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7

**\*\* FILED \*\***  
28SEP2015 - 02:00PM  
U.S.EPA - Region 09

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

10 IN THE MATTER OF: ) DOCKET NO. UIC-09-2015-0003  
11 Keith Ward ) **PROPOSED ADMINISTRATIVE ORDER**  
12 Waimanalo, Hawaii, ) **FOR PENALTIES AND COMPLIANCE**  
Respondent. ) **(Administrative Complaint)**  
13 Proceedings under Section 1423(c) of the Safe )  
14 Drinking Water Act, 42 U.S.C. § 300h-2(c). )

16 **I. AUTHORITY**

17 1. The United States Environmental Protection Agency (EPA) issues this Proposed  
18 Administrative Order for Penalties and Compliance pursuant to the authority vested in the  
19 Administrator of EPA and properly delegated to the EPA Region 9 Director of the Enforcement  
20 Division under Section 1423(c) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300h-2(c).  
21 The rules for this proceeding are the “Consolidated Rules of Practice Governing the  
22 Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of  
23 Permits” (Rules of Practice), 40 Code of Federal Regulation (C.F.R.) Part 22, a copy of which is  
24 enclosed. *See, specifically* 40 C.F.R. § 22.1(a)(9). Pursuant to the Rules of Practice, 40 C.F.R. §

**In re: Keith Ward**  
**Proposed Administrative Order (Complaint)**

1 22.13(a), this Proposed Order conforms to the prehearing procedures at 40 C.F.R. § 22.14  
2 governing administrative complaints and is herinafter referred to also as the “Complaint.” EPA  
3 alleges as follows:

## 4 **II. JURISDICTION**

5 2. The Regional Judicial Officer for EPA Region 9 is the Presiding Officer with jurisdiction  
6 over this action pursuant to the Rules of Practice, 40 C.F.R. Part 22, Subpart I, §§ 22.50(a)(2)  
7 and 22.51.

## 8 **III. STATUORY AND REGULATORY BACKGROUND**

9 3. To prevent underground injection which endangers drinking water sources, EPA has  
10 promulgated regulations pursuant to Part C of the Act, 42 U.S.C. §§ 300h – 300h-8, which  
11 establish minimum requirements for Underground Injection Control (UIC) programs. These UIC  
12 regulations are set forth in 40 C.F.R. Part 144.

13 4. The UIC regulations define “underground injection” to mean the subsurface emplacement  
14 of fluids by well injection. 42 U.S.C. § 300 h(d)(1), 40 C.F.R. § 144.3. “Well injection” is  
15 defined by 40 C.F.R. § 144.3 to mean the subsurface emplacement of fluids through a well. A  
16 “drywell” is a type of well, other than an improved sinkhole or subsurface fluid distribution  
17 system, completed above the water table so that its bottom and sides are typically dry except  
18 when receiving fluids. 40 C.F.R. § 144.3. A “cesspool” is a type of drywell that receives  
19 untreated sanitary waste containing human excreta, and which sometimes has an open bottom  
20 and/or perforated sides. 40 C.F.R. § 144.3. “Sanitary waste” is defined at 40 C.F.R. § 144.3 to  
21 include: “wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic  
22 areas, sinks used for food preparation, clothes washing operations, and sinks or washing  
23 machines where food and beverage serving dishes, glasses and utensils are cleaned.”  
24

1 5. The UIC regulations define “large capacity cesspools” to mean cesspools that receive  
2 sanitary waste from “multiple dwelling, community or regional cesspools, or other devices.” 40  
3 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools  
4 or non-residential cesspools which receive solely sanitary waste and have the capacity to serve  
5 fewer than 20 persons per day. Id.

6 6. The UIC regulations at 40 C.F.R. § 144.88 required owners or operators of existing large  
7 capacity cesspools to close them no later than April 5, 2005 in accordance with the closure  
8 specifications contained in 40 C.F.R. § 144.89.

9 7. EPA administers the UIC program in the State of Hawaii pursuant to section 1422(c) of  
10 the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147, Subpart M, § 147.601.

