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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. UIC-09-2023-0074
)	
Hawthorne Pacific Corp.,)	
)	
Respondent.)	CONSENT AGREEMENT
)	AND
Proceedings under Section 1423(c))	FINAL ORDER
of the Safe Drinking Water Act,)	
42 U.S.C. § 300h-2(c).)	

CONSENT AGREEMENT

I. Authorities and Parties

1. The U.S. Environmental Protection Agency (EPA), Region IX, and Hawthorne Pacific Corp. (Respondent) (collectively the Parties) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (CA/FO). This CA/FO is an administrative action commenced and concluded under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil*

Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA Region IX.

3. Respondent Hawthorne Pacific Corp. is a Hawaii corporation located at 470 S. Hana Highway, Kahului, Hawaii, 96732.

4. Where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be simultaneously commenced and concluded by the issuance of a CA/FO. *See* 40 C.F.R. § 22.13(b).

5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of \$71,422 and the compliance requirements specified below.

II. Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Consistent with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent: admits the jurisdictional allegations of the CA/FO; neither admits nor denies the specific factual allegations contained in the CA/FO; consents to the assessment of the stated civil penalty, and to all conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

8. Respondent further waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-

2(c)(3); its right to seek federal judicial review of the CA/FO under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and its right to appeal this CA/FO under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CA/FO without further adjudication.

III. Statutory and Regulatory Background

9. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires the Administrator of EPA to promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping, and reporting requirements, for state underground injection control (UIC) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h-1, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

12. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells, and all owners or operators of these injection wells must be authorized either by permit or rule.

13. Section 1401(6) of the SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

14. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

15. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.

16. 40 C.F.R. § 144.3 defines “well” to mean, in relevant part, a dug hole whose depth is greater than the largest surface dimension.

17. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which in turn is a “well.”

18. 40 C.F.R. § 144.81(2) defines “large capacity cesspools” (LCCs) to include “multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides.” LCCs do not include single-family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than twenty (20) persons per day. *Id.*

19. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V UIC injection wells.

20. 40 C.F.R. § 144.3 defines Class V UIC injection wells as a “facility or activity” subject to regulation under the UIC program.

21. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

22. 40 C.F.R. § 144.3 defines “owner or operator” to mean the owner or operator of any “facility or activity” subject to regulation under the UIC program.

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

24. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required owners or operators of existing LCCs to close those LCCs by April 5, 2005, and prohibited new LCCs after that date.

25. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, EPA administers the UIC program in the State of Hawaii.

26. Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

27. Under Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may issue an order requiring compliance and assessing a civil penalty of not more than \$27,018 for each day of violation, up to a maximum administrative penalty of \$337,725 for violations occurring after November 2, 2015.

IV. Alleged Violations

28. Respondent is a corporation and thus a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

29. Since at least 2014, Respondent has owned and/or operated the facility at 470 S. Hana Highway, Kahului, Hawaii, 96732 (TMK 2-3-8-065-001) (the Property).

30. At all times that Respondent has owned and/or operated the Property, two cesspools have serviced their restrooms.

31. The cesspools servicing the Property's restrooms meet the definition of LCCs as defined at 40 C.F.R. § 144.81(2), in that they have the capacity to serve at least twenty (20) persons a day.

32. Each day that Respondent fails to close the LCCs at the Properties after April 5, 2005, constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

V. Settlement Terms

A. Civil Administrative Penalty

33. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of the SDWA.

34. Within thirty (30) days of the effective date of this CA/FO, Respondent must pay a SEVENTY-ONE THOUSAND FOUR HUNDRED TWENTY-TWO DOLLARS (\$71,422) civil penalty by one of the payment methods below. Payment instructions are available at <http://2.epa.gov/financial/makepayment>.

For checks sent by regular U.S. Postal Service mail: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which will not deliver mail to P.O. Boxes): sending a cashier's or certified check, payable to "Treasurer, United States of America," to the following address:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CA/FO.

For electronic funds transfer: electronic funds transfer, payable to "Treasurer, United States of America," and sent to the following address:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CA/FO.

For Automated Clearinghouse (ACH), also known as REX or remittance express: ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent here:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

The comment area of the electronic funds transfer must state Respondent's name and the docket number of this CA/FO.

To pay online, visit www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

35. Concurrently with payment, Respondent shall provide proof of payment to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, ORC-1
75 Hawthorne Street
San Francisco, CA 94105
r9HearingClerk@epa.gov

Respondent shall also send notice of payment and a transmittal letter via e-mail to the EPA Region IX Enforcement and Compliance Assurance Division's enforcement officer and the EPA Region IX Office of Regional Counsel attorney identified in Paragraph 51.

36. This civil penalty represents an administrative civil penalty and shall not be deductible for purposes of federal taxes. *See* 26 U.S.C. § 162(f).

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Paragraphs 43, 44, and 45, Respondent must pay the following on any penalty amount overdue under this CA/FO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury under 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee for each month that any portion of the penalty is more than thirty (30) days past due; and a 6% per year penalty on any principal amount ninety (90) days past due.

