

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region IX

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U.S.EPA - Region 09

3 SARA GOLDSMITH
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4 United States Environmental Protection Agency, Region IX
75 Hawthorne Street
5 San Francisco, California 94105
6 (415) 972-3931

7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**
75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2020-0001

12 County of Hawai'i,)
13 (Kainaliu Parking Lot Comfort Station))
Hilo, Hawai'i 96750)

CONSENT AGREEMENT
AND
FINAL ORDER

14)
15)
16 Respondent.)

17 Proceedings under Sections 1423(c) of the)
Safe Drinking Water Act,)
18 42 U.S.C. §§ 300h-2(c).)

19 **CONSENT AGREEMENT**

20 **I. AUTHORITIES AND PARTIES**

21 1. The United States Environmental Protection Agency ("EPA"), Region IX and the
22 County of Hawai'i ("Respondent") (collectively the "Parties") agree to settle this matter and
23 consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This CA/FO
24 commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2)
25 and 22.45(b).

In re County of Hawai'i

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

5 3. Complainant is the Director of the Enforcement and Compliance Assurance
6 Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of
7 EPA Region IX the authority to bring and settle this action under SDWA. In turn, the Regional
8 Administrator of EPA Region IX further delegated the authority to bring and sign a consent
9 agreement settling this action under SDWA to the Director of the Enforcement and Compliance
10 Assurance Division.

11 4. Respondent is the County of Hawai‘i, through its Department of Public Works,
12 located at the Aupuni Center, 101 Pauahi Street, Suite, 7, Hilo, Hawai‘i, 96720-4224.

13 II. APPLICABLE STATUTES AND REGULATIONS

14 5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has
15 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC
16 programs to prevent underground injection that endangers drinking water sources.

17 6. “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 7. “Well injection” means the subsurface emplacement of fluids through a well. 40
20 C.F.R. § 144.3.

21 8. “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 9. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
24 in 40 C.F.R. § 144.3.

1 10. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or
2 regional cesspools, or other devices that receive sanitary wastes, containing human excreta,
3 which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do
4 not include single-family residential cesspools or non-residential cesspools which receive solely
5 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

6 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
7 § 144.80(e).

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

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

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

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

18 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
19 § 147.601, EPA administers the UIC program in the State of Hawai’i. This UIC program consists
20 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

21 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
22 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
23 than \$22,927 per day per violation up to a maximum of \$286,586, or requiring compliance, or
24 both, against any person who violates the SDWA or any requirement of an applicable UIC
25 program.

1 III. ALLEGATIONS

2 18. Respondent is a county, a state subdivision, and thus qualifies as a "person"
3 within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. §
4 144.3.

5 19. Respondent owns and operates the property identified on the Tax Map Key as 3-
6 7-9-009-051 located at 79-7393A Hawai'i Belt Road, Kealahou, Hawai'i ("Facility") on which
7 exists a parking lot and public bathroom referred to as the Kainaliu Parking Lot Comfort Station.

8 20. Since at least April 5, 2005, Respondent has owned and operated a cesspool
9 located at the Facility receiving sanitary wastewater from the public bathroom located onsite that
10 has the capacity to serve twenty or more persons per day.

11 21. The cesspool identified in Paragraph 20 meets the definition of LCC as that term
12 is defined at 40 C.F.R. § 144.81(2).

13 22. Respondent's failure to close the LCC at the Facility by April 5, 2005 or anytime
14 thereafter constitutes an ongoing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

15 IV. SETTLEMENT TERMS

16 A. General Provisions

17 23. For the purposes of this proceeding, Respondent (1) admits the jurisdictional
18 allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations
19 contained in this CA/FO, (3) consents to the assessment of the penalty and to the specified
20 compliance obligations contained in this CA/FO, and (4) waives any right to contest the
21 allegations or to appeal the final order accompanying this consent agreement. 40 C.F.R. §
22 22.18(b)(2).

23 24. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
24 agreement between the Parties to resolve EPA's civil claims against Respondent for the alleged
25 violations of the SDWA identified in Section III of this CA/FO. Full compliance with this

1 CA/FO, which includes (1) bringing the LCC at the Facility into compliance with the UIC
2 requirements in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a) and in
3 accordance with Section IV.B of this CA/FO; and (2) payment of an administrative civil penalty
4 of \$133,000 in accordance with Section IV.C of this CA/FO; shall constitute full settlement of
5 Respondent's liability for federal civil claims for the alleged SDWA violations specifically
6 identified in Section III of this CA/FO.

