

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-09-2018-0003

5 N.F. Kawakami Store, Ltd.,)
6 P.O. Box 756, Eleele, HI 96705)

7 **CONSENT AGREEMENT**
8 **AND**
9 **FINAL ORDER**

Respondent.)

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

** FILED **
26 JUN 2018 - 04:44 PM

11 **CONSENT AGREEMENT**

U.S. EPA - Region 09

12 **I. AUTHORITIES AND PARTIES**

13 1. The United States Environmental Protection Agency (“EPA” or “Complainant”),
14 Region IX, and N.F. Kawakami Store, Ltd. (“Kawakami” or “Respondent”) (collectively, the
15 “Parties”) agree to settle this matter and consent to the entry of this Consent Agreement and
16 Final Order (“CA/FO”), which commences this proceeding in accordance with 40 C.F.R.
17 §§ 22.13(b), 22.18(b)(2), and 22.45(b). Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will
18 conclude upon the issuance of a Final Order by the Regional Judicial Officer.

19 2. This is a civil administrative action instituted by EPA Region IX against
20 Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §
21 300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”)
22 requirements set forth at 40 C.F.R. Part 144.

23 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The
24 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority
25 to bring and settle this action under the SDWA. In turn, the Regional Administrator of EPA

1 Region IX further delegated the authority to bring and sign a consent agreement settling this
2 action under the SDWA to the Director of the Enforcement Division.

3 4. Respondent N.F. Kawakami Store, Ltd. is a Hawaii domestic profit corporation
4 headquartered at P.O. Box 756, Eleele, Hawaii 96705.

5 **II. APPLICABLE STATUTES AND REGULATIONS**

6 5. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has
7 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC
8 programs to prevent underground injection that endangers drinking water sources.

9 6. Per Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. §
10 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of
11 the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

12 7. “Underground injection” means the subsurface emplacement of fluids by well
13 injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

14 8. “Well injection” means the subsurface emplacement of fluids through a well. 40
15 C.F.R. § 144.3.

16 9. “Well” means, in relevant part, a dug hole whose depth is greater than the largest
17 surface dimension. 40 C.F.R. § 144.3.

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

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

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

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

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

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

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

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

16 **III. ALLEGATIONS**

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

19 19. On or about December 1983, Respondent acquired a commercial property located
20 at 5492 Koloa Road, Koloa, Hawaii 96756 (the “Property”) on the Island of Kauai.

21 20. Since at least April 5, 2005, the Property has contained a “cesspool,” as defined at
22 40 C.F.R. § 144.3.

23 21. Since at least April 5, 2005, the cesspool referred to in Paragraph 20 has had the
24 capacity to serve twenty or more persons per day, and thus is considered an LCC, as defined at
25 40 C.F.R. § 144.81(2).

1 22. To date, Respondent has not closed the LCC referred to in Paragraphs 20 and 21
2 in accordance with 40 C.F.R. §§ 144.84(b)(2) and 144.88.

3 23. Since at least April 5, 2005, Respondent “owned” and/or “operated” the LCC
4 located on the Property in violation of the requirement for owners and operators to close all
5 LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

6 **IV. SETTLEMENT TERMS**

7 **A. GENERAL PROVISIONS**

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

13 25. Respondent also waives any and all remedies, claims for relief, and otherwise-
14 available rights to judicial or administrative review that Respondent may have with respect to
15 any issue of fact or law set forth in this CA/FO, including any right to judicial review under the
16 SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706.

17 26. Respondent acknowledges and agrees to the terms of this CA/FO as the owner
18 and/or operator of the LCC.

19 27. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
20 agreement between the Parties to resolve EPA’s civil claims against Respondent for the alleged
21 violations of the SDWA identified in Section III of this CA/FO. Full compliance with this
22 CA/FO, which includes (1) bringing the LCC at the Property into compliance with the UIC
23 requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a) and in
24 accordance with Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty
25

1 of \$110,000 in accordance with Section IV.B of this CA/FO, shall constitute full settlement of
2 Respondent's liability for federal civil claims for the alleged SDWA violations identified in
3 Section III of this CA/FO.

4 28. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
5 officers, directors, agents, servants, authorized representatives, employees, and successors or
6 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
7 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
8 perform its obligations under this CA/FO.

9 29. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
10 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
11 except with respect to those claims that have been specifically resolved pursuant to Paragraph
12 27.

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

19 31. EPA reserves any and all legal and equitable remedies available to enforce this
20 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
21 any actions against Respondent for noncompliance with this CA/FO. A violation of this CA/FO
22 shall be deemed a violation of the SDWA.
23

24 32. Unless otherwise specified, the Parties shall each bear their own costs and
25 attorneys' fees incurred in this proceeding.

