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Regional Counsel  
2 United States Environmental Protection Agency, Region IX

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U.S. EPA - Region 09

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75 Hawthorne Street  
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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
9 **REGION IX**

75 Hawthorne Street  
San Francisco, California 94105

11 IN THE MATTER OF:

DOCKET NO. UIC-09-2019-0051

12 Kailua View Estates Association, Inc.  
c/o Hawaiiiana Management Company, Ltd.  
13 74-5620 Palani Road, Suite 215  
14 Kailua-Kona, Hawai'i 96740

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

15 Respondent.

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

**CONSENT AGREEMENT**

**I. AUTHORITIES AND PARTIES**

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

*In re Kailua View Estates Association, Inc.*



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

6           11.     UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.  
7 § 144.80(e).

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

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

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

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

18          16.     Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.  
19 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists  
20 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

21          17.     Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40  
22 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more  
23 than \$22,927 per day per violation up to a maximum of \$286,586, or requiring compliance, or  
24 both, against any person who violates the SDWA or any requirement of an applicable UIC  
25 program.



1 accordance with Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty  
2 of \$12,000 in accordance with Section IV.C of this CA/FO; shall constitute full settlement of  
3 Respondent's liability for federal civil claims for the alleged SDWA violations specifically  
4 identified in Section III of this CA/FO.

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

10 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue  
11 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,  
12 except with respect to the claim described in Paragraph 2 that has been specifically resolved by  
13 this CA/FO.

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

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

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

1           30. 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           31. 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           32. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the  
9 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.B (Compliance  
10 Requirements) is restitution or required to come into compliance with law.

11           B. Compliance Requirements

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

- 14           a. By December 31, 2019, close the LCC located at the Facility in accordance  
15 with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other  
16 applicable requirements, including all Hawaii Department of Health  
17 (“HDOH”) closure, conversion, and/or replacement requirements. If  
18 Respondent installs one or more replacement wastewater systems, such as  
19 Individual Wastewater Systems (“IWSs”), then installation and operation of  
20 such systems shall comply with all HDOH requirements; and  
21           b. Within thirty (30) days of closure of the LCC, submit to EPA a description of  
22 how the LCC was closed and identify the contractor(s) providing the service  
23 as well as copies of the cesspool Backfill Closure Reports for the closure of  
24 the cesspool. Respondent shall also submit all related approvals, including for  
25 any replacement systems, issued by HDOH within thirty (30) days of closure

1 of the LCC, provided that, should HDOH not issue any approval within thirty  
2 (30) days of closure, Respondent shall submit HDOH's approval to EPA  
3 within fourteen (14) days of receipt.

4 C. Penalty

5 34. Respondent agrees to the assessment of a civil penalty in the amount of TWELVE  
6 THOUSAND DOLLARS (\$12,000) for the violations at the Facility of the SDWA alleged in  
7 Section III of this CA/FO.

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. Concurrent with making the payment, Respondent must provide a letter with  
21 evidence of the payment made pursuant to Paragraphs 34 and 35, accompanied by the title and  
22 docket number of this action, to the EPA Region IX Regional Hearing Clerk, the EPA Region IX  
23 Enforcement and Compliance Assurance Division Compliance Officer, and the EPA Region IX  
24 Office of Regional Counsel attorney, via United States mail, at the following addresses:

25 Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region IX - Office of Regional Counsel

1 75 Hawthorne Street (ORC-1)  
San Francisco, CA 94105

2  
3 Jelani Shareem, Enforcement Officer  
4 U.S. Environmental Protection Agency  
5 Region IX – Enforcement and Compliance Assurance Division  
6 75 Hawthorne Street (ENF-3-3)  
7 San Francisco, CA 94105

8 Janet A. Magnuson, Attorney Advisor  
9 U.S. Environmental Protection Agency  
10 Region IX – Office of Regional Counsel  
11 75 Hawthorne Street (ORC-2-3)  
12 San Francisco, CA 94105

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

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

21 40. A penalty charge will be assessed on all debts more than 90 days delinquent. The  
22 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. §  
23 13.11(c).

24 41. In addition, administrative costs for handling and collecting Respondent's  
25 overdue debt will be based on either actual or average cost incurred, and will include both direct  
and indirect costs. 40 C.F.R. § 13.11(b).

42. 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



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

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

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

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

14 D. Stipulated Penalties

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

17 45. If Respondent fails to pay the assessed civil administrative penalty specified in  
18 Section IV.C of this CA/FO by the deadline specified in that section, or fails to meet the  
19 compliance deadline for closure of the cesspool at the Facility by the deadline specified in  
20 Section IV.B of this CA/FO, Respondent agrees to pay in addition to the assessed penalty, a  
21 stipulated penalty of \$250 per day for each day the Respondent is late in making the penalty  
22 payment or meeting the closure deadline for the Facility's LCC.

23 46. If Respondent fails to timely submit any reports in accordance with the timelines  
24 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after  
25 the report was due until it submits the report in its entirety.

1           47.     Respondent agrees to pay any stipulated penalties within thirty (30) days of  
2 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the  
3 first date of noncompliance, and shall continue to accrue through the date of completion of the  
4 delinquent CA/FO requirement. Respondent will use the method of payment specified in  
5 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for  
6 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through  
7 42.