11 8. Pursuant to section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4, EPA  
12 may issue an administrative order against any person who violates the Act or any requirement of  
13 an applicable UIC program, and the administrative order may:

14 a. assess an administrative civil penalty of not more than \$16,000 for each day of  
15 each violation occurring after January 12, 2009, up to a maximum penalty of  
16 \$187,500; or

17 b. require compliance with any UIC regulation or other requirement of the UIC  
18 Program; or

19 c. both assess an administrative civil penalty and require compliance with any UIC  
20 regulation or other requirement of the UIC Program.

21 9. Pursuant to section 1423 of the Act, 42 U.S.C. § 300h-2(c)(4)(B), EPA must take into  
22 account the following factors in assessing any civil penalty: (1) the seriousness of the violations;  
23 (2) the economic benefit resulting from the violations; (3) the history of such violations; (4) any  
24

1 good faith efforts to comply with the applicable requirements; (5) the economic impact of the  
2 penalty on the violator; and (6) such other matters as justice may require.

3 10. Pursuant to section 1445(a)(1)(A) of the Act, EPA may require any person who is subject  
4 to the requirements of the Act to submit information relating to such person's compliance with  
5 the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).

#### 6 **IV. FINDINGS OF VIOLATION**

7 11. Respondent, Keith Ward, is a "person" within the meaning of section 1401(12) of the  
8 Act, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

9 12. Since at least December 1, 2006, and at all times relevant to this action, Respondent has  
10 owned the real property located at 41-865 Kalaniana'ole Highway, Waimanalo, Hawaii, Tax Map  
11 Key (TMK) Number 1-4-1-004-007 (the Property).

12 13. The Property contains a building which Respondent currently leases to two tenants. One  
13 tenant operates a restaurant named "Serg's Mexican Kitchen," the other tenant operates coffee  
14 shop currently named the "Hawaiian Island Café."

15 14. The tenants' businesses are food establishments open to the public most days of the year.  
16 Serg's Mexican Kitchen has been open since December 2010. Public restrooms are located in  
17 Serg's Mexican Kitchen and are available to workers and customers of both businesses.

18 15. The Property is serviced by two cesspools, which are "large capacity cesspools" (LCCs)  
19 pursuant to 40 C.F.R. § 144.81(2) because they are non-residential cesspools which receive  
20 sanitary wastes, containing human excreta, and have the capacity to serve 20 or more persons per  
21 day.

22 16. After acquiring the Property on or about December 1, 2006, Respondent did not close  
23 the two LCCs, as required by 40 C.F.R. § 144.88.

1 17. On May 23, 2011, EPA inspected the Property with Respondent in attendance. In the  
2 parking lot at the front of the Property, the EPA inspector observed an access lid of the type  
3 often used to cover a cesspool. The inspector informed Respondent that it appeared the Property  
4 was being served by an LCC.

5 18. On July 7, 2011, EPA sent a letter to Respondent which stated that the continued  
6 operation of LCCs was prohibited by the Act's UIC program regulations at 40 C.F.R. § 144.88.

7 19. On January 11, 2013, EPA sent a "Request for Information" letter to Respondent,  
8 pursuant to Section 1445 of the SDWA, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.17. The letter  
9 sought information about the Property's wastewater disposal structures and stated that the  
10 continued operation of LCCs was prohibited by the Act's UIC program regulations at 40 C.F.R.  
11 § 144.88.

12 20. On January 23, 2013, EPA inspectors called Respondent to discuss the January 11 letter  
13 and the status of the cesspools on the Property. Respondent stated that he had not received either  
14 the July 7, 2011 or January 11, 2013 letters from EPA.

15 21. On February 22, 2013, Respondent forwarded to EPA an email from a contractor he hired  
16 to evaluate the wastewater disposal structures on the Property. The contractor stated that he  
17 found two cesspools on the Property and was able to access one of the cesspools, which appeared  
18 to be the primary pit receiving waste directly from the building on the Property. The contractor  
19 stated that he did not access the second cesspool, but that it appeared to function as an overflow  
20 pit for the first cesspool.

21 22. On February 27, 2013, Respondent provided a brief, undated, written response to EPA's  
22 January 11, 2013 Request for Information letter, which stated that his contractor had completed a  
23 site survey and found two cesspools on the Property. The response also stated that Respondent  
24 was applying for a permit to connect to the city sewer line.

1 23. Respondent provided to EPA a signed and certified revision of his response to the  
2 Request for Information letter, dated March 31, 2013. The revised response included a partial  
3 application for a sewer connection to the City and County of Honolulu, dated March 24, 2013.

