

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

75 Hawthorne Street
San Francisco, California 94105

**** FILED ****
26SEP2016 - 11:45AM
U.S.EPA - Region 09

4 IN THE MATTER OF:)

DOCKET NO. UIC-09-2016-0004

5 County of Hawaii)
6 (Hilo Drag Strip and)
Hilo Trap and Skeet Range),)

7 Hilo, Hawaii)

~~PROPOSED~~ FINAL ORDER



8 Respondent.)

9)
10 Proceedings under Sections 1423(c) and)
11 1445(a) of the Safe Drinking Water Act,)
42 U.S.C. §§ 300h-2(c) and 300j-4(a).)

12
13 The United States Environmental Protection Agency Region 9 (“EPA”), and
14 Hawaii County (“Respondent”), having entered into the foregoing Consent Agreement, and EPA
15 having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding
16 the matters alleged therein,
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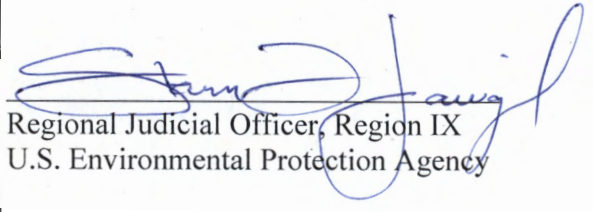
18 **IT IS HEREBY ORDERED THAT:**

- 19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-
20 09-2016-0004) be entered;
21
22 2. Respondent pay an administrative civil penalty of One Hundred and Five
23 Thousand Dollars (\$105,000) dollars to the Treasurer of the United States of America in
24 accordance with the terms set forth in the Consent Agreement; and
25

In re: County of Hawaii (UIC-09-2016-0004)

1 3. Respondent shall otherwise comply with all other requirements of this
2 Consent Agreement and Final Order.

3 This Final Order's Effective Date is the date that it is filed. This Final Order
4 constitutes full adjudication of the allegations in the Consent Agreement entered into by the
5 Parties in this proceeding.
6

7
8 
9 Regional Judicial Officer, Region IX
U.S. Environmental Protection Agency

Date: 09/23/16

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region IX

3 BRETT P. MOFFATT
Attorney-Advisor
4 United States Environmental Protection Agency, Region IX
75 Hawthorne Street
5 San Francisco, California 94105
6 (415) 972-3946

7 Attorneys for Complainant

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

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2016-0004

12 County of Hawaii)
13 (Hilo Drag Strip and)
Hilo Trap and Skeet Range),)
14 Hilo, Hawaii)
15 Respondent.)

CONSENT AGREEMENT
AND
[PROPOSED] FINAL ORDER

16)
17)
18)
Proceedings under Sections 1423(c) and)
1445(a) of the Safe Drinking Water Act,)
42 U.S.C. §§ 300h-2(c) and 300j-4(a).)

19 **CONSENT AGREEMENT**

20 **I. AUTHORITY**

21
22 1. This Consent Agreement is entered into and the [Proposed] Final Order is issued
23 under the authorities vested in the Administrator of the United States Environmental Protection
24 Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act ("SDWA" or
25 "the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4(a).

In re: County of Hawaii (UIC-09-2016-0004)

1 2. The Administrator has delegated the authority to enter into this Consent
2 Agreement and issue a Final Order (“CA/FO”) to the Regional Administrator of EPA Region IX.
3 The Regional Administrator in turn has delegated the authority to enter into this Consent
4 Agreement to the Director of the Enforcement Division, EPA Region IX. In accordance with this
5 authority, and with the “Consolidated Rules of Practice Governing the Administrative
6 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40
7 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the Director of the Enforcement
8 Division, EPA Region IX, and the County of Hawaii (“Respondent”), together referred to as “the
9 Parties,” hereby agree to the terms of this Consent Agreement and to the issuance of the
10 proposed Final Order.

11 3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of
12 this CA/FO commences this proceeding. Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding
13 will conclude upon the issuance of a final order by the Regional Judicial Officer.

14 4. Part II of this CA/FO contains a concise statement of the factual basis of the
15 alleged violations of the SDWA and the Underground Injection Control (“UIC”), in accordance
16 with 40 C.F.R. § 22.18(b)(2).

17 **II. STIPULATIONS AND FINDINGS**

18 5. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, Sections 1421 to
19 1429 of the SDWA, EPA has promulgated regulations establishing minimum requirements for
20 UIC programs, to prevent underground injection that endangers drinking water sources. These
21 regulations are set forth at 40 C.F.R. Part 144.

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

24 7. “Well injection” means the subsurface emplacement of fluids through a well. 40
25 C.F.R. § 144.3.

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

7 9. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
8 § 144.80(e).

