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Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

IN THE MATTER OF	)	DOCKET NO. UIC-09-2022-0058
	)	
	)	
NSHE HI Narcissus, LLC	)	<b>COMPLAINANT’S REPLY TO</b>
	)	<b>RESPONDENT’S MEMORANDUM IN</b>
Kahuku, Hawaii,	)	<b>OPPOSITION TO COMPLAINANT’S</b>
	)	<b>MOTION FOR ACCELERATED</b>
Respondent.	)	<b>DECISION ON LIABILITY</b>
_____	)	

**I. INTRODUCTION**

In the Complaint filed in this matter on August 2, 2022, the United States Environmental Protection Agency (“EPA” or “Complainant”) alleged that Respondent, NSHE HI Narcissus, LLC, violated the Safe Drinking Water Act and its implementing regulations at 40 C.F.R. § 144.88(a) by owning or operating a large capacity cesspool after April 5, 2005 on the property

located at 66-532 Kamehameha Highway, Haleiwa, Hawaii 96712, Tax Map Key (TMK) 1-6-2-007-019 (the “Property”). On January 13, 2023, EPA moved for accelerated decision on liability in this matter under 40 C.F.R. § 22.20. Respondent filed a Memorandum in Opposition to Complainant’s Motion for Accelerated Decision on Liability (hereafter, “Opposition Memo”), received on January 30, 2023. Because Respondent’s Opposition Memo raises no genuine issue of material fact, Complainant respectfully requests that the Presiding Officer issue an accelerated decision on liability in EPA’s favor.

To defeat a motion for accelerated decision “an adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial.” *In the matter of Coast Wood Preserving, Inc.*, 2001 WL 1030894 at \*3. The mere allegation of a factual dispute will not defeat a properly supported motion for accelerated decision. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).) The opposing party must not only “raise an issue of material fact, but that party must demonstrate that this dispute is ‘genuine’ by referencing probative evidence in the record, or by producing such evidence.” *Green Thumb Nursery, Inc.*, 6 E.A.D. 782, 793 (EAB 1997); see also *In the matter of Coast Wood Preserving, Inc.* at \*3. “The requirement that a dispute be genuine means simply that there must be more than some metaphysical doubt as to the material facts.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 261 (1986) (internal quotations omitted). Additionally, where the non-moving party’s assertion is clearly contradicted or discredited by the record, the Court should adopt the moving-party’s version of the facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

EPA’s Memorandum in Support of its Motion for Accelerated Decision on Liability established that there is no genuine issue of any material fact as to each of the following: (1) Respondent is a person who (2) owned or operated a cesspool after April 5, 2005, (3) which was non-residential and (4) which had the capacity to serve twenty or more persons in a day from at

least October 4, 2017 to April 28, 2021, thereby establishing that Respondent is liable for a violation of 40 C.F.R. § 144.88(a). Moreover, Respondent’s Opposition Memo, introduces *no* facts through exhibits or affidavits to raise a genuine dispute as to any material fact.

Respondent’s Opposition Memo merely raises three arguments, each of which are addressed in this Reply. Because Respondent’s arguments raise no genuine issues of material fact an accelerated decision is appropriate and, for the reasons provided in Complainant’s Memorandum in Support of its Motion for Accelerated Decision on Liability, Complainant is entitled to judgment as a matter of law.

## II. ARGUMENT

### A. RESPONDENT’S ARGUMENT THAT EPA FAILED TO ESTABLISH THERE WAS A CESSPOOL ON THE PROPERTY HAS NO LEGAL SUPPORT AND IS CONTRADICTED BY THE FACTUAL RECORD AND RESPONDENT’S OWN ANSWER

For the first time in this administrative litigation, Respondent argues that the “wastewater collection system” in question may not actually have been a cesspool because Complainant failed to establish that it “had no bottom.” Opposition Memo pp. 3-4. Respondent misstates the regulatory definition of a cesspool. Further, Respondent does not dispute EPA’s factual record showing that a cesspool existed on the Property and Respondent puts forth no evidence indicating that the Property was not served by a cesspool.

