of Acton Holding Trust, has owned the real property located at 3740 Smith Avenue, Acton, California 93510 with Assessor Parcel Number 3208-026-048 (the “Property”) since at least 2011, (2) that the Respondent has operated the Cactus Creek Mobile Home Park (the “Park”) on the Property since at least 2015, and (3) that since at least 2019, the Park’s wastewater system has consisted of two cesspools. Compl. ¶¶ 17-21. The Complaint therefore alleges that the Respondent owned and operated two cesspools after April 5, 2005.

iii. The cesspools at issue are Large Capacity Cesspools.

Finally, the Complaint alleges that the cesspools on the property are large capacity cesspools. *Id.* ¶ 21. As explained above, the UIC regulations define “large capacity cesspools” to mean cesspools that receive sanitary waste from “multiple dwellings, community or regional cesspools, or other devices,” but exclude single family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20

persons per day. 40 C.F.R. § 144.81(2). “Sanitary waste” is defined to include: “wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses and utensils are cleaned.” 40 C.F.R. § 144.3. Here, the Complaint alleges that the Park’s wastewater disposal system has, since at least 2019, and at all times relevant to this action, consisted of two residential cesspools located on the Property, each of which receives sanitary waste, including human excreta, from at least two of the Park’s mobile homes. Compl. ¶¶ 19-25. The Complaint alleges that the cesspools on the Property receive sanitary waste from “multiple dwellings,” and are therefore large capacity cesspools.

Because the Complaint alleges that Respondent is a “person” who owned or operated a cesspool after April 5, 2005, that receives sanitary waste from multiple dwellings, the Complaint establishes a *prima facie* case for violations of the SDWA UIC program for the failure to close two large capacity cesspools.

IV. CONCLUSION

In view of Respondent’s failure to answer the Complaint or otherwise participate in this proceeding, EPA Region 9 respectfully requests that the Presiding Officer issue a default order against Respondent for failure to file an Answer and deeming Respondent liable under section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), for violating the regulatory prohibition on large capacity cesspools.

Respectfully submitted,

**ERIN
BREWER**

Erin Brewer
Assistant Regional Counsel
Attorney for Complainant

Digitally signed by
ERIN BREWER
Date: 2023.07.26
15:52:07 -07'00'

Exhibit A



1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 NATHANIEL BOESCH
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
75 Hawthorne Street
5 San Francisco, California 94105
(415) 972-3926

6 Attorneys for Complainant
7

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION 9**

11 IN THE MATTER OF:)
12 Eric Hauck, individually and as trustee of the)
13 Acton Holding Trust,)
14 Respondent.)

DOCKET NO. UIC-09-2023-0029

ADMINISTRATIVE COMPLAINT

15 Proceedings under Section 1423(c) of the Safe)
16 Drinking Water Act, 42 U.S.C. § 300h-2(c).)
17)
18)

19
20
21
22
23
24
25
In re: Eric Hauck, Acton Holding Trust
Administrative Complaint UIC-09-2023-0029

1 **I. AUTHORITY**

2 1. The United States Environmental Protection Agency (EPA or “Complainant”) issues this
3 Administrative Complaint pursuant to the authority vested in the Administrator of EPA and
4 properly delegated to the EPA Region 9 Director of the Enforcement and Compliance Assurance
5 Division under Section 1423(c) of the Safe Drinking Water Act (“SDWA” or “Act”), 42 U.S.C.
6 § 300h-2(c). The rules for this proceeding are the “Consolidated Rules of Practice Governing the
7 Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of
8 Permits” (“Rules of Practice”), 40 Code of Federal Regulation (“C.F.R.”) Part 22, a copy of
9 which is enclosed. *See specifically* 40 C.F.R. § 22.1(a)(9). Pursuant to the Rules of Practice, 40
10 C.F.R. § 22.13(a), this Administrative Complaint conforms to the prehearing procedures at 40
11 C.F.R. § 22.14 governing administrative complaints and is hereinafter referred to also as the
12 “Complaint.” EPA alleges as follows:

13 **II. JURISDICTION**

14 2. The Regional Judicial Officer for EPA Region 9 is the Presiding Officer with jurisdiction
15 over this action pursuant to the Rules of Practice, 40 C.F.R. §§ 22.50(a)(2) and 22.51.

