

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9



IN THE MATTER OF: )  
 )  
Frank Alo ) COMPLAINT'S MOTION  
 ) FOR PARTIAL DEFAULT  
 ) (LIABILITY)  
 )  
 )  
Respondent. )  
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 )  
\_\_\_\_\_ ) Docket No. CWA-09-2021-0049

Complainant, Region 9 of the United States Environmental Protection Agency, moves for the entry of an Order for Partial Default on Liability. This motion is made pursuant to 40 C.F.R. § 22.17. Complainant requests a ruling that all allegations in the Complaint are deemed admitted by Respondent, Frank Alo, and that, as a consequence, Respondent is liable for the violations as set forth in the Complaint. This motion is supported by the accompanying Memorandum in Support of Motion for Partial Default on Liability, the Declaration of Scott McWhorter with supporting documents attached thereto, and the Declaration of Richard Campbell with supporting documents attached thereto.

Respectfully submitted February 3, 2022.

**RICHARD**  
**CAMPBELL** Digitally signed by  
RICHARD CAMPBELL  
Date: 2022.02.03  
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Rich Campbell  
Assistant Regional Counsel  
U.S. EPA – Region 9

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

**IN THE MATTER OF:**

**Frank Alo**

**Respondent.**

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**COMPLAINANT'S MEMORANDUM IN  
SUPPORT OF MOTION  
FOR PARTIAL DEFAULT  
(LIABILITY)**

Docket No. CWA-09-2021-0049

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A. July 1, 2021, Complaint Package to Respondent

B. Declaration of Scott McWhorter

1. October 18, 2019 EPA Request for Information
2. UPS Proof of Service of EPA Request for Information
3. February 6, 2020 Alo Response to EPA Request for Information
4. Emails from Alo to EPA dated December 19, 2019 and September 29, 2020
5. October 27, 2020 EPA transmittal of AOC and NOPVOC to Alo
6. December 2, 2020 Alo email confirming receipt of AOC and NOPVOC
7. December 16, 2020 email from Launi Alo
8. July 6, 2021 UPS Proof of Delivery
9. July 6, 2021 UPS Delivery Notification
10. September 28, 2021 EPA email of Complaint to Alo
11. September 28, 2021 Outlook email confirmation of EPA email of Complaint

C. Declaration of Rich Campbell

1. June 29, 2021 UPS Mailing Label
2. Complaint as delivered to Respondent on August 11, 2021
3. August 11, 2021 UPS Proof of Delivery
4. October 21, 2021 email from Regional Hearing Clerk

D. EPA July 22, 2020 Inspection Report

## **I. INTRODUCTION**

The Environmental Protection Agency (“EPA”), Region 9, Enforcement and Compliance Assurance Division (“Complainant”), by and through EPA Region 9’s Office of Regional Counsel, submits this Memorandum of Law in support of its Motion for Partial Default on Liability, brought pursuant to 40 C.F.R. §§ 22.16 and 22.17, for an order finding Frank Alo (“Respondent”) in default for his failure to file an Answer to EPA’s Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing (hereafter, the “Complaint”) filed on July 1, 2021, a true and correct copy of which is attached as Exhibit A to this Memorandum. The Complaint alleges that Respondent discharged fill materials to approximately 0.77 acres of waters of the United States without authorization under section 404 of the Clean Water Act (“CWA”), 33 U.S.C. § 1344, in violation of the prohibition against unauthorized discharges at section 301(a) of the CWA, 33 U.S.C. § 1311(a).

This administrative proceeding for the assessment of a civil penalty was initiated in accordance with the authority vested in the Administrator of the EPA by section 309(g) of the CWA, 33 U.S.C. § 1319(g), as delegated to Complainant. This proceeding is governed by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules”) at 40 C.F.R. Part 22.

## **II. STANDARD FOR GRANTING A MOTION FOR DEFAULT JUDGMENT**

Section 22.17 of the Consolidated Rules, entitled “Default” states:

(a) Default. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint .... Default by respondent constitutes, for purposes of the pending proceedings only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations ....

(b) Motion for default. A motion for default may seek resolution of all or part of the proceeding ....

(c) Default order. When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

... The relief proposed in the ... motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the [CWA] ....

40 C.F.R. § 22.17(a).

Regional Judicial Officers routinely find, and the Environmental Appeals Board has affirmed, judgements of default to be appropriate where a Respondent completely and inexcusably fails to respond to a properly served Complaint by the time a motion for default is filed.<sup>1</sup>

### **III. FACTUAL BACKGROUND: SERVICE OF PROCESS**

#### **A. Filing of Complaint**

On July 1, 2021, pursuant to the authority of section 309(g) of the CWA, 33 U.S.C. § 1319(g), Complainant filed a copy of the signed original of the Complaint and a copy of the Consolidated Rules with the Regional Hearing Clerk for EPA Region 9. Complainant electronically filed the Complaint following the requirements of the Regional Judicial Officer’s *May 14, 2020, Standing Order, Designation of EPA Region IX Part 22 Electronic Filing System (“EFS Standing Order”)*.

#### **B. Service of Complaint**

On July 1, 2021, in accordance with 40 C.F.R. § 22.5(b)(1)(i), Complainant initiated personal service of the Complaint and Consolidated Rules on Respondent using United Parcel Service (“UPS”) Next-Day Air delivery and its Signature Tracking Service with Adult Signature Required. *See Exhibit B, Declaration of Scott McWhorter, EPA Region 9, (“McWhorter Decl.”) at ¶¶9-10.*

UPS served the Complaint and Consolidated Rules on Respondent on July 6, 2021, at the address in Hauula, Island of Oahu, provided on the Complainant’s Certificate of Service attached to the Complaint. *See McWhorter Decl. at ¶5.*

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<sup>1</sup> *See e.g., Silky Associates, LLC*, RCRA Appeal No. 21-02, 2021, WL 2912094 \*3 (EAB July 6, 2021); *Bar Development Water Users’ Association*, SDWA-10-2005-0133, 2006 WL 4093131 \*5 (Jan. 10, 2006); *Alvin Raber, Jr., and Water Enterprises Northwest, Inc.*, Docket No. SDWA-10-2003-0086, 2004 WL 2163202 \*4, (July 2, 2004).

UPS's Proof of Delivery and Delivery Notification show receipt of the Complaint and Consolidated Rules by "Alo" at 3:19 p.m. on July 6, 2021. *See* McWhorter Decl. at ¶¶ 10-11.

The UPS delivery person did not have Respondent personally sign the Proof of Delivery document, and instead the UPS deliverer wrote "COVID-19" in the signature box in accordance with UPS's COVID-19 protocols in place at the time in Hawaii. *See* McWhorter Decl. at ¶12.

C. Notice to Respondent to Answer the Complaint

The Complaint advised Respondent of the right to a hearing and explained that, in order to avoid being found in default upon motion by Complainant, a written Answer, which could include a request for a hearing, had to be filed with the Regional Hearing Clerk within thirty calendar days of receipt of the Complaint. *See* Exhibit A, Complaint at ¶23. In addition, the Complaint contained the following directions:

The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested.

*Id.* EPA Region 9's transmittal cover letter, dated July 1, 2021, similarly advised Respondent of the need to provide an Answer to the Complaint within thirty calendar days.

D. Respondent's Failure to Answer the Complaint

Respondent did not file an Answer to the Complaint with the Regional Hearing Clerk within thirty calendar days of receiving the Complaint by UPS on July 6, 2021, *i.e.*, by August 9, 2021, or anytime thereafter. *See* Exhibit C, Declaration of Richard Campbell, EPA Region 9 Office of Regional Counsel ("Campbell Decl.") at ¶¶7-9.

After Respondent failed to provide a timely Answer to the Complaint, Scott McWhorter contacted the UPS's Oahu offices on August 16, 2021, to confirm that UPS had personally delivered the

Complaint to Respondent on July 6, 2021. *See* McWhorter Decl. at ¶11. UPS confirmed that personal delivery of the Complaint had occurred on July 6, 2012. *Id.* UPS also explained that Respondent did not physically sign for the UPS shipment due to UPS’s COVID-19 distancing protocols in place at the time, and thus, the UPS deliverer wrote “COVID 19” in the space reserved for signatures on the UPS Delivery Notification form. *See id.* at ¶12.

E. Complainant’s Follow-up Notices to Respondent

1. By UPS

On August 11, 2021, UPS delivered an additional copy of the Complaint to Respondent on behalf of EPA Region 9, using the same address as used for the July 6, 2021, service. *See* Campbell Decl. at ¶¶4-5. The UPS deliverer wrote “Chattel” in the signature box. *See id.* at ¶6. Although it is unclear what the word “Chattel” refers to, the additional copy of the Complaint was clearly delivered to Alo’s correct address. In any case, Complainant does not rely on this second, courtesy delivery to show the Complaint was properly served.

2. By Phone

On August 16, 2021, one week after Respondent’s Answer was due, Scott McWhorter called Respondent to inquire whether Respondent had filed or intended to file a response to the Complaint. *See* McWhorter Decl. at ¶13. Scott McWhorter used a phone number that EPA had successfully used to reach Respondent on prior occasions. *Id.* Respondent did not answer the call. *Id.* Later that same day, Scott McWhorter made a second call. *Id.* Respondent again did not answer the call, and so Scott McWhorter left a voice message for Respondent to call back. *Id.* As of the date of this Motion for Default, Respondent has not returned Scott McWhorter’s August 16, 2021, phone calls. *See id.*

3. By Email

On September 28, 2021, Scott McWhorter emailed a copy of the Complaint to Respondent (with a courtesy copy to Respondent’s daughter, Launi Alo) informing Respondent that EPA had yet to

receive an Answer and that an Answer should have been made by August 9, 2021. *See* McWhorter Decl. at ¶14. Scott McWhorter used an email address that EPA had successfully used to reach Respondent on prior occasions, including the NOPVOC and revised AOC discussed in Section III.C above. *See id.* at ¶¶4, 6. Scott McWhorter's email also contained a request that Respondent's legal counsel, if any, contact EPA's Office of Regional Counsel to discuss the matter. *See id.* An email confirmation from the Microsoft Outlook email software system used by EPA confirmed delivery of the email to Respondent. *Id.* at ¶14. As of the date of this Motion for Default, neither Respondent or Respondent's legal counsel, if Respondent has retained one, has responded to Scott McWhorter's September 28, 2021, email or otherwise contacted the EPA. *See* Campbell Decl. at ¶9.

F. Confirmation that No Answer Received by EPA

To date, Respondent has not filed an Answer to the Complaint with the Regional Hearing Clerk. On October 21, 2021, the EPA Region 9 Hearing Clerk confirmed in an email that a search of both the Clerk's individual agency account and the account for receiving public comments did not locate either an Answer or any Motion for Extension of Time from Respondent. *See* Campbell Decl. at ¶7.

On October 28, 2021, Richard Campbell visited EPA Region 9's office at 75 Hawthorne Street to confirm that the EPA Region 9 Office of Regional Counsel had not received an Answer or any other communication from Respondent. *See Id.* at ¶¶8-9. Similarly, staff with the EPA Region 9 Enforcement and Compliance Assurance Division confirmed that it had not received a hard copy of the Answer or any other communication from Respondent. *See* McWhorter Decl. at ¶15.

G. Respondent's Possible Legal Representation

Respondent may be represented by legal counsel based on an email exchange on December 16, 2020, between Scott McWhorter and Launi Alo, Respondent's daughter. *See* McWhorter Decl. at ¶7. Launi Alo's December 16, 2020, email was made in response to EPA Region 9's October 27, 2020

transmittal of a proposed administrative order on consent (“AOC”) and Notice of Potential Violation and Opportunity to Confer (“NOVPOC”) to Respondent. *See* McWhorter Decl. at ¶5. Launi Alo stated:

Aloha Scott,  
I’m writing on behalf of my father Frank Alo. I was going thru the documents and had some concerns. I would like to have my attorney look over the documents so we can have a better outlook on this matter. Please give us some time to get you an answer regarding your letter.  
Sincerely,  
Launi

In the email exchange, Launi Alo also informed Scott McWhorter that: “We would like to seek legal counsel to discuss a better financial solution for us.” However, neither Respondent or Respondent’s legal counsel, if one was retained, has provided a response to EPA’s proposed NOVPOC or revised AOC despite a December 2, 2020, email from Respondent acknowledging receipt. *See* McWhorter Decl. at ¶6. The December 16, 2020, emails from Launi Alo were the last communications received by EPA from Launi Alo or any representative of Respondent. As of the date of this Motion for Default, Respondent’s legal counsel, if one has been retained, has not communicated with EPA Region 9’s legal counsel on any matter related to Respondent, including the filing of the Complaint. *See* Campbell Decl. at ¶9.

**IV. ARGUMENT: COMPLAINANT HAS SATISFIED THE GOVERNING LEGAL STANDARDS FOR A DEFAULT TO BE ENTERED**

40 C.F.R. § 22.17(a), in pertinent part, provides: “A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint ... .” To be timely under the Consolidated Rules, an “answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.” 40 C.F.R. § 22.15(a). As discussed below, Complainant properly served the Complaint upon Respondent and Respondent did not provide a timely Answer to the Complaint within 30 days after service, or anytime thereafter.

A. Complainant Used a Proper Method of Service

The Consolidated Rules at 40 C.F.R. § 22.5(b)(1)(i) state: “Service shall be made personally, by certified mail with return receipt requested, *or by any reliable commercial delivery service that provides written verification of delivery.*” (Emphasis added.) Whichever method of service it chooses, EPA is obligated to follow the procedural rules for that type of service.<sup>2</sup>

Here, Complainant chose UPS’s “Next-Day Air delivery and its Signature Tracking Service with Adult Signature Required” as the method of service to personally serve the Complaint on Respondent. This method of service meets the requirements of 40 C.F.R. § 22.5(b)(1)(i) because, as discussed below, UPS is a “reliable commercial delivery service” and “provides written verification of delivery.”

1. “Reliable Commercial Delivery Service”

UPS is routinely used by EPA to effectuate personal service<sup>3</sup> and Administrative Law Judges (“ALJs”) throughout EPA have found UPS to be a “reliable commercial delivery service.”<sup>4</sup> Complainant

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<sup>2</sup> Cf. *Lester Sykes*, Docket No. TSCA-05-2008-0013, pg. 4 (July 30, 2013) (finding EPA Region 5 did not properly serve its complaint upon respondent when it used U.S. Postal Service (“USPS”) without using USPS’s certified mail/return receipt requested service (unavailable on Westlaw; available on EPA Office of ALJ Docket website at: <https://www.epa.gov/alj>).

<sup>3</sup> See, e.g., *Detroit Renovations, LLC*, Docket No. TSCA-HQ-2018, 2018 WL 5887552 \*1 (finding respondent had three additional days to file an answer to complaint because EPA “used a commercial delivery service [UPS] to serve the Complaint.”); *Spartan Diesel Technologies, LLC*, Docket No. CAA-HQ-2017-8362, 2018 WL 5314792 \*5 (Sept. 27, 2018) (finding service of complaint by UPS proper); *Cheerful Cesspool Serv.*, Docket No. CWA-08-2009-0017, 2011 WL 6849014 \*7 (Nov. 15, 2011)(finding service of Complaint by FedEx proper); see also *Ross Transport Co., Inc. & Arnold Steinman*, 2014 WL 11089305 (EAB Apr. 15, 2014)(service of complaint proper), adopting Initial Decision and Default Order, ¶13 (Dec. 31, 2013)(finding service of complaint by UPS proper), available on EPA EAB Dockets website at [https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf).