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

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

8 B. COMPLIANCE

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

- 11 a. By May 31, 2019, close the LCC located at the Property in accordance with
12 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable
13 requirements, including all Hawaii Department of Health (“HDOH”) closure,
14 conversion, and/or replacement requirements;
- 15 b. For the installation and operation of the replacement system to receive wastes
16 currently received by the LCC, such as an on-site treatment plant or individual
17 wastewater system (“IWS”), comply with HDOH requirements; and
- 18 c. Within ten (10) days of receipt of approval to operate any replacement system
19 from HDOH, submit to EPA copies of the Backfill Closure Reports for the
20 LCC and HDOH’s approval to operate any replacement system, such as an
21 on-site treatment plant or IWS, that is installed at the Property.
22

23 C. PENALTY

24 36. Respondent agrees to the assessment of a civil penalty in the amount of one
25 hundred ten thousand dollars (\$110,000).

1 37. Respondent shall pay the assessed penalty no later than thirty (30) days from the
2 Effective Date of this CA/FO.

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

8 U.S. Environmental Protection Agency
9 Fines and Penalties
10 Cincinnati Finance Center
11 P.O. Box 979077
12 St. Louis, Missouri 63197-9000

13 39. Respondent must provide a letter with evidence of the payment made pursuant to
14 this CA/FO, accompanied by the title and docket number of this action, to EPA Region IX's
15 Regional Hearing Clerk, Enforcement Division Compliance Officer, and Office of Regional
16 Counsel attorney, via United States mail, at the following addresses:

17 Regional Hearing Clerk
18 U.S. Environmental Protection Agency
19 Region IX - Office of Regional Counsel
20 75 Hawthorne Street (ORC-1)
21 San Francisco, CA 94105

22 Jelani Shareem, Enforcement Officer
23 U.S. Environmental Protection Agency
24 Region IX - Enforcement Division
25 75 Hawthorne Street (ENF-3-3)
 San Francisco, CA 94105

 Nathaniel Boesch, Attorney-Advisor
 U.S. Environmental Protection Agency
 Region IX – Office of Regional Counsel
 75 Hawthorne Street (ORC-2)
 San Francisco, CA 94105

 40. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
interest, penalty charges, and administrative costs will be assessed against the outstanding

1 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
2 penalty by the deadline specified in Paragraph 37.

3 a. Interest on delinquent penalties will be assessed at an annual rate that is equal to
4 the rate of current value of funds to the United States Treasury (i.e., the Treasury
5 tax and loan account rate) as prescribed and published by the Secretary of the
6 Treasury in the Federal Register and the Treasury Fiscal Requirements Manual
7 Bulletins. 40 C.F.R. § 13.11(a)(1).

8 b. A penalty charge will be assessed on all debts more than ninety (90) days
9 delinquent. The penalty charge will be at a rate of 6% per annum and will be
10 assessed monthly. 40 C.F.R. § 13.11(c).

11 c. Administrative costs for handling and collecting Respondent's overdue debt will
12 be based on either actual or average cost incurred, and will include both direct and
13 indirect costs. 40 C.F.R. § 13.11(b).

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

16 a. EPA may refer the debt to a credit reporting agency, a collection agency, or to
17 the Department of Justice for filing of a collection action in the appropriate
18 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any
19 such collection action, the validity, amount, and appropriateness of the
20 assessed penalty and of this CA/FO shall not be subject to review.

21 b. The department or agency to which this matter is referred (e.g., the
22 Department of Justice, the Internal Revenue Service) may assess
23 administrative costs for handling and collecting Respondent's overdue debt in
24 addition to EPA's administrative costs.

25 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
(ii) suspend or disqualify Respondents from doing business with EPA or
engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

1 42. Respondent shall tender any interest, handling charges, late penalty payments, and
2 stipulated penalties in the same manner as described in Paragraphs 38 and 39.

3 D. STIPULATED PENALTIES

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

6 44. If Respondent fails to meet the LCC closure requirements set forth in Paragraph
7 35, Respondent agrees to pay the following amounts:

- 8 a. \$75 for each and every day for the first 90 days that Respondent fails to
9 properly close the cesspool;
- 10 b. \$150 for each and every day from days 91 through 365 that Respondent fails
11 to properly close the cesspool; and
- 12 c. \$250 for each and every day from day 366 and afterwards that Respondent
13 fails to properly close the cesspool.

14 45. If Respondent fails to pay the assessed civil administrative penalty specified in
15 Paragraph 36 by the deadline specified in Paragraph 37, Respondent agrees to pay a stipulated
16 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
17 penalty.

18 46. If Respondent fails to timely submit any reports in accordance with the timelines
19 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$100 for each day after
20 the report was due until it submits the report.

21 47. Respondent agrees to pay any stipulated penalties within thirty (30) days of
22 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
23 first date of noncompliance, and shall continue to accrue through the date of completion of the
24 delinquent CA/FO requirement. Respondent will use the method of payment specified in
25 Paragraphs 38 and 39, and agrees to pay interest, handling charges and penalties that accrue for
late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 and 39.

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

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

7 E. FORCE MAJEURE

8 50. Respondent shall exercise its best efforts to avoid or minimize any delay and any
9 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
10 set forth in this CA/FO, Respondent or its attorney shall, within two (2) business days of the
11 delay or within two (2) business days of Respondent's knowledge of the anticipated delay,
12 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
13 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
14 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
15 by which those measures will be implemented. Failure to comply with the notice requirement of
16 this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

17 51. If EPA agrees in writing that the delay or anticipated delay in compliance with
18 this CA/FO has been or will be caused by circumstances entirely beyond the control of
19 Respondent, the time for performance may be extended for a period of no longer than the delay
20 resulting from the circumstances causing the delay. In such event, EPA will grant in writing an
21 extension of time. An extension of the time for performing an obligation granted by EPA
22 pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent
23 obligation.

