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		FILED 26 SEP 2016 (see page 10)			
1	SYLVIA QUAST				
2	Regional Counsel United States Environmental Protection Agency, Region IX				
3	JANET A. MAGNUSON				
4	Attorney-Advisor				
5	United States Environmental Protection Agency, Region IX 75 Hawthorne Street				
6	San Francisco, California 94105 (415) 972-3887				
7	Attorneys for Complainant				
8	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (
9	REGION IX 75 Hawthorne Street				
10	San Francisco,	, California 94105			
n		N Contraction of the second seco			
2	IN THE MATTER OF:) DOCKET NO. UIC-09-2016-00^2			
13	County of Maui,)			
14	Maui, Hawaii				
15	Respondent.	CONSENT AGREEMENT			
16	Proceedings under Sections 1423(c) and	(PROPOSED) FINAL ORDER			
	1445(a) of the Safe Drinking Water Act,)			
17	42 U.S.C. §§ 300h-2(e) and 300j-4(a).)			
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9	CONSENT AGREEMENT				
20	I. <u>AUTHORITY</u>				
21	1. This Consent Agreement is entered into and the [Proposed] Final Order is issued				
22	under the authorities vested in the Administrator of the United States Environmental Protection				
23	Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act ("SDWA" or				
24	"the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4(a).				
25		, u).			

In re: Maui County

2. The Administrator has delegated the authority to enter into this Consent 1 Agreement and issue a Final Order ("CA/FO") to the Regional Administrator of EPA Region IX. 2 The Regional Administrator in turn has delegated the authority to enter into this Consent 3 Agreement to the Director of the Enforcement Division, EPA Region IX. In accordance with this 4 authority, and with the "Consolidated Rules of Practice Governing the Administrative 5 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 6 C.F.R. Part 22 (hcreinafter "Consolidated Rules of Practice"), the Director of the Enforcement 7 Division, EPA Region IX, and the County of Maui ("Respondent"), together referred to as "the 8 Parties," hereby agree to the terms of this Consent Agreement and to the issuance of the 9 proposed Final Order. 10 3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of 11 this CA/FO commences this proceeding. In addition, pursuant to 40 C.F.R. § 22.18(b)(3), this 12 proceeding will conclude upon the issuance of a final order by the Regional Judicial Officer. 13 Part II of this CA/FO contains a concise statement of the factual basis of the 4. 14 violations of the SDWA in accordance with 40 C.F.R. § 22.18(b)(2). 15 16 **II. STIPULATIONS AND FINDINGS** 17 5. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, Sections 1421 to 18 1429 of the SDWA, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control ("UIC") programs, to prevent underground injection that 19

endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

6. "Underground injection" means the subsurface emplacement of fluids by well
injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

7. "Well injection" means the subsurface emplacement of fluids through a well. 40
C.F.R. § 144.3.

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1	8. A "cesspool" is a "drywell," which in turn is a "well," as those terms are define	ed	
2	in 40 C.F.R. § 144.3. "Large capacity cesspools" ("LCCs") include "multiple dwelling,		
3	community or regional cesspools, or other devices that receive sanitary wastes, containing		
4	human excreta, which have an open bottom and sometimes perforated sides." 40 C.F.R. §		
5	144.81(2). LCCs do not include single family residential cesspools or non-residential cesspool	ls	
6	which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day		
7	Id.		
8	9. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F	⁷ .R.	
9	§ 144.80(e).		
10	10. 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	11. "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	12. The "owner or operator" of a Class V UIC well "must comply with Federal UI	С	
15	requirements in 40 C.F.R. parts 144 through 147," and must also "comply with any other		
16	measures required by States or an EPA Regional Office UIC Program to protect [underground		
17	sources of drinking water]." 40 C.F.R. § 144.82.		
18	13. Owners or operators of existing LCCs were required to have closed those LCC	S	
19	no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.		
20	14. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.	R.	
21	§ 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consi	sts	
22	of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.		
23	15. Respondent is a county and thus qualifies as a "person" within the meaning of		
24	Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.		
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Since at least April 5, 2005, Respondent owned and/or operated a cesspool 16. located at Maui Raceway Park, Maui (the "Property"), and is an "owner or operator," as that 2 term is defined at 40 C.F.R. § 144.3. 3

EPA alleges that the cesspool referred to in Paragraph 16, at all times relevant to 17. this CA/FO, has had the capacity to serve 20 or more persons per day, and thus is considered an LCC pursuant to 40 C.F.R. § 144.81(2).