<sup>4</sup>*Spartan Diesel Technologies*, 2018 WL 5314792 at \*2; see also *Lester Sykes* at pg.4, n. 4 (“EPA administrative decisions have accepted the reliability of commercial delivery services, such as Federal Express (FedEx) and the United Parcel Service (UPS), when serving complaints.”) (available on EPA Office of ALJ Docket website at: <https://www.epa.gov/alj>).



sees no reason that UPS would not similarly be considered a reliable commercial delivery service here, so long as UPS “provides written verification of delivery.”

2. “Written Verification of Delivery”

As discussed above, UPS does provide written verification of delivery, and did so in this case by providing EPA with Proof of Delivery and also a Delivery Notification. *See* McWhorter Decl. at ¶¶9-11. Thus, Complainant’s use of UPS to serve the Complaint satisfied the personal service requirement of 40 C.F.R. § 22.5(b)(1)(i) despite the lack of Respondent’s signature on UPS’s Proof of Delivery.

Significantly, EPA’s ability to serve an administrative complaint using a reliable commercial delivery service, with written verification of delivery, is consistent with the service requirements of the Federal Civil Rules of Procedure (“FRCP”), which also do not require a defendant’s signature to demonstrate proof of service.<sup>5</sup> The FRCP allows for an individual to be served by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or (2) doing any of the following: (A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

FRCP § 4(e). Furthermore, proof of service under the FRCP is made by affidavit. *See* FRCP § 4(f)(1) (“Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit”). In sum, an

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<sup>5</sup> *See also* Hawaii Rules of Civ. Procedure (“HRCP”) § 4(d)(1)(Service shall be made as follows: “(1) Upon an individual other than an infant or an incompetent person, (A) by delivering a copy of the summons and of the complaint to the individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or (B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process”); *and see* HRCP § 4(g) (“The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to process. When service is made by any person specially appointed by the court, that person shall make affidavit of such service.”)

interpretation of 40 C.F.R. § 22.5(b)(1)(i) that does not require respondent to provide a signature to a commercial delivery service serving a complaint upon respondent would be consistent with applicable state and federal rules of civil procedure.

### 3. UPS's Shipper Release Did Not Allow for Signature

Although signature upon delivery was not necessary, EPA requested UPS deliver the Complaint with "Adult Signature Required." *See* McWorther Decl. at ¶9. However, while the UPS deliverer personally delivered the Complaint to Respondent, the UPS deliverer did not have Respondent sign for the package on the UPS deliverer's hand-held electronic device because of distance requirements due to the COVID-19 pandemic. *See* McWhorter Decl. at ¶12. In any case, the lack of signature is irrelevant because 40 C.F.R. § 22.5(b)(1)(i) does not require a respondent's signature when effectuating service of a complaint upon an individual by a reliable commercial delivery service.

### B. Complainant Used Proper Service Materials

The Consolidated Rules at 40 C.F.R. § 22.5(b)(1)(i) require that Complainant serve on Respondent "a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice." In the present case, the Complainant served the Respondent a copy of the signed original of the Complaint, a Certificate of Service, cover letter, a copy of the Consolidated Rules, and a copy of the Regional Judicial Officer's *EFS Standing Order*. Thus, Complainant used "proper service materials" in compliance with the requirements of 40 C.F.R. § 22.5(b)(1)(i).

### C. Complainant Used a Proper Address for Respondent

The address Complainant used to serve Respondent the Complaint was one that Complainant had successfully used in the past to deliver material to Respondent, including the October 18, 2019, CWA information request sent by UPS. *See* McWhorter Decl. at ¶¶2-3. Other documents also confirm that Complainant used the correct mailing address for Respondent, *e.g.*, City and County of Honolulu ("CCH") tax assessor records. *See* McWhorter Decl. ¶3. Finally, UPS's July 6, 2021 Proof of Delivery

and Delivery Notification form, which reflect that the Complaint was received by “Alo,” provides additional evidence that the Complaint was properly addressed. *See* McWhorter Decl. at ¶ 11.

D. Properly Executed Receipt of Service was Returned to the Region

40 C.F.R. § 22.5(b)(1)(iii) specifies that “[p]roof of Service of the Complaint must be made by affidavit of the person making personal service, *or by properly executed receipt.*” (Emphasis added.) Here, UPS’s July 6, 2021, Delivery Notification and Proof of Delivery provides the “properly executed receipt” contemplated by 40 C.F.R. § 22.5(b)(1)(iii). We again note that the rule does not require submission of respondent’s signature to demonstrate proof of service.

For the reasons identified above, the Complaint was properly served on Respondent and his failure to file an Answer to EPA’s properly served Complaint results in a finding of default.

V. **THE FACTS IN COMPLAINT ARE DEEMED ADMITTED BECAUSE RESPONDENT IS IN DEFAULT**

Respondent is in default for having failed to answer the Complaint, and, as a result, the facts alleged in the Complaint are now deemed admitted for purposes of this proceeding pursuant to 40 C.F.R. § 22.17(a), and are sufficient to find Respondent liable for violations of section 301 of the CWA, 33 U.S.C. § 1311(a). Under section 301(a) of the CWA, it is unlawful for (1) any person; (2) to discharge; (3) from any point source; (4) into waters of the United States; (5) except in compliance with certain enumerated sections of the CWA, one of which is section 404, 33 U.S.C. § 1344. Section 404 establishes a permit program for discharges of dredged or fill material into navigable waters, including adjacent wetlands.<sup>6</sup> As discussed below, the facts deemed to be admitted in this matter establish a *prima facie* case of at least one day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for Respondent’s discharge of fill that occurred on or around February 18, 2018.

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<sup>6</sup> *See Fairbanks North Star Borough v. U.S. Army Corps of Engineers*, 543 F.3d 586, 589 (9<sup>th</sup> Cir. 2008); *Borden Ranch Partnership v. U.S. Army Corps of Engineers*, 261 F.3d 810, 814 (9<sup>th</sup> Cir. 2001), *aff’d per curiam*, 537 U.S. 99 (2002).

A. “Person”

Respondent is an individual and therefore a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5). *See Exhibit A*, Complaint at ¶4.

Respondent owns the real Property at 54-028 Kukuna Road, Hauula, Hawaii identified by a State of Hawaii Tax Map Key (“TMK”) 5-4-001-013. *Id.* at ¶5. Although this fact is deemed admitted by Respondent’s default, the CCH Real Property Tax Assessor Records provided to EPA by Respondent on February 6, 2020, in response to EPA’s request for information show his ownership of the Property as well. *See McWhorter Decl.*, ¶3.

Respondent’s real property adjoins four parcels of land owned by other persons and entities, including the State of Hawaii and the CCH. *Exhibit A*, Complaint at ¶6. Again, although deemed to be admitted by virtue of Respondent’s default, the CCH Real Property Tax Assessor Records provided to EPA by Respondent on February 6, 2020 also show the ownership of the real properties that adjoin Respondent’s Property by entities other than the Respondent. *See McWhorter Decl.*, ¶3.

B. “Discharge”

Respondent’s real property and portions of the four other adjoining parcels of land referenced in paragraphs 6 of the Complaint, are referred to together as “the Site” in the Complaint. *See Exhibit A*, Complaint at ¶8. Respondent, or persons acting on behalf of Respondent, operated earth-moving equipment on or around February 12, 2018, and possibly thereafter on dates best known to Respondent, which discharged approximately 200 truckloads of gravel, asphalt, clay, dirt and other fill material to the wetlands described as waters of the United States on the Site. *Id.* In addition to these facts now deemed admitted as a result of Respondent’s default, an EPA inspector observed construction equipment at the Site during a July 22, 2020, inspection, and was told by Respondent that “at least 200 truck loads of fill material, obtained from Marine Corps Base Hawaii (MCBH), were place [sic] behind the house on his

property to expand and improve the backyard area.” A true and correct copy of EPA’s July 22, 2020, inspection report is attached as Exhibit D to this Memorandum.

C. “Pollutant”

The fill referenced in paragraph 8 of the Complaint, including gravel, asphalt, clay, dirt and other fill material, which Respondent discharged to “waters of the United States,” constitutes a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6), which includes, *inter alia*, “dredged spoil,” “biological materials,” “rock,” and “sand.” *See also Exhibit A*. Complaint at ¶9. *See also United States v. Pozsgai*, 999 F.2d 719, 724 (3d Cir. 1993) (“pollutants” include fill material, dredged spoil, rock, and sand), *cert. denied*, 510 U.S. 1110 (1994); *Rybachek v. United States*, 904 F.2d 1276, 1285 (9th Cir. 1990) (dirt is a pollutant). This fact is now deemed admitted as a result of Respondent’s default.

D. “Point Source”

The equipment referenced in paragraph 8 of the Complaint, which Respondent used to discharge fill material to “waters of the United States,” constitutes a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14), which defines “point source” to include any discernible, confined and discrete conveyance... from which pollutants are or may be discharged.” *See Exhibit A*, Complaint at ¶10; *see also Borden Ranch Partnership v. United States*, 261 F.3d 810, 815 (9<sup>th</sup> Cir. 2001), *aff’d per curiam*, 537 U.S. 99 (2002) (“The statutory definition of ‘point source’ ...is extremely broad, and courts have found that ‘bulldozers and backhoes’ can constitute ‘point sources.’”); *see also generally Ray and Jeanette Veldhuis*, Docket No. CWA-9-99-0088 (ALJ Gunning June 24, 2002), *aff’d*, 11 E.A.D. 194 (2003) (plow used to deep rip wetlands on farm land held to be a point source). This fact is now deemed admitted as a result of Respondent’s default.

E. “Waters of the United States”

Complainant alleges in paragraph 7 of the Complaint that Respondent’s real property, and portion of the four adjoining parcels of land referred to in paragraph 6 of the Complaint, contain “wetlands” and that these wetlands are “waters of the United States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), because “they are adjacent to and abut a perennial tributary to the Pacific Ocean, a Traditional Navigable Water.” These facts are now deemed admitted as a result of Respondent’s default. In addition, the attached July 22, 2020, EPA Inspection Report also provides documentary and photographic evidence of wetlands at the Site. *See Exhibit D* (“With the assistance of USACE, I documented vegetation surrounding the fill area, including wetland indicator species ...”).

F. “Without a Permit or Not in Compliance with the CWA”

Respondent, by discharging fill material to “waters of the United States” at the Site without authorization under section 404 of the CWA, 33 U.S.C. § 1344, violated section 301(a) of the CWA, 33 U.S.C. § 1311(a). *See Exhibit A*, Complaint at ¶11.

In sum, the facts alleged in the Complaint and deemed admitted by virtue of Respondent’s default establish that Respondent violated the CWA on at least February 18, 2018 by using trucks and other equipment that are point sources to discharge fill, a pollutant, into approximately 0.77 acres of wetlands that comprise waters of the United States without authorization under section 404 of the CWA, 33 U.S.C. § 1344, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311.

**VI. JUDGMENT AS TO LIABILITY SHOULD BE ENTERED IN FAVOR OF COMPLAINANT**

A default judgment on liability as alleged in the Complaint should be granted in EPA’s favor because Respondent has failed to provide any response to the Complaint despite repeated opportunity and urging. Respondent was properly served the Complaint on July 6, 2021, and pursuant to 40 C.F.R. § 22.15(a), was required to respond by August 9, 2021. As provided at 40 C.F.R. § 22.17(a), Respondent is subject to a default judgment for failing to timely answer the

Complaint. Such a default constitutes an admission of all facts alleged in the Complaint, as discussed above, and a waiver of any right to contest such factual allegations. *Id.* EPA is authorized to seek a default judgment that only resolves a portion of the pending matter, and here is seeking a default judgment as to the matter of liability only. EPA reserves all rights to seek a judgment addressing an appropriate penalty in the future. Respondent may have an opportunity to present facts and argument regarding an ultimate penalty amount.

Respondent has given no clear indication that he has retained counsel in this matter, *see* Section III.C above, and EPA is uncertain whether Respondent would proceed *pro se* in this matter. Nonetheless, Respondent’s possible *pro se* status should not excuse such inaction or preclude the default judgment. EPA’s Environmental Appeals Board’s decision in *Rybond, Inc.*, is instructive.<sup>7</sup> In *Rybond* the Environmental Appeals Board upheld a default judgment against *pro se* respondent Rybond, which had been issued based on Rybond’s failure to comply with an Administrative Law Judge’s order requiring the submission of a prehearing exchange. The Board noted:

It is true that both the federal courts and the Agency have adopted the approach that more lenient standards of competence and compliance apply to *pro se* litigants. Nonetheless, a litigant who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance.<sup>8</sup>

The Board in *Rybond* upheld the default judgment because, as is the case here, the respondent in that matter was “carefully apprised of the due date ....”<sup>9</sup> Here, the Respondent was apprised of the need to file an answer through the cover letter transmitting the Complaint and the Complaint itself. Additionally, as discussed above, Respondent also received the cover letter and Complaint by a supplemental UPS delivery on August 11, 2021, and again by email on September 28, 2021. Now, more than five months

---

<sup>7</sup> *Rybond, Inc.*, 1996 WL 691675 (E.A.B. Nov. 8, 1996).

<sup>8</sup> *Id.* at \*10 (internal citations and quotations omitted).

<sup>9</sup> *Id.* at \*2

past the original August 9, 2021, due date for a response and the supplemental delivery of the Complaint on August 11, 2021, and over four months since its delivery by email on September 28, 2021, Respondent has not made any attempt to answer the Complaint or request a hearing.

V. **RELIEF REQUESTED**

For the reasons stated above, Complainant requests the issuance of a default order against Respondent for failure to answer and liability for violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Respectfully submitted this day of February 3, 2022.

**RICHARD  
CAMPBELL**

Digitally signed by  
RICHARD CAMPBELL  
Date: 2022.02.03 10:01:14  
-08'00'

---

Richard Campbell  
Assistant Regional Counsel  
Attorney for Complainant



# **Exhibit A**

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
2 **REGION 9**

3 75 Hawthorne Street  
San Francisco, California 94105

**\*\*FILED\*\***  
**02 JULY 2021**  
**U.S. EPA - REGION IX**

4 In re the Matter of: ) Docket No.: CWA-09-2021-0049  
5 )  
6 Frank Alo, an individual ) **COMPLAINT, NOTICE OF PROPOSED**  
Hauula, Hawaii ) **PENALTY, AND NOTICE OF**  
7 ) **OPPORTUNITY FOR HEARING**  
8 Respondent. ) Proceedings Under Section 309(g)(2)(B) of the  
Clean Water Act, as amended, 33 U.S.C. §  
9 ) 1319(g)(2)(B)

10 **COMPLAINT**

11 **I. STATUTORY AUTHORITY**

12 1. The United States Environmental Protection Agency (“EPA”) issues this Complaint,  
13 Notice of Proposed Penalty, and Notice of Opportunity for Hearing (“Complaint”) pursuant to  
14 section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). The authority to take  
15 action under section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of  
16 the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA  
17 Region 9, who in turn has delegated it to the Director of the Enforcement and Compliance  
18 Assurance Division of EPA Region 9, who hereby issues this Complaint.

19 **II. STATUTORY AND REGULATORY FRAMEWORK**

20 2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of, *inter alia*,  
21 dredged and/or fill material from a point source into waters of the United States by any person  
22 except in compliance with a permit issued by the U.S. Army Corps of Engineers (“Corps”)  
23 pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

24 3. The term “fill material” within the meaning of 33 C.F.R. § 323.2(e)(1), includes any  
25 pollutant which replaces portions of “waters of the United States” with dry land or which

1 changes the bottom elevation of a water body for any purpose. The term “discharge of fill  
2 material” within the meaning of 33 C.F.R. § 323.2(f) includes “[p]lacement of fill that is  
3 necessary for the construction of any structure or infrastructure in a water of the United States.”

4 **III. FACTUAL AND LEGAL ALLEGATIONS**

5 4. Frank Alo (Respondent) is a “person” within the meaning of section 502(5) of the CWA,  
6 33 U.S.C. § 1362(5).

