

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

3 75 Hawthorne Street
4 San Francisco, California 94105

**** FILED ****
28SEP2017 - 04:05PM
U.S.EPA - Region 09

5
6 IN THE MATTER OF:) DOCKET NO. UIC-09-2015-0003
7 Keith Ward)
8 Waimanalo, Hawaii,) **CONSENT AGREEMENT**
9 Respondent.) **AND FINAL ORDER**
10 Proceedings under Section 1423(c) of the Safe)
11 Drinking Water Act, 42 U.S.C. § 300h-2(c).)

12 **CONSENT AGREEMENT**

13 1. The United States Environmental Protection Agency (“EPA” or “Complainant”),
14 Region IX and Respondent Keith Ward (“Respondent”) (collectively the “Parties”) agree to
15 settle this matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”).

16 **I. AUTHORITY**

17 2. EPA initiated this civil administrative proceeding for the assessment of a civil
18 penalty pursuant to Sections 1423(c) of the Safe Drinking Water Act (the “SDWA” or the
19 “Act”), 42 U.S.C. § 300h-2(c), by issuing an Administrative Order For Penalties and Compliance
20 (“Complaint”) against Respondent on September 28, 2016, in accordance with the Consolidated
21 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
22 Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22. As required by 40
23 C.F.R. § 22.45(b), EPA provided public notice of the filing of the Complaint and allowed for 30
24 days for interested members of the public to file comments.

1 3. The Complaint alleged that Respondent violated Part C of the SDWA, 42 U.S.C.
2 §§ 300h – 300h-8, by failing to comply with the requirement of 40 C.F.R. § 144.88 to close his
3 two large capacity cesspools, located at 41-865 Kalaniana'ole Hwy Waimanalo, Hawaii, (TMK 1-
4 4-1-004-007) (the "Property").

5 4. EPA and Respondent have agreed to resolve this civil administrative proceeding
6 by executing this CA/FO pursuant to 40 C.F.R. § 22.18(b), which includes both a compliance
7 order and the assessment of a penalty.

8 5. This CA/FO is filed more than 10 days after the close of the comment period
9 specified in 40 C.F.R. 22.45(c)(1), and no comments were submitted on the Complaint.

10
11 **II. SETTLEMENT TERMS**

12 **A. GENERAL PROVISIONS**

13 6. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this
14 proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this
15 CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations
16 contained in the Complaint; (iii) consents to the assessment of the civil administrative penalty
17 and to the specified compliance obligations contained in this CA/FO; (iv) waives any right to
18 contest the allegations contained in the Complaint; and (v) waives the right to appeal the
19 proposed final order contained in this CA/FO.

20 7. Respondent expressly waives any right to contest the allegations contained in the
21 Consent Agreement and to appeal the Final Order under the SDWA or the Administrative
22 Procedures Act, 5 U.S.C. §§ 701-706.

23 8. The provisions of this CA/FO shall apply to and be binding upon Respondent, his
24 agents, servants, authorized representatives, employees, and successors or assigns. Action or
inaction of any persons, firms, contractors, employees, agents, or corporations acting under,

1 through or for Respondent shall not excuse any failure of Respondent to fully perform its
2 obligations under this CA/FO.

3 9. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
4 appropriate injunctive or other equitable relief, or criminal sanctions for any violations of law,
5 except with respect to those claims set forth in the Complaint.

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

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

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

18 13. This CA/FO may be executed and transmitted by facsimile, email or other
19 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
20 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
21 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
22 shall remain in full force and effect.
23
24

1 **B. CIVIL ADMINISTRATIVE PENALTY**

2 14. Respondent agrees to the assessment of a civil penalty in the amount of ONE
3 THOUSAND DOLLARS (\$1,000) as final settlement of the civil claims against Respondent
4 arising under SDWA as alleged in the Complaint. EPA considered the nature, circumstances,
5 extent, and gravity of the violations, Respondent's ability to pay, its prior history of violations,
6 its degree of culpability, and any economic benefit or savings accruing to Respondent as a result
7 of the violations. EPA determined that Respondent had a limited ability to pay a penalty greater
8 than the one assessed in this CA/FO.

