



REGION 9
SAN FRANCISCO, CA 94105



In the Matter of:)	
)	
NSHE HI Narcissus, LLC,)	
Kahuku, Hawaii,)	Docket No. UIC-09-2022-0058
)	
Respondent.)	

PREHEARING ORDER

The United States Environmental Protection Agency (“Complainant or EPA”) filed this Administrative Complaint with a proposed civil penalty on August 2, 2022, pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits, 40 C.F.R. Part 22 (“Rules”), which govern this proceeding. Complainant served the Complaint on NSHE HI Narcissus, LLC (“Respondent”) on August 3, 2022. In its Complaint, Complainant notified Respondent of the opportunity to request a hearing, which will not be subject to Section 554 or 556 of the Administrative Procedures Act, 5 U.S.C. §§ 554 and 556, but will provide a reasonable opportunity to be heard and to present evidence. The hearing will be governed by Subpart I of the Rules at 40 C.F.R.

Part 22. Complainant also informed Respondent that 40 C.F.R. § 22.15(a) required Respondent to file its Answer with the Regional Hearing Clerk withing thirty (30) days after service of the Complaint.

Respondent filed an Answer to the Complaint on August 29, 2022. In its Answer, Respondent stated the circumstances or arguments that it believes serve as grounds for its defense, the facts it disputes, and the basis for opposing the proposed relief. Respondent also requested a hearing.

Pursuant to 40 C.F.R. § 22.51, I am the Presiding Officer who will conduct the hearing and rule on all motions until an initial decision has become final or has been appealed.

On January 13, 2023, the Agency filed a Motion for Accelerated Decision on Liability. On January 31, 2023, Respondent filed its Memorandum in Opposition to Motion for Accelerated Decision on Liability. On February 8, 2023, the Agency filed a Memorandum in Reply to Respondent's Opposition to Motion for Accelerated Decision on Liability. On August 28, 2023, the Presiding Officer issued a decision granting the Agency's Motion for Accelerated Decision on Liability. This matter will proceed to a hearing on the outstanding penalty issues.

ALTRENATE DISPUTE RESOLUTION

As stated in earlier proceedings, Agency policy strongly supports settlement. The procedures regarding documenting settlements are set forth in 40 C.F.R. § 22.18. Each party is reminded the resolution of this matter through a hearing and a possible appeal will require the expenditure of significant amounts of time and financial resources. Each party should realistically consider the risk of not prevailing in the proceeding despite such expenditures. Resolution through settlement negotiations allows the parties to control the outcome of this

matter. Similarly, pursuing settlement through alternate dispute resolution may expedite the finalization of this matter and avoid unnecessary litigation costs. Therefore, I strongly encourage the parties to pursue alternate dispute resolution in this matter.

If the parties agree to alternate dispute resolution, they should notify me of their agreement in writing. Thereafter, I will assign the matter to a Regional Judicial Officer (RJO) outside of Region 9 who will serve as a neutral mediator. If the parties reach a settlement agreement, the terms and conditions of the settlement shall be recorded in a written Consent Agreement signed by all parties in accordance with 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, I will execute a Final Order ratifying the parties' Consent Agreement. If the parties do not reach an agreement, the mediator RJO will not share the content of the settlement negotiations with me as the Presiding Officer and the matter to proceed to a hearing on the outstanding penalty issues.

BRIEFING SCHEDULE

I direct the parties to submit briefs, not to exceed twenty-five pages, that set forth their respective legal arguments on the outstanding penalty issues. The parties shall not revisit the liability issues in these briefs. Each party also shall include a list a proposed witnesses whom they intend to call at the hearing, including the name and title of each witness, and a brief summary describing each witness's proposed testimony. Furthermore, the parties shall provide a list of proposed exhibits they intend to introduce at the hearing and attach a copy of each exhibit they intend to introduce at hearing to their prehearing submissions. Documents not included in the parties' prehearing submission will not be considered by the Presiding Officer in reaching a penalty decision. Proposed exhibits will not be counted toward the twenty-five-page

brief limit. The parties shall file electronic copies of their briefs and proposed exhibits with the Region 9 Regional Hearing Clerk at: r9hearingclerk@epa.gov by **March 1, 2024**.

PREHEARING CONFERENCE

A prehearing video conference is scheduled for **Thursday, March 14, 2024 at 1:00 p.m. (PDT) / 10:00 a.m. (HST)**. Region 9's Regional Hearing Clerk shall provide the parties with instruction on how to access the video conference. During the prehearing conference, the parties shall be prepared to discuss:

1. Settlement of the case;
2. Simplification of issues and stipulation of facts not in dispute;
3. Objections to proposed witnesses;
4. Objections to proposed exhibits;
5. Any other matters which may expedite the disposition of the hearing.

HEARING

The penalty hearing is scheduled for **Tuesday, April 2, 2024 at 1:00 p.m. (PDT) / 10:00 a.m. (HST)**. The hearing will be conducted as a video conference. Region 9's Regional Hearing Clerk shall provide the parties with instruction on how to access the video conference.

**STEVEN
JAWGIEL** Digitally signed by
STEVEN JAWGIEL
Date: 2024.02.07
14:27:19 -08'00'

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify a true and correct copy of the Prehearing Order in In the Matter of NSHE HI Narcissus, LLC (UIC-09-2022-0058) was sent to the following parties via electronic mail, as indicated below:

COMPLAINANT:

Kimberly Y. Wells
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RESPONDENT:

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First Hawaiian Center
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Email: cwg@ksglaw.com

Ponly Tu Date
Regional Hearing Clerk, US EPA - Region IX