7 5. Respondent owns real property at 54-028 Kukuna Road, Hauula, Hawaii identified by a  
8 State of Hawaii Tax Map Key (“TMK”) 5-4-001-013.

9 6. Respondent’s real property adjoins four parcels of land owned by other persons and  
10 entities, including the State of Hawaii and the City and County of Honolulu (“CCH”).

11 7. Respondent’s real property, and portion of the four adjoining parcels of land referred to  
12 above in paragraph 6, contains wetlands that are adjacent to and abut a perennial tributary to the  
13 Pacific Ocean, a Traditional Navigable Water. Therefore, the wetlands are “waters of the United  
14 States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15 8. Based on inspections conducted by representatives of the Corps, Honolulu District on  
16 May 18, 2018, and by representatives of EPA Region 9 on July 22, 2020, and other information  
17 available to EPA, including Respondent’s February 26, 2020 response to EPA’s December 5,  
18 2019 information request made pursuant to EPA’s information gathering authorities at section  
19 308 of the CWA, 33 U.S.C. § 1318, Respondent, or persons acting on behalf of Respondent,  
20 operated equipment on or around February 12, 2018, and possibly thereafter on dates best known  
21 to Respondent, which discharged approximately 200 truckloads of gravel, asphalt, clay, dirt and  
22 other fill material to waters of the United States located on Respondent’s real property and also  
23 onto portions of the four other adjoining parcels of land referenced in paragraph 6 above,  
24 referred to together as “the Site.” Respondent’s activities at the Site include the discharge of fill  
25 material to approximately 0.77 acres of wetlands.

1 9. The fill referenced in Paragraph 8 above, which Respondent discharged to “waters of the  
2 United States,” constitutes a “pollutant” within the meaning of section 502(6) of the CWA, 33  
3 U.S.C. § 1362(6), which includes, *inter alia*, “dredged spoil,” “biological materials,” “rock,” and  
4 “sand.”

5 10. The equipment referenced in Paragraph 8 above, which discharged fill material to  
6 “waters of the United States,” constitutes a “point source” within the meaning of section 502(14)  
7 of the CWA, 33 U.S.C. § 1362(14), which defines “point source” to include any discernible,  
8 confined and discrete conveyance... from which pollutants are or may be discharged.”

9 11. Respondent, by discharging fill material to “waters of the United States” at the Site  
10 without authorization under section 404 of the CWA, 33 U.S.C. § 1344, violated section 301(a)  
11 of the CWA, 33 U.S.C. § 1311(a).

12 12. On June 10, 2021, EPA issued an Administrative Order for Compliance, Docket No.  
13 CWA-309(a)-21-001 (“Order”), ordering Respondent to remove the unauthorized fill from the  
14 wetlands at the Site and restore the wetlands in accordance with EPA and Corps requirements.

15 13. Work under the Order is not completed.

#### 16 **IV. FINDINGS OF VIOLATION**

##### 17 Unauthorized Discharge of Fill Material to Waters of the United States

18 14. Complainant repeats and realleges the allegations set forth in paragraphs 1 through 13.

19 15. On or around February 12, 2018, and possibly thereafter on dates best known to  
20 Respondent, Respondent and/or persons acting on Respondent’s behalf discharged or caused to  
21 be discharged fill material without authorization in violation of section 301(a) of the CWA, 33  
22 U.S.C. § 1311(a).

#### 23 **V. NOTICE OF PROPOSED ORDER ASSESSING PENALTIES**

24 16. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment  
25 of administrative civil penalties in an amount not to exceed \$22,584 per day for each day during

1 which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg.  
2 83818 (December 23, 2020).

3 17. EPA Region 9 determined the amount of its proposed administrative civil penalty on  
4 the facts stated in this Complaint, and after taking into account the statutory penalty factors at 33  
5 U.S.C. § 1319(g)(3), which include the nature, circumstances, extent, and gravity of the  
6 violations, and with respect to the violator, ability to pay, any prior history of such violations, the  
7 degree of culpability, economic benefit or savings resulting from the violation, and such other  
8 matters as justice may require.

9 18. By avoiding or delaying the costs necessary to comply with the CWA, Respondent has  
10 realized an economic benefit as a result of the violations alleged above.

11 19. Based on the foregoing Findings of Violations, and pursuant to section 309(g) of the  
12 Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil  
13 administrative penalty against Respondent in an amount not to exceed the statutory maximum  
14 penalty of \$282,293 as allowed under 33 U.S.C. § 1319(g)(2)(B). *See also* 40 C.F.R. § 19.4.

15 20. EPA has consulted with the State of Hawaii regarding this Complaint and its intention  
16 to seek civil administrative penalties against Respondent.

17 21. Neither assessment nor payment of a civil administrative penalty pursuant to section  
18 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to  
19 comply with the CWA, and with any separate compliance order issued under section 309(a) of  
20 the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

21 22. For purposes of the identification requirement in section 162(f)(2)(A)(ii) of the Internal  
22 Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of on-  
23 site wetland restoration required by the June 10, 2021 administrative order referenced in  
24 paragraph 12 above and the penalty of up to \$282,293 paid pursuant to paragraph 19 above are  
25 restitution, remediation or are required to come into compliance with the law.

1           **VI. ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

2           23. To avoid being found in default, which constitutes an admission of all facts alleged in  
3 the Complaint and a waiver of the right to hearing, Respondent must file a written answer and  
4 request for hearing within thirty (30) days of service of this Complaint. The answer shall clearly  
5 and directly admit, deny, or explain each of the factual allegations contained in this Complaint  
6 with respect to which Respondent has any knowledge, or shall clearly state that Respondent has  
7 no knowledge as to particular factual allegations in this Complaint. The answer shall also state  
8 (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the  
9 facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a  
10 hearing is requested.

11           **24. Pursuant to 40 C.F.R. § 22.5(b)(2), Complainant has filed with this Complaint a**  
12 **consent to receive service of all filings by Respondent via email so long as the documents**  
13 **filed are in pdf format. Following the Regional Judicial Officer’s May 14, 2020 Standing**  
14 **Order, *Designation of EPA Region IX Part 22 Electronic Filing System* (attached),**  
15 **Respondent’s Answer should be sent to the Regional Hearing Clerk at the email address**  
16 **below:**

17           Steven Armsey  
18           Regional Hearing Clerk  
19           Office of Regional Counsel  
20           U.S. Environmental Protection Agency – Region 9  
21           [r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov)

22           25. A copy of the Answer must also be served on Rich Campbell, one of the attorneys  
23 assigned to represent EPA in this matter, at the email address below:

24           Rich Campbell  
25           Attorney-Advisor  
              Office of Regional Counsel  
              U.S. Environmental Protection Agency – Region 9  
              [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov)

1 26. In accordance with section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), Respondent  
2 may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any  
3 material fact contained in the Complaint or to contest the appropriateness of the proposed penalty  
4 set forth therein. Such a hearing will be held and conducted in accordance with the attached  
5 *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and*  
6 *the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

7 27. If Respondent requests a hearing, members of the public, to whom EPA is obligated to  
8 give notice of this proposed action, will have a right under section 309(g)(4)(B) of the CWA, 33  
9 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the  
10 appropriateness of the penalty assessment.

## 11 **VII. OPPORTUNITY FOR INFORMAL SETTLEMENT**

12 28. Whether or not Respondent requests a hearing, Respondent may confer informally with  
13 EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference  
14 does not, however, affect Respondent's obligation to file a written Answer within thirty (30)  
15 days of the Effective Date of the Complaint. The informal conference procedure may be pursued  
16 simultaneously with the adjudicatory hearing procedure.

17 29. Any settlement reached as a result of an informal conference will be embodied in a  
18 written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final  
19 Order waives Respondent's right to a hearing on any matter to which Respondent stipulated.

20 30. If a settlement cannot be reached through an informal conference, the filing of a written  
21 Answer within thirty (30) days of the Effective Date of this Complaint preserves Respondent's  
22 right to a hearing.

23 31. EPA encourages Respondent to explore the possibility of settlement. To request an  
24 informal conference, Respondent should contact Rich Campbell in EPA Region 9's Office of  
25 Regional Counsel at (415) 972-3870 or by email at [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov).

1 **VIII. PUBLIC NOTICE**

2 32. Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b),  
3 require EPA to provide public notice of and a reasonable opportunity for comment before  
4 finalizing an administrative civil penalty action.

5 **IX. EFFECTIVE DATE**

6 33. This proceeding is initiated by the filing of this Complaint with the Regional Hearing  
7 Clerk. For calculation of time frames provided herein, the “Effective Date” of this Complaint is  
8 the date of service made in accordance with 40 C.F.R. § 22.5(b)(1)(i) and 22.7(c), including by  
9 reliable commercial delivery service that provides written verification of delivery.

10  
11 **AMY MILLER-** Digitally signed by AMY  
12 **BOWEN** MILLER-BOWEN  
13 Date: 2021.06.28 17:25:59  
-07'00'

14 Amy C. Miller-Bowen, Director,  
15 Enforcement and Compliance Assurance Division  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 **CERTIFICATE OF SERVICE**

2 In the Matter of Frank Alo  
3 EPA Docket No. CWA-09-2021-0049

4 I certify that the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for  
5 Hearing, was filed via email with the Regional Hearing Clerk, United States Environmental  
6 Protection Agency, Region 9 at [R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov) and that a true and correct copy of (1)  
7 the Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing; (2) the  
8 Consolidated Rules of Practice at 40 C.F.R. Part 22; and (3) the Region 9 Regional Judicial  
9 Officer’s Standing Order dated May 14, 2020, was sent via United Parcel Service’s Signature  
10 Service, with written verification of delivery requested, to:

11  
12 Frank Alo  
13 54-028 Kukuna Road  
14 Hauula, Hawaii 96717  
15 [REDACTED].com

16 Tracking No. **1ZA46W47A698994375**

17  
18  
19 Date: July 1, 2021 Signature ANDREW CHEW Digitally signed by ANDREW CHEW  
20 Date: 2021.07.01 12:59:52 -07'00'

# **Exhibit B**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

<b>IN THE MATTER OF:</b>	)	<b>DECLARATION OF SCOTT</b>
	)	<b>MCWHORTER IN SUPPORT OF</b>
<b>Frank Alo</b>	)	<b>COMPLAINANT'S MOTION</b>
	)	<b>FOR DEFAULT</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	Docket No. CWA-09-2021-0049

Based upon information and belief, I, Scott McWhorter, declare:

1. I am currently employed as an Enforcement Officer in the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 9, in San Francisco, California.
2. On October 18, 2019, I used the U.S. Postal Service (USPS) to mail via certified mail an EPA Request for information to Frank Alo (Alo). A true and correct copy of this Request for Information is attached to this Declaration as Exhibit 1.
3. On November 18, 2019, USPS informed me that the shipment containing the Request for Information was unclaimed and being returned to sender, *i.e.*, EPA. I subsequently used United Parcel Service (UPS) to deliver the Request for Information and it was successfully delivered on Friday, December 6, 2019 to Alo's address at 54-028 Kukuna Road, Hauula, Oahu, Hawaii, according to the attached UPS Delivery Notification I received that same day. A true and correct copy of the UPS Delivery Notification is attached as Exhibit 2. Alo responded to this Request for Information on February 8, 2020. A true and correct copy of Alo's response is attached to this Declaration as Exhibit 3. Alo's response served to show me that Alo receives shipments delivered to him via UPS at 54-028 Kukuna Road, Hauula, Oahu, Hawaii.
4. On December 19, 2019, February 7, 2020, and December 2, 2020, I exchanged emails with Alo using Alo's email address: [REDACTED] True and correct copies of emails sent by Alo on December 19, 2019 and September 29, 2020 are attached to this Declaration as Exhibit 4.
5. On October 27, 2020, I emailed a proposed Administrative Order on Consent (AOC) and a Notice of Potential Violation and Opportunity to Confer (NOPVOC) to Frank Alo at [REDACTED] A true and correct copy of this email transmittal of the NOPVOC and proposed AOC is attached to this Declaration as Exhibit 5.
6. On December 2, 2020, Frank Alo emailed me to confirm receipt of my October 27, 2020, email that attached EPA's proposed AOC and NOPVOC. A true and correct copy of Frank Alo's December 2, 2020 email is attached to this Declaration as Exhibit 6.

7. On December 16, 2020, I had an email exchange with Launi Alo, who claimed to be writing on behalf of Frank Alo as Frank Alo's daughter. Launi Alo notified me that her attorney would look over the documents I emailed to Frank Alo on October 27, 2020, and that Frank Alo "would like to seek legal counsel to discuss a better financial solution." A true and correct copy of my email exchange with Launi Alo on December 16, 2020 is attached to this Declaration as Exhibit 7.

8. On July 1, 2021, the EPA Region 9 Enforcement and Compliance Assurance Division filed a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") against Frank Alo with the EPA Region 9 Regional Hearing Clerk.

9. On July 1, 2021, the EPA Region 9 Enforcement and Compliance Assurance Division used UPS to deliver a package containing the Complaint to Alo's address at 54-028 Kukuna Road, Hauula, Oahu, Hawaii. The method of delivery used was UPS's Signature Service/Adult Signature Required.

10. On July 6, 2021, I received a Proof of Delivery of the Complaint to Alo at 54-028 Kukuna Road, Hauula, Oahu, Hawaii from UPS. A true and correct copy of this UPS Proof of Delivery, indicating use of UPS's Signature Service/Adult Signature Required is attached to this Declaration as Exhibit 8.

11. On August 16, 2021 at 9:51 a.m. Pacific Standard Time (PST), I called UPS's offices in Oahu to confirm delivery of the Complaint to Alo. UPS responded at 10:26 a.m. PST and attached a Delivery Notification indicating the Complaint was successfully received by "Alo" on July 6, 2021, at 3:19 p.m. at Alo's residence. A true and correct copy of this UPS Delivery Notification is attached to this Declaration as Exhibit 9. The UPS agent assured me that the original package was delivered on July 6, 2021, and received by Alo (e.g., the UPS driver noted received by "Alo").

12. During my August 16, 2021 conversation with UPS's Oahu office, I learned that Alo did not physically sign for the UPS shipment due to UPS's COVID-19 distancing protocols, and thus, the UPS driver wrote "COVID 19" in the space reserved for signatures on the UPS Delivery Notification form (although, again, the UPS driver noted "Alo" received the shipment).

13. On August 16, 2021 at around 5 p.m. PST (2 p.m. Hawaii time), I called Alo with the intention of reminding Alo of the need to respond to the Complaint issued on July 1, 2021. I used a phone number that Alo gave me and that I have successfully used to reach Alo on prior occasions. Alo did not answer, and I hung up. Moments later, I made a second call. Alo again did not answer my call and so I left a message for Alo to call me back. As of the date of this Declaration, Alo has not returned my phone calls made on August 16, 2021.

14. On September 28, 2021, in the hopes of prompting some response from Alo, I emailed the Complaint, EPA Cover letter, the Consolidated Rules, and the Standing Order to Alo using an email address that Alo had previously provided me and that I have successfully used to reach Alo on prior occasions, as discussed in paragraph 4 above. A true and correct copy of this email is attached to this Declaration as Exhibit 10. EPA's email Outlook software indicated that the email was received by Alo. A true and correct copy of this Outlook confirmation is attached to this Declaration as Exhibit 11. As of the date of this Declaration, I have not received a reply from Alo.

15. On October 19, 2021, my supervisor, Assistant Director Elizabeth Berg, conducted a search of my mailbox and office at my physical offices at 75 Hawthorne Street, San Francisco, California for any documents that may have been mailed or otherwise delivered to me by Respondent after July 1, 2021. Elizabeth Berg informed me that the search did not locate any such documents.