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

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

14          E.     Force Majeure

15          50.     Respondent shall exercise its best efforts to avoid or minimize any delay and any  
16 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines  
17 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the  
18 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,  
19 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days  
20 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration  
21 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable  
22 by which those measures will be implemented. Failure to comply with the notice requirement of  
23 this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

24          51.     If EPA agrees in writing that the delay or anticipated delay in compliance with  
25 this CA/FO has been or will be caused by circumstances entirely beyond the control of

1 Respondent, the time for performance may be extended for the period of the delay resulting from  
2 the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of  
3 time. An extension of the time for performing an obligation granted by EPA pursuant to this  
4 paragraph shall not, of itself, extend the time for performing a subsequent obligation. EPA also  
5 retains discretion to grant extensions for reasons other than those established as *force majeure*  
6 events.

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

9 F. Notices

10 53. Respondent must send written communications and/or submittals under this  
11 CA/FO, including any requests for extensions of time to meet the compliance deadlines, to the  
12 following:

13 Jelani Shareem, Enforcement Officer  
14 U.S. Environmental Protection Agency  
15 Region IX – Enforcement and Compliance Assurance Division  
16 75 Hawthorne Street (ENF-3-3)  
17 San Francisco, CA 94105  
18 Shareem.Jelani@epa.gov

17 Janet A. Magnuson, Attorney Advisor  
18 U.S. Environmental Protection Agency  
19 Region IX - Office of Regional Counsel  
20 75 Hawthorne Street (ORC-2-3)  
21 San Francisco, CA 94105  
22 Magnuson.Janet@epa.gov

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

23 54. Respondent shall include the following signed certification made in accordance  
24 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:  
25

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

11 55. EPA must send any written communications under this CA/FO to the following  
12 address: Kailua View Estates c/o Hawaiiana Management Company, 74-5620 Palani Rd. Suite  
13 215, Kailua Kona, HI 96740.

14 V. EFFECTIVE DATE

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

18 57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be  
19 effective on the date that the final order contained in this CA/FO, having been approved and  
20 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the  
21 Regional Hearing Clerk.

22 FOR THE CONSENTING PARTIES:

23 Kailua View Estates Associations, Inc.:

24 

25 Eric Frostad, President

Date: 7/9/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

 7/24/19

Date: \_\_\_\_\_

Amy C. Miller  
Director, Enforcement and Compliance Assurance Division  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

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-09-2019-0051

5 )  
6 Kailua View Estates Association, Inc. )  
c/o Hawaiiana Management Company, Ltd. )  
7 74-5620 Palani Road, Suite 215 )  
Kailua-Kona, Hawai'i 96740 )

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

8 Respondent. )  
9 )

10 Proceedings under Sections 1423(c) of the )  
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 the  
14 Respondent Kailua View Estates Association, Inc., ("Respondent"), having entered into the  
15 foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and  
16 Findings and Final Order regarding the matters alleged therein,

17 **IT IS HEREBY ORDERED THAT:**

18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-  
19 2019-0051) be entered;

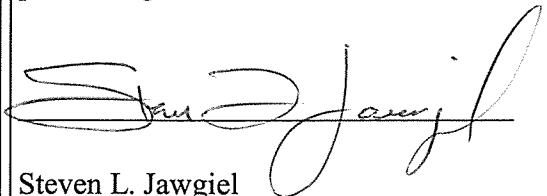
20 2. Respondent pay an administrative civil penalty of **\$12,000** dollars to the Treasurer  
21 of the United States of America in accordance with the terms set forth in the Consent Agreement;

22 3. Respondent close one LCC by December 31, 2019 in accordance with the terms  
23 set forth in Paragraph 33 of the Consent Agreement; and

24 4. Respondent comply with all other requirements of the Consent Agreement.  
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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: 09/11/19

Steven L. Jawgiel  
Regional Judicial Officer, Region IX  
U.S. Environmental Protection Agency

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing <sup>copy of</sup> FINAL ORDER incorporating a CONSENT AGREEMENT in  
3 the matter of Kailua View Estates Association, Inc. (UIC-09-2018-0051), dated  
4 Sept 11, 2019, was filed with the Regional Hearing Clerk and sent.

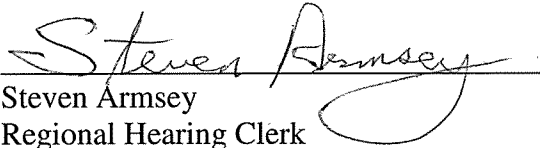
5 FIRST CLASS MAIL - CERTIFIED  
6 Tracking Numbers: 7015 3010 0000 3883 5338

7 Respondent Eric Frostad, President  
8 Kailua View Association, Inc.  
9 c/o Hawaiiana Management Company, Ltd.  
10 74-5620 Palani Road, Suite 215  
11 Kailua-Kona, HI 96740

12 HAND DELIVERED

13 EPA Region IX Attorney: Janet Magnuson, Attorney Advisor  
14 United States Environmental Protection Agency  
15 Region IX – Office of Regional Counsel (ORC-2)  
16 75 Hawthorne Street  
17 San Francisco, CA 94105

18 Dated at San Francisco, California: Sept. 11, 2019

19   
20 Steven Armsey  
21 Regional Hearing Clerk  
22 U.S. EPA, Region 9