24 52. EPA will not impose stipulated penalties for performance of a task during any
25 time period covered by an extension of time for that task granted pursuant to Paragraph 51.

1 F. NOTICES

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

4 Jelani Shareem, Enforcement Officer
5 U.S. Environmental Protection Agency
6 Region IX - Enforcement Division
7 75 Hawthorne Street (ENF-3-3)
8 San Francisco, CA 94105
9 shareem.jelani@epa.gov

8 Nathaniel Boesch, Attorney Advisor
9 U.S. Environmental Protection Agency
10 Region IX – Office of Regional Counsel
11 75 Hawthorne Street (ORC-2)
12 San Francisco, CA 94105
13 boesch.nathaniel@epa.gov

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

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

17 *I certify under penalty of law that this document and all attachments*
18 *were prepared under my direction or supervision in accordance with*
19 *a system designed to assure that qualified personnel properly gather*
20 *and evaluate the information submitted. Based on my inquiry of the*
21 *person or persons who manage the system, or those persons directly*
22 *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.

23 55. EPA must send any written communications to the following addresses:

24 N.F. Kawakami Store, Ltd.
25 P.O. Box 756
Eleele, HI 96705

IV. EFFECTIVE DATE

1 56. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to a thirty
2 (30)-day public notice and comment period at least forty (40) days prior to it becoming effective
3 through the issuance of the Final Order by the Regional Judicial Officer.
4

5 57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
6 effective on the date that the Final Order contained in this CA/FO, having been approved and
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
8 Regional Hearing Clerk.

9 58. This CA/FO shall terminate only after Respondent has complied with all
10 requirements of the CA/FO, including payment of any interest and late fees, and after EPA has
11 issued a written notice of termination
12
13

14 FOR THE CONSENTING PARTIES:

15 FOR N.F. KAWAKAMI STORE, LTD.:

16
17 *John Kato-Willis*

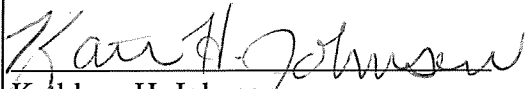
Date: 4/16/2018

18 Name

19 Vice President

20 Title
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23
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25

1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2 

Date: 5-4-18

3 Kathleen H. Johnson
4 Director, Enforcement Division
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Of counsel:

9 Nathaniel D. Boesch
10 Attorney-Advisor
11 Office of Regional Counsel
12 U.S. Environmental Protection Agency, Region IX
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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 75 Hawthorne Street
4 San Francisco, California 94105

5 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0003
6)
7)
8 N.F. Kawakami Store, Ltd.,)
9 P.O. Box 756, Eleele, HI 96705)
10)
11 Respondent.) [PROPOSED] FINAL ORDER
12)
13 Proceedings under Section 1423(c) of the Safe)
14 Drinking Water Act, 42 U.S.C. § 300h-2(c).)
15)
16)

17 **FINAL ORDER**

18 The United States Environmental Protection Agency Region IX ("EPA") and N.F.
19 Kawakami Store, Ltd. ("Respondent"), having entered into the foregoing Consent Agreement,
20 and EPA having duly publicly noticed the Consent Agreement and Final Order,

21 IT IS HEREBY ORDERED THAT:

- 22 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09- 2018-0003)
23 be entered;
- 24 2. Respondent close the LCC in accordance with the terms set forth in Paragraph 35 of the
25 Consent Agreement; and
3. Respondent pay an administrative civil penalty of \$110,000 dollars to the Treasurer of the
United States of America in accordance with the terms set forth in 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.



1 Steven L. Jawgiel
2 Regional Judicial Officer,
3 Region IX U.S. Environmental Protection Agency
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Date: 06/26/18

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in
3 the matter of N. F. Kawakami Store, Ltd. (UIC-09-2018-0003), dated June 26, 2018 was
4 filed with the Regional Hearing Clerk and sent.

5 FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7011-0470-0002-9198-0173

6 Respondent

Ruth Hashisaka, President
N.F. Kawakami Store, Ltd.
P.O. Box 756
Eleele, HI 96705

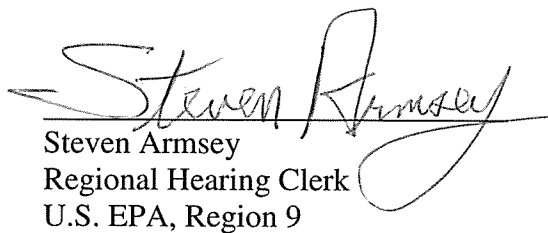
9
10 HAND DELIVERED

11 EPA Region IX Attorney:

Nathaniel Boesch, Attorney-Advisor
United States Environmental Protection Agency
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

12
13
14
15 Dated at San Francisco, California:

June 26, 2018

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