

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**REGION IX****In the Matter of:****GLACS, LLC****Kailu-Kona, Hawaii****Docket No. UIC-09-2009-0004****CONSENT AGREEMENT****AND FINAL ORDER****Proceedings under Section 1423(c) of the Safe****Drinking Water Act, 42 U.S.C. § 300h-2(c)****I. AUTHORITY**

This Consent Agreement and Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "SDWA" or the "Act"), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, the Director of the Water Division, EPA Region IX, hereby issues, and GLACS, LLC ("Respondent") hereby agrees to the issuance of, this Consent Agreement and Final Order.

II. FINDINGS OF VIOLATION

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (UIC) programs, to prevent underground injection which endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.
2. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.
3. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are required to be closed no

later than April 5, 2005. "Large capacity cesspools" include "multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides." 40 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools or a non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.* A "cesspool," is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3.

4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.
5. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), EPA may issue an administrative compliance order to any person who violates any requirement of an applicable UIC program. 42 U.S.C. § 300h-2(c)(1).
6. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the requirements of the Act to submit information relating to such person's compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).
7. Respondent is a corporation. Thus, Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.
8. Respondent owns and operates two commercial properties in Kailua-Kona, Hawaii ("the Facilities").
9. Respondent operated ten (10) large capacity cesspools at the Facilities.
10. Respondent did not close the large capacity cesspools by April 5, 2005 as required by 40 C.F.R. § 144.88.
11. Based on all the foregoing, Respondent has violated the requirement that all large capacity cesspools be closed by April 5, 2005, and is therefore in violation of 40 C.F.R. § 144.88.

B. CIVIL PENALTY

12. Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than \$11,000 for each day of each violation occurring before January 12, 2009, and not more than \$16,000 for each day of each violation occurring after January 12, 2009, up to a maximum penalty of \$177,500, or requiring compliance, or both, against any person who

violates the Act or any requirement of an applicable UIC program. In assessing a penalty for such violations, EPA must, in accordance with Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), take into account: (1) the seriousness of the violation; (2) the economic benefit resulting from the violations; (3) the history of the violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator, and (6) such other matters as justice may require. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), EPA has determined that it is appropriate to assess, and Respondent has, without admission, agreed to pay to the United States, a civil administrative penalty in the amount of \$67,000.00.

13. Payment of penalty must be received in accordance with one of the acceptable methods of payment listed in the attached "EPA Region 9 Collection Information" sheet (Attachment A) on or before **thirty (30) calendar days** after the effective date of the CA/FO. The date by which payment must be received by the United States shall be the "due date" for the payment.
14. Respondent shall make payment under this CA/FO in accordance with any of the acceptable methods of payment listed in the attached "EPA Region 9 Collection Information" sheet (Attachment A), which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attach a photocopy of the penalty payment, via certified mail to the following:

Aaron Setran

U.S. EPA, Region IX

75 Hawthorne Street (Mail Code: WTR-8)

San Francisco, CA 94105
15. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for

each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 14 above.

16. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. §300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 12 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorney's fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
17. The civil penalty, and any interest, late handling fees, or late penalty payments provided for in the CA/FO, shall not be deducted from Respondent's, or any affiliated entity's, federal, state or local taxes.

C. GENERAL REQUIREMENTS AND PROVISIONS

18. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
19. Respondent neither admits nor denies the factual allegations contained in this CA/FO.
20. The provisions of this CA/FO shall be binding upon Respondent and its employees and contractors. 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.
21. Respondent shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large capacity cesspools referred to in Paragraph 9. Such transfer, however, shall have no effect on Respondent's obligation to comply with this CA/FO. Respondent shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in Paragraph 9

22. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
23. Respondent consents to the issuance of this CA/FO and the conditions specified herein.
24. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), or to otherwise contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.
25. 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.
26. 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 Act, regulations promulgated thereunder, and any order or permit issued thereunder.
27. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO.

Violation of this CA/FO shall be deemed a violation of the Act.
28. Each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.
29. No term or condition of this CA/FO shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where the payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be adjusted accordingly by the parties.
30. The provisions of this CA/FO shall be severable. If any provision of this CA/FO is found to

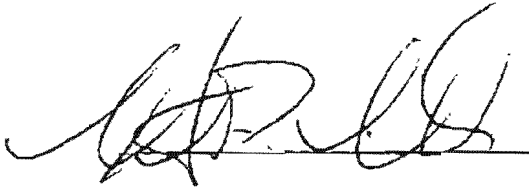
be unenforceable, the remaining provisions of this CA/FO shall remain in full force and effect.

C. EFFECTIVE DATE

31. The effective date of the CA/FO shall be the date that the Final Order is signed.

FOR THE CONSENTING PARTIES:

For GLACS:



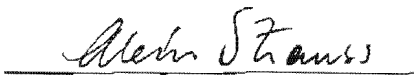
Garnet Giles, President

Kokua Care Corp.

Manager of GLACS LLC

Date: Aug 9/11

For the United States Environmental Protection Agency:



Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 15 August 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF

GLACS, LLC,
Kailua-Kona, HI

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


DOCKET NO. UIC-09-2011-0003

FINAL ORDER

The United States Environmental Protection Agency Region IX ("EPA"), and GLACS, LLC ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2011-0003) be entered; and
2. Respondent shall comply with the requirements set forth in the Consent Agreement and Final Order, which shall become final and effective on the date it is filed.


Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: April 30, 2012

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Order Granting Complainant's Motion for Reconsideration AND Final Order against Glacs, LLC (**Docket #: UIC-09-2011-0003**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

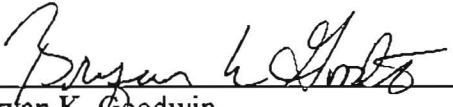
A copy was mailed via CERTIFIED MAIL to:

Patricia J. McHenry, Esq.
Cades Schutte, LLP
1000 Bishop Street, 12th Floor
Honolulu, HI 96813

CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 7252

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Brett Moffatt, Esq.
Assistant Regional Counsel (ORC-2)
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

5/1/12
Date