

FILED

2011 SEP 19 PM 4:07

U.S. EPA REGION IX  
REGIONAL HEARING CLERK

1 NANCY MARVEL  
Regional Counsel  
2 United States Environmental Protection Agency, Region 9

3 JULIA JACKSON  
Assistant Regional Counsel  
4 United States Environmental Protection Agency, Region 9  
5 75 Hawthorne Street  
San Francisco, California 94105  
6 (415) 972-3948

7 Attorneys for Complainant

8  
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
10 **REGION 9**

11 In re the Matter of:

) Docket No. UIC-09-2011-0003

12 **GLACS, LLC**

) **MOTION TO APPROVE FINAL ORDER**  
) **AND PROOF OF COMPLIANCE WITH**  
) **PUBLIC NOTICE REQUIREMENTS OF**  
) **40 C.F.R. § 22.45(b)**

13 Kailu-Kona, Hawaii

14  
15 Respondent.

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

17  
18 Complainant hereby moves the Presiding Officer in this matter to issue the proposed  
19 Final Order to make effective the attached Consent Agreement (“proposed CA/FO”) filed with  
20 the Regional Hearing Clerk on September 19, 2011. The Consent Agreement has been executed  
21 by Complainant, United States Environmental Protection Agency Region 9, and Respondent,  
22 GLACS, LLC.  
23  
24  
25

1                   Compliance with Public Notice Requirements.

2                   Administrative proceedings for the assessment of a civil penalty under Section 1423(c) of  
3 the Safe Drinking Water Act, 42 U.S.C. §300h-2(c), are subject to the supplemental rule at 40  
4 C.F.R. § 22.45(b)(1), which requires Complainant to notify the public before assessing a civil  
5 penalty, and provides, in relevant part, that: “Such notice shall be provided ... in the case of a  
6 proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the  
7 issuance of an order assessing a civil penalty.” Further, such notice must be made to the public  
8 “by a method reasonably calculated to provide notice” and must include:

- 9                   (i)     The docket number of the proceeding;
- 10                  (ii)    The name and address of the complainant and respondent, and the person  
11                           from whom information on the proceeding may be obtained, and the  
12                           address of the Regional Hearing Clerk to whom appropriate comments  
                              shall be directed;
- 13                  (iii)   The location of the site or facility from which the violations are alleged,  
14                           and any applicable permit number;
- 15                  (iv)    A description of the violation alleged and the relief sought; and
- 16                  (v)     A notice that persons shall submit comments to the Regional Hearing  
17                           Clerk, and the deadline for such submissions.

18                  *See* 40 C.F.R. § 22.45(b)(2).

19                  Public notices required under 40 C.F.R. § 22.45(b) may be provided via the internet. *See*  
20 71 Fed. Reg. 51193 (Aug. 29, 2006) (“Notice of Intent To Provide Internet Publication of  
21 Proposed Penalties under the Clean Water Act and Safe Drinking Water Act”). On August 17,  
22 2011, EPA posted the public notice of the proposed CA/FO on EPA’s Region 9 website. A true  
23 and correct copy of the public notice is attached as **Exhibit A** to the Declaration of Julia Jackson  
24 (**Attachment 1**). The public notice included the information required by 40 C.F.R. § 22.45(b)(i)  
25 through (v), described above.

                  On September 16, 2011, the 30-day public notice comment period closed, and no public



1  
2 **CERTIFICATE OF SERVICE**

3 I certify that, on the date noted below, I caused to be mailed a copy of the foregoing  
4 Motion to Approve Final Order, executed Consent Agreement, and accompanying Declaration of  
5 Julia Jackson (including all attached exhibits) to the following address:

6  
7 Patricia J. McHenry  
8 Cades, Schutte  
9 1000 Bishop Street, Suite 1200  
10 Honolulu, Hawaii 96813  
11 Phone: (808) 521-9200  
12 Email: pmchenry@cades.com

13 September 19, 2011

14 Leatrice K. Pleck  
15 Name  
16 Reception  
17 Position  
18  
19  
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21  
22  
23  
24  
25

ATTACHMENT 1

1 NANCY MARVEL  
Regional Counsel  
2 United States Environmental Protection Agency, Region 9

3 JULIA JACKSON  
Assistant Regional Counsel  
4 United States Environmental Protection Agency, Region 9  
5 75 Hawthorne Street  
San Francisco, California 94105  
6 (415) 972-3948

7 Attorneys for Complainant

8  
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
10 **REGION 9**

11 In re the Matter of:

) Docket No.: UIC-09-2011-0003

12 **GLACS, LLC**

) **DECLARATION OF JULIA A. JACKSON**  
) **IN SUPPORT OF COMPLAINANT'S**  
) **MOTION TO APPROVE FINAL ORDER**

13  
14  
15 Respondent.

