

US EPA ARCHIVE DOCUMENT

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2017-0004
5)

6 Fileminders of Hawaii, LLC,
7 Hawaii MMGD LLC,
8 91-238 Kauhi St., Kapolei, HI 96707

9)
10) **CONSENT AGREEMENT**
11) **AND**
12) **PROPOSED FINAL ORDER**

13 Respondents.)

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

16 **CONSENT AGREEMENT**

17 **I. AUTHORITIES AND PARTIES**

18 1. The United States Environmental Protection Agency (“EPA” or “Complainant”),
19 Region IX and Respondents Fileminders of Hawaii, LLC (“Fileminders”) and Hawaii MMGD
20 LLC (“MMGD”) (collectively the “Parties”) agree to settle this matter and consent to the entry
21 of this Consent Agreement and [Proposed] Final Order (“CA/FO”), which commences this
22 proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b). Pursuant to 40
23 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a Final Order by the
24 Regional Judicial Officer.

25 2. This is a civil administrative action instituted by EPA Region IX against
Respondents pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C.
§ 300h-2(c), for violations of the SDWA and the Underground Injection Control (“UIC”) requirements set forth at 40 C.F.R. Part 144.

1 3. Complainant is the Director of the Enforcement Division, EPA Region IX. The
2 Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority
3 to bring and settle this action under SDWA. In turn, the Regional Administrator of EPA Region
4 IX further delegated the authority to bring and sign a consent agreement settling this action under
5 SDWA to the Director of the Enforcement Division.

6 4. Respondent Fileminders is a Delaware limited liability company headquartered at
7 91-238 Kauhi Street, Kapolei, Hawaii, 96707.

8 5. Respondent MMGD is a Maryland limited liability company headquartered at 255
9 Washington Street, Newton, Massachusetts, 02458.

10 **II. APPLICABLE STATUTES AND REGULATIONS**

11 6. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, EPA has
12 promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC
13 programs to prevent underground injection that endangers drinking water sources.

14 7. Per Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. §
15 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of
16 the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

17 8. “Underground injection” means the subsurface emplacement of fluids by well
18 injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

19 9. “Well injection” means the subsurface emplacement of fluids through a well. 40
20 C.F.R. § 144.3.

21 10. “Well” means, in relevant part, a dug hole whose depth is greater than the largest
22 surface dimension. 40 C.F.R. § 144.3.

23 11. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined
24 in 40 C.F.R. § 144.3.

25 12. “Large capacity cesspools” (“LCCs”) include “multiple dwelling, community or
regional cesspools, or other devices that receive sanitary wastes, containing human excreta,

1 which have an open bottom and sometimes perforated sides.” 40 C.F.R. § 144.81(2). LCCs do
2 not include single family residential cesspools or non-residential cesspools which receive solely
3 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

4 13. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
5 § 144.80(e).

6 14. Class V UIC injection wells are considered a “facility or activity” subject to
7 regulation under the UIC program. 40 C.F.R. § 144.3.

8 15. “Owner or operator” means the owner or operator of any “facility or activity”
9 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

10 16. The “owner or operator” of a Class V UIC well “must comply with Federal UIC
11 requirements in 40 C.F.R. Parts 144 through 147,” and must also “comply with any other
12 measures required by States or an EPA Regional Office UIC Program to protect [underground
13 sources of drinking water].” 40 C.F.R. § 144.82.

14 17. Owners or operators of existing LCCs were required to have closed those LCCs
15 no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

16 18. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
17 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
18 than \$21,916 per day per violation up to a maximum of \$273,945, or requiring compliance, or
19 both, against any person who violates the SDWA or any requirement of an applicable UIC
20 program.

21 **III. ALLEGATIONS**

22 19. Respondents are each a limited liability company and thus each qualifies as a
23 “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40
24 C.F.R. § 144.3.

25 20. On or about June 15, 2005, Respondent MMGD acquired the fee simple interest
in a commercial property located at 91-238 Kauhi Street, Kapolei (the “Property”) containing a

1 commercial building (the “Facility”) in the Kapolei Business Park on the Island of Oahu, which
2 was then leased to Fileminders. At that time, a single cesspool located on the Property that had
3 been installed on or around 1981 received sanitary waste from the Facility.

4 21. Sometime in May 2007, Respondent Fileminders entered into a new lease to lease
5 the Property from MMGD to operate a document storage and scanning business at the Facility.

6 22. On or before May 2012, the cesspool was used by 20 people on at least a single
7 day and thereafter was considered an LCC because it had the capacity to serve 20 or more
8 persons per day pursuant to 40 C.F.R. § 144.81(2).