16 **III. STATUTORY AND REGULATORY BACKGROUND**

17 3. To prevent underground injection from endangering drinking water sources, EPA has
18 promulgated regulations pursuant to Part C of the Act, 42 U.S.C. §§ 300h – 300h-8, which
19 establish minimum requirements for Underground Injection Control (“UIC”) programs. These
20 UIC regulations are set forth in 40 C.F.R. Part 144.

21 4. The UIC regulations define “underground injection” to mean the subsurface emplacement
22 of fluids by well injection. 42 U.S.C. § 300 h(d)(1), 40 C.F.R. § 144.3.

23 5. “Well injection” is defined to mean the subsurface emplacement of fluids through a well.
24 40 C.F.R. § 144.3

1 6. A “drywell” is a type of well, other than an improved sinkhole or subsurface fluid
2 distribution system, completed above the water table so that its bottom and sides are typically dry
3 except when receiving fluids. 40 C.F.R. § 144.3.

4 7. A “cesspool” is a type of drywell that receives untreated sanitary waste containing human
5 excreta, and which sometimes has an open bottom and/or perforated sides. 40 C.F.R. § 144.3.

6 8. “Sanitary waste” is defined to include “wastes collected from toilets, showers, wash
7 basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing
8 operations, and sinks or washing machines where food and beverage serving dishes, glasses and
9 utensils are cleaned.” 40 C.F.R. § 144.3.

10 9. The UIC regulations define “large capacity cesspools” to mean cesspools, including those
11 that receive sanitary waste from “multiple dwellings, community or regional cesspools, or other
12 devices,” but excluding single family residential cesspools or non-residential cesspools which
13 receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. 40
14 C.F.R. § 144.81(2).

15 10. The UIC regulations classify large capacity cesspools as Class V UIC injection wells. 40
16 C.F.R. § 144.80(e).

17 11. A Class V UIC injection well is considered a “facility or activity” subject to regulation
18 under the UIC program. 40 C.F.R. § 144.3.

19 12. “Owner or operator” means the owner or operator of any “facility or activity” subject to
20 regulation under the UIC program. 40 C.F.R. § 144.3.

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

1 14. The UIC regulations at 40 C.F.R. § 144.88(a) prohibit new large capacity cesspools and
2 required owners and operators of existing large capacity cesspools to close them no later than
3 April 5, 2005, in accordance with the closure specifications contained in 40 C.F.R. § 144.89.

4 15. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
5 § 147.251, EPA administers the Class V UIC program in the State of California. This UIC
6 program consists of the requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart F), and 148.

7 16. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R.
8 § 19.4, EPA may issue an administrative order against any person who violates the Act or any
9 requirement of an applicable UIC program, and the administrative order may

10 a. assess an administrative civil penalty of not more than \$27,018 for each day of
11 each violation occurring after November 2, 2015, up to a maximum penalty of
12 \$337,725, or

13 b. require compliance with any UIC regulation or other requirement of the UIC
14 program, or

15 c. both assess an administrative civil penalty and require compliance with any UIC
16 regulation or other requirement of the UIC program.

17 **IV. FINDING OF VIOLATION**

18 17. Respondent, Erik Hauck, is the trustee of the Acton Holding Trust.

19 18. In his capacity as trustee of the Acton Holding Trust, Respondent has, since at least April
20 2011, and at all times relevant to this action, owned the real property located at 3740 Smith
21 Avenue, Acton, California 93510 with Assessor Parcel Number 3208-026-048 (the “Property”).

22 19. Respondent, both individually and in his capacity as trustee of the Acton Holding Trust,
23 has, since at least July 2015, and at all times relevant to this action, also operated on the Property
24 the Cactus Creek Mobile Home Park (the “Park”), a mobile home park comprising at least seven
25 mobile homes.

1 20. The Los Angeles Regional Water Quality Control Board inspected the Park in December
2 2019.

3 21. Since at least December 2019, and at all times relevant to this action, the Park's
4 wastewater disposal system has consisted of two cesspools located on the Property.