9 15. Respondent shall pay the assessed penalty no later than thirty (30) days from the
10 Effective Date of this CA/FO.

11 16. The penalty may be paid by check (mail or overnight delivery), wire transfer,
12 automated clearing house, or online payment. Payment instructions are available at:
13 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
14 check must be payable to the order of "Treasurer, United States of America" and delivered to the
15 following address:

16 U.S. Environmental Protection Agency
17 Fines and Penalties
18 Cincinnati Finance Center
19 P.O. Box 979077
20 St. Louis, Missouri 63197-9000

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

 Regional Hearing Clerk
 U.S. Environmental Protection Agency
 Region IX - Office of Regional Counsel
 75 Hawthorne Street (ORC-1)
 San Francisco, CA 94105

1 Aaron Setran, Compliance Officer
2 U.S. Environmental Protection Agency
3 Region IX - Enforcement Division
4 75 Hawthorne Street (ENF-3-3)
5 San Francisco, CA 94105

6 Brett Moffatt, Attorney-Advisor
7 U.S. Environmental Protection Agency
8 Region IX – Office of Regional Counsel
9 75 Hawthorne Street (ORC-2)
10 San Francisco, CA 94105

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

- 15 a. Interest on delinquent penalties will be assessed at an annual rate that is equal to
16 the rate of current value of funds to the United States Treasury (i.e., the Treasury
17 tax and loan account rate) as prescribed and published by the Secretary of the
18 Treasury in the Federal Register and the Treasury Fiscal Requirements Manual
19 Bulletins. 40 C.F.R. § 13.11(a)(1).
- 20 b. A penalty charge will be assessed on all debts more than 90 days delinquent. The
21 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40
22 C.F.R. § 13.11(c).
- 23 c. Administrative costs for handling and collecting Respondent's overdue debt will
24 be based on either actual or average cost incurred, and will include both direct and
indirect costs. 40 C.F.R. § 13.11(b).

19. Failure to pay any civil administrative penalty by the deadline may also lead to
any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the

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

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

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

12 20. Respondent shall tender any interest, handling charges, late penalty payments, and
13 stipulated penalties in the same manner as described in Paragraphs 16 and 17.

14 **C. COMPLIANCE REQUIREMENTS**

15 21. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40
16 C.F.R. §§ 144.82 and 144.89(a), Respondent shall close both large capacity cesspools ("LCCs")
17 on the Property. For purposes of this CA/FO, LCC No. 1 refers to the northernmost LCC on the
18 Property, located approximately in front of the Hawaiian Island Café, and LCC No. 2 refers to
19 the southernmost LCC on the Property, located approximately in front of the former Serg's
20 Mexican Kitchen.

21 22. Respondent shall close each LCC, by either: (1) pumping out all waste remaining
22 in the LCC and backfilling it with material acceptable to Hawaii Department of Health
23 ("HDOH"); or (2) converting the LCC to a seepage pit for a septic system or other on-site
24 treatment unit (referred to herein as an Individual Wastewater System, or "IWS"). Regardless of
the compliance option chosen, Respondent shall comply with all EPA and HDOH requirements
for the closure activities, and for the installation and operation of the IWS if Respondent chooses

1 to convert any LCC to a seepage pit. To meet the closure requirements for the LCCs,

2 Respondent shall take the following actions by the deadlines set forth below:

- 3 a. Within sixty (60) days of the effective date of this CA/FO, Respondent shall
4 provide EPA with a closure plan identifying the specific actions proposed to close
5 each LCC, including the actions required to use, modify or replace the existing
6 IWS if Respondent chooses to convert either or both LCCs to a seepage pit.
- 7 b. Within seventy-five (75) days of the effective date of this CA/FO, Respondent
8 shall submit to HDOH all documents required by HDOH for its review of
9 Respondent's application to close the LCCs or convert any LCC to a seepage pit,
10 including all actions required to use, modify or replace the existing IWS if
11 Respondent chooses to convert an LCC to a seepage pit. Respondent shall submit
12 to HDOH any additional information or clarifications required by HDOH within
13 thirty (30) days of receipt of such request. Respondent shall submit to EPA
14 copies of all documents submitted to, and received from, HDOH in connection
15 with this application and approval process.
- 16 c. Within sixty (60) days of HDOH's approval of the closure and/or conversion
17 plans for the LCCs, Respondent shall have completed all work necessary to close
18 both LCCs, to the satisfaction of HDOH, including all actions required to use,
19 modify or replace the existing IWS if Respondent chooses to convert any LCC to
20 a seepage pit. If the scope of the approved work requires more than sixty days to
21 complete, Respondent may seek an extension of time from EPA. Such request
22 must be made in writing and shall only be effective upon written approval by
23 EPA.
- 24 d. Within twenty (20) days of completing the work specified in Paragraph 22(c),
Respondent shall submit to HDOH all documents required by HDOH to

