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10SEP2018 - 04:35PM
U.S.EPA - Region 09

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

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0007

12 Hawaii Country Club, LLC)

13 Respondent.)

CONSENT AGREEMENT
AND
FINAL ORDER

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

19 **CONSENT AGREEMENT**

20 I. **AUTHORITIES AND PARTIES**

21 1. The United States Environmental Protection Agency Region IX (“EPA”) and
22 Hawaii Country Club, LLC (“Respondent”) (collectively the “Parties”) agree to settle this matter
23 and consent to the entry of this Consent Agreement and Final Order (“CA/FO”). This CAFO
24 commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2)
25 and 22.45(b).

1 10. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
2 in 40 C.F.R. § 144.3.

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

8 12. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
9 § 144.80(e).

10 13. Class V UIC injection wells are considered a “facility or activity” subject to
11 regulation under the UIC program. 40 C.F.R. § 144.3.

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

14 15. The “owner or operator” of a Class V UIC well “must comply with federal UIC
15 requirements set forth at 40 C.F.R. Parts 144 through 147,” and must also “comply with any
16 other measures required by States or an EPA Regional Office UIC Program to protect
17 [underground sources of drinking water].” 40 C.F.R. § 144.82.

18 16. Owners or operators of existing LCCs were required to close those LCCs no later
19 than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

20 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
21 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
22 than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or
23 both, against any person who violates the SDWA or any requirement of an applicable UIC
24 program.

1 III. ALLEGATIONS

2 18. Respondent is a limited liability company and thus qualifies as a “person” within
3 the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

4 19. Since at least October 3, 2014, Respondent has owned and/or operated the Hawaii
5 Country Club (“the Property”), located at 94-1211 Kunia Road, Wahiawa, Hawaii, 96786. The
6 Property is a public golf course. At the Property, there is a restaurant, pro-shop, and vehicle and
7 equipment maintenance area, which contribute wastewater to a cesspool located on-site.

8 20. Since at least October 3, 2014, Respondent has been the “owner or operator” of
9 the cesspool located at the Property within the meaning of 40 C.F.R. § 144.3.

10 21. Since at least October 3, 2014, the cesspool at the Property has had the capacity to
11 serve 20 or more persons per day, and thus is considered an LCC pursuant to 40 C.F.R. §
12 144.81(2).

13 22. Since at least October 3, 2014, Respondent has failed to close the LCC at the
14 Property in violation of the requirement for owners and/or operators to close all LCCs by April
15 5, 2005, as set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

16 IV. SETTLEMENT TERMS

17 A. General Provisions

18 23. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
19 allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations
20 contained in this CA/FO, (3) consents to the assessment of the penalty and to the specified
21 compliance obligations contained in this CA/FO, and (4) waives any right to contest the
22 allegations or to appeal the final order accompanying this consent agreement. 40 C.F.R. §
23 22.18(b)(2).
24
25

1 24. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
2 agreement between the Parties to resolve EPA's civil claims against Respondent for the specific
3 SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes
4 (1) bringing the LCC referred to in Paragraph 20 of this CA/FO into compliance with the UIC
5 requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and
6 Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty of \$40,000 in
7 accordance with Section IV.C of this CA/FO, shall constitute full settlement of Respondent's
8 liability for federal civil claims for the SDWA violations specifically identified in this CA/FO.

9 25. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
10 officers, directors, agents, servants, authorized representatives, employees, and successors or
11 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
12 acting under, through or for Respondent shall not excuse any failure of Respondent to fully
13 perform its obligations under this CA/FO.

14 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
15 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
16 except with respect to those civil claims that have been specifically resolved pursuant to
17 Paragraph 24 above.

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

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

4 29. Unless otherwise specified, the Parties shall each bear their own costs and
5 attorneys' fees incurred in this proceeding.

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

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

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

16 B. Compliance Requirements

17 33. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and
18 consistent with the timeframes set forth below, Respondent shall:

- 19 a. By no later than November 30, 2018, close the LCC referred to in Paragraph
20 20 of this CA/FO in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a),
21 and 144.89(a), and all other applicable requirements, including all Hawaii
22 Department of Health ("HDOH") closure and conversion requirements. If
23 Respondent installs one or more new Individual Wastewater Systems
24 ("IWSs") or other alternative system to replace the LCC, the installation and
25 operation of that system shall comply with all HDOH requirements; and

1 b. Within thirty (30) days of closure of the LCC, submit to EPA a description of
2 how the LCC was closed and who closed it, including copies of the Backfill
3 Closure Report and other approvals issued by HDOH, and copies of any
4 HDOH approvals to install and operate the replacement system.

5 C. Penalty

6 34. Respondent agrees to the assessment of a civil penalty in the amount of forty
7 thousand dollars (\$40,000).

8 35. Respondent shall pay the assessed penalty no later than thirty (30) days from the
9 Effective Date of this CA/FO.