18. Respondent failed to close the cesspool referred to in Paragraph 16 by April 5, 7 2005. 8

19. Respondent contracted an engineering firm and had the subject cesspool 9 backfilled, and therefore closed, on February 10, 2015. 10

20. Between April 5, 2005 and February 10, 2015, Respondent owned and operated 11 the cesspool referenced in Paragraph 16 and therefore EPA alleges that Respondent was in 12 violation of the requirement to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88. 13

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 order either assessing an administrative civil penalty of not more than \$16,000 per day per violation up to a maximum of \$187,500, or requiring compliance, or both, against any person who violates the SDWA or any requirement of an applicable UIC program.

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III. SETTLEMENT TERMS

General Provisions Α.

For the purposes of this proceeding, Respondent (1) admits the jurisdictional 22. allegations contained in this CA/FO, (2) neither admits nor denies the facts stipulated in this CA/FO; (3) consents to the assessment of the penalty and to the specified compliance obligations contained in this CA/FO, and (4) and waives any right to contest the allegations or to appeal the Final Order accompanying this CA/FO. 40 C.F.R. § 22.18(b)(2).

In re: Maui County

23. Respondent also expressly waives any right to contest the allegations contained in the CA/FO and to appeal the Final Order under the SDWA or the Administrative Procedures Act,
5 U.S.C. §§ 701-706, providing for judicial review of final agency action, including any right to confer with the EPA Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).

24. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes payment of administrative civil penalties of \$33,000, shall constitute full settlement only of Respondent's liability for federal civil penalties for the SDWA violations specifically identified in this CA/FO.

The provisions of this CA/FO shall apply to and be binding upon Respondent, its
officers, directors, agents, servants, authorized representatives, 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.

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

27. This CA/FO is not a permit or modification of a permit, and does not affect
Respondent's obligation 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, and any order or permit issued thereunder,
except as specifically set forth herein.

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28. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.

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29. 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. Violation of this CA/FO shall be deemed a violation of the SDWA.

8 30. Unless otherwise specified, the Parties shall each bear their own costs and
9 attorneys fees incurred in this proceeding.

31. This Consent Agreement 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 Consent Agreement is
determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the
remaining portions shall remain in full force and effect.

32. The undersigned representative of each party certifies that he or she is duly and
fully authorized to enter into and ratify this Consent Agreement.

B. Penalty

18 33. Respondent agrees to pay to the United States a single administrative civil
19 penalty of THIRTY-THREE THOUSAND DOLLARS (\$33,000) no later than 30 days following
20 the Effective Date of the Final Order (hereafter referred to as the "Due Date").

34. Respondent may pay the penalty by check (mail or overnight delivery), wire
transfer, ACH, or online payment. Payment instructions are available at:

<u>http://www2.epa.gov/financial/makepayment</u>. 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:

In re: Maui County

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2	U.S. Environmental Protection Agency Fines and Penaltics			
3	Cincinnati Finance Center P.O. Box 979077			
4	St. Louis, Missouri 63197-9000			
5	35. Respondent must provide a letter with evidence of the payment made pursuant to			
6	Paragraphs 33 and 34 above, accompanied by the title and docket number of this action, to the			
7	EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance			
8	Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at			
9	the following addresses:			
10	Regional Hearing Clerk Aaron Setran, Compliance Officer			
11	U.S. Environmental Protection Agency Region 9 - Office of Regional Counsel U.S. Environmental Protection Agency Region 9 - Enforcement Division			
12	75 Hawthorne Street (ORC-1)75 Hawthorne Street (ENF-3)San Francisco, CA 94105San Francisco, CA 94105			
13	Janet Magnuson, Attorney			
14	U.S. Environmental Protection Agency Region 9 - Office of Regional Counsel			
15	75 Hawthorne Street (ORC-2) San Francisco, CA 94105			
16	San Francisco, CA 94105			
17	36. If the full penalty payment is not received on or before the Due Date, interest shall			
18	accrue on any overduc amount from the Duc Date through the date of payment, at the annual rate			
19	established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late			
20	payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion			
21	thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty			
22	will also be applied on any principal amount not paid within 90 days of the Due Date.			
23	Respondent shall tender any interest, handling charges, or late penalty payments in the same			
24	manner as described above.			
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1	37. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if		
2	Respondent fails to pay by the Due Date the administrative civil penalty assessed in this CA/FO,		
3	EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus		
4	costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of		
5	such penalty shall not be subject to review.		
6	38. Respondent shall not deduct the civil penalty, nor any interest, late penalty		
7	payments, or administrative handling fees provided for in this CA/FO from Respondent's		
8	federal, state, or local income taxes.		
9	C. <u>Notices</u>		
10	39. Respondent must send any written communications, to the following address:		
11	Aaron Setran, Compliance Officer		
12	U.S. Environmental Protection Agency Region 9 - Enforcement Division		
13	75 Hawthorne Street (ENF-3) San Francisco, CA 94105		
14	40. EPA must send any written communications to the following address:		
15	Patrick K. Wong, Corporation Counsel		
16	Department of the Corporation Counsel, County of Maui 200 South High Street, 3 rd Floor		
17	Wailuku, Maui HI Email: CORPCOUN@MAUICOUNTY.GOV		
18	Telephone: (808) 270-7740		
19	IV. <u>EFFECTIVE DATE</u>		
20	41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be		
21	effective on the date that the final order contained in this CA/FO, having been approved and		
22	issued by either the Regional Judicial Officer or Regional Administrator, is filed with the		
23	Regional Hearing Clerk.		
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1 FOR THE CONSENTING PARTIES: COUNTY OF MAUI: 2 Date: ____6/28/1C 3 ALAN M. ARAKAWA 4 Its MAYOR 5 APPROVED AS TO FORM AND LEGALITY: 6 7 Date: 6/73/16 8 K. Wong Pai Corporation Counsel 9 County of Maui 10 (LF2015-4276) 11 12 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY: 13 14 Date: August 3, 2016 Mm 15 Kathleen Johnson 16 Director, Enforcement Division, Region IX U.S. Environmental Protection Agency 17 75 Hawthorne Street San Francisco, CA 94105 18 19 20 21 22 23 24 25 In re: Maui County

1 2 3	75 Hawth	ENTAL PROTECTION A ION IX norne Street California 94105	AGENCY ** FILED ** 265EP2016 - 11:44AA U.S.EPA - Region 09
4	IN THE MATTER OF:)) DOCKET NO. UIC-09-2	2016-0002
5	County of Maui)	
6	Maui, Hawaii	CONSENT AC	
7	Respondent.	(PROPOSED) F	
8	Proceedings under Sections 1423(c) and 1445(a) of the Safe Drinking Water Act,	j Sj	
10	42 U.S.C. §§ 300h-2(c) and 300j-4(a).)	
11 12	The United States Environmental Protection Agency Region 9 ("EPA"), and Maui		
13	County ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having		
14	duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the		
15	matters alleged therein,		
16	IT IS HEREBY ORDERED THAT:		
17	1. The foregoing Consent Agreement a	and this Final Order (Docke	t No. UIC-09-2016-
18	0002) be entered; and		
19	2. Respondent pay a single administrative civil penalty of \$33,000 dollars to the		
20	Treasurer of the United States of America in ac	cordance with the terms set	forth in the Consent
21	Agreement.		
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In re: Maui County

This Final Order's Effective Date is 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 23 16 au Regional Judicial Officer, Region IX U.S. Environmental Protection Agency In re: Maui County

1	CERTIFICATE OF SERVICE	
2	I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT	
3	AGREEMENT in the matter of County of Maui (UIC-09-2016-0002), dated, was filed with the Regional Hearing Clerk and sent.	
4		
5	FIRST CLASS MAIL - CERTIFIED Tracking Numbers: 7015 3010 0000 3883 9763	
6	Respondent Patrick K. Wong Corporate Counsel	
8	Department of the Corporation Counsel County of Maui 200 South High Street, 3 rd Floor	
9	Wailuku, Maui, Hawaii 96793	
10	HAND DELIVERED	
11	EPA Region IX Attorney: Janet Magnuson Attorney-Advisor	
12	United States Environmental Protection Agency 75 Hawthorne Street	
13	San Francisco, CA 94105	
14		
15 16	Dated at San Francisco, California:	
17		
18	The The second s	
19	FOR: Steve Armsey	
20	Regional Hearing Clerk U.S. EPA, Region 9	
21		
22		
23		
24		
25		
	In re: County of Maui Consent Agreement and Final Order	