Under penalty of perjury, I hereby swear the foregoing is true to the best of my knowledge.

SCOTT

MCWHORTER

Digitally signed by SCOTT  
MCWHORTER  
Date: 2022.02.02 08:59:10  
-08'00'

Scott McWhorter

# **EXHIBIT 1**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX – PACIFIC SOUTHWEST REGION  
75 Hawthorne Street  
San Francisco, CA 94105-3901

OCT 18 2019

VIA CERTIFIED MAIL  
No. 7019 0700 0001 7652 9664  
RETURN RECEIPT REQUESTED

Mr. Frank Alo  
54-028 Kukuna Road  
Hauula, Hawaii 96717

RE: Request for Information under Clean Water Act (CWA) Section 308(a)  
Mr. Frank Alo / Unauthorized work in wetlands in or around 54-028 Kukuna Road, Hauula,  
Island of Oahu, Hawaii  
EPA Docket No. CWA-308-9-20-001

Dear Mr. Alo,

The U.S. Environmental Protection Agency, Region IX (“EPA”) is requesting information from you about the work we understand you performed work in wetlands on your property and properties adjacent to yours in Hauula, Hawaii, and whether that work complied with the requirements of Section 404 of the Clean Water Act (“CWA”), 33 U.S.C. § 1342. For ease of reference we refer to this work as the “the Project.” As you are aware, the Corps conducted a site visit on May 18, 2018 to observe the nature and scope of the Project. We now ask for additional information from you. We request this information pursuant to EPA’s information-gathering authority under Section 308 of the CWA, 33 U.S.C. § 1318. Please provide us your response to the questions in the attached Request for Information by **October 30, 2019** by certified mail or by email to:

Scott McWhorter  
U.S. Environmental Protection Agency, Region IX  
Enforcement and Compliance Assurance Division ENF 4-1  
75 Hawthorne Street  
San Francisco, CA 94105  
Mcwhorter.Scott@epa.gov

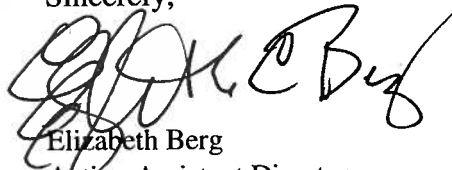
Your response to this Request for Information must be accompanied by the following certification signed by you or your duly authorized representative:

*I certify under penalty of law that this document and all attachments were prepared under my direction and 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.*

Failure to comply with this Request for Information can result in EPA proceeding with an enforcement action for appropriate remedies, including penalties, under Section 309 of the CWA, 33 U.S.C. § 1319.

Thank you for your cooperation and prompt attention to this Request for Information. If you have any questions regarding this Request for Information, please contact Scott McWhorter, at 415-972-3584 or at [mcwhorter.scott@epa.gov](mailto:mcwhorter.scott@epa.gov). Your attorney may contact Rich Campbell in our Office of Regional Counsel at 415-972-3870 or at [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Berg', written over a circular stamp.

Elizabeth Berg  
Acting Assistant Director  
Water and Pesticides Branch, Enforcement Division



**Request for Information**  
**EPA Docket No. CWA-308-9-20-001**

EPA requests that Mr. Frank Alo<sup>1</sup> provide information about the work in wetlands in or around 54-028 Kukuna Road, Hauula, Island of Oahu, Hawaii (“the Project”).

INSTRUCTIONS

1. Separate Response for Separate Question. Provide a separate narrative answer to each question and segregate responsive documents by each question or its subpart. Precede each answer with the number of the corresponding question or its subpart.
2. Best Information Available. Respond to the best of your ability, even if documents are not available. Explain any qualified response. If you do not have the responsive information but know the person from whom the information may be obtained, identify the person.
3. Document Submission. Provide copies of all responsive documents in your possession, custody or control. If a responsive document was, but no longer is, in your possession, custody or control, explain what was done with it. If another person has possession, custody or control of the document, identify the person. If the document was disposed of, explain when and why it was disposed of and who disposed of it.
4. Use of Document in Place of Answer. If a document provides the complete answer to a question, you may use it in place of a written answer by supplying the document and appropriately identifying the applicable portion of the document as answering a specific numbered question.
5. Document Alteration or Deletion. Explain the reason and identify the person responsible for any deleted, altered or redacted portion of a submitted document.
6. Obligation to Correct. If you later discover that any submitted information is incorrect, submit a corrected response as soon as possible.
7. No Effect on Other Legal Obligations. This Request for Information in no way alters or relieves you of other legal responsibilities or restrictions, including under the CWA.

DEFINITIONS

The following terms have the following definitions:

1. “Document” means all written, recorded, computer generated, or visually or aurally reproduced materials of any kind in any medium in your possession, custody or control or known by you to

---

<sup>1</sup> The Request for Information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act, because it is directed to fewer than ten persons and is therefore not a “collection of information” under 44 U.S.C. § 3502(3). It is also an exempt activity under 44 U.S.C. § 3518(c) and 5 C.F.R. § 1320.4.

exist, including all originals, drafts and non-identical copies. The term includes, without limitation, all reports, studies, surveys, plans, transcripts, permits, licenses, deeds, maps, drawings, schematics, specifications, instructions, calculations, monitoring data, rental records, contracts, agreements, bid documents, purchase orders, work orders, invoices, manifests, payment records, spreadsheets, communication records, correspondence, notes, memoranda, photographs, and videos.

2. "You" shall mean Mr. Frank Alo, and others working with or on behalf of Mr. Frank Alo.

### THE REQUEST FOR INFORMATION

Please provide the following documents, information, and communications by **October 30, 2019**. If no such documents, information, and/or communication exist, then provide a clear and explicit explanation as to why they do not exist.

1. Please describe the work in wetlands in or around 54-028 Kukuna Road, Hauula, Island of Oahu, Hawaii ("the Project") including:
  - a. Estimated date and time the Project began and ended and an explanation of how you estimated these dates and times;
  - b. The Project's nature and purpose;
  - c. The identity of all persons involved in approving and/or conducting the Project's activities;
  - d. The type of mechanized and non-mechanized equipment used for the Project;
  - e. The Project's location and size (acres); and
  - f. Type, volume and placement of excavated material or fill in the Project area.
2. Please describe and document what you did to determine the applicability of any permits and/or authorizations for the Project and any efforts you made to obtain authorization and/or permits for the Project. Please include Federal, State, and Local entities, and specifically answer:
  - a. Whether you notified the U.S. Army Corps of Engineers, and if so, provide the date and time of notification and the individual notified, if known;
  - b. Whether you notified the Hawaii Department of Health, and if so, provide the date and time of notification and the individual notified, if known; and/or
  - c. Whether you notified Oahu County, and if so, provide the date and time of notification and the individual notified, if known.
3. Please describe and document all efforts you made to comply with Section 404 of the Clean Water Act in relation to the Project.
4. Please provide all documents that granted you access to the Project's work site.

# **EXHIBIT 2**

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1ZA46W470168925300

**Weight**

1.00 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

12/05/2019

**Delivered On**

12/06/2019 5:42 P.M.

**Delivered To**

HAUULA, HI, US

**Received By**

DRIVER RELEASE

**Left At**

Front Door

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 12/09/2019 11:43 A.M. EST

# **EXHIBIT 3**

February 6, 2020

Mr. Scott McWhorter  
U.S. Environmental Protection Agency, Region IX  
Enforcement and Compliance Assurance Division ENF 4-1  
75 Hawthorne Street  
San Francisco, CA 94105

RE: FRANK ALO  
EPA DOCKET NO. cwa-308-9-20-001  
54-028 KUKUNA ROAD, HAUULA, HI

Dear Mr. McWhorter:

In response to your request regarding the captioned, please find following my best recollection of what happened. I do not have any type of documents to forward to you.

1. Project: 54-028 Kukuna Road, Hauula is a parcel zoned for residential use that I share personal interest with 3 other family members. I cleared the lot and wanted to cap off the lot with some dirt received from a Kaneohe Marine Base, Kaneohe, HI job. I currently live on the parcel right next to this one.
  - a. I believe work on the project began sometime late 2017. It ended shortly after the Corps did their site visit around mid 2018.
  - b. The Project's nature and purpose was to clear the lot and cap off the top with dirt. Two men from the Corps came and took dirt samples and asked that I remove the dirt which I did. They later returned and told me it looks good and I never heard from them.
  - c. I conducted the activities of this job. An inspector from the State of Hawaii came and advised me that I needed to apply for a grading permit before proceeding. Next thing I know two men from Corps came by and advised me to get an engineer and apply for a Dept of the Army Permit which I never did because I removed the fill I brought in.
  - d. I used a backhoe to clear the lot of trees and grass. I also used a backhoe to remove the fill.
  - e. The Project's location was 54-028 Kukuna Road, Hauula, HI. It consist of 25,047 sq ft of vacant land.
  - f. I brought in 8 dump truck loads of dirt and rocks from Kaneohe Marine Base, Kaneohe, HI. The loads were dumped nearest my parcel that I live on. (see attached map)
2. The State of Hawaii inspector that came by advised me to obtain a grading permit. Later the Army Corps advised me to hire an engineer and apply for a Department of the Army Permit. I didn't pursue either permitting because I removed the fill.
  - a. I did not notify the US Army Corps of Engineers.
  - b. I did not notify the Hawaii Dept of Health.

- c. I did not notify the City and County of Honolulu's permit office. The City showed up to investigate because someone complained.
3. When I cleared the lot, it was not wet. I wasn't aware that I could possibly be violating Section 404 of the Clean Water Act. I'm sorry.
4. Attached is a copy of the State of Hawaii, Honolulu Property Tax record that reflects my name as an owner along with 3 others owners. I went over my family's property to get to this one.

I certify under penalty of law that this document and all attachments were prepared under my direction and 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.

Sincerely,



Frank Alo, Land Owner  
54-028 Kukuna Road  
Hauula, HI 96717

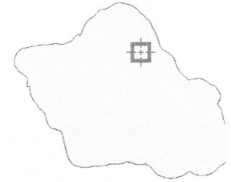
enclosures



*I live here*



**Overview**



**Legend**

- Roads
- Parcels
- City Labels
- County Outlines
- Area LM
- Area Water
- Ocean

Parcel ID	540010130000	Situs/Physical Address	54-28 KUKUNA RD	Assessed Land Value	\$88,300	Last 2 Sales Date		Price		Reason		Qual
Acreage	0.575	Mailing Address	ALO,FRANK F PO BOX 67	Assessed Building Value	\$0	8/31/2011		\$27,000		NOT OPEN MARKET		U
Class	RESIDENTIAL		HAUULA HI 96717	Total Property Assessed Value	\$88,300	8/31/2011		\$3,000		RELATED INDIVIDUALS OR CORPORATIONS		U
				Total Property Exemptions	\$0							
				Total Net Taxable Value	\$88,300							

**Brief Tax Description** POR LCAW 4285, RP 2910.575 AC DES  
 (Note: Not to be used on legal documents)

Date created: 2/7/2020  
 Last Data Uploaded: 2/3/2020 12:45:12 PM





**Parcel Information**

Parcel Number 540010130000  
 Location Address 54-28 KUKUNA RD  
 Project Name  
 Legal Information POR LCAW 4285, RP 2910 .575 AC DES  
 Property Class RESIDENTIAL  
 Land Area (approximate sq ft) 25,047 ←  
 Land Area (acres) 0.5750

[Plat Map PDF](#) [GIS Parcel Map](#)

**Owner Names**  
 ALO,FRANK F Fee Owner ←  
 CAMBRA,JOSEPH K Fee Owner  
 VALES,RICHARD R Fee Owner  
 CAMBRA,AUGUST K EST Fee Owner  
 Show All Owners and Addresses

**Assessment Information**

Show Historical Assessments

Assessment Year	Property Class	Assessed Land Value	Dedicated Use Value	Land Exemption	Net Taxable Land Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Property Assessed Value	Total Property Exemption	Total Net Taxable Value
2020	RESIDENTIAL	\$88,300	\$0	\$0	\$88,300	\$0	\$0	\$0	\$88,300	\$0	\$88,300

2020 amended values not to be posted until new tax rates are processed on or after July 20.

[How to calculate real property taxes](#)

**Land Information**

Property Class	Square Footage	Acreage	Agricultural Use Indicator
RESIDENTIAL	25,047	0.575	

[Department of Planning and Permitting \(DPP\)](#)

**Sales Information**

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page
08/31/2011	\$3,000	2011-144395	FEE CONVEYANCE	Deed	09/08/2011			
08/31/2011	\$27,000	2011-142321	FEE CONVEYANCE	Deed	09/06/2011			
08/24/2009	\$30,000	2009-129751	FEE CONVEYANCE	Deed	08/24/2009			
08/31/1996		9600130373	FEE CONVEYANCE		09/11/1995			

**Current Tax Bill Information**

Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2019-2	Property Tax	02/20/2020	\$154.52	\$0.00	\$154.52	\$0.00	\$0.00	\$0.00	\$154.52
	Tax Bill with Interest computed through 02/20/2020		\$154.52	\$0.00	\$154.52	\$0.00	\$0.00	\$0.00	\$154.52

[Treasury Division](#)

Pay online at [www.hnlpay.com](http://www.hnlpay.com)

Other Payment Options [Click Here](#)

**Historical Tax Information**

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
<input type="checkbox"/> 2019	\$309.05	(\$154.53)	(\$6.18)	(\$1.61)	\$0.00	\$154.52
<input type="checkbox"/> 2018	\$309.05	(\$309.05)	(\$9.27)	(\$1.61)	\$0.00	\$0.00
<input type="checkbox"/> 2017	\$309.05	(\$309.05)	(\$3.09)	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2016	\$309.05	(\$309.05)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2015	\$309.05	(\$309.05)	(\$15.45)	(\$10.20)	\$0.00	\$0.00
<input type="checkbox"/> 2014	\$300.00	(\$300.00)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2013	\$300.00	(\$300.00)	(\$15.00)	(\$9.90)	\$0.00	\$0.00
<input type="checkbox"/> 2012	\$300.00	(\$300.00)	(\$15.00)	(\$9.90)	\$0.00	\$0.00
<input type="checkbox"/> 2011	\$300.00	(\$300.00)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2010	\$300.00	(\$300.00)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2009	\$271.21	(\$271.21)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2008	\$260.90	(\$260.90)	\$0.00	\$0.00	\$0.00	\$0.00
<input type="checkbox"/> 2007	\$260.90	(\$260.90)	\$0.00	\$0.00	\$0.00	\$0.00

⊕ 2006	\$252.38	(\$252.38)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2005	\$229.88	(\$229.88)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2004	\$202.88	(\$202.88)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2003	\$202.88	(\$202.88)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2002	\$164.62	(\$164.62)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2001	\$164.62	(\$164.62)	\$0.00	\$0.00	\$0.00	\$0.00

[Treasury Division](#)  
[How to calculate real property taxes](#)

Email us at [bfstreasmailbox@honolulu.gov](mailto:bfstreasmailbox@honolulu.gov) regarding historical tax data questions.

### Map

**No data available for the following modules:** Condominium/Apartment Unit Information, Appeal Information, Agricultural Assessment Information, Residential Improvement Information, Residential Additions, Commercial Improvement Information, Sketches, Other Building and Yard Improvements, Permit Information.

By using this website, you have read, understood, and agreed to the disclaimer, privacy statement, and policy.

[User Privacy Policy](#)  
[GDPR Privacy Notice](#)

Last Data Upload: [2/3/2020, 7:45:12 AM](#)



[Version 2.3.39](#)

# **EXHIBIT 4**

**From:** [frank.alo](#)  
**To:** [McWhorter, Scott](#)  
**Subject:** Re: Scott McWhorter / EPA  
**Date:** Thursday, December 19, 2019 6:04:53 PM

---

Got it

Sent from my iPhone

On Dec 19, 2019, at 1:33 PM, McWhorter, Scott <[mcwhorter.scott@epa.gov](mailto:mcwhorter.scott@epa.gov)> wrote:

Hi Frank,

Thank you for your call and thank you for confirming receipt of our letter. Once you confirm receipt of this email, I will propose some dates and times so we can further discuss.