10 36. Respondent may pay the penalty by check (mail or overnight delivery), wire
11 transfer, automated clearing house, or online payment. Payment instructions are available at:
12 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
13 check must be payable to the order of "Treasurer, United States of America" and delivered to the
14 following address:

15 U.S. Environmental Protection Agency
16 Fines and Penalties
17 Cincinnati Finance Center
18 P.O. Box 979077
19 St. Louis, Missouri 63197-9000

20 37. Respondent must provide a letter with evidence of the payment made pursuant to
21 Paragraphs 34 through 36 above, accompanied by the title and docket number of this action, to
22 the EPA Region IX Regional Hearing Clerk, the EPA Region IX Enforcement Division
23 Compliance Officer, and the EPA Region IX Office of Regional Counsel attorney, via United
24 States mail, at the following addresses:

25 Regional Hearing Clerk
 U.S. Environmental Protection Agency
 Region IX - Office of Regional Counsel
 75 Hawthorne Street (ORC-1)
 San Francisco, CA 94105

1 Hillary Hecht, Compliance Officer
2 U.S. Environmental Protection Agency
3 Enforcement Division - SDWA/FIFRA Section
4 75 Hawthorne Street (ENF-3-3)
5 San Francisco, CA 94105

6 Desean Garnett, Attorney-Advisor
7 U.S. Environmental Protection Agency
8 Region IX – Office of Regional Counsel
9 75 Hawthorne Street (ORC-2-4)
10 San Francisco, CA 94105

11 38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
12 interest, penalty charges, and administrative costs will be assessed against the outstanding
13 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
14 penalty by the deadline specified in Paragraph 35.

- 15 a. Interest on delinquent penalties will be assessed per 40 C.F.R. § 13.11(a)(1) at an
16 annual rate that is equal to the rate of current value of funds to the United States
17 Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published
18 by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal
19 Requirements Manual Bulletins.
- 20 b. A penalty charge will be assessed on all debts delinquent beyond ninety days. The
21 penalty charge will be at a rate of 6% per annum and will be assessed monthly per
22 40 C.F.R. § 13.11(c).
- 23 c. In addition, administrative costs for handling and collecting Respondent's
24 overdue debt will be based on either actual or average cost incurred, and will
25 include both direct and indirect costs, as provided in 40 C.F.R. § 13.11(b).

39. Failure to pay any civil administrative penalty by the deadline may also lead to
any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the
Department of Justice for filing of a collection action in the appropriate United

1 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
2 collection action, the validity, amount, and appropriateness of the assessed
3 penalty and of this CA/FO shall not be subject to review.

- 4 b. The department or agency to which this matter is referred (e.g., the Department of
5 Justice, the Internal Revenue Service) may assess administrative costs for
6 handling and collecting Respondent's overdue debt in addition to EPA's
7 administrative costs.
- 8 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii)
9 suspend or disqualify Respondent from doing business with EPA or engaging in
10 programs EPA sponsors or funds. 40 C.F.R. § 13.17.

11 40. Respondent shall tender any interest, handling charges, late penalty payments, and
12 stipulated penalties in the same manner as described in Paragraphs 36 and 37.

13 D. Stipulated Penalties

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

16 42. If Respondent fails to meet the LCC closure requirements set forth in Paragraph
17 33, Respondent agrees to pay the following amounts for failing to properly close the cesspool on
18 time:

- 19 a. \$100 for each and every day for the first 90 days that Respondent fails to properly
20 close the cesspool;
- 21 b. \$200 for each and every day from days 91 through 365 that Respondent fails to
22 properly close the cesspool; and
- 23 c. \$300 for each and every day from day 366 and afterwards that Respondent fails to
24 properly close the cesspool.

25 43. If Respondent fails to pay the assessed civil administrative penalty specified in
Paragraph 34 by the deadline specified in Paragraph 35, Respondent agrees to pay a stipulated

1 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
2 penalty.

3 44. If Respondent fails to timely submit any reports in accordance with the timelines
4 set forth in this CA/FO, Respondent agree to pay a stipulated penalty of \$100 for each day after
5 the report was due until it submits the report in its entirety.

6 45. Respondent agrees to pay any stipulated penalties within thirty (30) days of
7 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
8 first date of noncompliance, and shall continue to accrue through the date of completion of the
9 delinquent CA/FO requirement. Respondent will use the method of payment specified in
10 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for
11 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through
12 40.

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

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

19 E. Notices

20 48. Respondent must send any written communications and/or submittals, including
21 any requests for extensions of time to meet the compliance deadlines, to the following:

22 Hillary Hecht, Compliance Officer
23 U.S. Environmental Protection Agency
24 Enforcement Division - SDWA/FIFRA Section
25 75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105
Hecht.Hillary@epa.gov

1 Desean Garnett, Attorney-Advisor
2 U.S. Environmental Protection Agency
3 Region IX – Office of Regional Counsel
4 75 Hawthorne Street (ORC-2-4)
5 San Francisco, CA 94105
6 Garnett.Desean@epa.gov

7 For each written communication and/or submittal, Respondent shall identify the case name, the
8 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
9 submission is being made.