4 24. On September 12, 2013, Respondent informed EPA via telephone that a sewer  
5 connection appeared infeasible because of difficulties in obtaining an easement required to install  
6 a sewer lateral.

7 25. On November 15, 2013, Respondent informed EPA via telephone that he hired a  
8 wastewater engineer to survey the Property and design an individual wastewater system (IWS) to  
9 replace the two cesspools.

10 26. On January 29, 2014, Respondent's engineer informed EPA via email that he would  
11 submit the required documentation for approval of the IWS to the State of Hawaii's Department  
12 of Health (DOH) by February 28, 2014, and projected that the IWS would be installed by April 25,  
13 2014. On January 31, 2014, Respondent sent an email to EPA confirming this schedule.

14 27. From March 2014 through September 2014, EPA regularly contacted Respondent and his  
15 engineer by telephone and email to determine the status of the IWS plans. At different times,  
16 Respondent and his engineer either responded that the plans were still being developed, or did  
17 not respond.

18 28. On October 22, 2014, EPA sent a letter to Respondent, informing him that he remained in  
19 violation of the UIC program regulations, and offering to discuss settlement of the matter before  
20 filing a complaint.

21 29. On October 31, 2014, Respondent's engineer submitted a cesspool closure and  
22 conversion plan to DOH to close the two cesspools and convert them to an IWS. Respondent's  
23 submittal included a water demand calculation for the facility with an estimated daily usage rate  
24 of 30 flushes for each of the three toilets in the restrooms.

1 30. Respondent's engineer submitted to DOH drawings for the cesspool closure and  
2 conversion plan dated December 12, 2014, and revised drawings dated February 13, 2015. The  
3 engineering drawings identify each of the two structures under the front parking lot as an  
4 "existing cesspool." The February 13, 2015 drawings indicate that a new septic tank (aerobic  
5 unit) was planned to be installed between the cesspools, and that both cesspools would be  
6 converted to leach pits.

7 31. On February 27, 2015, DOH approved Respondent's cesspool closure and conversion  
8 plan.

9 32. On April 1, 2015, Respondent's engineer stated to EPA via telephone that the cesspool  
10 closure and conversion work had been conducted on March 21, 2015, and that he had found a  
11 structure under the front parking lot of the Property that appeared to be a "holding tank  
12 discharging liquids to a seepage pit."

13 33. EPA requested information about this claim in an April 1, 2015 email to Respondent and  
14 his engineer, and in an April 13, 2015 "Request for Information" letter to Respondent. On May  
15 1, 2015, Respondent's attorney submitted unmarked black and white copies of photographs  
16 which he stated were taken by Respondent's engineer. Although the photographs appear to show  
17 a tank installation at Respondent's property, the contents of the photographs are not identified  
18 and do not appear to show either of the cesspool structures. Respondent did not provide any  
19 further information to EPA, and did not provide a signed and certified response to April 13, 2015  
20 "Request for Information" letter.

21 34. On June 23, 2015 and on July 14, 2015, EPA contacted DOH by email to determine if  
22 Respondent had submitted a final inspection report or other documentation to obtain DOH  
23 permission to operate a new IWS. DOH informed EPA that it had not received documentation of  
24 an IWS installation from Respondent.

1 35. Respondent's failure to close the two LCCs after taking ownership of the Property on or  
2 about December 1, 2006 is a continuing violation of the Act and of the UIC Program regulations  
3 at 40 C.F.R. § 144.88, which required the closure of all LCCs by April 5, 2005.

4 **V. RELIEF SOUGHT: PROPOSED ORDER FOR**  
5 **PENALTIES AND COMPLIANCE**

6 36. Pursuant to Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), EPA requests that  
7 the Presiding Officer issue the following Order in this matter assessing both an administrative  
8 penalty and requiring compliance with the UIC Program's LCC closure requirements.

9 A. Proposed Administrative Civil Penalty

10 37. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4,  
11 Respondent shall pay an administrative penalty of *up to* one hundred and eighty-seven thousand  
12 five hundred dollars (\$187,500.00), for Respondent's failure to comply with the UIC regulations  
13 at 40 C.F.R. Part 144.