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

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

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

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

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

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

24 16. Since at least April 5, 2005, Respondent, through its Department of Parks and
25 Recreation, owned and/or operated two cesspools at the Hilo Drag Strip and one cesspool at the

1 Hilo Trap and Skeet Range, Hawaii (the “Properties”), and is an “owner or operator” of the
2 cesspools, as that term is defined at 40 C.F.R. § 144.3.

3 17. Each of the three cesspools referred to in Paragraph 16, at all times relevant to this
4 CA/FO, has had the capacity to serve 20 or more persons per day, and thus is considered an LCC
5 pursuant to 40 C.F.R. § 144.81(2).

6 18. Respondent failed to close the three cesspools referred to in Paragraph 16 by
7 April 5, 2005.

8 19. Respondent represents that it ceased use of the three cesspools by closing the two
9 Hilo Drag Strip comfort stations to public use on April 1, 2015, and closing the single Hilo Trap
10 and Skeet Range comfort station to public use on May 7, 2015. The Hawai’i Department of
11 Health (“DOH”) approved Respondent’s plans for converting the Drag Strip cesspools to a septic
12 system on February 27, 2015 and for converting the Skeet Range cesspool to a septic system on
13 May 5, 2015. Respondent expects to complete the closures before October 31, 2016.

14 20. Since April 5, 2005, Respondent owned and operated the three cesspools
15 referenced in Paragraph 16 and therefore was in violation of the requirement to close all LCCs
16 set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

17 21. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
18 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not
19 more than \$16,000 per day per violation up to a maximum of \$187,500, or requiring compliance,
20 or both, against any person who violates the SDWA or any requirement of an applicable UIC
21 program.

22 22. Pursuant to Section 1445(a)(1)(A) of the SDWA, 42 U.S.C. § 300j-4(a), EPA may
23 require any person who is subject to the SDWA’s requirements to submit information relating to
24 such person’s compliance with those requirements.

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III. SETTLEMENT TERMS

A. General Provisions

23. For the purposes of this proceeding, Respondent (1) admits the jurisdictional 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).

24. 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).

25. 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 \$105,000, shall constitute full settlement only of Respondent's liability for federal civil penalties for the SDWA violations specifically identified in this CA/FO.

26. 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.

27. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,

1 except with respect to those claims that have been specifically resolved pursuant to Paragraph 25
2 above.

3 28. This CA/FO is not a permit or modification of a permit, and does not affect
4 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
5 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
6 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
7 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
8 except as specifically set forth herein.

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

12 30. EPA reserves any and all legal and equitable remedies available to enforce this
13 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
14 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO
15 shall be deemed a violation of the SDWA.

16 31. Unless otherwise specified, the Parties shall each bear their own costs and
17 attorneys fees incurred in this proceeding.

18 32. This Consent Agreement may be executed and transmitted by facsimile, email or
19 other electronic means, and in multiple counterparts, each of which shall be deemed an original,
20 but all of which shall constitute an instrument. If any portion of this Consent Agreement is
21 determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the
22 remaining portions shall remain in full force and effect.

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

1 **B. Compliance Requirements**

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

4 a. Properly close the three cesspools at the Hilo Drag Strip and the Hilo Trap
5 and Skeet Range in accordance with 40 C.F.R. § 144.89(a) and all other applicable
6 requirements, including the DOH closure, conversion, and/or replacement requirements
7 for large capacity cesspools, by October 31, 2016. If Respondent installs new Individual
8 Wastewater Systems (“IWSs”), then installation and operation of the IWSs shall comply
9 with DOH’s requirements.

10 b. Within forty-five (45) days of closure, submit to EPA either: (i) a copy of
11 the Backfill Closure Reports for the three cesspools, or (ii) DOH’s approval to use the
12 IWSs. In any event, Respondent must submit to EPA a copy of the DOH approval to
13 operate the IWSs within 10 days of receipt. Documents shall be sent to Jelani Shareem at
14 EPA at the address specified in Paragraph 46 below, and shall include the following
15 signed certification made in accordance with 40 C.F.R. § 144.32(b) and (d):

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

22 35. For failure to comply with the requirement in Paragraph 34.a, above, Respondent
23 agrees to pay upon EPA’s demand the stipulated penalties set forth below. Stipulated penalties
24 begin to accrue on the date performance is due and are calculated as follows:
25

1 a. \$1000 per month (or partial month), for each of the first 3 month
2 following the applicable deadline.

3 b. \$3000 per month (or partial month), for each of months 4 through 12
4 following the applicable deadline.

5 c. \$6000 per month (or partial month), for each of months 13 and thereafter
6 following the applicable deadline.