7 25. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
8 officers, directors, agents, servants, authorized representatives, employees, and successors or
9 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
10 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
11 perform its obligations under this CA/FO.

12 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
13 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
14 except with respect to the claim described in Paragraph 20 that has been specifically resolved by
15 this CA/FO.

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

22 28. EPA reserves any and all legal and equitable remedies available to enforce this
23 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
24 any actions against Respondent for noncompliance with this CA/FO.
25

1 29. Unless otherwise specified, the Parties shall each bear their own costs and
2 attorneys' fees incurred in this proceeding.

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

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

10 32. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the
11 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.B (Compliance
12 Requirements) is restitution or required to come into compliance with law.

13 B. Compliance Requirements

14 33. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and
15 consistent with the timeframes set forth below, Respondent shall:

- 16 a. By December 31, 2020, close the LCC located at the Facility in accordance
17 with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other
18 applicable requirements, including all Hawai'i Department of Health
19 ("HDOH") closure, conversion, and/or replacement requirements. If
20 Respondent installs one or more replacement wastewater systems, such as
21 Individual Wastewater Systems ("IWSs"), then installation and operation of
22 such systems shall comply with all HDOH requirements; and
23 b. Within thirty (30) days of closure of the LCC, submit to EPA a description of
24 how the LCC was closed and identify the contractor(s) providing the service
25 as well as copies of the cesspool Backfill Closure Report(s) for the closure of

1 the cesspool. Respondent shall also submit all related approvals, including for
2 any replacement systems, issued by HDOH within thirty (30) days of closure
3 of the LCC, provided that, should HDOH not issue any approval within thirty
4 (30) days of closure, Respondent shall submit HDOH's approval to EPA
5 within fourteen (14) days of receipt of any approval.

6 C. Penalty

7 34. Respondent agrees to the assessment of a civil penalty in the amount of ONE
8 HUNDRED THIRTY-THREE THOUSAND DOLLARS (\$133,000) for the violations at the
9 Facility of the SDWA alleged in Section III of this CA/FO.

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

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

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

20 37. Concurrent with making the payment, Respondent must provide a letter with
21 evidence of the payment made pursuant to Paragraphs 34 and 35, accompanied by the title and
22 docket number of this action, to the EPA Region IX Regional Hearing Clerk, the EPA Region IX
23 Enforcement and Compliance Assurance Division enforcement officer, and the EPA Region IX
24 Office of Regional Counsel attorney, via United States mail, at the following addresses:
25

1 Regional Hearing Clerk
2 U.S. Environmental Protection Agency
3 Region IX - Office of Regional Counsel
4 75 Hawthorne Street (ORC-1)
5 San Francisco, CA 94105

6 Christopher Chen, Enforcement Officer
7 U.S. Environmental Protection Agency
8 Region IX – Enforcement and Compliance Assurance Division
9 75 Hawthorne Street (ENF-3-3)
10 San Francisco, CA 94105

11 Sara Goldsmith, Attorney Advisor
12 U.S. Environmental Protection Agency
13 Region IX – Office of Regional Counsel
14 75 Hawthorne Street (ORC-3)
15 San Francisco, CA 94105

16 38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
17 interest, penalty charges, and administrative costs will be assessed against the outstanding
18 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
19 penalty by the deadline specified in Paragraph 35.

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

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

41. In addition, administrative costs for handling and collecting Respondent's
overdue debt will be based on either actual or average cost incurred, and will include both direct
and indirect costs. 40 C.F.R. § 13.11(b).

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

- 3 a. The debt being referred to a credit reporting agency, a collection agency, or to
4 the Department of Justice for filing of a collection action in the appropriate
5 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any
6 such collection action, the validity, amount, and appropriateness of the
7 assessed penalty and of this CA/FO shall not be subject to review.
- 8 b. The department or agency to which this matter is referred (e.g., the
9 Department of Justice, the Internal Revenue Service) may assess
10 administrative costs for handling and collecting Respondent's overdue debt in
11 addition to EPA's administrative costs.
- 12 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
13 (ii) suspend or disqualify Respondent from doing business with EPA or
14 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

15 43. Respondent shall tender any interest, handling charges, late penalty payments, and
16 stipulated penalties in the same manner as described in Paragraphs 36 and 37.

