

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

3 75 Hawthorne Street  
San Francisco, California 94105

4 IN THE MATTER OF: )  
5 )  
6 Fileminders of Hawaii, LLC, )  
Hawaii MMGD LLC, )  
7 91-238 Kauhi St., Kapolei, HI 96707 )

DOCKET NO. UIC-09-2017-0004

8 Respondents. )

**CONSENT AGREEMENT  
AND  
PROPOSED FINAL ORDER**

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

**\*\* FILED \*\***  
29SEP2017 - 09:45AM  
U.S. EPA - Region 09

11 **CONSENT AGREEMENT**

12 **I. AUTHORITIES AND PARTIES**

13 1. The United States Environmental Protection Agency (“EPA” or “Complainant”),  
14 Region IX and Respondents Fileminders of Hawaii, LLC (“Fileminders”) and Hawaii MMGD  
15 LLC (“MMGD”) (collectively the “Parties”) agree to settle this matter and consent to the entry  
16 of this Consent Agreement and [Proposed] Final Order (“CA/FO”), which commences this  
17 proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b). Pursuant to 40  
18 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a Final Order by the  
19 Regional Judicial Officer.  
20

21 2. This is a civil administrative action instituted by EPA Region IX against  
22 Respondents pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C.  
23 § 300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”)  
24 requirements set forth at 40 C.F.R. Part 144.  
25

1           3.       Complainant is the Director of the Enforcement Division, EPA Region IX. The  
2 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority  
3 to bring and settle this action under SDWA. In turn, the Regional Administrator of EPA Region  
4 IX further delegated the authority to bring and sign a consent agreement settling this action under  
5 SDWA to the Director of the Enforcement Division.

6           4.       Respondent Fileminders is a Delaware limited liability company headquartered at  
7 91-238 Kauhi Street, Kapolei, Hawaii, 96707.

8           5.       Respondent MMGD is a Maryland limited liability company headquartered at 255  
9 Washington Street, Newton, Massachusetts, 02458.

## 10                                   **II. APPLICABLE STATUTES AND REGULATIONS**

11           6.       Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has  
12 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC  
13 programs to prevent underground injection that endangers drinking water sources.

14           7.       Per Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. §  
15 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of  
16 the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

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

19           9.       “Well injection” means the subsurface emplacement of fluids through a well. 40  
20 C.F.R. § 144.3.

21           10.      “Well” means, in relevant part, a dug hole whose depth is greater than the largest  
22 surface dimension. 40 C.F.R. § 144.3.

23           11.      A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined  
24 in 40 C.F.R. § 144.3.

25           12.      “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or  
regional cesspools, or other devices that receive sanitary wastes, containing human excreta,

1 which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do  
2 not include single family residential cesspools or non-residential cesspools which receive solely  
3 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

4 13. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.  
5 § 144.80(e).

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

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

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

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

16 18. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40  
17 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more  
18 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or  
19 both, against any person who violates the SDWA or any requirement of an applicable UIC  
20 program.

### 21 **III. ALLEGATIONS**

22 19. Respondents are each a limited liability company and thus each qualifies as a  
23 “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40  
24 C.F.R. § 144.3.

25 20. On or about June 15, 2005, Respondent MMGD acquired the fee simple interest  
in a commercial property located at 91-238 Kauhi Street, Kapolei (the “Property”) containing a

1 commercial building (the “Facility”) in the Kapolei Business Park on the Island of Oahu, which  
2 was then leased to Fileminders. At that time, a single cesspool located on the Property that had  
3 been installed on or around 1981 received sanitary waste from the Facility.

4 21. Sometime in May 2007, Respondent Fileminders entered into a new lease to lease  
5 the Property from MMGD to operate a document storage and scanning business at the Facility.

6 22. On or before May 2012, the cesspool was used by 20 people on at least a single  
7 day and thereafter was considered an LCC because it had the capacity to serve 20 or more  
8 persons per day pursuant to 40 C.F.R. § 144.81(2).

9 23. On May 16, 2017, Hawaii Department of Health issued Respondents a permit to  
10 replace the LCC with a leachfield and septic tank septic system. On May 25, 2017, Respondents  
11 commenced the work to close the LCC, and on June 19, 2017, the Respondents completed the  
12 work to clean, backfill and close the LCC in accordance with 40 C.F.R. §§ 144.84(b)(2) and  
13 144.88.