) Proceedings Under Section 1423(c) of the Safe  
) Drinking Water Act, as amended, 42 U.S.C. §  
) 300h-2(c).  
)

18 I, Julia A. Jackson, declare:

19 1. I am an attorney at law, licensed to practice in the State of California and the State of  
20 Texas. I am an attorney with Region 9 of the United States Environmental Protection Agency  
21 ("EPA").

22 2. On or about August 15, 2011, EPA and Respondent entered into the attached Consent  
23 Agreement and Proposed Final Order ("proposed CA/FO") to resolve this matter.

24 3. On August 17, 2011, EPA placed public notice of the Consent Agreement and  
25 Proposed Final Order in this matter on EPA Region 9's website. An archive version of this

ATTACHMENT 1

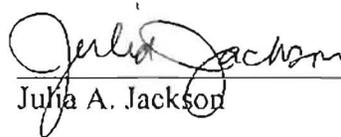
1 public notice may still be viewed on EPA Region 9's website at:  
2 [www.epa.gov/region09/enforcement/pubnotices/pubnotice-glacs.html](http://www.epa.gov/region09/enforcement/pubnotices/pubnotice-glacs.html). A true and correct copy of  
3 this public notice is attached. **(Exhibit A.)**

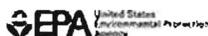
4 4. The internet public notice contained all the information required by 40 C.F.R. § 22.45(b)  
5 and was legally sufficient.

6 5. On or around September 19, 2011, after the end of the 30-day public comment period on  
7 September 16, 2011, I confirmed with the Region 9 Regional Hearing Clerk that no comments  
8 had been received in response to the public notice. *See* attached email from Steve Armsey,  
9 Region 9 Regional Hearing Clerk, to me, dated September 19, 2011. **(Exhibit B.)**

10 I declare under penalty of perjury, according to the laws of the State of California, that  
11 the foregoing is true and correct, and is known to me of my own personal knowledge.

12 Executed this 19<sup>th</sup> day of September, 2011, at San Francisco, California.

13  
14   
15 Julia A. Jackson  
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**Pacific Southwest, Region 9**

Serving Arizona, California, Hawaii, Nevada, Pacific Islands, Tribal Nations

**Notice of Proposed Consent Agreement for Safe Drinking Water Act Violations and Opportunity to Comment in the Matter of GLACs, LLC, Kailu-Kona, Hawaii**

Publication Date: August 17, 2011

Public Comment Closes: September 18, 2011

**In the Matter of GLACS, LLC**

Docket No. UIC-09-2011-0003

EPA is authorized under Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. Parts 300h-2(c), 300j-4(a), to assess administrative penalties against any person who fails to comply with the requirements of regulations enacted in accordance with Section 1422(c) of the Act, 42 U.S.C. Part 300h-1(c). This action under Section 1423(c) is conducted in accordance with "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules"), set forth at 40 C.F.R. Part 22. EPA is hereby providing public notice of and opportunity to comment on this proposed Consent Agreement in the following matter.

In the Matter of: GLACS, LLC, Docket No. UIC-09-2011-0003.

Complainant: Alexis Strauss, Director, Water Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Respondents: GLACS, LLC, in care of: Kokua Care Corporation, 3184 B Wai'alea Ave, Honolulu, HI, 96816.

Description of Business or Activity Conducted by the Respondents: Commercial property management

Alleged Violations: GLACS, LLC ("GLACS") is allowed to engage in underground injection pursuant to the Underground Injection Control Regulations of 40 C.F.R. Parts 124, 144, 145, 146, 147 and 148. In the proposed Administrative Order, EPA alleges that Respondent operated ten (10) large capacity cesspools in violation of the large cesspool ban that took effect on April 5, 2005. These cesspools were located in Kailu-Kona, Hawaii, and have been closed/converted as of June 2010