1 demonstrate the proper closure of both LCCs, including all documents required
2 for the use, modification or replacement of the existing IWS if Respondent
3 converted any LCC to a seepage pit. Respondent shall submit copies of these
4 documents to EPA.

- 5 e. Within ten (10) days of receipt, Respondent shall submit to EPA copies of all
6 documents received from HDOH pertaining to the closure and/or conversion
7 work.

8 23. If Respondent chooses to permanently close LCC No. 1, which may already
9 contain backfill materials, Respondent shall submit to EPA a new engineer-certified "Backfilling
10 Final Completion Report" within twenty (20) days of completing the work described in
11 Paragraph 22(c). Respondent shall conduct any inspections or investigations and perform any
12 work necessary for the engineer to certify that LCC No. 1 has been closed in compliance with
13 EPA and HDOH requirements.

14 24. Respondent shall retain a qualified professional engineer to perform all of the
15 compliance work requirement by this CA/FO. Respondent has selected Wesley Wong of Laulea
16 Engineering as the engineer to perform the work. If Respondent, for whatever reason, decides to
17 change his engineer, he may do so only upon written approval from EPA.

18 25. If Respondent anticipates or encounters circumstances beyond his control that are
19 likely to prevent Respondent from meeting any compliance deadline specified in Paragraphs 22
20 and 23, Respondent shall notify EPA immediately. Respondent may request an extension of a
21 deadline that is no longer than necessary to address the circumstances, by submitting a written
22 request, in accordance with Paragraph 30, that explains the circumstances and the basis for the
23 requested amount of additional time. It is within EPA's sole discretion to determine whether or
24 not to grant an extension of time, including the amount of any additional time granted. The
deadlines specified in Paragraphs 22 and 23 shall remain in effect, except to the extent that EPA

1 has granted Respondent an extension of time in writing. Electronic mail is acceptable for
2 communications made pursuant to this paragraph.

3 **D. STIPULATED PENALTIES**

4 26. If Respondent fails to pay the assessed civil administrative penalty specified in
5 Paragraph 14 by the deadline specified in Paragraph 15, or fails to take any action required by
6 Paragraph 22 or 23 by the specified deadline, Respondent agrees to pay stipulated penalties, as
7 follows:

- 8 a. \$50 for each and every day, for the first 90 days that Respondent fails to take the
9 action;
- 10 b. \$100 for each and every day, from days 91 through 365 that Respondent fails to
11 take the action; and
- 12 c. \$200 for each and every day, from day 366 and afterwards that Respondent fails
13 to take the action.

14 27. Respondent agrees to pay any stipulated penalties within thirty (30) days of
15 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
16 first date of noncompliance, and shall continue to accrue through the date of completion of the
17 delinquent CA/FO requirement. Respondent will use the method of payment specified in
18 Paragraphs 16 and 17, and agrees to pay interest, handling charges and penalties that accrue for
19 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 18 through
20 20.

21 28. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
22 of their obligation to comply with any requirement of this CA/FO.

23 29. EPA may, in the unreviewable exercise of its discretion, reduce or waive
24 stipulated penalties due under this CA/FO.