10 49. Respondent shall include the following signed certification made in accordance
11 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

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

22 50. EPA must send any written communications to the following address:

23 Guy Fong
24 P.O. Box 505
25 Brisbane, CA 94005
guyfong@yahoo.com

26 **IV. EFFECTIVE DATE**

27 51. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to public
28 notice and comment at least 40 days prior to it becoming effective through the issuance of the
29 Final Order by the Regional Judicial Officer.

30 52. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
31 effective on the date that the final order contained in this CA/FO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
2 Regional Hearing Clerk.

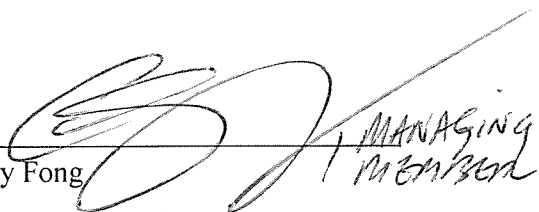
3 53. This CA/FO shall terminate only after Respondent has complied with all
4 requirements of the CA/FO, including payment of any interest and late fees, and after EPA has
5 issued a written notice of termination.

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1 FOR THE CONSENTING PARTIES:

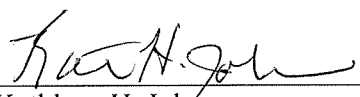
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HAWAII COUNTRY CLUB, LLC


Guy Fong
MANAGING MEMBER
MANAGING MEMBER.

Date: May 22, 2018

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Kathleen H. Johnson
Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: July 25, 2018

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0007
5)
6 Hawaii Country Club, LLC)
7 Respondent.) **CONSENT AGREEMENT AND**
8) **FINAL ORDER**
9 Proceedings under Sections 1423(c) of the)
10 Safe Drinking Water Act,)
11 42 U.S.C. §§ 300h-2(c).)

12 **FINAL ORDER**

13 The United States Environmental Protection Agency Region IX (“EPA”), and Hawaii
14 Country Club, LLC (“Respondent”), having entered into the foregoing Consent Agreement, and
15 EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order
16 regarding the matters alleged therein,
17

18 **IT IS HEREBY ORDERED THAT:**

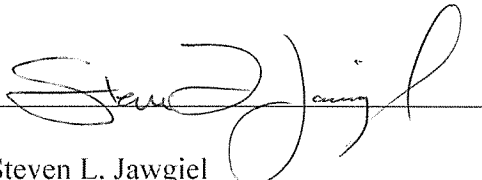
- 19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
20 2018-0007) be entered;
- 21 2. Respondent pay an administrative civil penalty of \$40,000 dollars to the Treasurer
22 of the United States of America in accordance with the terms set forth in the Consent Agreement;
23
- 24 3. Respondent close the LCC in accordance with the terms set forth in Paragraph 33
25 of the Consent Agreement;

In re Hawaii Country Club, LLC

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4. Respondent comply with all other requirements of the Consent Agreement.

This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.



Date: 09/10/18

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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing order issued by the Regional Judicial Officer in the
3 matter of Hawaii Country Club, LLC (UIC-09-2018-0007) has been filed with the Regional
4 Hearing Clerk, and a copy was served on Respondent, and Counsel for EPA, as indicated below:

5 FIRST CLASS MAIL - CERTIFIED

Tracking Number: 7015 0640 0001 1122 1946

6 Respondent:

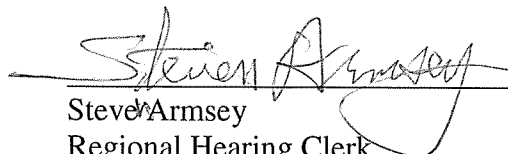
Guy Fong
Hawaii Country Club, LLC
P.O. Box 505
Brisbane, CA 94005

9 HAND DELIVERED

10 Complainant:
11 (By Counsel)

Desean Garnett
Attorney-Advisor
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

14 Date Sept. 10, 2018

16 
17 Steven Armsey
18 Regional Hearing Clerk
U.S. EPA, Region 9

CERTIFICATE OF SERVICE (Amended)

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Hawaii Country Club, LLC (UIC-09-2018-0007), was returned as undeliverable, and is now being served on Respondent at the alternate address indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)
(7012 1640 0001 2190 5034)

Respondent -

Attn: Guy Fong
Hawaii Country Club, LLC
94-1211 Kunia Rd
Wahiawa, HI 96786

Date: March 26, 2019

Steven Armsey

Steven Armsey
Regional Hearing Clerk
EPA, Region 9