14 24. From approximately May 2012 or before until June 19, 2017, Fileminders  
15 “operated” and MMGD “owned” the LCC located on the Property in violation of the requirement  
16 for owners and operators to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

#### 17 **IV. SETTLEMENT TERMS**

##### 18 **A. GENERAL PROVISIONS**

19 25. For the purposes of this proceeding, Respondents (1) admit the jurisdictional  
20 allegations contained in this CA/FO, (2) neither admit nor deny the specific factual allegations  
21 contained in this CA/FO; (3) consent to the assessment of the penalty and to the specified  
22 compliance obligations contained in this CA/FO, and (4) and waive any right to contest the  
23 allegations or to appeal the Final Order accompanying this CA/FO. 40 C.F.R. § 22.18(b)(2).  
24  
25

1           26.     Respondents also expressly waive any right to contest the allegations contained in  
2 the Consent Agreement and to appeal the Final Order under the SDWA or the Administrative  
3 Procedures Act, 5 U.S.C. §§ 701-706.

4           27.     Respondents acknowledge and agree to the terms of this CA/FO as the owners  
5 and/or operators of the LCC.

6           28.     This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire  
7 agreement between the Parties to resolve EPA's civil claims against Respondents for the specific  
8 SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes  
9 payment of an administrative civil penalty of \$122,000 in accordance with Section IV.B of this  
10 CA/FO shall constitute full settlement of Respondents' liability for federal civil claims for the  
11 SDWA violations specifically identified in this CA/FO.

12           29.     The provisions of this CA/FO shall apply to and be binding upon Respondents,  
13 their officers, directors, agents, servants, authorized representatives, employees, and successors  
14 or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or  
15 corporations acting under, through, or for Respondents shall not excuse any failure of  
16 Respondents to fully perform their obligations under this CA/FO.

17           30.     Issuance of this CA/FO does not in any manner affect the right of EPA to pursue  
18 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,  
19 except with respect to those claims that have been specifically resolved pursuant to Paragraph 28  
20 above.

21           31.     This CA/FO is not a permit or modification of a permit, and does not affect  
22 Respondents' obligation to comply with all federal, state, local laws, ordinances, regulations,  
23 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,  
24 satisfy, or otherwise affect Respondents' obligation to comply with all applicable requirements  
25 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,  
except as specifically set forth herein.

1           32.     EPA reserves any and all legal and equitable remedies available to enforce this  
2 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in  
3 any actions against Respondents for noncompliance with this CA/FO. Violation of this CA/FO  
4 shall be deemed a violation of the SDWA.

5           33.     Unless otherwise specified, the Parties shall each bear their own costs and  
6 attorneys' fees incurred in this proceeding.

7           34.     This CA/FO may be executed and transmitted by facsimile, email or other  
8 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all  
9 of which shall constitute an instrument. If any portion of this CA/FO is determined to be  
10 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions  
11 shall remain in full force and effect.

12          35.     The undersigned representative of each party certifies that he or she is duly and  
13 fully authorized to enter into and ratify this CA/FO.

14           B. PENALTY

15          36.     Respondents agree to the assessment of a civil penalty in the amount of one  
16 hundred twenty-two thousand dollars (\$122,000).

17          37.     Respondents shall pay the assessed penalty no later than thirty (30) days from the  
18 Effective Date of this CA/FO. Payment may be submitted by either Respondent.

19          38.     The penalty may be paid by check (mail or overnight delivery), wire transfer,  
20 automated clearing house, or online payment. Payment instructions are available at:  
21 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified  
22 check must be payable to the order of "Treasurer, United States of America" and delivered to the  
23 following address:  
24  
25

1 U.S. Environmental Protection Agency  
2 Fines and Penalties  
3 Cincinnati Finance Center  
4 P.O. Box 979077  
5 St. Louis, Missouri 63197-9000

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

10 Regional Hearing Clerk  
11 U.S. Environmental Protection Agency  
12 Region IX - Office of Regional Counsel  
13 75 Hawthorne Street (ORC-1)  
14 San Francisco, CA 94105

15 Aaron Setran, Compliance Officer  
16 U.S. Environmental Protection Agency  
17 Region IX - Enforcement Division  
18 75 Hawthorne Street (ENF-3-3)  
19 San Francisco, CA 94105

20 Rich Campbell, Attorney-Advisor  
21 U.S. Environmental Protection Agency  
22 Region IX - Office of Regional Counsel  
23 75 Hawthorne Street (ORC-2)  
24 San Francisco, CA 94105

25 40. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13  
interest, penalty charges, and administrative costs will be assessed against the outstanding  
amount that Respondents owe to EPA for Respondents' failure to pay the civil administrative  
penalty by the deadline specified in Paragraph 37.

