

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

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6 United States Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, California 94105
9 (415) 972-3887

10 Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY /
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

11	IN THE MATTER OF:)	DOCKET NO. UIC-09-2016-00^2
12)	
13	County of Maui,)	
14)	
15	Maui, Hawaii)	
16)	
17	Respondent.)	CONSENT AGREEMENT
18)	AND
19)	[PROPOSED] FINAL ORDER
20	Proceedings under Sections 1423(c) and)	
21	1445(a) of the Safe Drinking Water Act,)	
22	42 U.S.C. §§ 300h-2(c) and 300j-4(a).)	
23)	

CONSENT AGREEMENT

I. AUTHORITY

1. This Consent Agreement is entered into and the [Proposed] Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4(a).

1 8. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
2 in 40 C.F.R. § 144.3. “Large capacity cesspools” (“LCCs”) include “multiple dwelling,
3 community or regional cesspools, or other devices that receive sanitary wastes, containing
4 human excreta, which have an open bottom and sometimes perforated sides.” 40 C.F.R. §
5 144.81(2). LCCs do not include single family residential cesspools or non-residential cesspools
6 which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day.
7 *Id.*

8 9. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
9 § 144.80(e).

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

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

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

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

20 14. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
21 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists
22 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

23 15. Respondent is a county and thus qualifies as a “person” within the meaning of
24 Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

1 23. Respondent also expressly waives any right to contest the allegations contained in
2 the CA/FO and to appeal the Final Order under the SDWA or the Administrative Procedures Act,
3 5 U.S.C. §§ 701-706, providing for judicial review of final agency action, including any right to
4 confer with the EPA Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).

5 24. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
6 agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the
7 specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which
8 includes payment of administrative civil penalties of \$33,000, shall constitute full settlement
9 only of Respondent's liability for federal civil penalties for the SDWA violations specifically
10 identified in this CA/FO.

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

16 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
17 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
18 except with respect to those claims that have been specifically resolved pursuant to Paragraph 24
19 above.

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

1 28. This CA/FO does not constitute a waiver, suspension, or modification of the
2 requirements of any federal, state, or local statute, regulation or condition of any permit issued
3 thereunder, including the requirements of the Act and accompanying regulations.

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

8 30. Unless otherwise specified, the Parties shall each bear their own costs and
9 attorneys fees incurred in this proceeding.

10 31. This Consent Agreement may be executed and transmitted by facsimile, email or
11 other electronic means, and in multiple counterparts, each of which shall be deemed an original,
12 but all of which shall constitute an instrument. If any portion of this Consent Agreement is
13 determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the
14 remaining portions shall remain in full force and effect.

15 32. The undersigned representative of each party certifies that he or she is duly and
16 fully authorized to enter into and ratify this Consent Agreement.

17 **B. Penalty**

18 33. Respondent agrees to pay to the United States a single administrative civil
19 penalty of THIRTY-THREE THOUSAND DOLLARS (\$33,000) no later than 30 days following
20 the Effective Date of the Final Order (hereafter referred to as the "Due Date").

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

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 35. Respondent must provide a letter with evidence of the payment made pursuant to
7 Paragraphs 33 and 34 above, accompanied by the title and docket number of this action, to the
8 EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance
9 Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at
10 the following addresses:

11 Regional Hearing Clerk
12 U.S. Environmental Protection Agency
13 Region 9 - Office of Regional Counsel
14 75 Hawthorne Street (ORC-1)
15 San Francisco, CA 94105

11 Aaron Setran, Compliance Officer
12 U.S. Environmental Protection Agency
13 Region 9 - Enforcement Division
14 75 Hawthorne Street (ENF-3)
15 San Francisco, CA 94105

16 Janet Magnuson, Attorney
17 U.S. Environmental Protection Agency
18 Region 9 - Office of Regional Counsel
19 75 Hawthorne Street (ORC-2)
20 San Francisco, CA 94105

21 36. If the full penalty payment is not received on or before the Due Date, interest shall
22 accrue on any overdue amount from the Due Date through the date of payment, at the annual rate
23 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late
24 payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion
25 thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty
will also be applied on any principal amount not paid within 90 days of the Due Date.
Respondent shall tender any interest, handling charges, or late penalty payments in the same
manner as described above.

1 37. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if
2 Respondent fails to pay by the Due Date the administrative civil penalty assessed in this CA/FO,
3 EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus
4 costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of
5 such penalty shall not be subject to review.

