

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

Aloha Petroleum, Ltd.,
Captain Cook, Hawaii.

Respondent.

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

DOCKET NO. UIC-09-2016-0003

**CONSENT AGREEMENT
and
[PROPOSED] FINAL ORDER**

I. CONSENT AGREEMENT

Complainant, the Director of the Enforcement Division of the United States Environmental Protection Agency, Region IX (“EPA”) and Respondent, Aloha Petroleum, Ltd. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

A. AUTHORITY

1. EPA initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Sections 1423(c) of the Safe Drinking Water Act (the “SDWA” or the “Act”), 42 U.S.C. §§ 300h-2(c), by issuing a Proposed Administrative Order For Penalties (“Complaint”) against Respondent on August 3, 2016 in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

2. The Complaint alleged that Respondent violated Section Part C of the SDWA, 42 In the Matter of Aloha Petroleum, Ltd.

U.S.C. §§ 300h – 300h-8, by failing to comply with 40 C.F.R. § 144.88's requirement to close all large capacity cesspools by April 5, 2005. Respondent's cesspool was closed on December 23, 2014.

3. EPA and Respondent have agreed to resolve this civil administrative proceeding by executing this CAFO pursuant to 40 C.F.R. § 22.18(b).

4. The filing of this CAFO is beyond 10 days after the close of the comment period commenced by the filing of the Complaint pursuant to 40 C.F.R. 22.45(c)(1), and no comments were submitted on the Complaint.

B. RESPONDENT'S ADMISSIONS

5. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

6. Respondent agrees to the assessment of a penalty in the amount of FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$57,500) as final settlement of the civil claims against Respondent arising under SDWA as alleged in the Complaint.

7. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective date of the CAFO. The assessed penalty shall be paid by **certified or cashier's check**, payable to "Treasurer, United States of America," or paid by one of the other methods listed below and sent as follows:

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Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter fo1.1 in the search field
Open form and complete required fields

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If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

Concurrently, a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

- a) Regional Hearing Clerk (ORC-1)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
- b) Jelani Shareem
Enforcement Division (ENF-3-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

8. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

9. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 5 by the deadline specified in Paragraph 6, then Respondent shall pay to EPA a stipulated penalty of \$150 per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon written request by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 6 may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person

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owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 6. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

D. RETENTION OF RIGHTS

10. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Complaint.

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11. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

F. ATTORNEYS' FEES AND COSTS

12. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

G. EFFECTIVE DATE

13. In accordance with 40 C.F.R. §§ 22.18(b)(3), 22.31(b) and 22.45(c), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

H. BINDING EFFECT

14. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

15. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR THE CONSENTING PARTIES:

For Aloha Petroleum, Ltd.:

_____/s/_____
Richard Parry, President/CEO

Date: _____4/25/2017_____

For the United States Environmental Protection Agency:

_____/s/_____
Kathleen H. Director
Enforcement Division

Date: _____5/11/2017_____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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

DOCKET NO. UIC-09-2016-0003

CONSENT AGREEMENT
AND

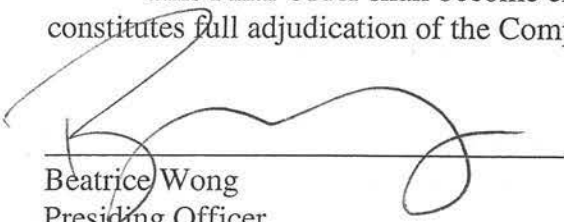
~~PROPOSED~~ FINAL ORDER

The United States Environmental Protection Agency Region IX ("EPA"), and Aloha Petroleum, Ltd. ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the "Findings and Proposed Administrative Order with Administrative Civil Penalty" ("Complaint"), regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2016-0003) be entered; and
2. Respondent shall pay an administrative civil penalty of fifty-seven thousand five hundred dollars (\$57,500) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.
3. Pursuant to 40 C.F.R. §§ 22.4(c) and 22.31(d), the Presiding Officer retains jurisdiction to hear motions pertaining to enforcement of the compliance requirements of the Consent Agreement, including disputes regarding the assessment of stipulated penalties.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.


Beatrice Wong
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: 5/11/17

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CERTIFICATE OF SERVICE

I certify that the original and foregoing Consent Agreement and [Proposed] Final Order, Docket Number UIC-09-2016-003 was filed on May 11, 2017, with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Richard Parry, President
Aloha Petroleum, LTD.
1132 Bishop Street, Ste. 1700
Honolulu, Hawaii 96813

Patricia J. McHenry
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

Dated: 5/11/17



FOR: Steven Armsey
Regional Hearing Clerk
Enforcement Division
U.S. EPA, Region IX