



1 GRETCHEN BUSTERUD
Acting Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 KIMBERLY WELLS
Attorney Advisor
4 United States Environmental Protection Agency, Region 9
75 Hawthorne Street
5 San Francisco, California 94105
6 (415) 972-3948

7 Attorneys for Complainant

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

11
12 IN THE MATTER OF:) DOCKET NO. UIC-09-2022-0058
13)
14 NSHE HI Narcissus, LLC,)
15 Kahuku, Hawaii,)
16 Respondent.) **ADMINISTRATIVE COMPLAINT**
17)
18 Proceedings under Section 1423(c) of the Safe)
19 Drinking Water Act, 42 U.S.C. § 300h-2(c).)
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In re: NSHE HI Narcissus, LLC
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I. AUTHORITY

1. The United States Environmental Protection Agency (EPA or “Complainant”) issues this Administrative Complaint pursuant to the authority vested in the Administrator of EPA and properly delegated to the EPA Region 9 Director of the Enforcement and Compliance Assurance Division under Section 1423(c) of the Safe Drinking Water Act (Act), 42 U.S.C. § 300h-2(c). The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Rules of Practice), 40 Code of Federal Regulation (C.F.R.) Part 22, a copy of which is enclosed. *See, specifically* 40 C.F.R. § 22.1(a)(9). Pursuant to the Rules of Practice, 40 C.F.R. § 22.13(a), this Administrative Complaint conforms to the prehearing procedures at 40 C.F.R. § 22.14 governing administrative complaints and is hereinafter referred to also as the “Complaint.” EPA alleges as follows:

II. JURISDICTION

15 2. The Regional Judicial Officer for EPA Region 9 is the Presiding Officer with jurisdiction
16 over this action pursuant to the Rules of Practice, 40 C.F.R. §§ 22.50(a)(2) and 22.51.

III. STATUORY AND REGULATORY BACKGROUND

18 3. To prevent underground injection which endangers drinking water sources, EPA has
19 promulgated regulations pursuant to Part C of the Act, 42 U.S.C. §§ 300h – 300h-8, which
20 establish minimum requirements for Underground Injection Control (UIC) programs. These UIC
21 regulations are set forth in 40 C.F.R. Part 144.

22 4. The UIC regulations define “underground injection” to mean the subsurface emplacement
23 of fluids by well injection. 42 U.S.C. § 300 h(d)(1), 40 C.F.R. § 144.3. “Well injection” is
24 defined by 40 C.F.R. § 144.3 to mean the subsurface emplacement of fluids through a well. A
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1 “drywell” is a type of well, other than an improved sinkhole or subsurface fluid distribution
2 system, completed above the water table so that its bottom and sides are typically dry except
3 when receiving fluids. 40 C.F.R. § 144.3. A “cesspool” is a type of drywell that receives
4 untreated sanitary waste containing human excreta, and which sometimes has an open bottom
5 and/or perforated sides. 40 C.F.R. § 144.3. “Sanitary waste” is defined at 40 C.F.R. § 144.3 to
6 include: “wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic
7 areas, sinks used for food preparation, clothes washing operations, and sinks or washing
8 machines where food and beverage serving dishes, glasses and utensils are cleaned.”

9 5. The UIC regulations define “large capacity cesspools” to mean cesspools that receive
10 sanitary waste from “multiple dwellings, community or regional cesspools, or other devices.” 40
11 C.F.R. § 144.81(2). Large capacity cesspools do not include single family residential cesspools
12 or non-residential cesspools which receive solely sanitary waste and have the capacity to serve
13 fewer than 20 persons per day. *Id.*

14 6. The UIC regulations at 40 C.F.R. § 144.88(a) required owners or operators of existing
15 large capacity cesspools to close them no later than April 5, 2005 in accordance with the closure
16 specifications contained in 40 C.F.R. § 144.89 and prohibits new LCCs.

17 7. EPA administers the UIC program in the State of Hawaii pursuant to Section 1422(c) of
18 the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601.

19 8. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. §
20 19.4, EPA may issue an administrative order against any person who violates the Act or any
21 requirement of an applicable UIC program, and the administrative order may:

- 22 a. assess an administrative civil penalty of not more than \$25,076 for each day of
23 each violation occurring after November 2, 2015, up to a maximum penalty of
24 \$313,448, or
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1 18. Jenny’s Shrimp Truck operated in the parking lot of the Property from at least April 10,
2 2018 until April 28, 2021 as a mobile food vendor.

3 19. While operating on the Property, Jenny’s Shrimp Truck employed one or more
4 individuals and served customers food.

5 20. Between April 10, 2018 and April 28, 2021 Jenny’s Shrimp Truck served multiple
6 customers on a daily basis, including 20 or more persons in a day on one or more occasions.

7 21. From at least April 10, 2018 until April 28, 2021, employees and customers of Jenny’s
8 Shrimp Truck had access to at least one of the two restrooms identified in Paragraph 13.