6 38. Respondent shall not deduct the civil penalty, nor any interest, late penalty
7 payments, or administrative handling fees provided for in this CA/FO from Respondent's
8 federal, state, or local income taxes.

9 **C. Notices**

10 39. Respondent must send any written communications, to the following address:

11 Aaron Setran, Compliance Officer
12 U.S. Environmental Protection Agency
13 Region 9 - Enforcement Division
14 75 Hawthorne Street (ENF-3)
15 San Francisco, CA 94105

16 40. EPA must send any written communications to the following address:

17 Patrick K. Wong, Corporation Counsel
18 Department of the Corporation Counsel, County of Maui
19 200 South High Street, 3rd Floor
20 Wailuku, Maui HI
21 Email: CORPCOUN@MAUICOUNTY.GOV
22 Telephone: (808) 270-7740

23 **IV. EFFECTIVE DATE**

24 41. 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:

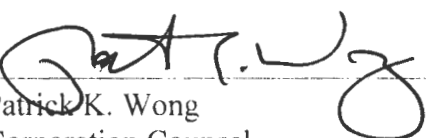
2 COUNTY OF MAUI:

3 

Date: 6/28/16

4 ALAN M. ARAKAWA
5 Its MAYOR

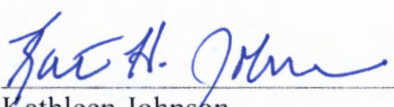
6 APPROVED AS TO FORM AND LEGALITY:

7 

Date: 6/23/16

8 Patrick K. Wong
9 Corporation Counsel
10 County of Maui
(LF2015-4276)

11
12 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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15 

Date: August 3, 2016

16 Kathleen Johnson
17 Director, Enforcement Division, Region IX
18 U.S. Environmental Protection Agency
19 75 Hawthorne Street
20 San Francisco, CA 94105
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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 75 Hawthorne Street
4 San Francisco, California 94105

** FILED **
26SEP2016 - 11:44 AM
U.S.EPA - Region 09

5 IN THE MATTER OF:)

DOCKET NO. UIC-09-2016-0002

6 County of Maui)

7 Maui, Hawaii)

Respondent.)

CONSENT AGREEMENT

AND

~~PROPOSED~~ FINAL ORDER

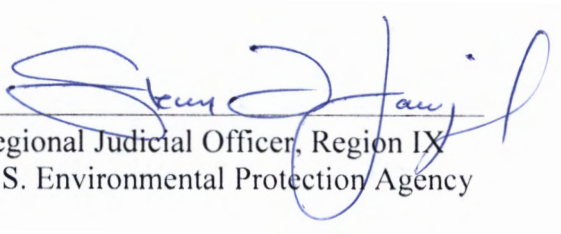
8 Proceedings under Sections 1423(c) and)
9 1445(a) of the Safe Drinking Water Act,)
10 42 U.S.C. §§ 300h-2(c) and 300j-4(a).)

11
12 The United States Environmental Protection Agency Region 9 (“EPA”), and Maui
13 County (“Respondent”), having entered into the foregoing Consent Agreement, and EPA having
14 duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the
15 matters alleged therein,

16 IT IS HEREBY ORDERED THAT:

- 17 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2016-
18 0002) be entered; and
- 19 2. Respondent pay a single administrative civil penalty of \$33,000 dollars to the
20 Treasurer of the United States of America in accordance with the terms set forth in the Consent
21 Agreement.

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

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

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Date: 09/23/16

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the forgoing FINAL ORDER incorporating a CONSENT
3 AGREEMENT in the matter of County of Maui (UIC-09-2016-0002), dated _____,
4 was filed with the Regional Hearing Clerk and sent.

5 FIRST CLASS MAIL - CERTIFIED
Tracking Numbers: 7015 3010 0000 3883 9763

6 Respondent

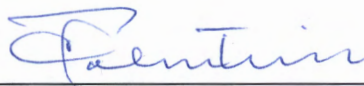
7 Patrick K. Wong
8 Corporate Counsel
9 Department of the Corporation Counsel
County of Maui
200 South High Street, 3rd Floor
Wailuku, Maui, Hawaii 96793

10 HAND DELIVERED

11 EPA Region IX Attorney:

12 Janet Magnuson
13 Attorney-Advisor
14 United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

15
16 Dated at San Francisco, California: 9/26/14

17
18 

19 FOR: Steve Armsey
20 Regional Hearing Clerk
21 U.S. EPA, Region 9
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