UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

In the Matter of:	)	
	)	
NSHE HI Narcissus, LLC,	)	
Kahuku, Hawaii,	)	Docket No. UIC-09-2022-0058
	)	
Respondent.	)	

PARTIAL ACCELERATED DECISION ON LIABILITY

I. INTRODUCTION

The Environmental Protection Agency ("EPA" or "Complainant") filed a Penalty Complaint and Notice of Opportunity for Hearing in this matter on August 2, 2022. EPA alleges NSHE HI Narcissus, LLC ("Respondent") violated 40 C.F.R. § 144.88, a requirement of an applicable underground injection control program that is actionable under Section 1423(a)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(a)(2), by owning or operating a large capacity cesspool (LCC) after April 5, 2005. On August 29, 2022, Respondent filed an Answer in this matter and requested a hearing. Pursuant to 40 C.F.R. § 22.50(a)(2), the provisions set forth in 40 C.F.R. §§ 22.50 – 52 apply to all proceedings for "[t]he assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)…." Furthermore, 40 C.F.R. § 22.51 states, "The Presiding Officer shall be the Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until the initial decision has become final or has been appealed."

Region 9's Regional Judicial Officer ("Presiding Officer") issued a Prehearing Order on December 6, 2022, which set forth a schedule for the exchange of information and a prehearing conference. On December 9, 2022, Complainant filed a Motion for Extension of Time requesting the dates in the Prehearing Order be extended to January 2023 to allow Complainant time to file a motion for accelerated decision on the liability issues in this matter. Respondent informed the Presiding Officer it concurred with Complainant's Motion for Extension of Time. On December 19, 2022, the Presiding Officer granted Complainant's Motion for Extension of Time. On January 13, 2023, Complainant filed its Motion for Accelerated Decision on Liability. On January 31, 2023, Respondent filed its Opposition to Complainant's Motion for Accelerated Decision on Liability. In its Opposition, Respondent requested a hearing on the Motion for Accelerated Decision. Complainant filed its Reply to Respondent's Opposition on February 8, 2023. Under 40 C.F.R. § 22.16(d) the Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion. After reviewing the parties' written briefs, I conclude the Presiding Office has sufficient information in order to issue a ruling in this matter. Therefore, a hearing in this motion proceeding is not necessary.

II. STANDARD FOR GRANTING AN ACCELERATED DECISION

Pursuant to 40 C.F.R § 22.20(a), the Presiding Officer may: render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. 40 C.F.R § 22.20(b)(2) further states, if an acerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts

exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

The EPA Environmental Appeals Board "has construed an accelerated decision to be in the nature of summary judgment and has adopted the formulation of the Supreme Court in *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986), and *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986), construing Federal Rule of Civil Procedure 56." *In Re: Amvac Chemical Corporation; Grower-shipper Association of Central California; J&D Produce; Ratto Bros., Inc.; and Huntington Farms*, 2022 WL 4968470, at *8 (EAB 2022); *see also BWX Techs., Inc.,* 9 E.A.D. 61, 74-75 (EAB 2000). In deciding such motions, the evidence must be viewed in a light most favorable to the non-moving party. *See Rogers Corp. v. E.P.A.*, 275 F.3d 1096, 1103 (D.C. Cir. 2002).

In order to prevail with a motion for summary judgement, a complainant has the burden of establishing its *prima facie* case against a respondent. *UA Local 343 of the United Ass'n of Journeymen v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465, 1471 (9th Cir. 1994). To defeat a motion for summary judgment, 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). "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 nonmoving 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).

The evidentiary standard of proof is a "preponderance of the evidence." 40 C.F.R. § 22.24(b). The Complainant bears the burdens of presentation and persuasion that a violation occurred as set forth in the Complaint, and Respondent bears the burdens of presentation and persuasion for any affirmative defenses. *Id.* § 22.24(a). Pursuant to 40 C.F.R. § 22.22(a), 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.

III. STATUTORY AND REGULATORY BACKGROUND

Congress enacted the Safe Drinking Water Act, commonly referenced as the SDWA, to protect underground sources of drinking water from contamination caused by, *inter alia*, the underground injection of fluids. *See* SDWA Part C, 42 U.S.C. §§ 300h to 300h-9. Pursuant to Part C of the SDWA, EPA promulgated regulations at 40 C.F.R. Part 144 to establish minimum requirements for the underground injection control (UIC) program. As part of the UIC program, EPA issued a final rule on December 7, 1999, categorically banning new and existing large capacity cesspools, nationwide, after April 5, 2005. 64 Fed. Reg. 68546, 68553-54 (codified at 40 C.F.R. § 144.88(a)). 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. The UIC requirements do not apply to. . . nonresidential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons a day. *Id.* at 68567 (codified at 40 C.F.R. § 144.81(2)).

