

CADES SCHUTTE
A Limited Liability Law Partnership

PATRICIA J. MCHENRY 4267-0
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4212
Telephone: (808) 521-9200

Attorney for Respondent
ALOHA PETROLEUM, LTD.

**** FILED ****
07SEP2016 - 03:05PM
U.S.EPA - Region 09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:

Aloha Petroleum, Ltd.,
Captain Cook, Hawaii

Respondent.

Proceedings under Section 1423(c) of the Safe
Drinking Water Act, 42 U.S.C. § 300h-2(c).

DOCKET NO. UIC-09-2016-0003

**ANSWER TO ADMINISTRATIVE
COMPLAINT AND PROPOSED
ADMINISTRATIVE ORDER FOR
PENALTIES**

**ANSWER TO ADMINISTRATIVE COMPLAINT AND PROPOSED
ADMINISTRATIVE ORDER FOR PENALTIES**

Aloha Petroleum, Inc. ("Aloha") responds to the Administrative Complaint and Proposed Order for Penalties (the "Complaint") as follows:

I. AUTHORITY

1. The allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

II. JURISDICTION

2. The allegations contained in Paragraph 2 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

III. STATUTORY AND REGULATORY BACKGROUND

1. The allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

2. The allegations contained in Paragraph 2 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations

3. The allegations contained in Paragraph 3 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

4. The allegations contained in Paragraph 4 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

5. The allegations contained in Paragraph 5 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

6. The allegations contained in Paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

7. The allegations contained in Paragraph 7 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

8. The allegations contained in Paragraph 8 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

9. The allegations contained in Paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

10. The allegations contained in Paragraph 10 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

11. The allegations contained in Paragraph 11 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

IV. FINDINGS OF VIOLATION

12. Aloha admits the allegations contained in Paragraph 12 of the Complaint.

13. Aloha admits the allegations contained in Paragraph 13 of the Complaint.

14. Aloha admits the allegations contained in Paragraph 14 of the Complaint.

15. Aloha admits the allegations contained in Paragraph 15 of the Complaint.

16. Aloha admits the allegations contained in Paragraph 16 of the Complaint.

17. Aloha admits the allegations contained in Paragraph 17 of the Complaint.

18. Aloha admits the allegations contained in Paragraph 18 of the Complaint.

19. Aloha admits the allegations contained in Paragraph 19 of the Complaint.

20. In response to the allegations contained in Paragraph 20 of the Complaint, Aloha denies that its employees provided access to the restrooms upon request by customers of the gas station or convenience store during the periods relevant to the Complaint; members of the public who asked to use the restroom were told that the restrooms were not open to members of the public and were not given keys.

21. In response to the allegations contained in Paragraph 21 of the Complaint, Aloha denies that at least one of the restrooms identified in Paragraph 17 has been accessible to members of the public without a key; the restrooms had locks, one of which was tampered with such that people “in the know” could by-pass the lock; members of the public who asked to use the restroom were also told that the restrooms were not open to members of the public.

22. Aloha admits the allegations contained in Paragraph 22 of the Complaint.

23. Aloha admits the allegations contained in Paragraph 23 of the Complaint.

24. Aloha denies the allegations contained in Paragraph 24 of the Complaint.

25. Aloha admits the allegations contained in Paragraph 25 of the Complaint as to employees on or about September 30, 2014, and denies the remaining allegations in Paragraph 25 of the Complaint.

26. Aloha denies the allegations contained in Paragraph 26 of the Complaint; the cesspool located at the Property served and had the capacity to serve less than 20 persons per day from between April 5, 2005 to December 23, 2014.

27. Aloha denies the allegations contained in Paragraph 27 of the Complaint; the cesspool located at the Property served and had the capacity to serve less than 20 persons per day from between April 5, 2005 to December 23, 2014 as reflected in the volume of water used at the restrooms on the Property and the cesspool was therefore not a large capacity cesspool.

28. Aloha admits the allegations contained in Paragraph 28 of the Complaint.

29. Aloha denies the allegations contained in Paragraph 29 of the Complaint; the cesspool located at the Property served and had the capacity to serve less than 20 persons per day from between April 5, 2005 to December 23, 2014, and therefore was not a large capacity cesspool subject to the closure requirements of the Safe Drinking Water Act and the Underground Injection Control (“UIC”) regulations.

V. RELIEF SOUGHT: PROPOSED ORDER FOR PENALTIES

30. In response to Paragraph 30, Aloha admits that the Environmental Protection Agency (“EPA”) requests an initial decision assessing an administrative penalty but denies that the EPA is entitled to such a decision.

31. In response to Paragraph 31, Aloha admits that the EPA seeks an administrative penalty of up to \$187,500.00 but denies that the EPA is entitled to any administrative penalty.

32. The allegations contained in Paragraph 32 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

33. Aloha denies the allegations contained in Paragraph 33 because Aloha did not operate a large capacity cesspool at the Property and therefore did not violate any provision of the UIC regulations.

34. The allegations contained in Paragraph 34 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

35. The allegations contained in Paragraph 35 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha also specifically denies that it is liable for any assessed penalty.

36. The allegations contained in Paragraph 36 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha also specifically denies that it is liable for any assessed penalty.

37. The allegations contained in Paragraph 37 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

**VII. [SIC] ANSWERING THE COMPLAINT AND REQUESTING A HEARING ON
THE PROPOSED ORDER FOR PENALTIES**

A. Answer to the Complaint.

38. The allegations contained in Paragraph 38 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha will, however, serve a copy of its Answer with the EPA Region 9, Regional Hearing Clerk.

39. The allegations contained in Paragraph 39 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha will, however, serve a copy of its Answer on Julia Jackson, Office of Regional Counsel for EPA Region 9.

40. The allegations contained in Paragraph 40 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

B. Request for a Hearing

41. The allegations contained in Paragraph 41 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha, however, requests a hearing.

42. The allegations contained in Paragraph 42 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

C. Default

43. The allegations contained in Paragraph 43 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha, however, is filing this Answer.

44. The allegations contained in Paragraph 44 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE

45. The allegations contained in Paragraph 45 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations. Aloha, however, requests an informal settlement conference and will contact Julia Jackson.

46. The allegations contained in Paragraph 46 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

47. The allegations contained in Paragraph 47 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

48. The allegations contained in Paragraph 48 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

49. The allegations contained in Paragraph 49 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

IX. APPEARANCES

50. The allegations contained in Paragraph 50 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Aloha denies the allegations.

51. Aloha denies each and every allegation to which a specific response has not been provided herein.

X. AFFIRMATIVE DEFENSES

51. EPA's claims are barred in whole or in part by the applicable statute of limitations.

52. EPA's claims are barred in whole or in part by EPA's failure to provide fair notice to Aloha of the requirement to close large capacity cesspools by April 5, 2005.

DATED: Honolulu, Hawaii, September 2, 2016.

CADES SCHUTTE
A Limited Liability Law Partnership



PATRICIA J. MCHENRY
Attorney for Respondent
ALOHA PETROLEUM, LTD.