5 22. The Respondent, both individually and in his capacity as trustee of the Acton Holding
6 Trust, owns and/or operates the two cesspools.

7 23. The westernmost cesspool receives sanitary waste, including human excreta, from at least
8 two of the Park's mobile homes.

9 24. The easternmost cesspool likewise receives sanitary waste, including human excreta,
10 from at least two of the Park's mobile homes.

11 25. The two cesspools serving the Park's seven mobile homes are "large capacity cesspools"
12 within the meaning of 40 C.F.R. § 144.81(2) because each receives sanitary waste, including
13 human excreta, from multiple dwellings.

14 26. Respondent is a "person" within the meaning of Section 1401(12) of the Act, 42 U.S.C.
15 § 300f(12) and 40 C.F.R. § 144.3, because he is an individual.

16 27. Respondent is an "owner or operator" within the meaning of 40 C.F.R. § 144.3 because
17 he owns and/or operates a "facility or activity" subject to regulation under the UIC program.

18 28. Respondent's failure to close the large capacity cesspools by April 5, 2005, or any time
19 thereafter is a violation of the Act and of the UIC program regulations set forth at 40 C.F.R.
20 § 144.88.

21 **V. RELIEF SOUGHT: PROPOSED ORDER FOR PENALTIES AND COMPLIANCE**

22 29. Pursuant to Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), EPA requests that
23 the Presiding Officer issue an order ("Order") in this matter assessing an administrative penalty
24 and requiring compliance with the UIC program, namely the closure of the large capacity
25 cesspools, as proposed below.

1 A. Proposed Administrative Civil Penalty

2 30. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4,
3 Respondent shall pay an administrative penalty of up to \$27,018 for each day of violation of the
4 Act, up to a maximum penalty of \$337,725.

5 31. In assessing a civil penalty, Section 1423(c)(4) of the Act requires that EPA take into
6 account the following factors: (1) the seriousness of the violations; (2) the economic benefit
7 resulting from the violations; (3) any history of such violations; (4) any good faith efforts to
8 comply with the applicable requirements; (5) the economic impact of the penalty on Respondent;
9 and (6) such other matters as justice may require.

10 32. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), which applies when the complaint does
11 not contain a specific penalty demand, the following briefly explains the duration and severity of
12 Respondent's violation: Respondent violated a crucial provision of the UIC program by owning
13 and/or operating two large capacity cesspools since at least July 2015 to the present day. The
14 Act's UIC regulations at 40 C.F.R. § 144.88 required closure of all such cesspools by April 5,
15 2005, to prevent the direct contamination of drinking water supplies and minimize the risk of
16 contamination of any potential drinking water sources. *See* 64 Fed. Reg. 66,546 (Dec. 7, 1999).
17 In promulgating that requirement, EPA found that large capacity cesspools have a high potential
18 to contaminate underground sources of drinking water and threaten human health because (1)
19 sanitary waste entering large capacity cesspools can percolate out of the bottom of wells to
20 shallow groundwater sources of drinking water; (2) wastewater from large capacity cesspools
21 frequently exceeds drinking water health standards for nitrates, total suspended solids, and
22 coliform bacteria and may contain other contaminants of concern such as phosphates, chlorides,
23 grease, viruses, and chemicals used to clean cesspools (e.g., trichloroethane and methylene
24 chloride); and (3) pathogens in untreated sanitary waste released from large capacity cesspools

1 could pose an acute health risk (e.g., a person could become ill by drinking from an affected
2 water supply). *Id.* at 68,553.

3 33. Within 30 days of the effective date of any final Order issued by the Presiding Officer,
4 Respondent shall pay any penalty required by the Presiding Officer in accordance with the
5 instructions posted on EPA's website at <https://www.epa.gov/financial/makepayment> and
6 <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

7 34. EPA will notify the public of this Complaint in accordance with the requirements of 40
8 C.F.R. § 22.45(b).