Thank you,  
Scott

Scott McWhorter  
Toxics Section  
Enforcement and Compliance Assurance Division, EPA Region 9  
75 Hawthorne Street (ECAD-4-1)  
San Francisco, CA 94105  
415-972-3584

**From:** [frank.alo](#)  
**To:** [McWhorter, Scott](#)  
**Date:** Tuesday, September 29, 2020 10:29:30 AM

---

Got your email  
Frank  
Sent from my iPhone

# **EXHIBIT 5**

---

**From:** McWhorter, Scott

**Sent:** Tuesday, October 27, 2020 4:28 PM

**To:** frank alo <[REDACTED].com>

**Cc:** Speerstra, Linda CIV USARMY CEPOH (USA) <Linda.Speerstra@usace.army.mil>;  
etakahashi@honolulu.gov; Kurano, Matthew <matthew.kurano@doh.hawaii.gov>

**Subject:** Notice of Potential Violation and Opportunity to Confer (NOPVOC) and Administrative Order on Consent (AOC) re: Frank Alo, Hauula, Hawaii

**Importance:** High

Dear Frank Alo,

Please find attached EPA correspondence (NOPVOC) and proposed Administrative Order on Consent (AOC).

This is to follow up on EPA's investigation, including EPA's recent July 22, 2020 Inspection of your property in Hauula, Hawaii.

**Please reply upon receipt of this message and the attached documents (2 pdfs).**

**Also, as indicated in the letter, please contact me within twenty-one (21) calendar days or prior to November 17<sup>th</sup> to schedule a call to discuss our findings.**

Regards,  
Scott

---

Scott McWhorter, Enforcement Officer  
U.S. Environmental Protection Agency – Region 9  
Enforcement and Compliance Assurance Division  
75 Hawthorne Street (ECAD-3-2)



San Francisco, CA 94105  
(415) 972-3584

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# **EXHIBIT 6**

**From:** [frank alo](#)  
**To:** [McWhorter, Scott](#)  
**Subject:** Re: Notice of Potential Violation and Opportunity to Confer (NOPVOC) and Administrative Order on Consent (AOC) re: Frank Alo, Hauula, Hawaii  
**Date:** Wednesday, December 2, 2020 11:35:49 AM  
**Attachments:** [image001.png](#)

---

Good morning Scott Got your email Frank Alo happy holidays

Sent from my iPhone

On Dec 2, 2020, at 6:45 AM, McWhorter, Scott <[mcwhorter.scott@epa.gov](mailto:mcwhorter.scott@epa.gov)> wrote:

Good Morning, Frank:

I hope you had a good holiday!

I am following up on your opportunity to confer on the potential violation. We have not heard from you.

Please respond by the end of the day.

Scott

---

<image001.png>

Scott McWhorter, Enforcement Officer  
U.S. Environmental Protection Agency – Region 9  
Enforcement and Compliance Assurance Division  
75 Hawthorne Street (ECAD-3-2)  
San Francisco, CA 94105  
(415) 972-3584

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**From:** McWhorter, Scott  
**Sent:** Tuesday, October 27, 2020 6:26 PM  
**To:** frank alo <[REDACTED].com>  
**Subject:** RE: Notice of Potential Violation and Opportunity to Confer (NOPVOC) and Administrative Order on Consent (AOC) re: Frank Alo, Hauula, Hawaii

Hi Frank,

Hope this finds you well. I am just confirming receipt.  
Please let me know if you have any questions.

Thanks,  
Scott

---

**From:** McWhorter, Scott  
**Sent:** Tuesday, October 27, 2020 4:28 PM  
**To:** frank alo <[REDACTED].com>  
**Cc:** Speerstra, Linda CIV USARMY CEPOH (USA) <[Linda.Speerstra@usace.army.mil](mailto:Linda.Speerstra@usace.army.mil)>; [etakahashi@honolulu.gov](mailto:etakahashi@honolulu.gov); Kurano, Matthew <[matthew.kurano@doh.hawaii.gov](mailto:matthew.kurano@doh.hawaii.gov)>  
**Subject:** Notice of Potential Violation and Opportunity to Confer (NOPVOC) and Administrative Order on Consent (AOC) re: Frank Alo, Hauula, Hawaii  
**Importance:** High

Dear Frank Alo,

Please find attached EPA correspondence (NOPVOC) and proposed Administrative Order on Consent (AOC).

This is to follow up on EPA's investigation, including EPA's recent July 22, 2020 Inspection of your property in Hauula, Hawaii.

**Please reply upon receipt of this message and the attached documents (2 pdfs).**

**Also, as indicated in the letter, please contact me within twenty-one (21) calendar days or prior to November 17<sup>th</sup> to schedule a call to discuss our findings.**

Regards,  
Scott

---

<image001.png>

Scott McWhorter, Enforcement Officer  
U.S. Environmental Protection Agency – Region 9  
Enforcement and Compliance Assurance Division  
75 Hawthorne Street (ECAD-3-2)  
San Francisco, CA 94105  
(415) 972-3584

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# **EXHIBIT 7**

-----Original Message-----

From: Launi Alo <[REDACTED].com>  
Sent: Wednesday, December 16, 2020 11:44 AM  
To: McWhorter, Scott <mcwhorter.scott@epa.gov>  
Subject: Re: Frank Alo ORDER on Consent

Aloha Scott,

My dads concern was the restoration of the wetlands and the cost stated in section 34. He would like to do the work himself or just apply for a permit for the area. It's financially impossible for him to have everything done as stated in area 34 on consent to order. We would like to seek legal counsel to discuss a better financial solution for us.

Thank You,

Launi

Sent from my iPhone

> On Dec 16, 2020, at 5:58 AM, McWhorter, Scott <mcwhorter.scott@epa.gov> wrote:

>

> Good morning, Launi,

>

> Thank you for your email. For your convenience I have attached the original correspondence dated October 27, 2020 and the revised draft Order per his initial feedback. If he will be represented by legal counsel, please have your attorney schedule a meeting with Rich Campbell in our Office of Regional Counsel by phone 415-972-3870 or by email at [campbell\\_rich@epa.gov](mailto:campbell_rich@epa.gov).

> The NOPVOC letter discusses available options. Please let me know today how you would like to proceed.

>

> Regards,

> Scott

>

> Scott McWhorter, Enforcement Officer

> U.S. Environmental Protection Agency – Region 9 Enforcement and

> Compliance Assurance Division

> 75 Hawthorne Street (ECAD-3-2)

> San Francisco, CA 94105

> (415) 972-3584

>

> -----Original Message-----

> From: Launi Alo <[REDACTED].com>

> Sent: Wednesday, December 16, 2020 1:22 AM

> To: McWhorter, Scott <mcwhorter.scott@epa.gov>

> Cc: frankfalo@outlook.com

> Subject: Re: Frank Alo ORDER on Consent

>

> Aloha Scott,

>

> I'm writing on behalf of my father Frank Alo. I was going thru the documents and had some concerns. I would like to have my attorney look over the documents so we can have a better outlook on this matter. Please give us some time to get you an answer regarding your letter.

>

> Sincerely,

>

> Launi

>

>

>

>

> Sent from my iPhone

> <NOPVOC to Frank Alo 2020.10.27.pdf>

> <Revised 12-15-2020 AOC CWA-309(a)-21-001 Frank Alo.pdf>

# **EXHIBIT 8**

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1ZA46W47A698994375

**Service**

UPS 2nd Day Air®

**Shipped / Billed On**

06/29/2021

**Additional Information**

Adult Signature Required

**Delivered On**

07/06/2021 3:19 P.M.

**Received By**

ALO

**Delivered To**

HAUULA, HI, US

**Left At**

Residential

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 07/06/2021 11:08 P.M. EST



# **EXHIBIT 9**



ATTN : SCOTT MCWHORTER  
PHONE : (415)972-3755

**DELIVERY NOTIFICATION**

**INQUIRY FROM:** DIANA URIBE  
USEPA REGION 9  
75 HAWTHORNE ST RM #14248  
SAN FRANCISCO CA 94105

<b>SHIPMENT TO:</b>	<b>FRANK ALO FRANK ALO 54-028 KUKUNA ST HAUULA HI 96717</b>
Shipper Number.....	<b>A46W47</b>
Tracking Identification Number...	<b>1ZA46W47A698994375</b>

According to our records 1 parcel was delivered on 07/06/21 at 3:19 P.M., and left at **RESIDENTIAL**.  
The shipment was received by **ALO** as follows:

SHIPPER NUMBER	PKG ID NO.	TRACKING NUMBER	ADDRESS (NO/STREET,CITY)	SIGNATURE
A46W47		1ZA46W47A698994375	54-028 KUKUNA ST HAUULA	<i>Cono 19</i>

# **EXHIBIT 10**

**From:** [McWhorter, Scott](#)  
**To:** [REDACTED].com; "frank alo"  
**Cc:** [Campbell, Rich](#)  
**Subject:** In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint  
**Date:** Tuesday, September 28, 2021 11:50:06 AM  
**Attachments:** [image001.png](#)  
[Admin Penalty Complaint and Cert of Service- In re Frank Alo.2021.06.24.pdf](#)  
[Cover Letter for Frank Alo Complaint 2021.pdf](#)  
[STANDING ORDER Region IX EFS \(05 14 2020\).pdf](#)  
[CROP 40 CFR Part 22.pdf](#)  
[CERTIFICATE OF SERVICE ALO.pdf](#)

---

Dear Frank Alo,

**We are following up on the Complaint that we served you on July 6, 2021, and on my August 16, 2021 phone messages.**

As we explained in our cover letter to you, as well as in the **Complaint** itself, your **Answer to the Complaint** should have been filed within 30 days of receiving the Complaint, or **by Monday, August 9, 2021**.

As of today, we have not received an Answer from you. Please have your legal counsel contact the attorney on this matter, Rich Campbell, in our Office of Regional Counsel, to discuss this matter.

Please note you may also request an informal conference with EPA to discuss settlement (see pg. 6 of the Complaint).

To request such a conference, please contact me at (415) 972-3584 or have your legal counsel contact Rich Campbell at (415) 972-3870 or by email at [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov).

Thank you,  
Scott



Scott McWhorter, Enforcement Officer  
U.S. Environmental Protection Agency – Region 9  
Enforcement and Compliance Assurance Division  
75 Hawthorne Street (ECAD-3-2)  
San Francisco, CA 94105  
(415) 972-3584

---

# **EXHIBIT 11**

**From:** [McWhorter, Scott](#)  
**To:** [Campbell, Rich](#)  
**Subject:** FW: RE: In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint  
**Date:** Tuesday, September 28, 2021 11:56:24 AM

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FYI

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**From:** postmaster@outlook.com <postmaster@outlook.com>  
**Sent:** Tuesday, September 28, 2021 11:54 AM  
**To:** McWhorter, Scott  
**Subject:** Delivered: RE: In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint

**Your message has been delivered to the following recipients:**

['frank alo'](#)

Subject: RE: In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint

# **Exhibit C**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

<b>IN THE MATTER OF:</b>	)	<b>DECLARATION OF RICHARD</b>
	)	<b>CAMPBELL IN SUPPORT OF</b>
<b>Frank Alo</b>	)	<b>COMPLAINANT'S MOTION</b>
	)	<b>FOR DEFAULT</b>
	)	
<b>Respondent.</b>	)	
<hr/>	)	Docket No. CWA-09-2021-0049

Based upon information and belief, I, Richard Campbell, declare:

1. I make this Declaration in support of Complainant's Motion for Default.
2. I am currently employed as an Attorney-Advisor with the U.S. Environmental Protection Agency, Region 9, with the Office of Regional Counsel in San Francisco, California, and represent Complainant in this matter.
3. On June 29, 2021, I had the EPA Region 9 Mail Room prepare a United Parcel Service (UPS) label for UPS's Signature Service/Adult Signature Required for me to use for serving the Complaint upon Frank Alo, the Respondent in the above-referenced matter. A true and correct copy of this label is attached to this Declaration as Exhibit 1.
4. On the morning of June 30, 2021, I went to the UPS Store at 446 Old County Rd. Ste 100, Pacifica, California and enclosed a copy of the signed original of the Complaint, a copy of the Consolidated Rules, the EFS Standing Order, and a Certificate of Service that I had digitally signed on June 29, 2021 in an envelope with a UPS label that EPA Region 9 Mail Room prepared the day before. A true and correct copy of the Complaint and Certificate of Service is attached as Exhibit 2. I instructed UPS staff not to send the Complaint (and Consolidated Rules and EFS Standing Order) until I emailed UPS staff the first page of the Complaint stamped as "filed" by the EPA Region 9 Hearing Clerk.
5. In the afternoon of June 30, 2021, I instructed staff at the UPS Store not to send the Complaint Package I had assembled that morning in the UPS Store. Instead, and in order to better align with EPA Region 9's standard operating procedure for filing administrative complaints, Andrew Chew in the EPA Region 9 Enforcement and Compliance Assurance Division assembled a new and nearly identical Complaint Package (the only difference being that the Service of Process reflects Andrew Chew as having mailed the Complaint Package and not me) and filed it with the EPA Region 9 Hearing Clerk on July 1, 2021. A true and correct copy of Andrew Chew's Complaint Package is attached as Exhibit 3. Also, on July 1, 2021, Andrew Chew effected delivery of the Complaint Package using UPS's Signature Service with Adult Signature Required, as evidenced by the Certificate of Service that Andrew Chew signed and attached to the package.
6. On August 11, 2021, UPS delivered the Complaint Package that I had left at the UPS store on June 30, 2021. The UPS Proof of Delivery, dated August 11, 2021, indicates the Complaint



Package was received by “Chattel” at 5:11 p.m. Hawaii time. A true and correct copy of the August 11, 2021 Proof of Delivery is attached as Exhibit 4.

7. On October 21, 2021, the EPA Region 9 Regional Hearing Clerk confirmed in an email to me that Respondent had not filed an Answer in response to the Complaint Package served by EPA on July 6, 2021, via UPS, or in response to the Complaint Package delivered by UPS on August 11, 2021. A true and correct copy of the Regional Hearing Clerk’s October 21, 2021 email to me is attached as Exhibit 5.

8. On October 28, 2021, I personally conducted a search of my physical mailbox and office at 75 Hawthorne Street, San Francisco, California for any documents that may have been mailed or otherwise delivered to me by Respondent after July 1, 2021. I did not find any documents from Respondent as a result of this search.

9. As of the date of this Declaration I have not received any communication in any format from Respondent or Respondent’s legal counsel. I am further unaware whether Respondent has any legal counsel.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 26, 2021.

**RICHARD  
CAMPBELL**

 Digitally signed by RICHARD  
CAMPBELL  
Date: 2022.01.26 10:52:10 -08'00'

Signature

# **EXHIBIT 1**

**UPS CampusShip: View/Print Label**

- 1. Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
- 3. GETTING YOUR SHIPMENT TO UPS**  
**Customers with a Daily Pickup**  
 Your driver will pickup your shipment(s) as usual.

**Customers without a Daily Pickup**

Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

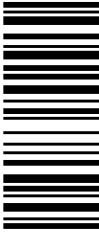
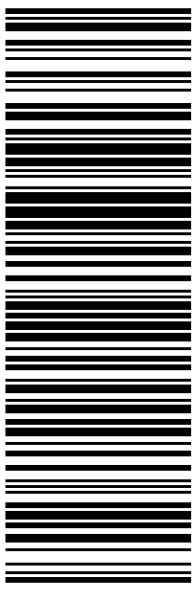

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages. Hand the package to any UPS driver in your area.