EPA administers the UIC program directly in the State of Hawaii pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, because the State has not been delegated primary enforcement responsibility. Sections 1423(a)(2) and 1423(c) of the SDWA, 42 U.S.C. §§ 300h-2(a)(2) and 300h-2(c), authorize EPA to issue an order for compliance and to seek a penalty where "any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement."

IV. UNDISPUTED FACTS

1. Respondent is a Hawaiian domestic limited liability company. (Complaint filed on August 2, 2022 ("Complaint") attached to Complainant's Motion for Accelerated Decision as Exhibit A, ¶ 9; Answer filed on August 29, 2022 ("Answer") attached to Complainant's Motion for Accelerated Decision as Exhibit B, ¶ 31).

2. Since at least October 4, 2017, Respondent has owned the real property located at 66-532 Kamehameha Highway, Haleiwa, HI 96712, Tax Map Key (TMK) 1-6-2-007-019 (hereafter, the "Property"). (Ex. A, ¶ 11; Ex. B, ¶ 1).

3. The Property comprises a commercial building and a parking lot. (Ex. A, ¶ 12; Ex. B, ¶ 4; *see also* EPA Inspection Report from March 4, 2021 ("Inspection Report") attached to Complainant's Motion for Accelerated Decision as Exhibit C, Figure A).

4. The Property had two restrooms, which were connected to a single cesspool from at least October 4, 2017, until April 28, 2021. (Ex. A, ¶ 14; Ex. B, ¶ 62; Ex. C, Figure A, Section IV IMG_1436).

5. At various times between at least October 4, 2017, and April 28, 2021, the Property's commercial building was rented. (Ex. A, ¶ 16; Ex. B, ¶ 7; *see also* Electronic-Mail from Duke Pontin, attached to Complainant's Motion for Accelerated Decision as Exhibit E.)

6. At various times between at least October 4, 2017, and April 28, 2021, the parking lot on the Property was rented to mobile food vendors, including Jenny's Shrimp Truck since at least April 10, 2018, and Island Fresh Takeout since at least July 19, 2020. (Ex. A, ¶¶ 18, 22; Ex. B, ¶¶ 9, 13; Ex. C, pp. 3).

7. Persons visiting the commercial building and customers and workers from Jenny's Shrimp Truck had access to at least one of the restrooms connected to the cesspool on the Property. (Ex. A, ¶¶ 17, 21; Ex. B, ¶¶ 8, 12).

8. On December 2, 2021, Anchor Builders Hawaii LLC issued a "Large Capacity Cesspool Backfilling Completion Report." The Report was issued by Scott Olson, a licensed contractor and described the cesspool on the Property as being five feet in diameter, ten feet deep, and needing eight cubic yards of material to backfill the cesspool. Mr. Olson referred to the cesspool as a large capacity cesspool and included photos of the backfill project. (Complainant's Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Accelerated Decision on Liability, Ex. F-6 and F-7). The Report was sent to EPA by Respondent's Property Manager. (*Id.)*

V. FINDINGS

I find EPA proved by a preponderance of evidence that Respondent violated Section 1423(a)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(a)(2) by owning or operating a large capacity cesspool after April 5, 2005.

Under the SDWA, a person is liable for violating the ban on large capacity cesspools where (1) the "person" (2) owns or operates a cesspool after April 5, 2005, (3) that is nonresidential and (4) that has the capacity to serve twenty or more persons in a day. 40 C.F.R. § 144.81(2).

A. <u>Respondent is a "Person" for Purposes of the SDWA.</u>

Complainant established Respondent is a "person" as defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and at 40 C.F.R. §144.3, which is an "individual, corporation, company, association, partnership, State, municipality, or Federal agency." Respondent admits it is a domestic limited liability company, and therefore a "person" under the SDWA. (Ex. A, ¶¶ 9, 10; Ex. B, ¶¶ 1, 3). Therefore, Respondent is a "person" as defined by Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12) and at 40 C.F.R. §144.3. (See Ex. B, ¶¶ 1 and 3).