17 D. Stipulated Penalties

18 44. Respondent shall pay stipulated penalties in accordance with this Section for any
19 violations of this CA/FO.

20 45. If Respondent fails to pay the assessed civil administrative penalty specified in
21 Section IV.C of this CA/FO by the deadline specified in that section, or fails to meet the
22 compliance deadline for closure of the cesspool at the Facility by the deadline specified in
23 Section IV.B of this CA/FO, Respondent agrees to pay in addition to the assessed penalty, a
24 stipulated penalty of \$250 per day for each day the Respondent is late in making the penalty
25 payment and/or meeting the closure deadline for the Facility's LCC.

1 46. If Respondent fails to timely submit any reports in accordance with the timelines
2 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after
3 the report was due until it submits the report in its entirety.

4 47. Respondent agrees to pay any stipulated penalties within thirty (30) days of
5 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
6 first date of noncompliance, and shall continue to accrue through the date of completion of the
7 delinquent CA/FO requirement. Respondent will use the method of payment specified in
8 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for
9 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through
10 42.

11 48. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
12 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
13 deadlines set forth in this CA/FO.

14 49. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other
15 administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties
16 and/or reduce or waive stipulated penalties due under this CA/FO.

17 E. Force Majeure

18 50. Respondent shall exercise its best efforts to avoid or minimize any delay and any
19 effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines
20 set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the
21 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,
22 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
23 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
24 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
25 by which those measures will be implemented. Failure to comply with the notice requirement of
this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

In re County of Hawai'i

1 51. If EPA agrees in writing that the delay or anticipated delay in compliance with
2 this CA/FO has been or will be caused by circumstances entirely beyond the control of
3 Respondent, the time for performance may be extended for the period of the delay resulting from
4 the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of
5 time. An extension of the time for performing an obligation granted by EPA pursuant to this
6 paragraph shall not, of itself, extend the time for performing a subsequent obligation. EPA also
7 retains discretion to grant extensions for reasons other than those established as *force majeure*
8 events.

9 52. EPA will not impose stipulated penalties for performance of a task during any
10 time period covered by an extension of time for that task granted pursuant to Paragraph 51.

11 F. Notices

12 53. Respondent must send written communications and/or submittals under this
13 CA/FO, including any requests for extensions of time to meet the compliance deadlines, to the
14 following:

15 Christopher Chen, Enforcement Officer
16 U.S. Environmental Protection Agency
17 Region IX – Enforcement and Compliance Assurance Division
18 75 Hawthorne Street (ENF-3-3)
19 San Francisco, CA 94105
20 Chen.Christopher@epa.gov

21 Sara Goldsmith, Attorney Advisor
22 U.S. Environmental Protection Agency
23 Region IX - Office of Regional Counsel
24 75 Hawthorne Street (ORC-3)
25 San Francisco, CA 94105
 Goldsmith.Sara@epa.gov

For each written communication and/or submittal, Respondent shall identify the case name, the
case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
submission is being made.

54. Respondent shall include the following signed certification made in accordance

1 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

2 *I certify under penalty of law that this document and all attachments*
3 *were prepared under my direction or supervision in accordance with*
4 *a system designed to assure that qualified personnel properly gather*
5 *and evaluate the information submitted. Based on my inquiry of the*
6 *person or persons who manage the system, or those persons directly*
7 *responsible for gathering the information, the information submitted*
8 *is, to the best of my knowledge and belief, true, accurate, and*
9 *complete. I am aware that there are significant penalties for*
10 *submitting false information, including the possibility of fine and*
11 *imprisonment for knowing violations.*

12 55. EPA must send any written communications under this CA/FO to the following
13 address:

14 David Yamamoto, PE
15 Director
16 County of Hawai'i
17 Department of Public Works
18 Aupuni Center, 101 Pauahi Street, Suite 7
19 Hilo, Hawai'i 96720

20 V. EFFECTIVE DATE

21 56. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and
22 comment at least 40 days prior to it becoming effective through the issuance of the final order by
23 the Regional Judicial Officer.