- a. Interest on delinquent penalties will be assessed at an annual rate that is equal to  
the rate of current value of funds to the United States Treasury (i.e., the Treasury  
tax and loan account rate) as prescribed and published by the Secretary of the  
Treasury in the Federal Register and the Treasury Fiscal Requirements Manual  
Bulletins. 40 C.F.R. § 13.11(a)(1).

1 b. A penalty charge will be assessed on all debts more than 90 days delinquent. The  
2 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40  
3 C.F.R. § 13.11(c).

4 c. Administrative costs for handling and collecting Respondents' overdue debt will  
5 be based on either actual or average cost incurred, and will include both direct and  
6 indirect costs. 40 C.F.R. § 13.11(b).

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

9 a. The debt being referred to a credit reporting agency, a collection agency, or to  
10 the Department of Justice for filing of a collection action in the appropriate  
11 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any  
12 such collection action, the validity, amount, and appropriateness of the  
13 assessed penalty and of this CA/FO shall not be subject to review.

14 b. The department or agency to which this matter is referred (e.g., the  
15 Department of Justice, the Internal Revenue Service) may assess  
16 administrative costs for handling and collecting Respondents' overdue debt in  
17 addition to EPA's administrative costs.

18 c. EPA may (i) suspend or revoke Respondents' licenses or other privileges; or  
19 (ii) suspend or disqualify Respondents from doing business with EPA or  
20 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

21 42. Respondents shall tender any interest, handling charges, late penalty payments,  
22 and stipulated penalties in the same manner as described in Paragraphs 38 and 39.

### 23 C. STIPULATED PENALTIES

24 43. If Respondents fail to pay the assessed civil administrative penalty specified in  
25 Paragraph 36 by the deadline specified in Paragraph 37, Respondents agree to pay a stipulated  
penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed  
penalty.



1 44. Respondents agree to pay any stipulated penalties within thirty (30) days of  
2 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the  
3 first date of noncompliance, and shall continue to accrue through the date of completion of the  
4 delinquent CA/FO requirement. Respondents will use the method of payment specified in  
5 Paragraphs 38 and 39, and agrees to pay interest, handling charges and penalties that accrue for  
6 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 and 39.

7 45. Neither the demand for, nor payment of, a stipulated penalty relieves Respondents  
8 of their obligation to comply with any requirement of this CA/FO.

9 46. EPA may, in the unreviewable exercise of its discretion, reduce or waive  
10 stipulated penalties due under this CA/FO.

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

12 For Fileminders:

13 Chris Harris  
14 Regional Vice President – Pacific Region  
15 Fileminders of Hawaii, LLC  
91-238 Kauhi Street, Kapolei, Hawaii 96707  
[charris@accesscorp.com](mailto:charris@accesscorp.com)

16 For MMGD:

17 Hawaii MMGD LLC  
18 c/o The RMR Group LLC  
220 King Street, Suite 2150  
19 Honolulu, Hawaii 96813  
Attention: Jan S. Yokota, Vice President, Pacific Region  
20 [JYokota@rmrgroup.com](mailto:JYokota@rmrgroup.com)

21 **IV. EFFECTIVE DATE**

22 48. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to a 30-day  
23 public notice and comment period at least 40 days prior to it becoming effective though the  
24 issuance of the Final Order by the Regional Judicial Officer.

25 49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be  
effective on the date that the Final Order contained in this CA/FO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the  
2 Regional Hearing Clerk.