1 **E. NOTICES**

2 30. Respondent must send any written communications and/or submittals, including
3 any requests for extensions of time to meet compliance deadlines, to the following:

4 Aaron Setran, Compliance Officer
5 U.S. Environmental Protection Agency
6 Region IX - Enforcement Division
7 75 Hawthorne Street (ENF-3-3)
8 San Francisco, CA 94105
9 setran.aaron@epa.gov

10 Brett Moffatt, Attorney-Advisor
11 U.S. Environmental Protection Agency
12 Region IX – Office of Regional Counsel
13 75 Hawthorne Street (ORC-2)
14 San Francisco, CA 94105
15 moffatt.brett@epa.gov

16 31. EPA must send any written communications to Keith Ward at the following:

17 Keith Ward
18 53-138 Kamehameha Hwy
19 Punalu'u, Hawaii 96717
20 kenekes@hawaii.rr.com

21 **III. EFFECTIVE DATE**

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

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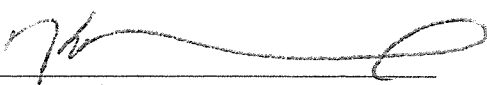
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1 33. This CA/FO shall terminate only after Respondent has complied with all
2 requirements of the CA/FO, including payment of any interest and late fees, and after EPA has
3 issued a written notice of termination.

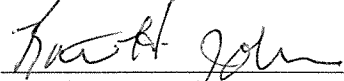
4
5 FOR THE CONSENTING PARTIES:

6 **KEITH WARD:**

7 
8 _____
Keith Ward

Date: 24 Sept 17

9
10 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

11 
12 _____
Kathleen H. Johnson
13 Director, Enforcement Division, Region IX
14 U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: Sept 26, 2017

15 Of counsel:

16 Brett Moffatt and Tessa Berman
17 Attorney-Advisors
18 Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX

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

3 75 Hawthorne Street
San Francisco, California 94105

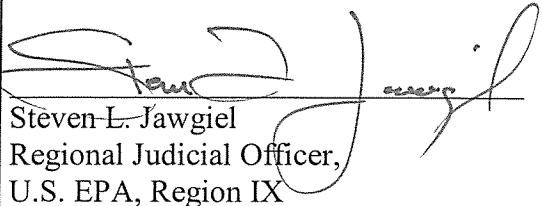
4 IN THE MATTER OF:) DOCKET NO. UIC-09-2015-0003
5 Keith Ward)
6 Waimanalo, Hawaii,) **FINAL ORDER**
7 Respondent.)
8 Proceedings under Section 1423(c) of the Safe)
9 Drinking Water Act, 42 U.S.C. § 300h-2(c).)

10 **FINAL ORDER**

11 The United States Environmental Protection Agency Region IX (“EPA”), and
12 Respondent Keith Ward (“Respondent”) (collectively the “Parties”), having entered into the
13 foregoing Consent Agreement, and EPA having duly publicly noticed the Complaint,

14 It is Hereby Ordered that this Consent Agreement and Final Order (Docket No. UIC-09-
15 2015-0003) be entered and that Respondent shall: (1) pay a civil penalty in the amount of \$1,000
16 dollars, and (2) close his two large capacity cesspools, in accordance with the terms of this
Consent Agreement and Final Order.

17 This Final Order is effective on the date that it is filed. This Final Order constitutes full
18 adjudication of the allegations in the Consent Agreement entered into by the Parties in this
19 proceeding.

20
21 
22 Steven L. Jawgiel
23 Regional Judicial Officer,
U.S. EPA, Region IX

24 Date: 09/28/17

CERTIFICATE OF SERVICE

I hereby certify the attached **Consent Agreement and Final Order**, in the Matter of Keith Ward, Docket No. UIC-09-2015-0003, was sent as indicated below to:

BY FIRST CLASS MAIL (certified):

Robert F. Miller, Esq.
875 Waimanu Street, Suite 614
Honolulu, Hawaii 96813

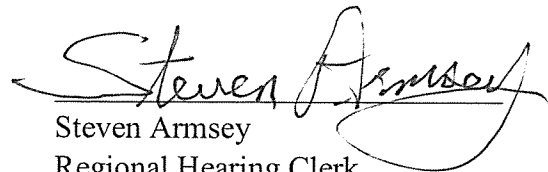
Courtesy copy: bob@rfmillerlaw.com

HAND DELIVERED:

Brett P. Moffatt
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Courtesy copy: moffatt.brett@epa.gov

Dated at San Francisco, California, this September 28, 2017.



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105