UPS Access Point™  
CVS STORE # 10164  
601 MISSION ST  
SAN FRANCISCO ,CA 94105

UPS Access Point™  
CVS STORE # 10035  
581 MARKET ST  
SAN FRANCISCO ,CA 94105

UPS Access Point™  
THE UPS STORE  
268 BUSH ST  
SAN FRANCISCO ,CA 94104

FOLD HERE

<p style="text-align: right;"><b>LTR</b></p> <p style="text-align: right;"><b>1 OF 1</b></p> <p><b>BUSINESS CENTER</b> 4159723424 US EPA 75 HAWTHORNE ST SAN FRANCISCO CA 94105</p> <p><b>SHIP TO:</b> FRANK ALO 808-651-7381 FRANK ALO 54-028 KUKUNA ROAD <b>HAUULA HI 96717</b></p>	<p style="font-size: 2em;"><b>HI 967 9-11</b></p> 	<p style="font-size: 3em;"><b>2</b></p> <p><b>UPS 2ND DAY AIR</b></p> <p>TRACKING #: 1Z A46 W47 A6 9899 4375</p>		<p><b>BILLING: P/P</b> <b>ADULT SIGNATURE REQUIRED-MIN 21</b> sender: R. Campbell</p>  <p style="font-size: 0.8em;">CS 22.0.13. WNTNV50 26.0A 06/2021*</p>
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# **EXHIBIT 2**

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
2 **REGION 9**

3 75 Hawthorne Street  
San Francisco, California 94105

4 In re the Matter of: ) Docket No.: CWA-09-2021-0049  
5 )  
6 Frank Alo, an individual ) **COMPLAINT, NOTICE OF PROPOSED**  
Hauula, Hawaii ) **PENALTY, AND NOTICE OF**  
7 ) **OPPORTUNITY FOR HEARING**  
8 Respondent. ) Proceedings Under Section 309(g)(2)(B) of the  
Clean Water Act, as amended, 33 U.S.C. §  
9 ) 1319(g)(2)(B)

10 **COMPLAINT**

11 **I. STATUTORY AUTHORITY**

12 1. The United States Environmental Protection Agency (“EPA”) issues this Complaint,  
13 Notice of Proposed Penalty, and Notice of Opportunity for Hearing (“Complaint”) pursuant to  
14 section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). The authority to take  
15 action under section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of  
16 the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA  
17 Region 9, who in turn has delegated it to the Director of the Enforcement and Compliance  
18 Assurance Division of EPA Region 9, who hereby issues this Complaint.

19 **II. STATUTORY AND REGULATORY FRAMEWORK**

20 2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of, *inter alia*,  
21 dredged and/or fill material from a point source into waters of the United States by any person  
22 except in compliance with a permit issued by the U.S. Army Corps of Engineers (“Corps”)  
23 pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

24 3. The term “fill material” within the meaning of 33 C.F.R. § 323.2(e)(1), includes any  
25 pollutant which replaces portions of “waters of the United States” with dry land or which

1 changes the bottom elevation of a water body for any purpose. The term “discharge of fill  
2 material” within the meaning of 33 C.F.R. § 323.2(f) includes “[p]lacement of fill that is  
3 necessary for the construction of any structure or infrastructure in a water of the United States.”

4 **III. FACTUAL AND LEGAL ALLEGATIONS**

5 4. Frank Alo (Respondent) is a “person” within the meaning of section 502(5) of the CWA,  
6 33 U.S.C. § 1362(5).

7 5. Respondent owns real property at 54-028 Kukuna Road, Hauula, Hawaii identified by a  
8 State of Hawaii Tax Map Key (“TMK”) 5-4-001-013.

9 6. Respondent’s real property adjoins four parcels of land owned by other persons and  
10 entities, including the State of Hawaii and the City and County of Honolulu (“CCH”).

11 7. Respondent’s real property, and portion of the four adjoining parcels of land referred to  
12 above in paragraph 6, contains wetlands that are adjacent to and abut a perennial tributary to the  
13 Pacific Ocean, a Traditional Navigable Water. Therefore, the wetlands are “waters of the United  
14 States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15 8. Based on inspections conducted by representatives of the Corps, Honolulu District on  
16 May 18, 2018, and by representatives of EPA Region 9 on July 22, 2020, and other information  
17 available to EPA, including Respondent’s February 26, 2020 response to EPA’s December 5,  
18 2019 information request made pursuant to EPA’s information gathering authorities at section  
19 308 of the CWA, 33 U.S.C. § 1318, Respondent, or persons acting on behalf of Respondent,  
20 operated equipment on or around February 12, 2018, and possibly thereafter on dates best known  
21 to Respondent, which discharged approximately 200 truckloads of gravel, asphalt, clay, dirt and  
22 other fill material to waters of the United States located on Respondent’s real property and also  
23 onto portions of the four other adjoining parcels of land referenced in paragraph 6 above,  
24 referred to together as “the Site.” Respondent’s activities at the Site include the discharge of fill  
25 material to approximately 0.77 acres of wetlands.

1 9. The fill referenced in Paragraph 8 above, which Respondent discharged to “waters of the  
2 United States,” constitutes a “pollutant” within the meaning of section 502(6) of the CWA, 33  
3 U.S.C. § 1362(6), which includes, *inter alia*, “dredged spoil,” “biological materials,” “rock,” and  
4 “sand.”

5 10. The equipment referenced in Paragraph 8 above, which discharged fill material to  
6 “waters of the United States,” constitutes a “point source” within the meaning of section 502(14)  
7 of the CWA, 33 U.S.C. § 1362(14), which defines “point source” to include any discernible,  
8 confined and discrete conveyance... from which pollutants are or may be discharged.”

9 11. Respondent, by discharging fill material to “waters of the United States” at the Site  
10 without authorization under section 404 of the CWA, 33 U.S.C. § 1344, violated section 301(a)  
11 of the CWA, 33 U.S.C. § 1311(a).

12 12. On June 10, 2021, EPA issued an Administrative Order for Compliance, Docket No.  
13 CWA-309(a)-21-001 (“Order”), ordering Respondent to remove the unauthorized fill from the  
14 wetlands at the Site and restore the wetlands in accordance with EPA and Corps requirements.

15 13. Work under the Order is not completed.

#### 16 **IV. FINDINGS OF VIOLATION**

##### 17 Unauthorized Discharge of Fill Material to Waters of the United States

18 14. Complainant repeats and realleges the allegations set forth in paragraphs 1 through 13.

19 15. On or around February 12, 2018, and possibly thereafter on dates best known to  
20 Respondent, Respondent and/or persons acting on Respondent’s behalf discharged or caused to  
21 be discharged fill material without authorization in violation of section 301(a) of the CWA, 33  
22 U.S.C. § 1311(a).

#### 23 **V. NOTICE OF PROPOSED ORDER ASSESSING PENALTIES**

24 16. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment  
25 of administrative civil penalties in an amount not to exceed \$22,584 per day for each day during

1 which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg.  
2 83818 (December 23, 2020).

3 17. EPA Region 9 determined the amount of its proposed administrative civil penalty on  
4 the facts stated in this Complaint, and after taking into account the statutory penalty factors at 33  
5 U.S.C. § 1319(g)(3), which include the nature, circumstances, extent, and gravity of the  
6 violations, and with respect to the violator, ability to pay, any prior history of such violations, the  
7 degree of culpability, economic benefit or savings resulting from the violation, and such other  
8 matters as justice may require.

9 18. By avoiding or delaying the costs necessary to comply with the CWA, Respondent has  
10 realized an economic benefit as a result of the violations alleged above.

11 19. Based on the foregoing Findings of Violations, and pursuant to section 309(g) of the  
12 Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil  
13 administrative penalty against Respondent in an amount not to exceed the statutory maximum  
14 penalty of \$282,293 as allowed under 33 U.S.C. § 1319(g)(2)(B). *See also* 40 C.F.R. § 19.4.

15 20. EPA has consulted with the State of Hawaii regarding this Complaint and its intention  
16 to seek civil administrative penalties against Respondent.

17 21. Neither assessment nor payment of a civil administrative penalty pursuant to section  
18 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to  
19 comply with the CWA, and with any separate compliance order issued under section 309(a) of  
20 the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

21 22. For purposes of the identification requirement in section 162(f)(2)(A)(ii) of the Internal  
22 Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of on-  
23 site wetland restoration required by the June 10, 2021 administrative order referenced in  
24 paragraph 12 above and the penalty of up to \$282,293 paid pursuant to paragraph 19 above are  
25 restitution, remediation or are required to come into compliance with the law.



1           **VI. ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

2           23. To avoid being found in default, which constitutes an admission of all facts alleged in  
3 the Complaint and a waiver of the right to hearing, Respondent must file a written answer and  
4 request for hearing within thirty (30) days of service of this Complaint. The answer shall clearly  
5 and directly admit, deny, or explain each of the factual allegations contained in this Complaint  
6 with respect to which Respondent has any knowledge, or shall clearly state that Respondent has  
7 no knowledge as to particular factual allegations in this Complaint. The answer shall also state  
8 (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the  
9 facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a  
10 hearing is requested.

11           **24. Pursuant to 40 C.F.R. § 22.5(b)(2), Complainant has filed with this Complaint a**  
12 **consent to receive service of all filings by Respondent via email so long as the documents**  
13 **filed are in pdf format. Following the Regional Judicial Officer’s May 14, 2020 Standing**  
14 **Order, *Designation of EPA Region IX Part 22 Electronic Filing System* (attached),**  
15 **Respondent’s Answer should be sent to the Regional Hearing Clerk at the email address**  
16 **below:**

17           Steven Armsey  
18           Regional Hearing Clerk  
19           Office of Regional Counsel  
20           U.S. Environmental Protection Agency – Region 9  
21           [r9hearingclerk@epa.gov](mailto:r9hearingclerk@epa.gov)

22           25. A copy of the Answer must also be served on Rich Campbell, one of the attorneys  
23 assigned to represent EPA in this matter, at the email address below:

24           Rich Campbell  
25           Attorney-Advisor  
              Office of Regional Counsel  
              U.S. Environmental Protection Agency – Region 9  
              [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov).

1 26. In accordance with section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), Respondent  
2 may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any  
3 material fact contained in the Complaint or to contest the appropriateness of the proposed penalty  
4 set forth therein. Such a hearing will be held and conducted in accordance with the attached  
5 *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and*  
6 *the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

7 27. If Respondent requests a hearing, members of the public, to whom EPA is obligated to  
8 give notice of this proposed action, will have a right under section 309(g)(4)(B) of the CWA, 33  
9 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the  
10 appropriateness of the penalty assessment.

## 11 **VII. OPPORTUNITY FOR INFORMAL SETTLEMENT**

12 28. Whether or not Respondent requests a hearing, Respondent may confer informally with  
13 EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference  
14 does not, however, affect Respondent's obligation to file a written Answer within thirty (30)  
15 days of the Effective Date of the Complaint. The informal conference procedure may be pursued  
16 simultaneously with the adjudicatory hearing procedure.

17 29. Any settlement reached as a result of an informal conference will be embodied in a  
18 written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final  
19 Order waives Respondent's right to a hearing on any matter to which Respondent stipulated.

20 30. If a settlement cannot be reached through an informal conference, the filing of a written  
21 Answer within thirty (30) days of the Effective Date of this Complaint preserves Respondent's  
22 right to a hearing.

23 31. EPA encourages Respondent to explore the possibility of settlement. To request an  
24 informal conference, Respondent should contact Rich Campbell in EPA Region 9's Office of  
25 Regional Counsel at (415) 972-3870 or by email at [campbell.rich@epa.gov](mailto:campbell.rich@epa.gov).

1 **VIII. PUBLIC NOTICE**

2 32. Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b),  
3 require EPA to provide public notice of and a reasonable opportunity for comment before  
4 finalizing an administrative civil penalty action.

5 **IX. EFFECTIVE DATE**

6 33. This proceeding is initiated by the filing of this Complaint with the Regional Hearing  
7 Clerk. For calculation of time frames provided herein, the “Effective Date” of this Complaint is  
8 the date of service made in accordance with 40 C.F.R. § 22.5(b)(1)(i) and 22.7(c), including by  
9 reliable commercial delivery service that provides written verification of delivery.

10  
11  
12  
13  
14 

---

Amy C. Miller-Bowen, Director,  
Enforcement and Compliance Assurance Division

1 **CERTIFICATE OF SERVICE**

2 In the Matter of Frank Alo  
3 EPA Docket No. CWA-09-2021-0049

4 I certify that the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for  
5 Hearing, was filed via email with the Regional Hearing Clerk, United States Environmental  
6 Protection Agency, Region 9 at [R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov) and that a true and correct copy of (1)  
7 the Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing; (2) the  
8 Consolidated Rules of Practice at 40 C.F.R. Part 22; and (3) the Region 9 Regional Judicial  
9 Officer’s Standing Order dated May 14, 2020, was sent via United Parcel Service’s Signature  
10 Service, with written verification of delivery requested, to:

11  
12 Frank Alo  
13 54-028 Kukuna Road  
14 Hauula, Hawaii 96717  
15 [REDACTED].com

16 Tracking No. [REDACTED]

17  
18  
19 Date: \_\_\_\_\_ Signature \_\_\_\_\_  
20  
21  
22  
23  
24  
25

# **EXHIBIT 3**

**From:** [Chew, Andrew](#)  
**To:** [R9HearingClerk](#)  
**Cc:** [Campbell, Rich](#); [Berg, Elizabeth](#); [McWhorter, Scott](#); [Kermish, Laurie](#)  
**Subject:** In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint;  
**Date:** Thursday, July 1, 2021 1:51:18 PM  
**Attachments:** [Admin Penalty Complaint and Cert of Service- In re Frank Alo.2021.06.24.pdf](#)  
[Cover Letter for Frank Alo Complaint 2021.pdf](#)  
[STANDING ORDER Region IX EFS \(05 14 2020\).pdf](#)  
[CROP 40 CFR Part 22.pdf](#)  
[CERTIFICATE OF SERVICE ALO.pdf](#)  
**Importance:** High

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In the matter of Frank Alo; U.S. EPA Docket No. CWA-09-2021-0049; Administrative Complaint;  
Please let me know if you have any questions. Thanks.

- Andrew

-----  
Andrew Chew, P.E.

[chew.andrew@epa.gov](mailto:chew.andrew@epa.gov)

Stormwater, Wetlands and Oil

Acting Supervisor, Water Section II (ENF-3-2)

U.S. EPA Region 9, Enforcement & Compliance Assurance Division (ECAD) | 75 Hawthorne St., San Francisco, CA 94105

# **EXHIBIT 4**




ATTN : SCOTT MCWHORTER  
PHONE : (415)972-3755

**DELIVERY NOTIFICATION**

**INQUIRY FROM:** DIANA URIBE  
USEPA REGION 9  
75 HAWTHORNE ST RM #14248  
SAN FRANCISCO CA 94105

<b>SHIPMENT TO:</b>	<b>FRANK ALO FRANK ALO 54-028 KUKUNA ST HAUULA HI 96717</b>
Shipper Number.....	<b>A46W47</b>
Tracking Identification Number...	<b>1ZA46W47A698994375</b>

According to our records 1 parcel was delivered on **08/11/21** at **5:11 P.M.**, and left at **RESIDENTIAL**.  
The shipment was received by **CHATELL** as follows:

SHIPPER NUMBER	PKG ID NO.	TRACKING NUMBER	ADDRESS (NO/STREET,CITY)	SIGNATURE
A46W47		1ZA46W47A698994375	54-028 KUKUNA ST HAUULA	



# **EXHIBIT 5**

**From:** [Armsey, Steven](#)  
**To:** [Campbell, Rich](#)  
**Subject:** RE: In re Frank Alo - CWA-09-2021-0049  
**Date:** Thursday, October 21, 2021 1:00:08 PM

---

To: Rich Campbell, Assistant Regional Counsel  
From: Steven Armsey, Regional Hearing Clerk  
Re: The matter of Frank Alo (CWA-09-2021-0049)

In response to your inquiry, have conducted email searches of both my individual agency account and the account for receiving public comments (R9HearingClerk@epa.gov). The most recent email communication received in this matter was a public comment sent by David Sunshine on behalf of Sean Quinlan, Hawaii State Representative. This comment was forwarded to you on August 17, 2021. My email searches did not locate either an Answer or any Motion for Extension of Time as of approximately 1:00 PM today.