14 38. The proposed penalty amount is based upon the foregoing findings and after  
15 taking into consideration the factors set forth in Section 1423(c)(4) of the Act: (1) the seriousness  
16 of the violations; (2) the economic benefit resulting from the violations; (3) any history of such  
17 violations; (4) any good faith efforts to comply with the applicable requirements; (5) the  
18 economic impact of the penalty on Respondent; and (6) such other matters as justice may  
19 require.

20 39. As provided in 40 C.F.R. Section 22.14(a)(4)(ii), the following is a brief explanation of  
21 the days of Respondent's violations and the severity of the violations: Respondent violated a  
22 crucial provision of the UIC program by owning and operating two LCCs for approximately  
23 3200 days, starting on or about December 1, 2006, when Respondent purchased the Property, up  
24 to the present day. The Act's UIC regulations at 40 C.F.R. § 144.88 required closure of all LCCs



1 by April 5, 2005 to assure the safety of the country's drinking water sources by preventing direct  
2 contamination of water supplies and minimizing the risk that any potential drinking water  
3 sources may be contaminated. 64 Fed. Reg. 66546 (Dec. 7, 1999). In promulgating the LCC  
4 closure requirement, EPA found that LCCs have a high potential to contaminate underground  
5 sources of drinking water and to threaten human health because:

- 6 a. sanitary waste entering LCCs can percolate out the bottom of the wells to shallow  
7 groundwater sources of drinking water;
- 8 b. LCCs are not designed to treat sanitary waste;
- 9 c. wastewater from LCCs frequently exceeds drinking water health standards for  
10 nitrates, total suspended solids, and coliform bacteria;
- 11 d. wastewater from LCCs may contain other constituents of concern such as phosphates,  
12 chlorides, grease, viruses, and chemicals used to clean cesspools (e.g., trichloroethane  
13 and methylene chloride);
- 14 e. areas that rely on cesspools are in general more likely to rely on groundwater for their  
15 drinking water supplies; and
- 16 f. pathogens in untreated sanitary waste released from LCCs could pose an acute health  
17 risk (i.e. a person could become ill by taking one drink from an affected drinking  
18 water supply). *Id.* at 68553.

19 40. Within 30 days of the effective date of a Final Order, Respondent shall pay the penalty in  
20 accordance with any acceptable method of payment, as specified in the Final Order.

21 41. Concurrent with payment of the penalty, Respondent shall provide written notice of  
22 payment, referencing the title and docket number of this case, via certified mail, to:

1 Regional Hearing Clerk  
2 Office of Regional Counsel (ORC-1)  
3 U.S. EPA, Region 9  
4 75 Hawthorne Street  
5 San Francisco, CA 94105

Aaron Setran  
SDWA/FIFRA Office (ENF-3)  
Enforcement Division  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, Ca 94105

6 42. Pursuant to section 1423(c)(3)(D) of the Act, 42 U.S.C. § 300h-2(c)(3)(D), a Final Order  
7 in this matter will become effective 30 days following its issuance unless an appeal to a United  
8 States District Court is taken pursuant to section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

9 B. Compliance with the UIC Program

10 43. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), Respondent shall:

- 11 a. Properly close both LCCs in accordance with 40 C.F.R. § 144.89(a) and all other  
12 applicable requirements, including the DOH closure, conversion, and/or replacement  
13 requirements for LCCs, no later than **60 days** after the effective date of the Final  
14 Order. If Respondent installs a new IWS, then installation and operation of the IWS  
15 shall comply with DOH requirements, including the requirement to obtain a permit to  
16 operate.
- 17 b. Submit to EPA a copy of DOH's approval to use the IWS within ten (10) days of  
18 receipt. Documents shall be sent to Aaron Setran of EPA at the address specified in  
19 paragraph 41 above, and shall include the following signed certification made in  
20 accordance with 40 C.F.R. § 144.32(b) and (d):

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

1  
2 C. Proposed Terms and Conditions of Proposed Order

3 44. The Proposed Order's provisions shall apply to and be binding upon Respondent, and his  
4 agents, successors, and assigns. Respondent shall give notice and a copy of this Proposed Order  
5 to any successor-in-interest prior to transfer of ownership of the Property. Such transfer,  
6 however, shall have no effect on Respondent's obligation to comply with this Proposed Order.  
7 Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting  
8 under, through, or for Respondent shall not excuse Respondent's failure to perform their  
9 obligations under this Proposed Order.