Proposed Order and Penalty: \$67,000

**Name, Mailing Address, Telephone Number, and email of Regional Hearing Clerk:**

Sieven Amsey, Regional Hearing Clerk  
 U.S. Environmental Protection Agency, Region IX  
 75 Hawthorne Street (ORC-1)  
 San Francisco, CA 94105  
 (415) 972-3919  
[rhhearingclerk@epa.gov](mailto:rhhearingclerk@epa.gov)

**Instructions for Submitting Comments:**

Please provide the following information along with your comments and submit them in accordance with Part 22: Your full name, mailing address, telephone number, email address, the Docket Number (UIC-9-2011-0003), and a concise statement of the basis for and relevant facts supporting any comment for the case to which you are commenting. Persons wishing to comment on this case, including comments on the amount or basis of the proposed penalty, are invited to submit a statement to the EPA Regional Administrator, attention of the Regional Hearing Clerk (address above), within 30 days of the date of this public notice. All comments received within this 30-day period will be considered in the issuance of the final order. If the 30th day of the comment period falls on a Saturday, Sunday or federal holiday, the deadline shall be extended to the next business day. See 40 C.F.R. 22.7(a).

**For More Information**

Persons wishing to receive a copy of Part 22, review the documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted the public record for the proceeding is located in the EPA Regional Office at 75 Hawthorne Street, San Francisco, California 94105, and the file will be open for public inspection during normal business hours.

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Last updated on Tuesday, August 16, 2011



**Comment Period for Glacs , LLC**  
BryanK Goodwin to: Julia Jackson

09/19/2011 02:38 PM

From: BryanK Goodwin/R9/USEPA/US  
To: Julia Jackson/R9/USEPA/US@EPA

Julia,

This is to confirm that the public comment period in the matter of Glacs, LLC. (Docket #: UIC-09-2011-0003) has expired. There were **zero** comments submitted. Please contact me if you have further questions.

Kind Regards,

Bryan K. Goodwin  
Regional Hearing Clerk  
Office of the Regional Counsel  
US E.P.A. Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901  
(415) 972-3686

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION IX****In the Matter of:****GLACS, LLC****Kailu-Kona, Hawaii****Docket No. UIC-09-2009-0004****CONSENT AGREEMENT****AND FINAL ORDER****Proceedings under Section 1423(c) of the Safe****Drinking Water Act, 42 U.S.C. § 300h-2(c)****I. AUTHORITY**

This Consent Agreement and 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 (the "SDWA" or the "Act"), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, the Director of the Water Division, EPA Region IX, hereby issues, and GLACS, LLC ("Respondent") hereby agrees to the issuance of, this Consent Agreement and Final Order.

**II. FINDINGS OF VIOLATION**

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (UIC) programs, to prevent underground injection which endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.
2. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.
3. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are required to be closed no

later than April 5, 2005. "Large capacity cesspools" 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." 40 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools or a non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.* A "cesspool," is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3.

4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.
5. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), EPA may issue an administrative compliance order to any person who violates any requirement of an applicable UIC program. 42 U.S.C. § 300h-2(c)(1).
6. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the requirements of the Act to submit information relating to such person's compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).
7. Respondent is a corporation. Thus, Respondent is 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.
8. Respondent owns and operates two commercial properties in Kailua-Kona, Hawaii ("the Facilities").
9. Respondent operated ten (10) large capacity cesspools at the Facilities.
10. Respondent did not close the large capacity cesspools by April 5, 2005 as required by 40 C.F.R. § 144.88.
11. Based on all the foregoing, Respondent has violated the requirement that all large capacity cesspools be closed by April 5, 2005, and is therefore in violation of 40 C.F.R. § 144.88.

#### **B. CIVIL PENALTY**

12. Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than \$11,000 for each day of each violation occurring before January 12, 2009, and not more than \$16,000 for each day or each violation occurring after January 12, 2009, up to a maximum penalty of \$177,500, or requiring compliance, or both, against any person who

violates the Act or any requirement of an applicable UIC program. In assessing a penalty for such violations, EPA must, in accordance with Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), take into account: (1) the seriousness of the violation; (2) the economic benefit resulting from the violations; (3) the history of the violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator, and (6) such other matters as justice may require. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), EPA has determined that it is appropriate to assess, and Respondent has, without admission, agreed to pay to the United States, a civil administrative penalty in the amount of \$67,000.00.