B. <u>Respondent Owned or Operated the Cesspool After April 5, 2005.</u>

Under the UIC regulations, an "owner or operator" is defined as "the owner or operator of any 'facility or activity' subject to regulation under the UIC program." 40 C.F.R. § 144.3. A "facility or activity" is defined as "any UIC 'injection well,' or an other facility or activity that is subject to regulation under the UIC program." *Id.* A "cesspool" is one type of injection well. *Id.*

Complainant established Respondent owned the Property, including the cesspool and the restrooms connected to the cesspool, since at least October 4, 2017 (Ex. A, ¶ 11; Ex. B, ¶ 1) and that Respondent owned or operated the cesspool for purposes of 40 C.F.R. § 144.3. Except for temporary periods of closure, Respondent admits it was the owner of the Property that periodically operated a single cesspool which was connected to the restrooms located on the Property and that individuals visiting the Property had access to at least one restroom during the

periods of operation. (Ex. B ¶¶ 1, 6, and 8). Therefore, I find Respondent owned or operated a cesspool after April 5, 2005.

C. Respondent's Cesspool is Non-Residential.

Complainant claims both common usage and the Merriam-Webster dictionary define "residential" as relating to one or more residences. A "residence" is a dwelling or a building used as a home. *See* Merriam-Webster Online Dictionary, https://www.merriamwebster.com (last visited Dec. 9, 2022).

The record shows the Property does not contain a dwelling or building used as a home and it has a commercial building which was open to the public, and a parking lot which was rented to two mobile food vendor businesses. (Ex. A, ¶¶ 16, 18, 22; Ex. B, ¶¶ 7, 9, 13). Since the cesspool on the Property does not serve a residence and it is therefore a non-residential cesspool. Respondent did not contest Complainant's characterization of the cesspool on the Property as "non-residential." Instead, Respondent affirmed the cesspool was associated with the commercial use of the Property. (Ex. B ¶¶ 8, 9, 12, 13). Therefore, Complainant has shown Respondent's cesspool is non-residential.

D. Complainant Established the Cesspool on the Property is a Large Capacity Cesspool.

The crux of the dispute between the parties in the current motion for accelerated decision is whether the cesspool on the property is a large capacity cesspool.

i. Complainant has the burden of proof.

As stated above, Complainant has the burden of establishing the cesspool located on the Property is a Large Capacity Cesspool under 40 C.F.R. § 144.81(2), which states,

> Large capacity cesspools including 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.

ii. Capacity is a measure of a device's potential or ability.

As Complainant stated, there does not appear to be any caselaw interpreting "capacity" in the large capacity cesspool context. Therefore, it is appropriate to consider dictionary definitions, the common understanding of the word, and judicial opinions interpreting the term in other contexts. *See Carbon Injection Sys. LLC*, 17 E.A.D. 1, 23 (EAB 2016) ("[T]he Board frequently relies on dictionaries in interpreting regulatory language."); *Odessa Union Warehouse Co-Op, Inc.*, 4 E.A.D. 550, 557 (EAB 1993) ("[I]n the absence of a statutory or regulatory definition, it is appropriate to use the common meaning of the terms at issue.").

In its effort to define the term "capacity", Complainant cites the Merriam-Webster Dictionary, which defines "capacity" to mean "the potential or suitability for holding, storing, or accommodating." Merriam-Webster Online Dictionary, https://www.merriam-webster.com(last visited Dec. 9, 2022). Complainant notes, Black's Law Dictionary provides a similar definition: "[t]he amount of something that a factory, company, machine, etc. can produce or deal with." CAPACITY, Black's Law Dictionary (11th ed. 2019). These definitions align with the common understanding of the term, which connotes potentiality and suitability and is not limited by the actual use of the item. I generally agree with Complainant's dictionary definitions and example that a bucket with a five-gallon capacity would retain its five-gallon capacity even if it was filled only to the three-gallon mark. And while actual use does not define the capacity of an item, it can be informative. If the capacity of a bucket is unknown but three gallons of water are poured into the bucket without causing it to overflow, the common understanding would be that the bucket

has the capacity to hold *at least* three gallons. In other words, the known actual use of an item provides a floor, not a ceiling, that informs our understanding of the item's capacity.

Complainant further explains courts agree with this understanding of the term. For example, in a recent Telephone Consumer Protection Act case, the Second Circuit concluded that "capacity" is best understood to refer to the functions a device is currently able to perform, regardless of whether it has actually performed those functions. *King v. Time Warner Cable Inc.,* 894 F.3d 473, 477, 480 (2d Cir. 2018); *accord Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 (9th Cir. 2009). In reaching this conclusion, the court noted that the D.C. Circuit had considered and rejected a narrow interpretation limiting "capacity" to actual use because such an interpretation is inconsistent with the plain meaning of the term. *King*, 894 F.3d at 478-79 (citing *ACA International v. FCC*, 885 F.3d 687, 696 (D.C. Cir. 2018)). The Second Circuit proceeded to hold that "capacity" refers to a device's "current ability" or "current functions, absent any modifications." *Id.* at 481.