#### 1. **A Closed Bottom is not a Defining Element of a Cesspool.**

A “cesspool” is defined as “a ‘drywell’ that receives untreated sanitary waste containing human excreta, and which *sometimes* has an open bottom and/or perforated sides.” 40 C.F.R. § 144.3 (emphasis added). A “large capacity cesspool” is a type of cesspool, as described at 40 C.F.R. § 144.81(2):

Large capacity cesspools includ[e] 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. The UIC

requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons a day.

Respondent reads the list of examples of “large capacity cesspools” at 40 C.F.R. § 144.81(2) to categorically preclude cesspools with a closed bottom from ever qualifying as large capacity cesspools. Respondent’s reading of the regulations cannot withstand scrutiny, because as is clear from the regulation, an open bottom is not a defining element of a cesspool.

First, in plain language, the subset of cesspools described in 40 C.F.R. § 144.81(2) are “large capacity cesspools.” In its rulemaking, EPA explained that it is necessary to ban large capacity cesspools because of their high potential to contaminate underground sources of drinking water. 64 Fed. Reg. 68546, 68551 (Dec. 7, 1999). EPA also explained that the ban applies to cesspools serving campgrounds, multi-unit residences, churches, schools, and rest stops but not to cesspools serving single family residences or non-residential cesspools with the capacity to serve fewer than twenty people per day – distinctions related to the capacity of the cesspool and not to the type of bottom. *See id.* at 68546, 68557.

Respondent’s construction of the regulations as limiting large capacity cesspools to only those cesspools with an open bottom would create an inconsistency in the regulations. By Respondent’s reading, a cesspool with the capacity to serve twenty or more persons in a day and with the potential to contaminate underground sources of drinking water with large quantities of waste would not be subject to regulation if it had perforated sides and a closed bottom. Such a reading would contravene the intent of the regulations. Applying a consistent reading of the term “cesspool,” as a drywell “which *sometimes* has an open bottom and/or perforated sides” and the plain meaning of “large capacity” creates the more coherent result that any non-residential cesspool with the capacity to serve twenty or more persons in a day is a large capacity cesspool, regardless of whether it has an open bottom.

Not only would Respondent's construction of the regulation create a glaring conflict between 40 C.F.R. § 144.81(2) and the definitions at 40 C.F.R. § 144.3, it also plainly ignores the syntax of the list at 40 C.F.R. § 144.81(2). Use of the word "include" typically signifies a non-exhaustive list. *Samantar v. Yousuf*, 560 U.S. 305, 316–17 (2010); *Cumberland Reclamation Co. v. Sec'y, U.S. Dep't of Interior*, 925 F.2d 164, 167 (6th Cir. 1991); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 132–33 (2012) (explaining that "*include* does not ordinarily introduce an exhaustive list" but "introduces examples"). The list at 40 C.F.R. § 144.81(2) includes "other devices . . . which have an open bottom and sometimes perforated sides" *in addition* to "multiple dwelling, community or regional cesspools." A cesspool is not categorically precluded from qualifying as a large capacity cesspool merely because it does not have a closed bottom.

Because a cesspool can exist with or without an open bottom, the absence of an open bottom, even if true, is not material to establishing Respondent's liability for owning or operating a large capacity cesspool.

## **2. There is no Genuine Dispute That Respondent Owned or Operated a Cesspool.**

Respondent has introduced *no* evidence to indicate that the Property was not served by a cesspool, and Respondent's insinuation that there may not have been a cesspool on the Property is directly contradicted by the factual record. First, Respondent *directly admits* that there was a cesspool on the Property. Respondent's Answer, ¶ 6 ("Respondent admits that the restrooms [on the Property] were connected to a single cesspool"); see also Respondent's Answer ¶¶ 24, 25, 30, 32, 33, 34, 38 ("Respondent . . . closed the cesspool"). Second, the factual record confirms there was a cesspool; Complainant now attaches the Electronic Mail From Duke Pontin, managing member of NSHE HI Narcissus, LLC, sent December 2, 2021 and Attachments, including the Large Capacity Cesspool Backfilling Final Completion Report, ABC Plumbing