38. If Respondent does not timely pay the civil penalty due under Paragraph 34 and/or any stipulated penalties due under Paragraphs 43, 44, and 45, EPA may request that the U.S. Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

B. Injunctive Relief

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

- a. By April 1, 2025, close the LCCs at the Property in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable requirements, including all Hawaii Department of Health (HDOH) closure, conversion, and/or replacement requirements. If Respondent installs one or more replacement wastewater systems, such as Individual Wastewater Systems (IWSs), then installation and operation of such systems shall comply with all HDOH requirements. If Respondent connects to a municipal sewer system, then that connection shall comply with all applicable sewer connection requirements; and
- b. Within thirty (30) days of closure of the LCCs, submit to EPA a final report describing how each LCC was closed and identify the contractor(s) providing the service, as well as copies of the cesspool Backfill Closure Reports for the closure of the cesspools. Respondent shall also submit all related approvals, including for any replacement systems, issued by HDOH provided that, should HDOH not issue any approval within thirty (30) days of closure, Respondent shall submit HDOH's approval to EPA within fourteen (14) days of its receipt of the approval.

40. If Respondent fails to comply with the requirements set forth in Paragraph 39, EPA may request that the U.S. Department of Justice bring an action to seek penalties for violating this CA/FO under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

C. Stipulated Penalties

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

42. If Respondent fails to make payment as specified in Section V.A of this CA/FO, or fails to meet the compliance deadline for closure of the cesspools at the Properties by the

deadline specified in Section V.B of this CA/FO, Respondent agrees to pay, in addition to the assessed penalty, a stipulated penalty of \$300 per day for each day the Respondent is late in making the penalty payment or meeting the closure deadline for the Properties' LCCs.

43. If Respondent fails to timely submit any reports, as referred to in Paragraph 39(b), in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$100 for each day after the report was due until it submits the report in its entirety.

44. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in Paragraph 34 and agrees to pay interest, handling charges and penalties that accrue for late payment of the stipulated penalty in the same manner as set forth in Paragraph 34.

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

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

D. Force Majeure

47. For purposes of this CA/FO, "*force majeure*" is defined as any event arising from causes that are beyond the control of Respondent, any entity controlled by Respondent, or Respondent's contractors, which delays or prevents the performance of any obligation under this CA/FO despite Respondent's reasonable best efforts to fulfill the obligation. The requirement that Respondent exercise "reasonable best efforts to fulfill the obligation" includes using

reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of *force majeure* events include, but are not limited to, unforeseen environmental, geological, or archaeological conditions; labor, equipment, or material shortage; or pandemics, epidemics, or disease. Examples of events that are not *force majeure* include, but are not limited to, increased costs or expenses of any work to be performed under this CA/FO and normal inclement weather.

48. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines set forth in this CA/FO, Respondent or its attorney shall, within five (5) business days of the delay or within five (5) business days of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA by e-mail in accordance with Paragraph 51. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable 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.

49. If EPA agrees in writing that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for the period of the delay resulting from the circumstances causing the delay. In such event, EPA will grant in writing an extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.

E. Submissions

50. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: shih.alex@epa.gov and magnuson.janet@epa.gov. The subject line of all e-mail correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Alex Shih
U.S. Environmental Protection Agency, Region IX
Enforcement and Compliance Assurance Division
75 Hawthorne Street (ECAD-3-3)
San Francisco, CA 94105

and

Janet A. Magnuson
U.S. Environmental Protection Agency, Region IX
Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)
San Francisco, CA 94105

51. The reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

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

52. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signee must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondent to criminal prosecution under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

53. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

54. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

55. The information required to be submitted pursuant to this CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

56. The Parties consent to service of this CA/FO by e-mail at the following e-mail addresses: shih.alex@epa.gov (for Complainant) and jboman@hawthornecat.com (for Respondent).

F. General Provisions

57. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties.

58. Full compliance with this CA/FO shall resolve only Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO. Violation of this CA/FO shall be deemed a violation of the SDWA for purposes of Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

59. Full compliance with this CA/FO shall not in any manner affect the right of EPA to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any

violation of law, except with respect to the claims described in Section IV that have been specifically resolved by this CA/FO.

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

61. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO except for the extensions of time to complete such obligations provided by EPA pursuant to Paragraph 50.

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

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

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

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

66. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section V.B (Injunctive Relief) is restitution or required to come into compliance with law.

VI. Effective Date

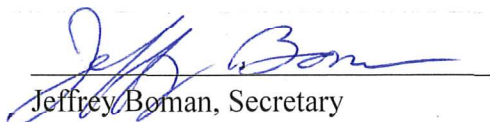
67. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

68. The Parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4), which sets forth the conditions under which a person not party to a proceeding may petition to set aside a CA/FO on the basis that material evidence was not considered.

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

**Consent Agreement and Final Order
In the Matter of Hawthorne Pacific Corp.
Docket No. UIC-09-2023-0074**

Hawthorne Pacific Corp.:



Jeffrey Boman, Secretary

Date: 8/3/23

**Consent Agreement and Final Order
In the Matter of Hawthorne Pacific Corp.
Docket No. UIC-09-2023-0074**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

**AMY MILLER-
BOWEN**

Digitally signed by AMY
MILLER-BOWEN
Date: 2023.08.07 10:54:10
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Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region IX, and Hawthorne Pacific Corp. (“Respondent”), having entered into the foregoing Consent Agreement, and EPA Region IX having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT

1. The foregoing Consent Agreement and this Final order (Docket No. UIC-09-2023-0074) be entered;
2. Respondent pay an administrative civil penalty of \$71,422 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent close the cesspools by April 1, 2025, in accordance with the terms set forth in the Consent Agreement; and
4. Respondent comply with all other requirements of the Consent Agreement.

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

Beatrice Wong Regional Date
Judicial Officer U.S. EPA, Region IX