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1 FOR THE CONSENTING PARTIES:

2 FOR FILEMINDERS OF HAWAII LLC:

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\_\_\_\_\_

Date: 8/15/17

Name

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CFO  
\_\_\_\_\_

6

Title

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9 FOR HAWAII MMGD LLC:

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\_\_\_\_\_

Name

Date: \_\_\_\_\_

13

\_\_\_\_\_

Title

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1 FOR THE CONSENTING PARTIES:

2 FOR FILEMINDERS OF HAWAII LLC:

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4 \_\_\_\_\_

Date: \_\_\_\_\_

Name

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6 \_\_\_\_\_

Title

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8

9 FOR HAWAII MMGD LLC:

By: The RMR Group LLC, its agent

10



Date: August 10, 2017

11

12 Name Jennifer F. Francis

Senior Vice President

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Title

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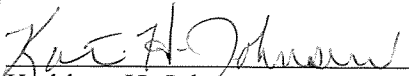
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25

1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2   
3 Kathleen H. Johnson

Date: Aug 18, 2017

4 Kathleen H. Johnson  
5 Director, Enforcement Division, Region IX  
6 U.S. Environmental Protection Agency  
7 75 Hawthorne Street  
8 San Francisco, CA 94105

9 Of counsel:

10 Rich Campbell  
11 Attorney-Advisor  
12 Office of Regional Counsel  
13 U.S. Environmental Protection Agency, Region IX  
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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION IX

3 75 Hawthorne Street  
4 San Francisco, California 94105

5 IN THE MATTER OF: )

DOCKET NO. UIC-09-2017-0004

6 Fileminders of Hawaii, LLC, )  
7 Hawaii MMGD LLC, )  
8 91-238 Kauhi St., Kapolei, HI 96707 )

PROPOSED FINAL ORDER

9 Respondents. )

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

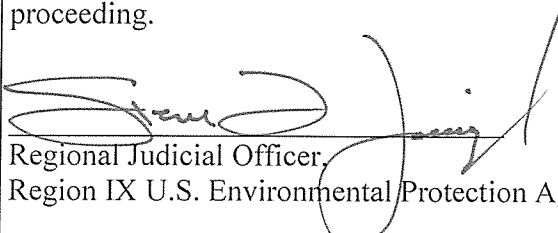
12 **FINAL ORDER**

13 The United States Environmental Protection Agency Region IX (“EPA”), and  
14 Respondents Fileminders of Hawaii, LLC (“Fileminders”) and Hawaii MMGD LLC (“MMGD”)  
15 (collectively the “Parties”), having entered into the foregoing Consent Agreement, and EPA  
16 having duly publicly noticed the Consent Agreement and Proposed Final Order,

17 IT IS HEREBY ORDERED THAT:

- 18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09- 2017-0004) be  
19 entered; and  
20 2. Respondent pay an administrative civil penalty of \$122,000 dollars to the Treasurer of the  
21 United States of America in accordance with the terms set forth in the Consent Agreement.

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

25   
Regional Judicial Officer,  
Region IX U.S. Environmental Protection Agency

Date: 09/29/17

## CERTIFICATE OF SERVICE

By this certificate of service, I hereby verify that the forgoing FINAL ORDER incorporating a CONSENT AGREEMENT in the matter of Fileminders of Hawaii, LLC and Hawaii MMGD, LLC (UIC-09-2017-0004) was filed with the Regional Hearing Clerk and sent to the parties as follows:

Respondents -

FIRST CLASS MAIL CERTIFIED

Tracking Number: 7016 1370 0000 0749 0142

Chris Harris  
Regional Vice President-Pacific Region  
Fileminders of Hawaii, LLC  
91-238 Kauhi St.  
Kapolei, Hawaii 96707

FIRST CLASS MAIL CERTIFIED

Tracking Number: 7016 1370 0000 0749 0159

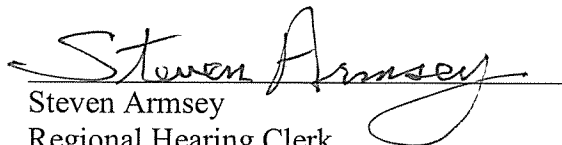
Jan Yokota  
Vice President-Pacific Region  
The RMR Group, LLC  
220 King Street, Suite 2150  
Honolulu, Hawaii 96813

Complainant -

HAND DELIVERED

Rich Campbell  
Attorney-Advisor  
U. S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated: Sept. 29, 2017

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