LLC's Receipt, and Aloha Trucking Inc. Backfill Material Disposal Receipt, together as "Exhibit F."<sup>1</sup> Not only does Respondent's managing member confirm in the December 2, 2021 e-mail that the Property had a cesspool, but he provided the Large Capacity Cesspool Backfilling Final Completion Report signed by the licensed contractor who certified that he supervised backfilling of the *cesspool*. Ex. F, pp. 1, 6-7. Respondent cannot credibly dispute that there was a cesspool on the Property during the relevant period of time.

Respondent attempts to raise an issue of fact by implying that there may not have been a cesspool on the Property because Complainant has not put forth evidence that the cesspool had an open bottom. *See* Opposition Memo pp. 3-4. Not only is an open bottom immaterial to EPA's allegations, as established above, but Respondent's arguments do not raise a *genuine* issue of fact. Respondent fails to reference any probative facts disputing that there was a cesspool on the Property. Respondent's argument conveniently ignores its own admissions regarding the presence of a cesspool on the Property and is clearly contradicted by the record. Therefore, Respondent's argument raises no genuine issue of material fact.

**B. EPA HAS PROVEN ALL ELEMENTS NECESSARY TO ESTABLISH THAT RESPONDENT'S CESSPOOL WAS A LARGE CAPACITY CESSPOOL**

To establish that a violation of 40 C.F.R. § 144.88(a) has occurred, EPA has the burden to prove that (1) Respondent is a person who (2) owned or operated a cesspool after April 5, 2005, (3) that was non-residential and (4) that had the capacity to serve twenty or more persons in a day. Respondent attempts to add a new legal element for the physical capacity of the "storage portion" of the cesspool and proceeds to argue that Complainant failed to prove this additional element. However, this is not a required legal element to state a claim for violations of

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<sup>1</sup> Complainant did not initially include Exhibit F with its January 13, 2023 Motion for Accelerated Decision on Liability based on Respondent's admission that it was operating a cesspool.

40 C.F.R. § 144.88(a), and Respondent has introduced no facts to raise a dispute as to the capacity of the cesspool to serve twenty or more persons in a day.

**1. Physical Capacity of the “Storage Portion” of a Cesspool is Not a Required Legal Element.**

Without reference to any statute, regulation, or other legal authority, Respondent claims that “[c]apacity is a two-part test consisting of determining the physical capacity [of what Respondent refers to as the ‘storage portion’] of the facility in question, and the number of persons who could potentially access the facility.” Opposition Memo pg. 5. However, as explained in EPA’s rulemaking and in the text of the regulation itself, the *only* criterion for determining whether a non-residential cesspool is a large capacity cesspool is whether it “[has] the capacity to serve 20 or more persons a day.” 64 Fed. Reg. 68546, 68557 (Dec. 7, 1999); *see also* 40 C.F.R. § 144.81(2).

Respondent’s assertion that physical capacity of the “storage portion” of a cesspool is an element necessary to establish liability is directly contradicted by all relevant legal authority. Respondent argues that Complainant “incorrectly assert[s] that the preamble [for the large capacity cesspool rule] considered and rejected any physical or technical factors as the determinative factor,” and infers that instead the Agency only “rejected using specific size requirements as the sole factor of determination.” Opposition Memo pg. 6. Respondent’s assertion is contradicted by the preamble itself, which explains that after considering various other options, EPA retained the criterion of “capacity to serve 20 or more persons a day.” 64 Fed. Reg. 68557. Even Respondent acknowledges that after considering specific size requirements, EPA “left the original language” in the rule. Opposition Memo pg. 6.

Respondent notes that EPA recognized in the rulemaking that there are “weaknesses” to the criterion of “capacity to serve 20 or more persons in a day.” Opposition Memo pg. 6.