7 36. EPA may demand stipulated penalties within one (1) year after the date
8 Respondents become subject to the stipulated penalty. Respondents must pay the stipulated
9 penalty within thirty (30) days of receipt of EPA's demand, according to the process provided in
10 the demand. If any payment is not received within thirty (30) calendar days of being due,
11 interest, handling charges and late-payment penalties will begin to accrue in the same manner as
12 set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11.

13
14 37. Neither the demand for, nor payment of, a stipulated penalty relieves Respondents of
15 its obligation to comply with any requirement of this CA/FO, or modifies any subsequent
16 deadline.

17 38. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
18 administrative or judicial remedies in lieu of assessing stipulated penalties due under this
19 CA/FO.

20 39. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated
21 penalties due under this CA/FO.

22
23 **C. Penalty**

24 40. Respondent shall pay to the United States a single administrative civil penalty of
25 One Hundred and Five Thousand Dollars (\$105,000) no later than 30 days following the
Effective Date of the Final Order (hereafter referred to as the "Due Date").

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

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

11 42. Respondent must provide a letter with evidence of the payment made pursuant to
12 Paragraphs 40 and 41 above, accompanied by the title and docket number of this action, to the
13 EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance
14 Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at
15 the following addresses:

16 Regional Hearing Clerk	Jelani Shareem, Compliance Officer
17 U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
18 Region 9 - Office of Regional Counsel	Region 9 - Enforcement Division
19 75 Hawthorne Street (ORC-1)	75 Hawthorne Street (ENF-3-3)
20 San Francisco, CA 94105	San Francisco, CA 94105

21 43. If the full penalty payment is not received on or before the Due Date, interest shall
22 accrue on any overdue amount from the Due Date through the date of payment, at the annual rate
23 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late
24 payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion
25 thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty
will also be applied on any principal amount not paid within 90 days of the Due Date.

1 Respondent shall tender any interest, handling charges, or late penalty payments in the same
2 manner as described above.

3 44. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if
4 Respondent fails to pay by the Due Date the administrative civil penalty assessed in this CA/FO,
5 EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus
6 costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of
7 such penalty shall not be subject to review.

8 45. Respondent shall not deduct the civil penalty, nor any interest, late penalty
9 payments, or administrative handling fees provided for in this CA/FO from Respondent's
10 federal, state, or local income taxes.

11 **D. Notices**

12 46. Respondent must send any written communications, to the following address:

13 Jelani Shareem, Compliance Officer
14 U.S. Environmental Protection Agency
15 Region 9 - Enforcement Division
16 75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

17 47. EPA must send any written communications to the following addresses:

18 James M. Komata, Deputy Director
19 Department of Parks and Recreation
20 County of Hawai'i
101 Pauahi Street, Suite 6
21 Hilo, HI 96720

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IV. EFFECTIVE DATE

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

FOR THE CONSENTING PARTIES:

COUNTY OF HAWAII:

_____ Date: _____

William P. Kenoi
Mayor, County of Hawai'i
25 Aupuni Street
Hilo, HI 96720

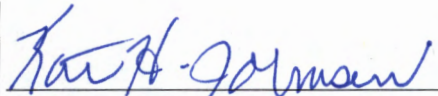
APPROVED AS TO FORM AND LEGALITY:

_____ Date: _____

J Yoshimoto
Deputy Corporation Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ Date: August 3, 2016


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

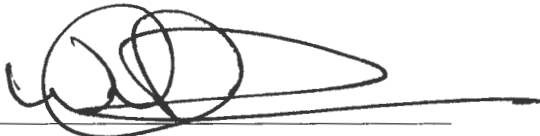
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FOR THE CONSENTING PARTIES:

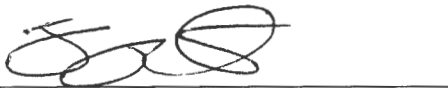
COUNTY OF HAWAII:



Date: JUL 29 2016

William P. Kenoi
Mayor, County of Hawai'i
25 Aupuni Street
Hilo, HI 96720

APPROVED AS TO FORM AND LEGALITY:



Date: July 27, 2016

J Yoshimoto
Deputy Corporation Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

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

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CERTIFICATE OF SERVICE

I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of County of Hawai'i (UIC-09-2016-0004), dated _____, was filed with the Regional Hearing Clerk and sent.

FIRST CLASS MAIL - CERTIFIED

Tracking Numbers: 7015 3010 0000 3883 9756

Respondent

J. Yoshimoto
Deputy Corporation Counsel
Office of the Corporation Counsel
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

HAND DELIVERED

EPA Region IX Attorney:

Brett P. Moffatt
Attorney-Advisor
United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, California: _____

9/26/16



For:

Steve Armsey
Regional Hearing Clerk
U.S. EPA, Region 9