10 45. This Proposed Order does not constitute a waiver, suspension, or modification of the  
11 requirements of any federal, state, or local statute, regulation, or condition of any permit issued  
12 thereunder, including the requirements of the Act and accompanying regulations. Issuance of this  
13 Proposed Order is not an election by EPA to forgo any civil or any criminal action otherwise  
14 authorized under the Act.

15 46. Notwithstanding compliance with the terms of this Proposed Order, EPA is not precluded  
16 from taking any action authorized by law including, but not limited to, the issuance of additional  
17 administrative orders, and/or the initiation of judicial actions, against Respondent. EPA  
18 expressly reserves the right to enforce this Proposed Order through appropriate proceedings.

19 47. Violation of any term of this Proposed Order, or failure or refusal to comply with this  
20 Proposed Order, may subject Respondent to additional enforcement action pursuant to section  
21 1423(b), 42 U.S.C. § 300h-2(b), and/or section 1423(c)(7), 42 U.S.C. § 300h-2(c)(7) of the Act.  
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23  
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1                    **VII. ANSWERING THE COMPLAINT AND REQUESTING A HEARING ON**  
2                    **THE PROPOSED ORDER FOR PENALITIES AND COMPLIANCE**

3                    A.     Answer to the Complaint

4                    48. If Respondent intends to contest any material fact upon which the Complaint is based, or  
5 wishes to contend that the Proposed Order for Penalties and Compliance is inappropriate, or that  
6 Respondent is entitled to judgment as a matter of law, then the Rules of Practice at 40 C.F.R. §  
7 22.15(a) require that Respondent file an original and one copy of a written Answer with EPA  
8 Region 9's Regional Hearing Clerk within 30 days after service of this Complaint and Proposed  
9 Order at the address below:

10                    Regional Hearing Clerk  
11                    U.S. Environmental Protection Agency, Region 9  
12                    75 Hawthorne Street (mail code: ORC-1)  
13                    San Francisco, CA 94105

14                    49. The Rules of Practice at 40 C.F.R. § 22.15(a) also require that Respondent serve an  
15 additional copy of the Answer on EPA to the following person who is authorized to receive  
16 service related to this proceeding:

17                    Brett Moffatt  
18                    Office of Regional Counsel  
19                    U.S. Environmental Protection Agency, Region 9  
20                    75 Hawthorne Street (mail code: ORC-2)  
21                    San Francisco, CA 94105

22                    50. In accordance with 40 C.F.R. § 22.15(b), the contents of the Answer must clearly and  
23 directly admit, deny, or explain each of the factual allegations contained in the Complaint with  
24 regard to which Respondent has any knowledge. Where Respondent has no knowledge of a  
particular factual allegation and so state in its Answer, the allegation is deemed denied. Under  
40 C.F.R. Section 22.15(d), Respondent's failure to admit, deny or explain any material factual  
allegation contained in this Complaint constitutes an admission of the allegation. The Answer

**In re: Keith Ward  
Proposed Administrative Order (Complaint)**

1 must also, in accordance with 40 C.F.R. § 22.15(b), state: (1) the circumstances or arguments  
2 that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes;  
3 (3) the basis for opposing the proposed relief; and (4) whether a hearing is requested.

4 B. Request for a Hearing

5 51. In accordance with section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A), EPA  
6 gives Respondent this written notice of EPA's Proposed Order for Penalties and Compliance and  
7 of the opportunity to request a hearing upon the issues raised by the Complaint and Answer, and  
8 on the appropriateness of the Proposed Order for Penalties and Compliance. As provided under  
9 40 C.F.R. Section 22.15(c), if Respondent wishes to request such a hearing, Respondent must  
10 include the request in its Answer. Such hearing shall not be subject to Section 554 or 556 of the  
11 Administrative Procedures Act, 5 U.S.C. §§ 554 and 556, but shall provide a reasonable  
12 opportunity to be heard and to present evidence. If a hearing is requested, Subpart I of the Rules  
13 of Practice, 40 C.F.R. Part 22, governs and sets forth the procedures of such hearing.

14 52. Respondent's failure to affirmatively raise in the Answer facts that constitute or might  
15 constitute grounds for its defense may preclude Respondent from raising such facts and/or from  
16 having such facts admitted into evidence at a hearing.