Please let me know if you need any further information.

Thank you.

---

**From:** Campbell, Rich <Campbell.Rich@epa.gov>  
**Sent:** Thursday, October 21, 2021 8:47 AM  
**To:** Armsey, Steven <Armsey.Steven@epa.gov>  
**Subject:** In re Frank Alo - CWA-09-2021-0049

Dear Mr. Armsey,

I just want to confirm that you have not received any answer from Respondent Frank Alo.

Thank you,

Rich



Rich Campbell, Attorney-Advisor  
U.S. Environmental Protection Agency – Region 9  
Office of Regional Counsel  
75 Hawthorne Street (ORC-2)  
San Francisco, CA 94105  
(415) 972-3870

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CONFIDENTIALITY NOTICE: This message is being sent by or on behalf of an attorney. It is intended exclusively for the individual(s) or entity(ies) to whom or to which it is addressed. This communication may contain information that is proprietary, privileged, or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message.

# **Exhibit D**



# Clean Water Act Section 404: Site Visit/Case Development

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

This report includes only factual information gained by documentation, onsite observations, and/or onsite interviews.

Inspector Name(s)	Connor Adams (808)541-2752 adams.connor@epa.gov	Time In	3:05PM	Start Date	July 22, 2020
		Time Out	4:00PM	End Date	July 22, 2020

Inspector's Organization: U.S. EPA Region 9, ECAD 3-2, Pacific Island Contact Office

Organization Requesting Inspection (if different):

Inspection Type: 404      Inspection Status: Original

Site Name: Frank Alo Property

Site Address\*: 54-28 Kukuna Road.

City\*: Hau'ula      County\*: Honolulu      State\*: HI      Zip Code\*: 96717

Latitude/Longitude\*: 21°36'27.61"N, 157°54'37.02"W      Estimated Size of Site (acres): 0.5 acres (based on GPS app)

Is there a home on the site?       Yes       No

Inspector Signature: CONNOR ADAMS      Digitally signed by CONNOR ADAMS      Date: 2020.08.26 15:22:46 -10'00'      Date: [ ]

Supervisor Signature: JAMES MARINCOLA      Digitally signed by JAMES MARINCOLA      Date: 2020.08.25 08:33:34 -07'00'      Date: [ ]



# Clean Water Act Section 404: Site Visit/Case Development

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

Site Name	Frank Alo Property	Start Date	July 22, 2020
		End Date	July 22, 2020
Inspection Purpose	Follow-up site visit		
<b>Opening Conference</b>			
<input checked="" type="checkbox"/> Presentation of Inspector Credentials			
Name and Title (Use N/A if owner/operator not available to join the inspection)			
Frank Alo- Owner			
<input checked="" type="checkbox"/> Opening Conference			
Name of person authorizing access if applicable			
Frank Alo			
Notes from Opening Conference			
I explained to Mr. Alo that I was conducting a CWA 404 inspection in follow-up to the US Army Corps of Engineers ("USACE") referral for formal enforcement (dated November 7 2018) <span style="float: right;">+</span>			
<input type="checkbox"/> Access Issues if Any			
Describe			
N/A			
<b>Inspection Observations and Sample Collection</b>			
Site Owner* (Name, title and contact information)			
Frank Alo			
Additional Persons Present at Inspection			
US Army Corps of Engineers ("USACE")- Hawaii District Office- Linda Speerstra (Chief), Frank Winter & Michael Maaninein			
General Site Characteristics (layout of property, etc.)			
The site is a residential property. The impacted area had been cleared and leveled in late 2017 or early 2018 according to Mr. Alo.			
Site Overview (Past inspections, site description, permits, etc.)			
A USACE site visit in May 2018 (USACE file number POH-2018-00054) resulted in a referral to EPA for Lead Enforcement Agency. The USACE has an enforcement history with Mr. Alo for similar violations, prior to the 2018 USACE site visit.			
Scope of Inspection (Areas inspected or not inspected)			
I observed the wetland fill area to my best ability. GPS data used to track my inspection was obtained by walking the fill area as described by Mr. Alo at the time of inspection (Appendix B- Figure A). GPS data was recorded using my personal Garmin Forerunner 935. The perimeter of the fill immediately dropped in elevation approximately two feet into the wetland area. I did not walk into the natural wetland.			
Environmental Conditions (e.g., wind, rain, smoke, dust, temperature, snow)			
Sunny and clear. Temperatures were in the mid-eighties.			



## Clean Water Act Section 404: Site Visit/Case Development

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

Site Name	Frank Alo Property	Start Date	July 22, 2020
		End Date	July 22, 2020
<b>Field Work Conducted</b>			
After the Opening Conference, USACE and I walked the perimeter of the fill area (Appendix B- Figure A). The inspection team approximated the perimeter of the fill area based on aerial imagery reviewed prior to this inspection and a description of the impacted area provided by Mr. Alo.			
<b>Closing Conference</b>			
<b>Documents Received and/or Requested During the Inspection</b>			
Mr. Alo stated that a railroad traversed the impacted wetland area when the surrounding lands were used for sugarcane production. I asked that Mr. Alo or his family follow-up with any maps or imagery that depicts sugarcane railroad.			
<b>Compliance Assistance Provided (If any)</b>			
USACE Chief Speerstra explained to Mr. Alo the basic function of the wetland area that his fill impacted. Both Speerstra and I provided our contact information and offered to provide general compliance assistance to Mr. Alo should he have regulatory questions or concerns.			
<b>Observations Relayed to Site Owner/Operator</b>			
Mr. Alo stated that at least 200 truck loads of fill material, obtained from Marine Corps base Hawaii (MCBH), were place behind the house on his property to expand and improve the backyard area. The fill area had been graded level and is bermed on the southeastern edge. With the assistance of USACE, I documented vegetation surrounding the fill area, including wetland indicator species Kudzu ( <i>Puearia Montana</i> ), Elephant Grass ( <i>Pennisetum purpureum</i> ) and Sea Hibiscus ( <i>Taliparti Tiliaceum</i> ) ( <i>Appendix A, Appendix D</i> ). The southeastern most section of the impacted area was being used as storage for non-functioning vehicles and heavy machinery ( <i>Appendix A</i> ). Mr. Alo stated that he borrowed a friends machinery to unload and grade the fill material in late 2017 or early 2018.			
<b>Actions Taken by Owner/Operator During the Inspection (If any)</b>			
N/A			
<b>Potential Issues of Concern Including Regulatory Citations</b>			
At least 200 truck-loads of fill material placed in jurisdictional Waters of the United States.			
<b>Attachments*</b>			
<input checked="" type="checkbox"/> Maps and Sketches <input checked="" type="checkbox"/> Photographs (including location) and Photo Log <input checked="" type="checkbox"/> Other			
Appendix A- Photo log Appendix B- Map and Historical Photography Appendix C- USACE 7/22/2020 Site Visit Report			
<b>Additional Notes</b>			
This site visit was the first time that US EPA had been to Mr. Alo's property.			



*Photograph 1: IMG\_1342: This photograph was taken facing southeast. Mr. Alo stated that the graded area in this picture is the extent of the fill placed on his property. Mr. Alo stated that the heavy equipment on the left side of the frame and vehicles in the background are out of service.*



*Photograph 2: IMG\_1343: This photograph was taken facing east. This picture shows heavy equipment that Mr. Alo stated was out of service at the time of inspection. A natural berm can be seen in the background and indicates the approximate perimeter of the fill area.*





*Photograph 3: IMG\_1344: This photograph is a close-up of the berm indicated by the red arrow in Photograph 2: The vegetation in the forefront of this photo appears to be Pueraria Montana as identified in the USACE Site Visit Report (Appendix D). Pueraria Montana is a facultative species.*



*Photograph 4: IMG\_1345: This photograph is a close-up of vegetation along the perimeter of the fill area. The vegetation in the forefront of this photo appears to be Pueraria Montana as identified in the USACE Site Visit Report (Appendix D). The vegetation in the background of this photo appears to be Pennisetum purpureum as also identified in Appendix D.*





*Photograph 5: IMG\_1346: This photograph was taken facing northwest. This image shows the fill perimeter berm from a perspective looking towards Mr. Alo's home (away from the wetland). A piece of heavy equipment is visible on the left side of frame.*



*Photograph 6: IMG\_1347: This photograph was taken facing southeast. Mr. Alo stated that the graded area in this picture is the extent of the fill placed on his property. Mr. Alo stated that the heavy equipment on the left side of the frame and vehicles in the background are out of service.*



Appendix B- Map and Historical Photography

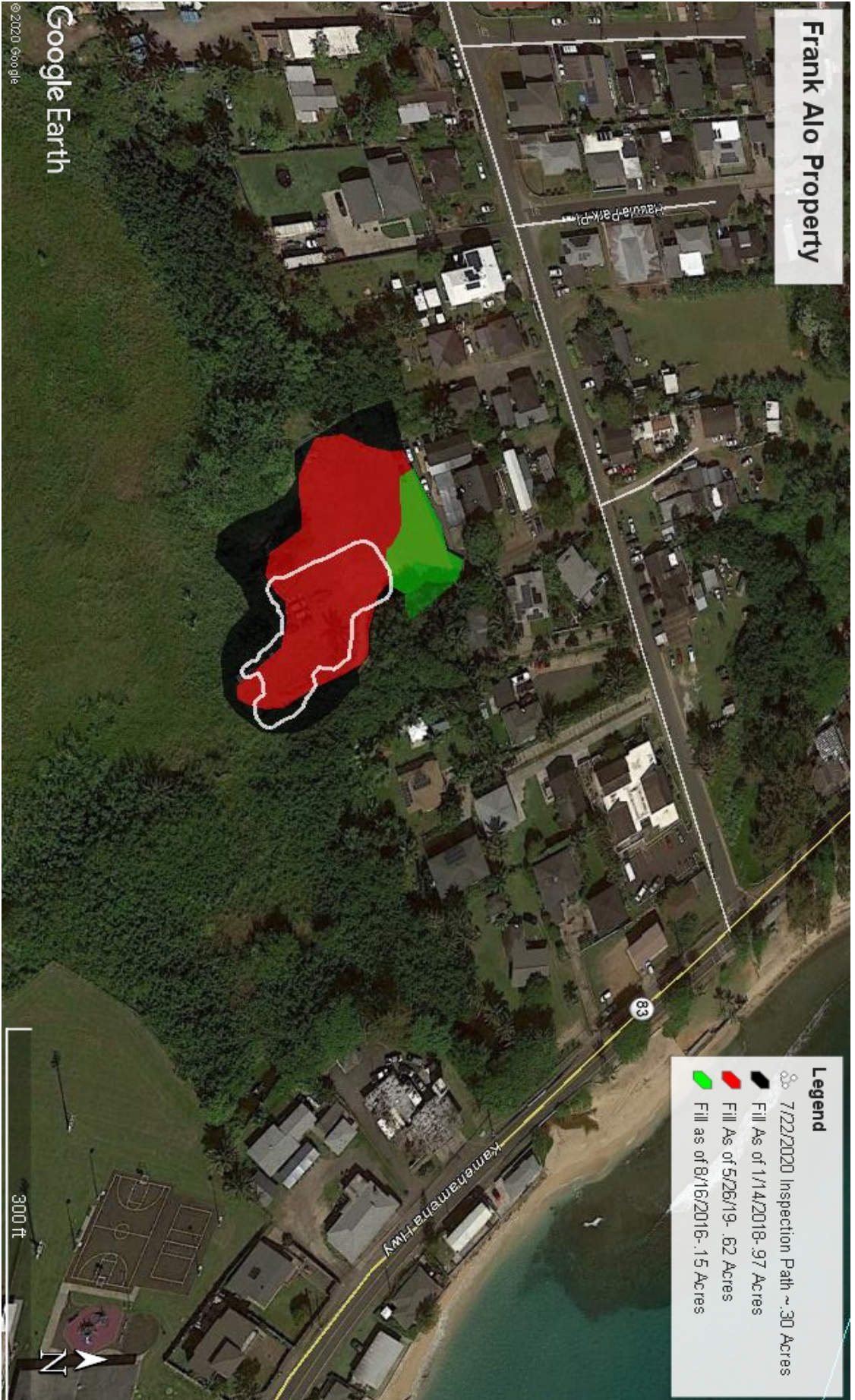


Figure A: Satellite imagery obtained from Google Earth. Fill areas were estimated referencing satellite imagery available through the timeline feature in Google Earth.

Appendix B



Figure B: USGS aerial imagery obtained from the University of Hawaii MAGIS tool (<https://uhmagis.maps.arcgis.com/apps/webappviewer/index.html?id=f6672e31727d49468a37b7bb3ab77d77>). This photograph of Hau'ula was taken in 1951 by USGS. The red arrow was added to the original photograph to indicate the approximate location of the Frank Alo property.



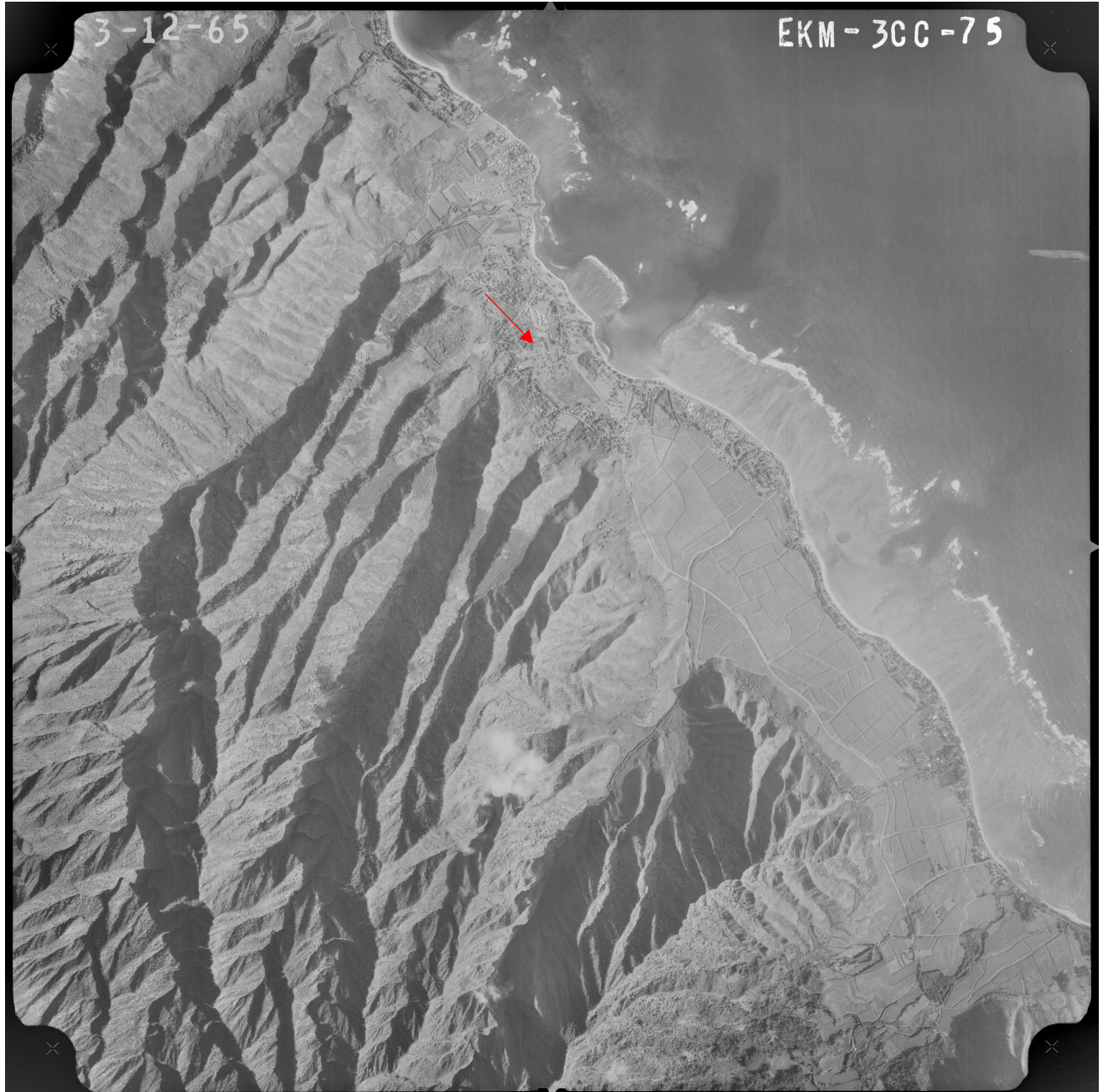


Figure C: USDA aerial imagery obtained from the University of Hawaii MAGIS tool (<https://uhmagis.maps.arcgis.com/apps/webappviewer/index.html?id=f6672e31727d49468a37b7bb3ab77d77>). This photograph of Hau'ula was taken on 3/12/1965 by USDA. The red arrow was added to the original photograph to indicate the approximate location of the Frank Alo property.