Recognizing that the regulation many have weaknesses does not mean that it can be ignored or that a newly concocted test can be substituted, as Respondent seemingly argues.

Lacking any legal citation in support of its assertions, Respondent attempts to infer from EPA's website that physical capacity of the "storage portion" of a cesspool is a necessary legal element. Opposition Memo pg. 5. To the extent the physical or technical specifications of a cesspool, such as flow rate or the connection to the overlaying infrastructure, inform the ultimate determination of whether the cesspool has the capacity to serve twenty or more persons per day, those criteria may be relevant considerations in an enforcement matter. The potential relevance of physical or technical specifications is acknowledged on EPA's website. *See* <https://www.epa.gov/uic/large-capacity-cesspools> (last visited Feb. 7, 2023). However, the potential relevance of a detail in some cases does not make it a necessary element to establish liability in all cases. Furthermore, general information about cesspools provided on EPA's website cannot redefine regulatory requirements. Physical capacity of the "storage portion" of a cesspool is not a required legal element. The regulatory criterion for determining Respondent's legal liability is whether Respondent's non-residential cesspool had the capacity to serve twenty or more persons in a day. *See* 40 C.F.R. § 144.81(2).

## **2. Respondent Raises No Genuine Issue of Material Fact**

Respondent raises no genuine dispute that the cesspool on the Property lacked the capacity to serve twenty or more persons in a day, because Respondent fails to introduce any facts at all. As established in Complainant's Memorandum in Support of its Motion for Accelerated Decision on Liability, the cesspool clearly had capacity to serve twenty or more persons a day because every visitor to the commercial building and every customer and employee of Jenny's Shrimp Truck (which alone served at least twenty customers on multiple days) had access to a restroom served by the cesspool. Respondent fails to introduce any facts

which contradict this. Further, as documented in the Large Capacity Cesspool Backfilling Final Completion Report, the cesspool on Respondent's Property was approximately five feet in diameter and ten feet deep and it took eight cubic yards of material to fill it. Ex. F, pg. 6.

Respondent puts forward no facts, such as evidence of overflows, to suggest that the cesspool lacked the physical capacity to serve twenty or more persons in a day. Indeed, Respondent does not even claim in its Opposition Memo that the cesspool on the Property lacked the capacity or the "physical capacity" to serve twenty persons in a day. Therefore, even if the physical capacity of the "storage portion" of the cesspool were a necessary legal element, which it is not, Respondent raises no genuine factual dispute regarding the capacity of the cesspool.

**C. EPA HAS PROVIDED ADMISSIBLE EVIDENCE THAT RESPONDENT'S CESSPOOL HAD THE CAPACITY TO SERVE TWENTY OR MOR PERSONS IN A DAY**

To establish that a violation of 40 C.F.R. § 144.88(a) has occurred, EPA has the burden to prove that Respondent's non-residential cesspool had the capacity to serve twenty or more persons in a day. *See* 40 C.F.R. § 144.81(2). Respondent's Opposition Memo asserts that EPA has failed to meet its burden because EPA has failed to provide *admissible* evidence showing that the cesspool had the capacity to serve twenty or more persons in a day. Opposition Memo pg. 8. Respondent incorrectly asserts that the photographs and other evidence cited by EPA to establish the elements of the violation are inadmissible. Opposition Memo pp. 7-8.

The present proceeding is administrative and is governed by 40 C.F.R. Part 22. Under 40 C.F.R. § 22.22:

The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible.

With the exception of Federal Rule of Evidence 408 (Compromise Offers and Negotiations), the Federal Rules of Evidence do not govern the admissibly of evidence in 40 C.F.R. Part 22

proceedings. *In Re Chippewa Hazardous Waste Remediation & Energy, Inc.*, 2005 WL 4905111 at \*14; see also *In Re: William E. Comley, Inc. & Bleach Tek, Inc.*, 11 E.A.D. 247 (EAB 2004) (“Hearsay evidence is clearly admissible under the liberal standards for admissibility of evidence in the 40 C.F.R. pt. 22 rules, which are not subject to the stricter Federal Rules of Evidence.”). The “controlling inquiry in determining whether particular evidence is admissible [in a Part 22 proceeding] is whether the evidence is relevant, probative and reliable.” *In Re: J.v. Peters and Company, A Partnership, David B. Shillman, and Dorothy L. Brueggemeyer*, 7 E.A.D. 77. (EAB 1997). The Presiding Officer has broad discretion in determining what evidence is admissible. *In Re Chippewa Hazardous Waste Remediation & Energy, Inc.* at \*17.