9 22. Island Fresh Takeout operated in the parking lot of the Property from at least July 19,
10 2020 until April 28, 2021 as a mobile food vendor.

11 23. While operating on the Property, Island Fresh Takeout employed one or more individuals
12 and served customers food.

13 24. Between July 19, 2020 and April 28, 2021, Island Fresh Takeout served multiple
14 customers on a daily basis.

15 25. From July 19, 2020 until April 28, 2021, employees and customers of Island Fresh
16 Takeout had access to at least one of the two restrooms identified in Paragraph 13.

17 26. For the reasons described in Paragraphs 1211-25, from at least October 4, 2017 until
18 April 28, 2021, the cesspool serving the Property had the potential to serve 20 or more persons in
19 a day.

20 27. The cesspool serving the Property from at least October 4, 2017 until April 28, 2021 was
21 a “large capacity cesspool” as that term is defined at 40 C.F.R. § 144.81(2), because it received
22 sanitary waste, including human excreta, from a non-residential facility that has the capacity to
23 serve 20 or more persons per day.
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1 28. Respondent's failure to close the cesspool at the Property prior to December 2, 2021 is a
2 violation of the Act and of the UIC Program regulations set forth at 40 C.F.R. § 144.88.

3 **V. RELIEF SOUGHT: CIVIL PENALTY DEMAND**

4 29. Pursuant to Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3), EPA requests that
5 the Presiding Officer issue an order in this matter assessing an administrative penalty.

6 A. **Proposed Administrative Civil Penalty**

7 30. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4,
8 Respondent shall pay an administrative penalty of *up to* \$25,076 for each day of violation of the
9 Act, up to a maximum penalty of \$313,448. In assessing any civil penalty, Section 1423(c)(4) of
10 the Act requires that EPA take into account the following factors: (1) the seriousness of the
11 violations; (2) the economic benefit resulting from the violations; (3) any history of such
12 violations; (4) any good faith efforts to comply with the applicable requirements; (5) the
13 economic impact of the penalty on Respondent; and (6) such other matters as justice may
14 require. Accordingly, EPA requests that after consideration of these statutory assessment factors,
15 the Presiding Officer assess Respondent a civil administrative penalty of up to \$313,448 pursuant
16 to 40 C.F.R. § 22.27.

17 31. EPA will notify the public of this Complaint in accordance with the requirements of 40
18 C.F.R. § 22.45(b).

19 **VII. ANSWERING THE COMPLAINT AND REQUESTING A HEARING ON**
20 **THE DEMAND FOR PENALTIES**

21 A. **Answer to the Complaint**

22 32. If Respondent intends to contest any material fact upon which the Complaint is based, or
23 wishes to contend that the proposed penalty is inappropriate, or that Respondent is entitled to
24 judgment as a matter of law, then the Rules of Practice at 40 C.F.R. § 22.15(a) require that
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1 Respondent file an original and one copy of a written Answer with EPA Region 9's Regional
2 Hearing Clerk within 30 days after service of this Complaint at the address below:

3 Ponly Tu
4 Regional Hearing Clerk
5 U.S. Environmental Protection Agency, Region 9
6 75 Hawthorne Street (mail code: ORC-1)
7 San Francisco, CA 94105
8 R9HearingClerk@epa.gov

9 33. The Rules of Practice at 40 C.F.R. § 22.15(a) also require that Respondent serve an
10 additional copy of the Answer on EPA to the following person who is authorized to receive
11 service related to this proceeding:

12 Kimberly Wells
13 Office of Regional Counsel
14 U.S. Environmental Protection Agency, Region 9
15 75 Hawthorne Street (mail code: ORC 2-3)
16 San Francisco, CA 94105
17 Phone: (415) 972-3056
18 wells.kimberly@epa.gov

19 34. In accordance with 40 C.F.R. § 22.15(b), the contents of the Answer must clearly and
20 directly admit, deny, or explain each of the factual allegations contained in the Complaint with
21 regard to which Respondent has any knowledge. Where Respondent has no knowledge of a
22 particular factual allegation and so state in its Answer, the allegation is deemed denied. Under 40
23 C.F.R. Section 22.15(d), Respondent's failure to admit, deny or explain any material factual
24 allegation contained in this Complaint constitutes an admission of the allegation. The Answer
25 must also, in accordance with 40 C.F.R. § 22.15(b), state: (1) The circumstances or arguments
that are alleged to constitute the grounds of any defense; (2) the facts that Respondent disputes;
(3) the basis for opposing the proposed relief; and (4) whether a hearing is requested.

26 B. Request for a Hearing

27 35. In accordance with Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A), EPA
gives Respondent this written notice of its proposed Complaint for Civil Penalties and of the

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1 opportunity to request a hearing upon the issues raised by the Complaint and Answer, and on the
2 appropriateness of the proposed Complaint for Civil Penalties. As provided under 40 C.F.R.
3 Section 22.15(c), if Respondent wishes to request such a hearing, it must include the request in
4 its Answer. Such hearing shall not be subject to Section 554 or 556 of the Administrative
5 Procedures Act, 5 U.S.C. §§ 554 and 556, but shall provide a reasonable opportunity to be heard
6 and to present evidence. If a hearing is requested, Subpart I of the Rules of Practice, 40 C.F.R.
7 Part 22, governs and sets forth the procedures of such hearing.