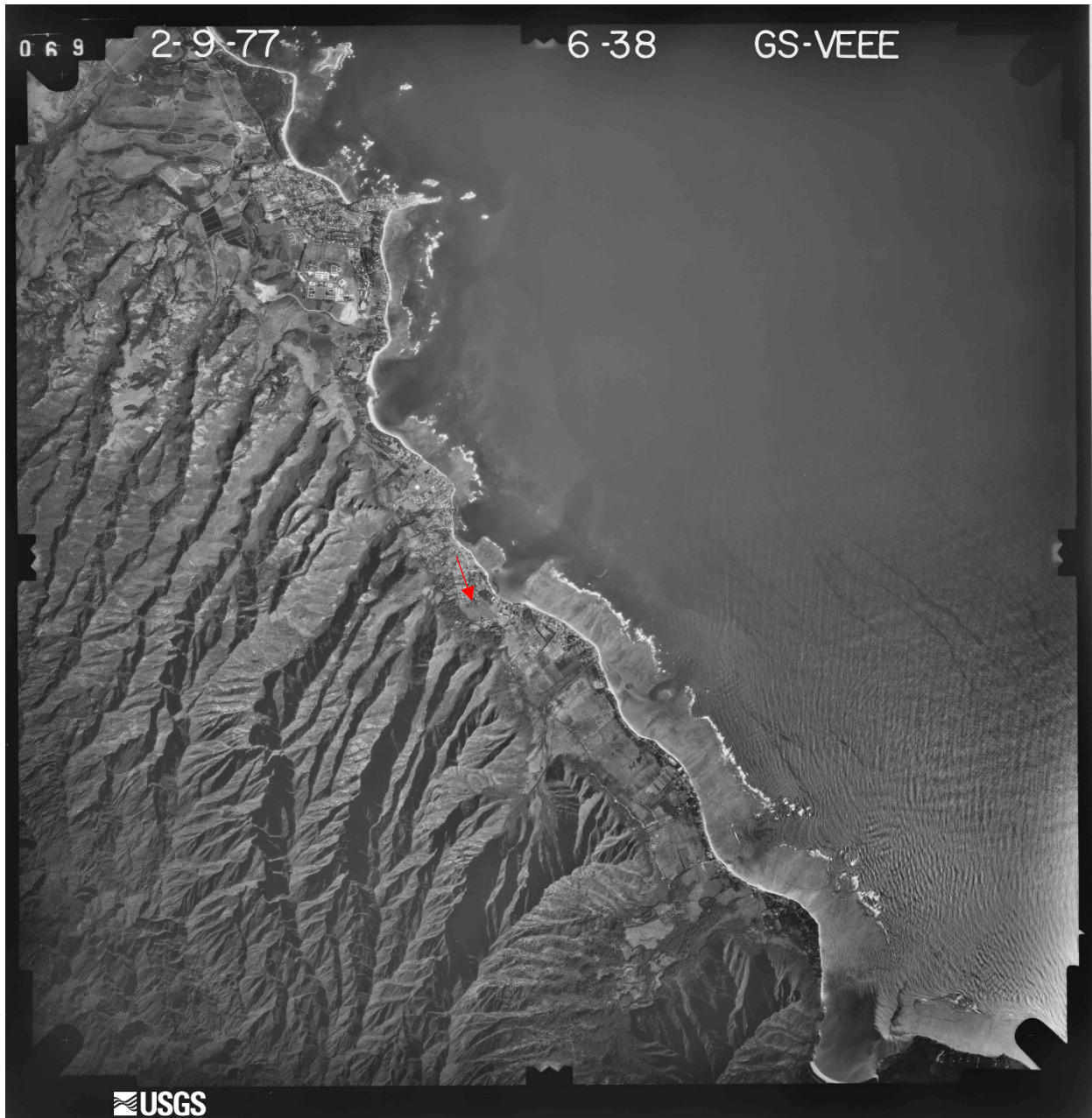


Figure C: USGS aerial imagery obtained from the University of Hawaii MAGIS tool (<https://uhmagis.maps.arcgis.com/apps/webappviewer/index.html?id=f6672e31727d49468a37b7bb3ab77d77>). This photograph of Hau'ula was taken on 2/9/1977 by USGS. The red arrow was added to the original photograph to indicate the approximate location of the Frank Alo property.



Appendix B

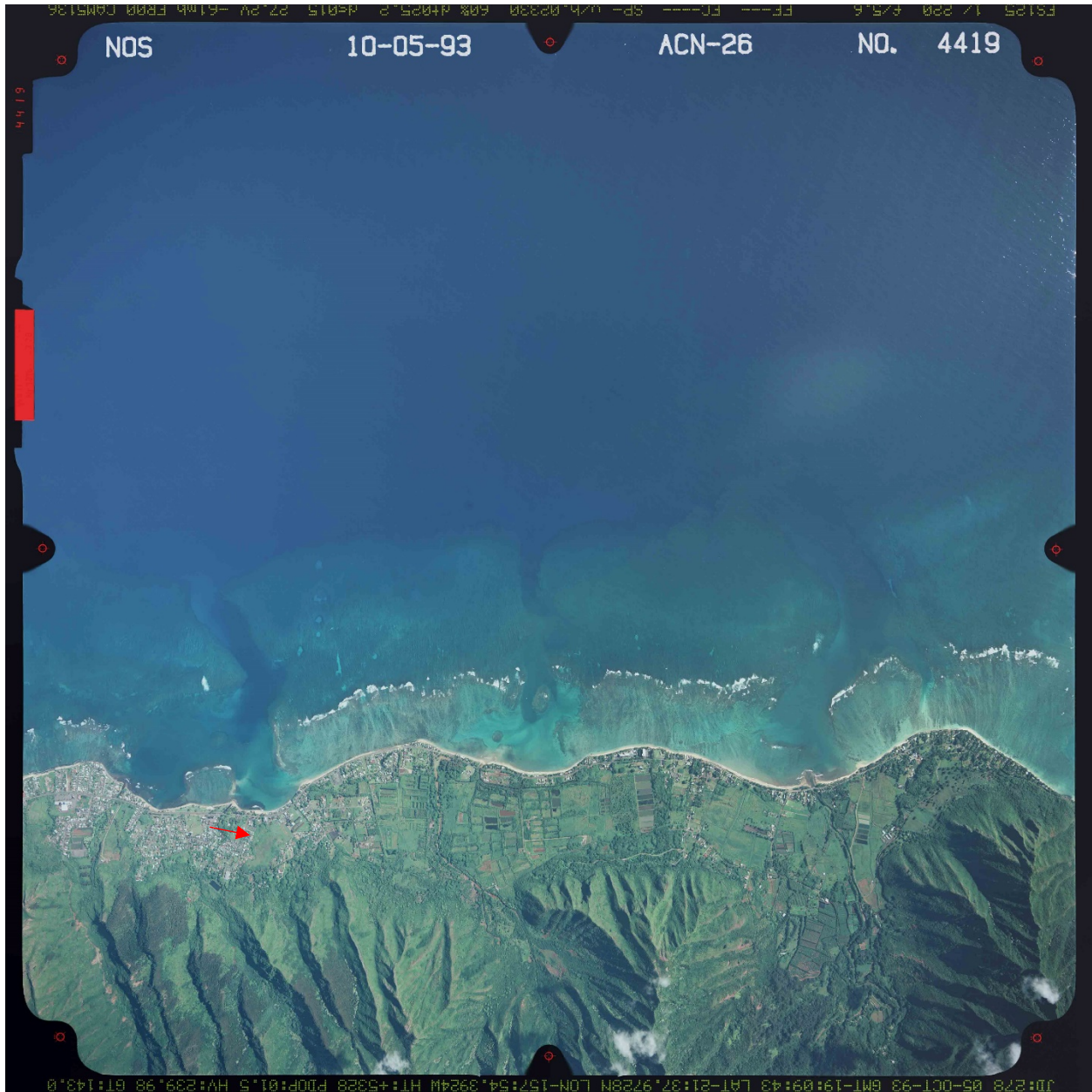


Figure D: NOAA aerial imagery obtained from the University of Hawaii MAGIS tool (<https://uhmagis.maps.arcgis.com/apps/webappviewer/index.html?id=f6672e31727d49468a37b7bb3ab77d77>). This photograph of Hau'ula was taken on 10/5/1993 by NOAA. The red arrow was added to the original photograph to indicate the approximate location of the Frank Alo property.



## CEPOH-RO MEMORANDUM FOR RECORD

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SUBJECT: POH-2018-00054 54-28 Kukuna Road – Hauula, Oahu Island, Hawaii Enforcement Action Site Visit with EPA – July 22, 2020 2:00 pm

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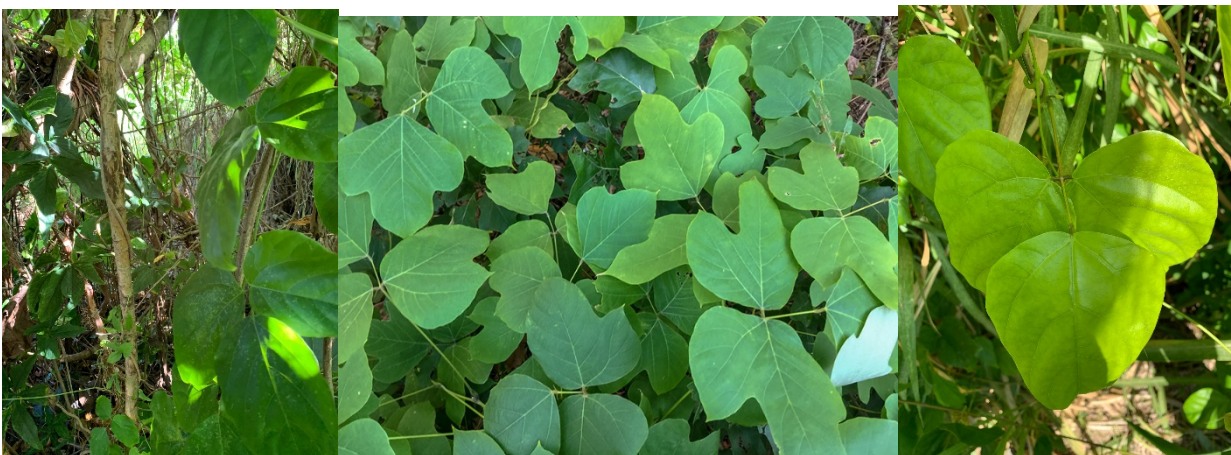
USACE personnel present– Frank Winter, Michael Maaninen, Linda Speerstra

EPA personnel present - Connor Adams

The enforcement action was referred and accepted by EPA in 2018. A site visit was conducted at the Frank Alo property to determine the extent of the fill material, meet with the land owner, Mr. Frank Alo to discuss historical information of the site, and gather field data of the boundaries of where the violation took place along with the environmental conditions of the site.

During the site visit Mr. Frank Alo outlined where the illegal fill was placed and that approximately 200 truckloads were dumped. Mr. Alo indicated the fill material originated from the Kaneohe Marine Corps Base.

USACE and EPA staff walked the boundary of the fill site taking GPS coordinates and collected pictures of the vegetation growing around the fill site for identification.



Kudzu – FAC

*(Pueraria Montana)*

It is a [perennial](#) vine with tuberous roots and rope-like, dark brown stems to 20 m (65 ft) long. It grows up to 20 metres per year and can achieve a height of 30 metres. It has markedly hairy herbaceous stems. Flowers are reddish-purple and yellow, fragrant, similar to pea flowers, about 20–25 millimetres (0.79–0.98 in) wide and are produced at the leaf axis in elongated [racemes](#) about 20 centimetres (7.9 in) long. The flowering period extends from July through October. The fruit is a flat hairy pod about 8 centimetres (3.1 in) long with three



seeds.



## Elephant Grass – FAC

*(Pennisetum purpureum)*

Elephant grass is a tufted perennial grass that can grow in stands up to 4 m high. It has pale green leaves up to 4 cm in width, with a strong midrib tapering to a fine point. The large flower heads range in color from yellow to purple, and can be up to 30 cm in length. Each flower head has fine bristles along the spike.





## Sea Hibiscus – FAC WET

### (*Talipariti tiliaceum*)

*Hibiscus tiliaceus* reaches a height of 4–10 m (13–33 ft), with a trunk up to 15 cm (5.9 in) in diameter.<sup>[3]</sup> The [flowers](#) of *H. tiliaceus* are bright yellow with a deep red center upon opening. Over the course of the day, the flowers deepen to orange and finally red before they fall. The branches of the tree often curve over time. The leaves are heart shaped and deep red in the var. *rubra*.

DATE: 31-July-2020

Linda Speerstra

Chief Regulatory, Honolulu Branch

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date listed below, the foregoing **COMPLAINANT'S MOTION FOR PARTIAL DEFAULT (LIABILITY)** and **MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL DEFAULT (LIABILITY)**, **In the Matter of Frank Alo, Docket No. CWA-09-2021-0049** was filed with the Regional Hearing Clerk for EPA Region 9 and sent to the following parties in the manner indicated below, in accordance with the EPA Region IX Part 22 E-Filing Management System:

Originals by Electronic Mail to:

Regional Hearing Clerk  
EPA Region 9  
[R9HearingClerk@epa.gov](mailto:R9HearingClerk@epa.gov)

Copies by Electronic Mail and UPS/Adult Signature Required:

Frank Alo  
54-028 Kukuna Road  
Hauula, Hawaii 96717  
[FrankfAlo@outlook.com](mailto:FrankfAlo@outlook.com)

**RICHARD**  
**CAMPBELL** Digitally signed by  
RICHARD CAMPBELL  
Date: 2022.02.03  
11:30:05 -08'00'

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Rich Campbell  
Assistant Regional Counsel  
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[campbell.rich@epa.gov](mailto:campbell.rich@epa.gov)