Here, Respondent does not dispute the fact that the cesspool on its Property had the capacity to serve twenty or more persons in a day, but instead asks the Presiding Officer to ignore extremely relevant photographs and reviews from Yelp.com showing that more than twenty customers visited Jenny’s Shrimp Truck on various days, on the grounds that there is no witness to authenticate the photographs. Opposition Memo pp. 7-8. However, the photographs and Yelp.com reviews do not need to be admissible under the more stringent Federal Rules of Evidence applicable to federal judicial proceedings to be admissible in this administrative proceeding. In this proceeding, the photographs and reviews are admissible if they are relevant, probative, and reliable.

The photographs and reviews are clearly relevant and probative. The photographs in Exhibit D.2 depict persons who had access to a restroom served by the cesspool, which is relevant to the legal question of whether the cesspool had the capacity to serve twenty persons a day. Specifically, the photographs show that Jenny’s Shrimp Truck served more than twenty customers in a day on multiple days. Ex. D.2. Respondent has admitted that all customers and employees of Jenny’s Shrimp Truck had access to the cesspool. Respondent’s Answer, ¶ 12. The

reviews from Yelp.com are relevant to provide the address of the business being reviewed and to prove that patrons had access to the restrooms on the Property. Ex. D.3, pp. 2-6. Accordingly, the photographs and reviews are relevant and probative of the capacity of the cesspool on Respondent's Property.

The photographs are reliable because they are corroborated by multiple pieces of evidence in the record. Testimony regarding the chain of custody is not necessary to determine a photograph's reliability. *In Re Chippewa Hazardous Waste Remediation & Energy, Inc.* at \*17. A simple comparison of the photograph on page two of EPA's March 4, 2021 Inspection Report to the photographs from Yelp.com, clearly shows that the photographs are of the Property. Next, the Yelp.com webpage for Jenny's Shrimp Truck from which these photographs were downloaded (and which is still publicly available) identifies the Jenny's Shrimp Truck as operating at 66-532 Kamehameha Highway, Haleiwa, HI 96712, the address of the Property. Ex. D.3, pg. 2; see also <https://www.yelp.com/biz/jennys-shrimp-lunch-wagon-haleiwa-2> (last visited Feb. 1, 2023). Finally, Respondent admits that Jenny's Shrimp Truck, the subject of the photographs and reviews, operates on Respondent's Property. Respondent's Answer, ¶ 9 ("Respondent admits that Jenny's Shrimp Truck occupied the parking lot" on the Property). The photographs are a reliable source of information about Respondent's Property and indeed, Respondent does not dispute that the photographs from Yelp.com depict the Property. Consistent with EAB case law and the language of the 40 C.F.R. § 22.22, the Presiding Officer shall consider the photographs and reviews because they are relevant, probative, and reliable.

Respondent's assertions regarding admissibility of the photographs and reviews do not raise a genuine issue of material fact. To defeat EPA's motion for accelerated decision on liability, Respondent must present affirmative evidence to support its pleadings. See *In the matter of Coast Wood Preserving, Inc.* at \*3. Respondent does not reference any facts disputing

that twenty or more persons had access to the cesspool in a day, and the relevant, probative, and reliable photographs clearly show that more than twenty persons had access to the cesspool in a day on multiple days.

### **III. CONCLUSION**

EPA has provided evidence in support of each element needed to establish Respondent's liability for violation of the Safe Drinking Water Act by owning or operating a large-capacity cesspool after April 5, 2005. Respondent raised three arguments in its Opposition. As discussed above, none of Respondent's arguments raise a genuine issue of material fact. Therefore, Complainant respectfully requests that the Presiding Officer grant Complainant's motion for accelerated decision on liability.