13. Payment of penalty must be received in accordance with one of the acceptable methods of payment listed in the attached "EPA Region 9 Collection Information" sheet (Attachment A) on or before **thirty (30) calendar days** after the effective date of the CA/FO. The date by which payment must be received by the United States shall be the "due date" for the payment.
14. Respondent shall make payment under this CA/FO in accordance with any of the acceptable methods of payment listed in the attached "EPA Region 9 Collection Information" sheet (Attachment A), which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attach a photocopy of the penalty payment, via certified mail to the following:  
  
Aaron Setran  
  
U.S. EPA, Region IX  
  
75 Hawthorne Street (Mail Code: WTR-8)  
  
San Francisco, CA 94105
15. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for

each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 14 above.

16. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. §300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 12 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorney's fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
17. The civil penalty, and any interest, late handling fees, or late penalty payments provided for in the CA/FO, shall not be deducted from Respondent's, or any affiliated entity's, federal, state or local taxes.

**C. GENERAL REQUIREMENTS AND PROVISIONS**

18. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
19. Respondent neither admits nor denies the factual allegations contained in this CA/FO.
20. The provisions of this CA/FO shall be binding upon Respondent and its employees and contractors. 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.
21. Respondent shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large capacity cesspools referred to in Paragraph 9. Such transfer, however, shall have no effect on Respondent's obligation to comply with this CA/FO. Respondent shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in Paragraph 9

22. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
23. Respondent consents to the issuance of this CA/FO and the conditions specified herein.
24. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), or to otherwise contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.
25. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation, or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.
26. 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 Act, regulations promulgated thereunder, and any order or permit issued thereunder.
27. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO.  
  
Violation of this CA/FO shall be deemed a violation of the Act.
28. Each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.
29. No term or condition of this CA/FO shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where the payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be adjusted accordingly by the parties.
30. The provisions of this CA/FO shall be severable. If any provision of this CA/FO is found to

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

Docket No. UIC-09-2009-0004

In the Matter of:

FINAL ORDER

GLACS, LLC

Kaʻahu-Kona, Hawaii

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

The United States Environmental Protection Agency Region IX ("EPA"), and GLACS, LLC ("Respondent") having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Proposed Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-11-2009-xxx) be entered; and
2. Respondent shall comply with the requirements set forth in the Consent Agreement and Proposed Order, which shall become final and effective on the date it is signed below.

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

\_\_\_\_\_  
Steven Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency

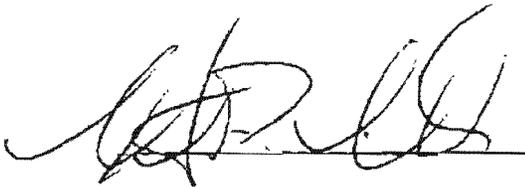
be unenforceable, the remaining provisions of this CA/FO shall remain in full force and effect.

**C. EFFECTIVE DATE**

31. The effective date of the CA/FO shall be the date that the Final Order is signed.

FOR THE CONSENTING PARTIES:

For GLACS:



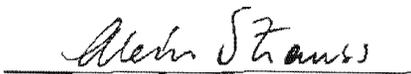
Garnet Giles, President

Kokua Care Corp.

Manager of GLACS LLC

Date: Aug 9/11

For the United States Environmental Protection Agency:



Alexis Strauss  
Director, Water Division  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Date: 15 August 2011

1  
2 **CERTIFICATE OF SERVICE**

3 I certify that the original of the fully executed Consent Agreement and Final Order against  
4 **GLACs, LLC (Docket #: UIC-09-2011-0003)** was filed with the Regional Hearing Clerk, U.S.  
5 EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct  
6 copy of the same was sent to the following parties:

7 A copy was mailed via CERTIFIED MAIL to:

8 Patricia J. McHenry  
9 Cades, Schutte  
10 1000 Bishop Street, Suite 1200  
11 Honolulu, Hawaii 96813  
12 Phone: (808) 521-9200  
13 Email: pmchenry@cades.com

14 **CERTIFIED MAIL NUMBER: 7000 0520 0021 6108 1872**

15 An additional copy was hand-delivered to the following U.S. EPA case attorney:

16 Julia A. Jackson, Esq.  
17 Office of Regional Counsel  
18 U.S. EPA, Region IX  
19 75 Hawthorne Street  
20 San Francisco, CA 94105

21 September 30, 2011

22 Bryan K. Goodwin  
23 Name  
24 Regional Hearing Clerk  
25 Position