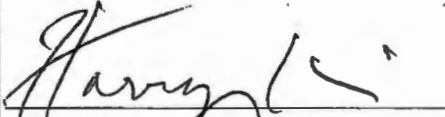
24 57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
25 effective on the date that the final order contained in this CA/FO, having been approved and
issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
Regional Hearing Clerk.

1 FOR THE CONSENTING PARTIES:

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3 COUNTY OF HAWAI'I:

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Date: DEC 12 2019

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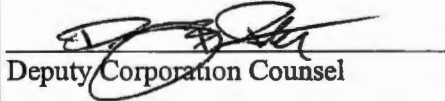
6 Harry Kim, Mayor
7 County of Hawai'i
25 Aupuni Street
8 Hilo, Hawai'i 96720

8

9 APPROVED AS TO FORM AND LEGALITY:

9

10



Date: DEC 12 2019

11

12 Deputy Corporation Counsel

12

13

Danny P. Patel

14 Printed Name
15 Deputy Corporation Counsel

15

16

17

18 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

18



Date: 12/19/2019

19

20 Amy C. Miller
21 Director, Enforcement and Compliance Assurance Division
22 Region IX
23 U.S. Environmental Protection Agency
24 75 Hawthorne Street
25 San Francisco, CA 94105

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In re County of Hawai'i

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-09-2020-0001

5)
6 County of Hawai'i,
(Kainaliu Parking Lot Comfort Station)
7 Hilo, Hawai'i 96750)

**CONSENT AGREEMENT
AND
FINAL ORDER**

8 Respondent.)

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

12 **FINAL ORDER**

13 The United States Environmental Protection Agency Region IX ("EPA"), and the County
14 of Hawai'i ("Respondent"), having entered into the foregoing Consent Agreement, and EPA
15 having duly publicly noticed the Consent Agreement,
16

17 **IT IS HEREBY ORDERED THAT:**

18 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
2020-0001) be entered;

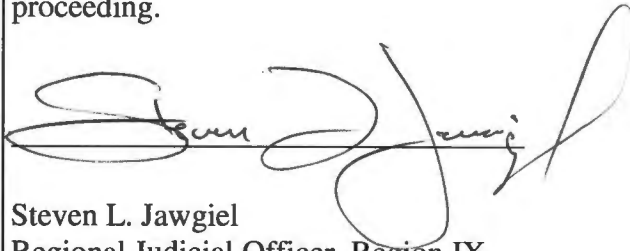
19 2. Respondent pay an administrative civil penalty of **\$133,000** dollars to the
20 Treasurer of the United States of America in accordance with the terms set forth in the Consent
21 Agreement;

22 3. Respondent close one LCC by December 31, 2020 in accordance with the terms
23 set forth in Paragraph 33 of the Consent Agreement; and

24 4. Respondent comply with all other requirements of the Consent Agreement.
25

In re County of Hawai'i

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

4 

5 Date: 02/13/20

6 Steven L. Jawgiel
7 Regional Judicial Officer, Region IX
8 U.S. Environmental Protection Agency
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing FINAL ORDER incorporating the CONSENT AGREEMENT
3 in the matter of County of Hawai'i (UIC-09-2020-0001) was filed with the Regional Hearing
4 Clerk and sent.

5 FIRST CLASS MAIL - CERTIFIED

Tracking Number: 7019 0700 0001 7652 8513

6 Respondent

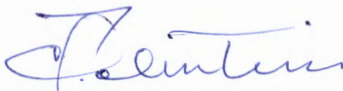
7 Harry Kim
8 Mayor
9 County of Hawai'i
10 25 Aupuni Street
11 Hilo, HI 96720

12 HAND DELIVERED

13 EPA Region IX Attorney:

14 Sara Goldsmith, Attorney Advisor
15 United States Environmental Protection Agency
16 Region IX – Office of Regional Counsel (ORC-2)
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 Dated at San Francisco, California: 2/14/20

20 
21 FOR: Steven Armsey
22 Regional Hearing Clerk
23 U.S. EPA, Region 9
24
25