17 C. Default

18 53. To avoid the Presiding Officer's entry of a default order pursuant to 40 C.F.R. § 22.17(a)  
19 for compliance and a penalty up to \$187,500, Respondent must file a written Answer with the  
20 Regional Hearing Clerk in the manner described above.

21 54. Any penalty assessed in a default order will become due and payable by Respondent  
22 without further proceedings 30 days after the default order becomes final. 40 C.F.R. § 22.17(d).  
23 Similarly, any compliance required under a default order shall be effective and enforceable  
24 without further proceedings on the date the default order becomes final. Id. If necessary, EPA

1 may then seek to enforce such Final Order of Default against Respondent, and seek compliance  
2 and collect the assessed penalty amount, which may be up to \$187,500, in federal court.

3 **VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE**

4 55. In accordance with 40 C.F.R. § 22.18(b), whether or not Respondent requests a  
5 hearing, Respondent may request an informal settlement conference to discuss the facts of this  
6 case, the proposed penalty and compliance order, and settlement. To request such a settlement  
7 conference, please contact:

8 Brett Moffatt  
9 Office of Regional Counsel  
10 U.S. Environmental Protection Agency, Region 9  
11 75 Hawthorne Street (mail code: ORC-2)  
12 San Francisco, CA 94105  
13 Phone: (415) 972-3946  
14 Email: moffatt.brett@epa.gov

15 56. A request for an informal settlement conference constitutes neither an admission nor a  
16 denial of any of the matters alleged herein. EPA does not deem a request for an informal  
17 settlement conference to be a request for a hearing as specified in 40 C.F.R. § 22.15(c), or as  
18 provided for by Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A).

19 57. Settlement discussions do not affect Respondent's obligation to file a timely Answer to  
20 the Complaint. 40 C.F.R. §§ 22.15 and 22.18(b)(1). EPA will not modify its proposed penalty  
21 and compliance order simply because an informal settlement conference is held.

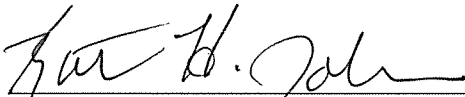
22 58. The terms and conditions of any settlement that may be reached as a result of a settlement  
23 conference will be recorded in a written Consent Agreement signed by all parties. 40 C.F.R. §  
24 22.18(b)(2). To conclude the proceeding, EPA will execute a Final Order ratifying the parties'  
Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondent  
would waive any right to contest the allegations herein and waive any right to appeal the Final  
Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

1 59. Entering into a Consent Agreement does not extinguish, waive, satisfy, or otherwise  
2 affect Respondent's obligation to comply with all applicable statutory and regulatory  
3 requirements and legal orders.

4 IX. APPEARANCES

5 60. In accordance with 40 C.F.R. § 22.10, any party may appear in person or by counsel or  
6 other representative. A partner may appear on behalf of a partnership and an officer may appear  
7 on behalf of a corporation. Persons who appear as counsel or other representatives must conform  
8 to the standards of conduct and ethics required of practitioners before the courts of the United  
9 States.

10 Dated this 23<sup>rd</sup> day of September, 2015

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13 Kathleen H. Johnson, Director  
14 Enforcement Division  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing PROPOSED ADMINISTRATIVE ORDER FOR  
3 PENALTIES AND COMPLIANCE in the matter of Keith Ward and, Docket No. UIC-09-2015-  
4 0003, and a copy of the Consolidated Rules of Practice (40 C.F.R Part 22), was sent to the  
5 following persons, in the manner and on the date specified:

6 Original and one copy  
7 VIA HAND-DELIVERY: Regional Hearing Clerk (ORC-1)  
8 U.S. Environmental Protection Agency, Region 9  
9 75 Hawthorne Street  
10 San Francisco, CA 94105

11 Copy  
12 VIA CERTIFIED MAIL:  
13 (7003-3110-0006-1998-5876) Keith Ward  
14 53-138 Kamehameha Hwy.  
15 Punalu'u, Hawaii 96717

16 Dated at San Francisco, California: SEP 28 2015

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18 \_\_\_\_\_  
19 Jelani Shareem  
20 Enforcement Division  
21 U.S. EPA, Region 9  
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