Respectfully submitted,

**Wells, Kimberly**

Digitally signed by Wells,  
Kimberly  
Date: 2023.02.08 13:58:41 -08'00'

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Kimberly Wells  
Assistant Regional Counsel  
Office of Regional Counsel, EPA 9

**From:** [Duke Pontin](#)  
**To:** [Shareem, Jelani](#)  
**Cc:** [pontind@icloud.com](mailto:pontind@icloud.com)  
**Subject:** Does this satisfy proof of closure?  
**Date:** Friday, December 3, 2021 10:20:28 AM  
**Attachments:** [Final completion report.pdf](#)  
[ABC pumping.pdf](#)  
[Backfill material.pdf](#)

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Jelani, 12/2/21

The State I live in has almost 90,000 cesspits, they are everywhere. When I bought the property in late 2017 I knew no new cesspits were allowed but in no way thought I was in violation of any laws, the garage was built in 1962. I spent a lot of time and money looking into a new septic system, it was my intention to make the old garage a restaurant. With all my discussions with different engineers as to what it would take to bring the septic up to restaurant capability none of them ever mentioned anything about a LCC.

When Connor emailed me his report April 28th I immediately made contact with him to find out what I should do. Most of the discussions were about LCC and how they are regulated. That's when Connor informed non-residential cesspits that serve less than 20 people a day are not regulated. Even though I believe the system would have a hard time handling 20 people a day because of its age I made sure there was no more than 5 or 6. In his report the girl that runs Jenny's thought the usage was about 10 people a day. From the conversations we had and my emails with pictures of restricted bathrooms and a port-a potty for customers Connor and the regional office must have known I was pursuing compliance by being under 20 people a day.

I thought all was good until I received your email November 22nd. I immediately reached out to you and within an hour the bathroom doors were screwed shut and the septic was pumped. Moving faster than humanly possible for Hawaii including Thanksgiving holiday I have backfilled the cesspit within 10 days of your email.

Back in April *if I have been given a little guidance* I would've done then what I did today. Duke

Enclosed:

Backfilling final completion report

Receipt for pumping November 22

Receipt fo backfill material and volume

Pictures backfilling

# Exhibit F-2









LARGE CAPACITY CESSPOOL (LESS THAN 1,000 GPD)  
BACKFILLING FINAL COMPLETION REPORT  
US Environmental Protection Agency – Region 9 Ground Water Office

Property owner: NSHE HI NARCISSUS, LLC (DUKE PONTEN)

Project address: 66-540 KAMEHAMEHA HWY, HALEIWA, HI

TMK: 1-6-2-007-019

Number of cesspools, and numbering if any: 1

Diameter(s): 5' Depth(s): 10'

Was sludge/sediment or liquid removal necessary?  Yes  No

Where was sludge/sediment or liquid taken or disposed of? ABC PUMPING

Was groundwater encountered?  Yes  No

Date of backfilling: 12/2/2021 Type of backfill material: R, C, S

Amount of backfill used (cubic yards): 8

Was the cesspool completely backfilled?  Yes  No

How was it compacted? VIBRATOR & HAND COMPACTION

Backfilling contractor: ANCHOR BUILDERS HAWAII LLC (BC-37198)

Please provide:

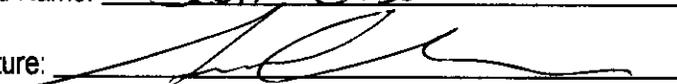
- Pictures: Attach photos of the large capacity cesspool from step-back distances of approximately 8 feet and 20 feet.
- Copy of this report to: LCC Program Coordinator  
EPA Ground Water Office (WTR-9)  
75 Hawthorne Street  
San Francisco, CA 94105

LARGE CAPACITY CESSPOOL BACKFILLING FINAL COMPLETION REPORT (Continuation)