9 B. Compliance with the UIC Program

10 35. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1),

11 a. Respondent shall, within 60 days of the effective date of any final Order issued by
12 the Presiding Officer, close both large capacity cesspools in accordance with 40
13 C.F.R. § 144.89(a) and all other applicable requirements. Respondent shall
14 comply with all federal, state, and local laws governing the proper closure and/or
15 conversion of cesspools, including timely submittal of all necessary permit
16 applications and diligent pursuit of issuance of such permits and application of all
17 federal and state cross-cutting authorities, as appropriate.

18 b. Respondent shall, within 30 days of closure of the large capacity cesspools,
19 submit to EPA a description of how the large capacity cesspools were closed, the
20 names of the contractor(s) providing the service, and copies of any reports or
21 approvals from any state or local agencies documenting pertaining to the closure
22 of the cesspools. Respondent shall also submit all related approvals, including for
23 any replacement systems, issued by applicable permitting authorities.
24
25

1 **VII. ANSWERING THE COMPLAINT AND REQUESTING A HEARING**

2 A. Answer to the Complaint

3 36. If Respondent intends to contest any material fact upon which the Complaint is based, or
4 wishes to contend that the proposed penalty is inappropriate or that Respondent is entitled to
5 judgment as a matter of law, the Rules of Practice at 40 C.F.R. § 22.15(a) require that
6 Respondent file an original and one copy of a written Answer with EPA Region 9’s Regional
7 Hearing Clerk within 30 days after service of this Complaint at the address below:

8 Ponly Tu
9 Regional Hearing Clerk
10 U.S. Environmental Protection Agency, Region 9
11 75 Hawthorne Street (mail code: ORC-1)
12 San Francisco, CA 94105
13 R9HearingClerk@epa.gov

14 37. The Rules of Practice at 40 C.F.R. § 22.15(a) also require that Respondent serve an
15 additional copy of the Answer on EPA to the following person, who is authorized to receive
16 service related to this proceeding:

17 Nathaniel Boesch
18 Office of Regional Counsel
19 U.S. Environmental Protection Agency, Region 9
20 75 Hawthorne Street (mail code: ORC 2-3)
21 San Francisco, CA 94105
22 (415) 972-3926
23 boesch.nathaniel@epa.gov

24 38. In accordance with 40 C.F.R. § 22.15(b), the contents of the Answer must clearly and
25 directly admit, deny, or explain each of the factual allegations contained in the Complaint with
regard to which Respondent has any knowledge. Where Respondent has no knowledge of a
particular factual allegation and so states in his Answer, the allegation is deemed denied. Under
40 C.F.R. § 22.15(d), Respondent’s failure to admit, deny, or explain any material factual
allegation contained in this Complaint constitutes an admission of the allegation. The Answer
must also, in accordance with 40 C.F.R. § 22.15(b), state (1) the circumstances or arguments that

**In re: Eric Hauck, Acton Holding Trust
Administrative Complaint UIC-09-2023-0029**

1 are alleged to constitute the grounds of any defense, (2) the facts that Respondent disputes,
2 (3) the basis for opposing the proposed relief, and (4) whether a hearing is requested.

3 **B. Request for a Hearing**

4 39. In accordance with Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A), EPA
5 gives Respondent this written notice of the Complaint for penalties and compliance and of the
6 opportunity to request a hearing upon the issues raised by the Complaint and Answer, and on the
7 appropriateness of the relief sought in the Complaint. As provided under 40 C.F.R. § 22.15(c), if
8 Respondent wishes to request such a hearing, he must include the request in his Answer. Such
9 hearing shall not be subject to Section 554 or 556 of the Administrative Procedures Act, 5 U.S.C.
10 §§ 554 and 556, but shall provide a reasonable opportunity to be heard and to present evidence.
11 If a hearing is requested, Subpart I of the Rules of Practice, 40 C.F.R. Part 22, governs and sets
12 forth the procedures of such hearing.

13 40. Respondent's failure to affirmatively raise in the Answer facts that constitute or might
14 constitute grounds for his defense may preclude Respondent from raising such facts and/or from
15 having such facts admitted into evidence at a hearing.

16 **C. Default**

17 41. To avoid the Presiding Officer's entry of a default order pursuant to 40 C.F.R. § 22.17(a)
18 for a penalty up to \$337,725 and compliance, Respondent must file a written Answer with the
19 Regional Hearing Clerk in the manner described above.

