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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:

1284 Kilauea K&M, LLC

Respondent.

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

DOCKET NO. UIC-09-2025-0046

**CONSENT AGREEMENT  
AND FINAL ORDER**

**CONSENT AGREEMENT**

**I. AUTHORITIES AND PARTIES**

1. The United States Environmental Protection Agency, Region 9 ("EPA") and 1284 Kilauea K&M, LLC ("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)(1) 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*, 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 9. The Administrator of EPA delegated the authority to bring and settle this action under the SDWA to the Regional Administrator of EPA Region 9. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division.

3. Respondent was an "owner" or "operator" of one cesspool at the commercial property located at 1284 Kilauea Avenue, Hilo, Hawaii 96720.

4. Where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order. 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 \$25,000.

II. JURISDICTION AND WAIVER OF RIGHT TO JUDICIAL REVIEW AND HEARING

7. Consistent with 40 C.F.R. § 22.18(b), for purposes of the proceeding, Respondent admits the jurisdictional allegations of the CA/FO; neither admits nor denies specific factual allegations contained in the CA/FO; consents to the assessment of any

stated civil penalty, and to any 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 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 pursuant to 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.

9. By signing this consent agreement, Respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

### III. STATUTORY AND REGULATORY AUTHORITY

10. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA 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 from endangering drinking water sources.

11. 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.
12. Pursuant to Sections 1421 and 1422 of the SDWA, 42 U.S.C. §§ 300h and 300h- 1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.
13. 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.
14. 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.
15. 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.
16. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.
17. 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.
18. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which is a type of “well” that is completed above the water table.

19. 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.*

20. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V injection wells.

21. 40 C.F.R. § 144.3 defines Class V injection wells as a “facility or activity” subject to regulation under the UIC program.

22. 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.

23. 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.

24. Pursuant to 40 C.F.R. § 144.82, the “owner or operator” of a Class V well agrees to “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].”

25. 40 C.F.R. §§ 144.84(b)(2) and 144.88 requires owners or operators of existing LCCs to have closed them by April 5, 2005. New LCCs were prohibited as of April 5, 2000. *Id.*

26. 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.

27. 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).

28. 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 assess a civil penalty of not more than \$28,619 for each day of violation, up to a maximum administrative penalty of \$357,729, for violations occurring after November 2, 2015, where penalties are assessed on or after January 8, 2025, and issue an order requiring compliance.

#### IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

29. Respondent 1284 Kilauea K&M, LLC is a limited liability company incorporated in the State of Hawaii and therefore 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.

30. Respondent owns a commercial property identified as Tax Map Key (TMK) 3-2-2-023-021 and located at 1284 Kilauea Avenue, Hilo, Hawaii (the “Property”). The Property has been in Respondent’s ownership since at least May 3, 2002.

31. The Property functions as a multi-tenant commercially leased building with a parking lot. The building contains a formal-wear boutique shop and administrative offices of a non-profit organization. The building’s other units are used for storage by the state judiciary and the same non-profit organization. Previously, a vehicle repair shop

operated at the Property.

32. Since at least May 3, 2002, the Property has been serviced by an exterior-facing restroom accessible by key by employees and customers of the Property's tenants.

33. From at least May 3, 2002 until October 14, 2024, the restroom was connected to a cesspool also located on the Property.

34. On or around October 14, 2024, the cesspool serving the Property was closed and replaced with a septic tank.

35. The cesspool that served the property until October 14, 2024 was a "large capacity cesspool" within the meaning of 40 C.F.R. § 144.81(2) because it received sanitary waste, including human excreta, from non-residential facilities and had the capacity to serve twenty or more persons per day.

36. EPA alleges that each day that Respondent failed to close the alleged LCC at the Property after April 5, 2005, but prior to October 14, 2024, constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

## V. SETTLEMENT TERMS

### a. Civil Penalty

37. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to consider 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.

38. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

39. After payment, Respondent shall immediately provide proof of payment to the Regional Hearing Clerk at the following address:

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

Respondent shall also send notice of payment and a transmittal letter via email to Claire Ong at [ong.claire@epa.gov](mailto:ong.claire@epa.gov) and Desean Garnett at [garnett.desean@epa.gov](mailto:garnett.desean@epa.gov).

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

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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 pursuant to 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 each month that any portion of the penalty is more than thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

42. If Respondent do not timely pay the civil penalty due under Paragraph 38, EPA may request the United States 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 expense 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. Tax Identification**

43. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number

("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that their completed IRS Form W-9 include Respondent's correct TINs or that Respondent has applied and are waiting for issuance of a TIN;
- c. Respondent shall email their completed Form W-9 to EPA's Cincinnati Finance Center in Paragraph 38 within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and;
- d. In the event that either Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date, as defined in Section VIII. below, and

ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

## VI. GENERAL PROVISIONS

44. Full payment of the penalty as described in Section V.A., above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in Section IV of 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).

45. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses:

[ong.claire@epa.gov](mailto:ong.claire@epa.gov) and [garnett.desean@epa.gov](mailto:garnett.desean@epa.gov) (for Complainant) and [lrs@ksqlaw.com](mailto:lrs@ksqlaw.com) (for Respondent).

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

47. The provisions of this CA/FO shall apply to and be binding upon Respondent and their officers, directors, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.

48. Full compliance with this CA/FO does not in any manner affect the right of EPA or the United States 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.

49. This CA/FO is not a permit or modification of a permit and does not affect Respondent's obligations to comply with all federal, state, 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, or any order or permit issued thereunder, except as specifically set forth herein.

50. 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.

51. Unless otherwise specified, the Parties shall each bear their own costs and attorneys fees in this action.

52. This CA/FO may be executed and transmitted by facsimile, email, 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.

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

## VII. EFFECTIVE DATE

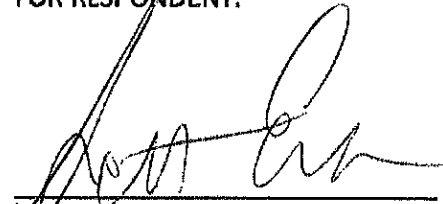
54. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

55. 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 requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

56. 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.

IN THE MATTER OF 1284 KILAUEA K&M, LLC

FOR RESPONDENT:

A handwritten signature in black ink, appearing to be "Donna", written over a horizontal line.

Manager

1284 Kilauea K&M, LLC

Hilo, Hawaii

Date: 05/06/2025

IN THE MATTER OF 1284 KILAUEA K&M, LLC

FOR COMPLAINANT:

AMY MILLER-  
BOWEN

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2025.06.10  
07:24:07 -07'00'

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

Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:

1284 Kilauea K&M, LLC.

Respondent.

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

DOCKET NO. UIC-09-2025-0046

**CONSENT AGREEMENT AND  
FINAL ORDER**

**FINAL ORDER**

The United States Environmental Protection Agency Region 9 ("EPA") and 1284 Kilauea K&M, LLC ("Respondent"), having entered into the foregoing Consent Agreement, and EPA 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-09-2025-0046) be entered;
2. Respondent pay an administrative civil penalty of \$25,000 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent comply with all other requirements of the Consent Agreement.



In re: 1284 Kilauea K&M, LLC

This Consent Agreement and Final Order, as agreed to by the Parties, shall become effective on the date that it is filed with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18, 22.31, and 22.45. IT IS SO ORDERED.

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Steven Jawgiel  
Regional Judicial Officer, Region 9  
U.S. Environmental Protection Agency

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

**CERTIFICATE OF SERVICE**

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of 1284 Kilauea K&M LLC (Docket No. UIC-09-2025-0046) was filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

**RESPONDENT:**

Scott Esser  
1284 Kilauea Avenue  
Hilo, HI 96720  
Upsprop2015@yahoo.com

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**COMPLAINANT:**

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Ponly Tu  
Regional Hearing Clerk  
U.S. EPA – Region IX