In sum, an item's capacity is a measure of its ability or functionality when the claims arose, whether or not that functionality was in use at the time. *See King*, 894 F.3d at 477, 479, 480. Applying that definition to the current issue at hand, a cesspool has the capacity to serve twenty or more persons a day—making it a large capacity cesspool—when it has the present ability or potential to serve twenty or more persons in a day. *See also* 64 Fed. Reg. 68557 ("Under this criterion…cesspools are covered under the UIC program if they … have the capacity to serve 20 or more persons a day."). Although Complainant correctly states capacity is a measure of a device's potential or ability, Complainant still has the burden of proving the subject cesspool's potential or ability with reliable evidence.

iii. There is No Genuine Dispute that the Cesspool on the Property Had the Capacity to Serve Twenty or more Person in a Single Day Between April 10, 2018, and April 28, 2021.

Large Capacity Cesspool Backfilling Final Completion Report: I find Anchor Builders Hawaii LLC's December 2, 2021 "Large Capacity Cesspool Backfilling Final Completion Report" to be relevant, reliable, and providing high probative value in establishing the cesspool on the Property was a Large Capacity Cesspool under 40 C.F.R. § 144.81(2). This Report establishes the cesspool on the Property was five feet in diameter, ten feet deep, and required eight cubic yards of backfill. Scott Olson, a licensed contractor with Anchor Builders Hawaii LLC characterized the cesspool on the property as a "large capacity cesspool" and provided photographs of backfilling process. (Complainant's Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Accelerated Decision on Liability, Ex. F-6 and F-7).

Complainant's March 4, 2021, Inspection Report: On March 2, 2021, two EPA inspectors conducted a physical inspection of the Property. These inspectors included statements regarding their observations and photographs of the uncovered cesspool and restroom facilities on the Property in their March 4, 2021, Compliance Evaluation Inspection Report. (Complainant's Motion for Accelerated Decision, Ex. C). Although the Report contains photographs of the uncovered cesspool, it lacks any measurements of the cesspool's dimensions or volume.

On January 9, 2023, EPA Region 9's Principle Enforcement Officer executed a declaration in this matter. The Declaration establishes the Principle Enforcement Officer's experience with LCC inspections since 2013. In her Declaration, the Principle Enforcement

Officer concludes the subject cesspool is a LCC based on: 1) City and County of Honolulu (CCH) sewer maps; 2) County Assessor Tax Maps and Hawaii's Department of Commerce and Consumer Affairs business registration website; 3) the State of Hawaii, Department of Health (HDOH) individual wastewater system (IWS) extract from February 2021; 4) geographic imagery via Google Maps; and 5) EPA's R9iWells database for inventoried Class V Injection Wells, which includes large capacity septic systems; 5) the March 4, 2021 Compliance Evaluation Inspection Report; 6) her conversations with one of the inspectors who wrote the Report; and 7) photographs she obtained from Yelp.com.

Respondent claims "the cesspool did not have the physical capacity to service 20 or more persons per day and the EPA must take into account the physical capacity of the cesspool in determining if a cesspool is a large capacity cesspool subject to EPA regulation." (Ex. B, ¶ 24). However, Complainant asserts the preamble for EPA's large capacity cesspool rule considered and rejected any physical or technical test as the determinative factor. Complainant explains, during its rulemaking, EPA received and considered numerous comments on whether technical or physical criteria such as "waste flow rate or septic tank size" should be considered. *See* 64 Fed. Reg. 68557. In light of the conclusion that such technical or physical criteria would "disrupt existing state programs" and that no alternatives were offered during comment period that were "necessary to ensure better protection of [underground sources of drinking water]," EPA affirmed the proper threshold to be the "capacity to serve 20 or more persons a day." without requiring a physical or technical criteria. *Id.*

Complainant's own assessment factors clearly state, "For non-residential cesspools, capacity is determined by design and construction of the cesspool and the potential usage of the infrastructure it serves." The Complainant's assessment factors go on to say, "determining the

potential usage of a non-residential cesspool is highly fact-specific and must be done on a case-by case basis." Here, Respondent claims Complainant failed to satisfy its burden of proof because Complainant failed to inspect the physical capacity of the cesspool on the Property. I disagree with Respondent's conclusion that Complainant did not physically inspect the cesspool. Although Complainant did not physically measure the dimensions or volume of the cesspool, Complainant did physically inspect and photograph the uncovered cesspool on the Property. I agree physical measurements of a cesspool's dimensions and volume would have bolstered Complainant's conclusions, yet I agree that these measurements are not required for Complainant to assess whether a given cesspool is a LLC. Instead, Complainant's inspectors may rely on their experience with LLCs to determine whether their observation of a given cesspool's approximate dimensions and volume satisfy the 20-person capacity threshold.