8 36. Respondent's failure to affirmatively raise in the Answer facts that constitute or might
9 constitute grounds for its defense may preclude Respondent from raising such facts and/or from
10 having such facts admitted into evidence at a hearing.

11 **C. Default**

12 37. To avoid the Presiding Officer's entry of a default order pursuant to 40 C.F.R. § 22.17(a)
13 for a penalty up to \$313,448, Respondent must file a written Answer with the Regional Hearing
14 Clerk in the manner described above.

15 38. Any penalty assessed in a default order will become due and payable by Respondent
16 without further proceedings 30 days after the default order becomes final. 40 C.F.R. § 22.17(d).
17 Similarly, any compliance required under a default order shall be effective and enforceable
18 without further proceedings on the date the default order becomes final. *Id.* If necessary, EPA
19 may then seek to enforce such final default order against Respondent, and seek to collect the
20 assessed penalty amount, which may be up to \$313,448, in federal court.

21 **VIII. REQUESTING AN INFORMAL SETTLEMENT CONFERENCE**

22 39. In accordance with 40 C.F.R. § 22.18(b), whether or not Respondent requests a hearing,
23 Respondent may request an informal settlement conference to discuss the facts of this case, the
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1 proposed penalty and compliance order, and settlement. To request such a settlement conference,
2 please contact:

3 Kimberly Wells
4 Office of Regional Counsel
5 U.S. Environmental Protection Agency, Region 9
6 75 Hawthorne Street (mail code: ORC 2-3)
7 San Francisco, CA 94105
8 (415) 972-3056
9 wells.kimberly@epa.gov

10 40. A request for an informal settlement conference constitutes neither an admission nor a
11 denial of any of the matters alleged herein. EPA does not deem a request for an informal
12 settlement conference to be a request for a hearing as specified in 40 C.F.R. § 22.15(c), or as
13 provided for by Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A).

14 41. Settlement discussions do not affect Respondent's obligation to file a timely Answer to
15 the Complaint. 40 C.F.R. §§ 22.15 and 22.18(b)(1). EPA will not modify its proposed penalty
16 and compliance order simply because an informal settlement conference is held.

17 42. The terms and conditions of any settlement that may be reached as a result of a settlement
18 conference will be recorded in a written Consent Agreement signed by all parties. 40 C.F.R. §
19 22.18(b)(2). To conclude the proceeding, EPA will execute a Final Order ratifying the parties'
20 Consent Agreement. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondent
21 would waive any right to contest the allegations herein and waive any right to appeal the Final
22 Order accompanying the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

23 43. Respondent entering into a Consent Agreement would not extinguish, waive, satisfy, or
24 otherwise affect Respondent's obligation to comply with all applicable statutory and regulatory
25 requirements and legal orders.

IX. APPEARANCES

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1 44. In accordance with 40 C.F.R. § 22.10, any party may appear in person or by counsel or
2 other representative. A partner may appear on behalf of a partnership and an officer may appear
3 on behalf of a corporation. Persons who appear as counsel or other representatives must conform
4 to the standards of conduct and ethics required of practitioners before the courts of the United
5 States.

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7 Dated this day of

8 **AMY MILLER-** Digitally signed by
9 **BOWEN** AMY MILLER-BOWEN
10 Date: 2022.08.01
10:39:08 -07'00'

11 Amy C. Miller-Bowen, Director

12 Enforcement and Compliance Assurance Division
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1 **CERTIFICATE OF SERVICE**

2 In the Matter of NSHE HI Narcissus, LLC
3 EPA Docket No. UIC-09-2022-0058

4 I certify that the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for
5 Hearing, was filed via email with the Regional Hearing Clerk, United States Environmental
6 Protection Agency, Region 9 at R9HearingClerk@epa.gov and that a true and correct copy of (1)
7 the Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing; (2) the
8 Consolidated Rules of Practice at 40 C.F.R. Part 22; (3) the EPA's 1993 UIC Program Judicial
9 and Administrative Order Settlement Penalty Policy; and (4) the Region 9 Regional Judicial
10 Officer's Standing Order dated May 14, 2020, was sent via United Parcel Service's Signature
11 Service, with written verification of delivery requested, to:

9 Duke Pontin, Officer
10 NSHE HI Narcissus, LLC
11 56-970 Kamehameha Hwy
12 Kahuku, Hawaii 96731

13 Tracking No. **1ZA46W47A299892543**

14 JELANI SHAREEM Digitally signed by JELANI
SHAREEM
Date: 2022.08.02 12:14:31 -07'00'

15 Jelani Shareem
16 Enforcement and Compliance Assurance Division, ECAD
17 U.S. EPA, Region 9
18 75 Hawthorne Street
19 San Francisco, CA 94105
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