20 42. Any penalty assessed in a default order will become due and payable by Respondent
21 without further proceedings 30 days after the default order becomes final. 40 C.F.R. § 22.17(d).
22 Similarly, any compliance required under a default order shall be effective and enforceable
23 without further proceedings on the date the default order becomes final. *Id.* If necessary, EPA
24 may then seek to enforce such final default order against Respondent, and seek to collect the
25 assessed penalty amount, which may be up to \$337,725, in federal court.

1 **VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE**

2 43. In accordance with 40 C.F.R. § 22.18(b), whether or not Respondent requests a hearing,
3 Respondent may request an informal settlement conference to discuss the facts of this case, the
4 penalty and compliance requirements proposed in the Complaint, and settlement. To request such
5 a settlement conference, please contact the following person:

6 Nathaniel Boesch
7 Office of Regional Counsel
8 U.S. Environmental Protection Agency, Region 9
9 75 Hawthorne Street (mail code: ORC 2-3)
10 San Francisco, CA 94105
11 (415) 972-3926
12 boesch.nathaniel@epa.gov

13 44. A request for an informal settlement conference constitutes neither an admission nor a
14 denial of any of the matters alleged herein. EPA does not deem a request for an informal
15 settlement conference to be a request for a hearing as specified in 40 C.F.R. § 22.15(c), or as
16 provided for by Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A).

17 45. Settlement discussions do not affect Respondent's obligation to file a timely Answer to
18 the Complaint. 40 C.F.R. §§ 22.15 and 22.18(b)(1). EPA will not modify the penalty and
19 compliance requirements proposed in the Complaint simply because an informal settlement
20 conference is held.

21 46. The terms and conditions of any settlement that may be reached as a result of a settlement
22 conference will be recorded in a written Consent Agreement signed by all parties. 40 C.F.R.
23 § 22.18(b)(2). To conclude the proceeding, EPA will execute any Final Order ratifying the
24 parties' Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement,
25 Respondent would waive any right to contest the allegations herein and waive any right to appeal
the Final Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

1 47. Respondent entering into a Consent Agreement would not extinguish, waive, satisfy, or
2 otherwise affect Respondent's obligation to comply with all applicable statutory and regulatory
3 requirements and legal orders.

4 **IX. APPEARANCES**

5 48. In accordance with 40 C.F.R. § 22.10, any party may appear in person or by counsel or
6 other representative. A partner may appear on behalf of a partnership and an officer may appear
7 on behalf of a corporation. Persons who appear as counsel or other representatives must conform
8 to the standards of conduct and ethics required of practitioners before the courts of the United
9 States.

10 Dated this 15th day of February, 2023

11
12
13 **JOEL** Digitally signed by
14 **JONES** JOEL JONES
Date: 2023.02.15
11:25:37 -08'00'
15 Amy C. Miller-Bowen, Director
16 Enforcement and Compliance Assurance Division
17
18
19
20
21
22
23
24
25


CERTIFICATE OF SERVICE

In the Matter of Acton Holding Trust
EPA Docket No. UIC-09-2023-0029

I certify that the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing, was filed via email with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 9 at R9HearingClerk@epa.gov and that a true and correct copy of (1) the Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice at 40 C.F.R. Part 22; (3) the EPA’s 1993 UIC Program Judicial and Administrative Order Settlement Penalty Policy; and (4) the Region 9 Regional Judicial Officer’s Standing Order dated May 14, 2020, was delivered in person by Skip N Serve Process Server Service to:

Eric Hauck, Trustee
Acton Holding Trust
12803 Autumn Leaves
Victorville, CA 92395

**CHRISTOPHER
CHEN**

 Digitally signed by CHRISTOPHER
CHEN
Date: 2023.02.15 13:09:39 -08'00'

Christopher Chen
Enforcement and Compliance Assurance Division, ECAD
U.S. EPA, Region 9
600 Wilshire Blvd, Suite 940
Los Angeles, CA 90017

In re: Eric Hauck, Acton Holding Trust

Administrative Complaint UIC-09-2023-0029