The backfilling work and the final completion report have been performed and completed under my supervision, and the work was properly completed:

- Architect
- Geologist
- Licensed Contractor License Number: BC-37198
- Licensed Plumber License Number: \_\_\_\_\_
- Professional Engineer Include P.E. stamp:

Printed Name: Scott Olson

Signature: 

Date: 12/2/2021

Company: Anchor Builders Hawaii LLC

Address: PO Box 971, Lase, HI 96762

Phone: 808-421-8156 Fax: \_\_\_\_\_

342921

ABC Pumping LLO  
1479 GLEN AVE  
WAHIAWA, HI 96786  
~~808-561-7736~~

CUSTOMER'S ORDER NO.	DEPT.	DATE: 11/22/21
NAME: Duke Pontin		
ADDRESS: 66-540		
CITY, STATE, ZIP		

SOLD BY:	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RTD.	PAID OUT
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QUANTITY	DESCRIPTION	PRICE	AMOUNT
1			
2	Pumped cesspool		175.00
3	empty on this date		
4			
5			
6			
7			
8	CC Payment		
9			
10			
11			
12			
13			
14			
15			

RECEIVED BY: *Duke Pontin*

81361



BO BOX 75277 • KAPOLEI, HI 96707  
 PR: 216-3786 • FAX: 685-3898  
 CS1013 • PUC 1157-C • DOT 1313126

TIME START 615 AM  
 PM

TIME END 925 AM  
 PM

LUNCH FROM      TO      AM  
 PM

DELAYS: TIME & REASON

FROM      TO       
 REASON:     

INSTRUCTIONS:  
 TIME WANTED:     

**DELIVERY SITE CONDITIONS**  
 The Customer agrees to provide suitable roadways or approaches to points on delivery other than paved public streets. We reserve the right to stop delivery if the roadways or approaches are not satisfactory. Should the Customer order delivery beyond a public street curb line, we will not assume liability for damage to sidewalks, roadways, driveways, or other property and the Customer agrees to indemnify and hold Aloha Trucking harmless against liabilities, loss and expense incurred as a result of any damage or trespass caused by such deliveries.

CHARGE TO <b>DUKE PONTIN</b>		DATE <b>12/2/21</b>	P.O. NO.	
FROM: <b>GP MAKAKILO</b>		TO: <b>66-540 KAM HWY</b>	TAG NO.	
JOB NAME		TRUCK TYPE <b>SUPER</b>	TRUCK NO. <b>214</b>	
NO. UNITS	DESCRIPTION	TICKET NUMBER	WEIGHT/MEAS	RATE
	<b>RECYCLE CONCRETE SCALP</b>	<b>1476120</b>	<b>14.10</b>	
DRIVER'S FULL NAME <b>MARA 31</b>		TOTAL →		
SIGNATURE		BY:		
CREDIT HAUL TO:		RECEIVED IN GOOD ORDER EXCEPT AS NOTED		

**TERMS: 30 DAYS NET. THE CUSTOMER AGREES TO PAY INTEREST AT 2% OF ANY UNPAID BALANCE FOR COLLECTION FEES OR ATTORNEY FEES IN THE EVENT THIS BILL BECOMES OVERDUE.**

Certificate of Service

The undersigned certifies that on the date indicated below this Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Accelerated Decision on Liability and all Exhibits, were served upon the Respondent's attorney, who has consented in writing to electronic service pursuant to 40 C.F.R. § 22.5(b)(2).

One copy via electronic mail to:

Charles W. Gall  
Kobayashi Sugita & Goda, LLP  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, Hawaii 96813  
Telephone: (808) 535-5700  
Facsimile: (808) 535-5799  
Email: [cwg@ksglaw.com](mailto:cwg@ksglaw.com)

Dated: February 8, 2023

**Wells,**  
**Kimberly**  
Digitally signed by  
Wells, Kimberly  
Date: 2023.02.08  
14:06:33 -08'00'

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Kimberly Wells  
Assistant Regional Counsel  
Office of Regional Counsel, EPA 9