Yelp.com Photographs: Complainant explained it is acceptable to consider, among other things, the infrastructure a cesspool serves and location, as well as whether it is publicly accessible when determining if a cesspool can serve twenty or more persons in a day. Respondent admitted every visitor to the commercial building and every customer and employee of Jenny's Shrimp Truck had access to the open restroom. (Ex. A, ¶¶ 17, 21; Ex. B, ¶¶ 8, 12). Respondent also admitted Jenny's Shrimp Truck has been operating in the parking lot from at least April 10, 2018, until April 28, 2021. (Ex. A, ¶ 18; Ex. B, ¶ 9). However, Complainant relied on Yelp.com photographs of persons claimed to be food truck patrons, and Yelp,com photographs of seating arrangements in the Property's parking lot to prove Jenny's Shrimp Truck alone served at least twenty customers on multiple days, including May 3, 7, 10, and 18 of 2018. (Ex. D, ¶ 14; Ex. D.2, pp. 1-10). Although Respondent asserts the Presiding Officer may only

consider evidence that is properly authenticated under the Federal Rules of Evidence, I disagree that this is the evidentiary standard set forth in 40 C.F.R. § 22.22(a), which states, "The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value…"

Authentication under the Federal Rules of Evidence would certainly bolster the reliability of proffered evidence, but it is not mandatory to determine reliability. On the other hand, Complainant claims the Yelp.com photographs indisputably demonstrate the cesspool on the Property had the potential to serve *at least* twenty persons in a day from at least April 10, 2018, until April 28, 2021. Given the ease at which anyone can alter photographs or post inaccurate images online, I do not consider the Yelp.com photographs reliable evidence without having additional verification of the images. Therefore, I conclude the proffered Yelp.com photographs are not reliable. As such, I did not admit them into evidence or use them in reaching my decision.

Design and construction: Respondent argues Complainant must prove the cesspool on the Property had an open bottom in order to establish its *prima facie* case against Respondent. Respondent further claims Complainant cannot satisfy this legal element without having conducted a physical inspection of the cesspool. Complainant argues Respondent is incorrectly interpreting the language in 40 C.F.R. § 144.81(2) in relation to 40 C.F.R. § 144.3. Complainant explains 40 C.F.R. § 144.3 defines cesspools to be a drywell that receives untreated sanitary waste containing human excreta, and which *sometimes* has an open bottom and/or perforated sides [emphasis added]. Complainant further explains 40 C.F.R. § 144.81(2), which defines "large capacity cesspool", does not exclude cesspools defined in 40 C.F.R. § 144.3. Instead, 40 C.F.R. § 144.81(2) expands the physical definition to "include" cesspools which have an open

bottom and sometimes perforated sides. I agree with Complainant's interpretation that LCCs can include cesspools with open or closed bottoms.

E. **"Legal Defenses" in Respondent's Answer are Not Relevant to the Question of Legal Liability**

Respondent's "Ninth Defense" asserts "the property is located makai of the state of Hawaii UIC injection line and is not above a drinking water aquifer and therefore the cesspool was incapable of polluting the aquifer." (Ex. B, ¶ 30; *see also* ¶ 2). "Makai" is Hawaiian for "toward the sea" or "seaward." Although Respondent seems to argue that there is a geographic exception to the large capacity cesspool ban, I agree with Complainant's assertion that 40 C.F.R. § 144.88(a) clearly states the large capacity cesspool ban applies to all new and existing large capacity cesspools "regardless of [their] location."

Similarly, Respondent's "Fourteenth Defense" asserts "the alleged violation was not serious and there was no actual or threatened impact to the aquifer and environment." (Ex. B, ¶ 35). Here, as with its "Ninth Defense," Respondent seems to argue for an exception based on the alleged lack of endangerment or harm posed by a large capacity cesspool. Again, I concur with Complainant's position that 40 C.F.R. § 144.88(a) contains no such limitation.

VI. CONCLUSION

Based on the foregoing, I conclude Complainant established its *prima* facie case against Respondent, with no genuine issue of material fact, for a violation of Section 1423(a)(2) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(a)(2). I hereby **GRANT** Complainant's Motion for Accelerated Decision on Liability and find NSHE HI Narcissus LLC liable as a matter of law for violating the SDWA.

STEVEN JAWGIEL

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Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify a true and correct copy of the Partial accelerated Decision In the Matter of NSHE HI Narcissus, LLC (UIC-09-2022-0058) was sent to the following parties via electronic mail, as indicated below:

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