9 23. On May 16, 2017, Hawaii Department of Health issued Respondents a permit to
10 replace the LCC with a leachfield and septic tank septic system. On May 25, 2017, Respondents
11 commenced the work to close the LCC, and on June 19, 2017, the Respondents completed the
12 work to clean, backfill and close the LCC in accordance with 40 C.F.R. §§ 144.84(b)(2) and
13 144.88.

14 24. From approximately May 2012 or before until June 19, 2017, Fileminders
15 “operated” and MMGD “owned” the LCC located on the Property in violation of the requirement
16 for owners and operators to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

17 **IV. SETTLEMENT TERMS**

18 **A. GENERAL PROVISIONS**

19 25. For the purposes of this proceeding, Respondents (1) admit the jurisdictional
20 allegations contained in this CA/FO, (2) neither admit nor deny the specific factual allegations
21 contained in this CA/FO; (3) consent to the assessment of the penalty and to the specified
22 compliance obligations contained in this CA/FO, and (4) and waive any right to contest the
23 allegations or to appeal the Final Order accompanying this CA/FO. 40 C.F.R. § 22.18(b)(2).
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25

1 26. Respondents also expressly waive any right to contest the allegations contained in
2 the Consent Agreement and to appeal the Final Order under the SDWA or the Administrative
3 Procedures Act, 5 U.S.C. §§ 701-706.

4 27. Respondents acknowledge and agree to the terms of this CA/FO as the owners
5 and/or operators of the LCC.

6 28. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire
7 agreement between the Parties to resolve EPA's civil claims against Respondents for the specific
8 SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes
9 payment of an administrative civil penalty of \$122,000 in accordance with Section IV.B of this
10 CA/FO shall constitute full settlement of Respondents' liability for federal civil claims for the
11 SDWA violations specifically identified in this CA/FO.

12 29. The provisions of this CA/FO shall apply to and be binding upon Respondents,
13 their officers, directors, agents, servants, authorized representatives, employees, and successors
14 or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or
15 corporations acting under, through, or for Respondents shall not excuse any failure of
16 Respondents to fully perform their obligations under this CA/FO.

17 30. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
18 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
19 except with respect to those claims that have been specifically resolved pursuant to Paragraph 28
20 above.

21 31. This CA/FO is not a permit or modification of a permit, and does not affect
22 Respondents' obligation to comply with all federal, state, local laws, ordinances, regulations,
23 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
24 satisfy, or otherwise affect Respondents' obligation to comply with all applicable requirements
25 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
except as specifically set forth herein.

1 32. EPA reserves any and all legal and equitable remedies available to enforce this
2 CA/FO, as well as the right to seek recovery of any costs and attorneys’ fees incurred by EPA in
3 any actions against Respondents for noncompliance with this CA/FO. Violation of this CA/FO
4 shall be deemed a violation of the SDWA.

5 33. Unless otherwise specified, the Parties shall each bear their own costs and
6 attorneys’ fees incurred in this proceeding.

7 34. This CA/FO may be executed and transmitted by facsimile, email or other
8 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
9 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
10 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
11 shall remain in full force and effect.

12 35. The undersigned representative of each party certifies that he or she is duly and
13 fully authorized to enter into and ratify this CA/FO.

14 B. PENALTY

15 36. Respondents agree to the assessment of a civil penalty in the amount of one
16 hundred twenty-two thousand dollars (\$122,000).

17 37. Respondents shall pay the assessed penalty no later than thirty (30) days from the
18 Effective Date of this CA/FO. Payment may be submitted by either Respondent.

19 38. The penalty may be paid by check (mail or overnight delivery), wire transfer,
20 automated clearing house, or online payment. Payment instructions are available at:
21 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified
22 check must be payable to the order of “Treasurer, United States of America” and delivered to the
23 following address:
24
25

1 U.S. Environmental Protection Agency
2 Fines and Penalties
3 Cincinnati Finance Center
4 P.O. Box 979077
5 St. Louis, Missouri 63197-9000

6 39. Respondents must provide a letter with evidence of the payment made pursuant to
7 this CA/FO, accompanied by the title and docket number of this action, to EPA Region IX's
8 Regional Hearing Clerk, Enforcement Division Compliance Officer, and Office of Regional
9 Counsel attorney, via United States mail, at the following addresses:

10 Regional Hearing Clerk
11 U.S. Environmental Protection Agency
12 Region IX - Office of Regional Counsel
13 75 Hawthorne Street (ORC-1)
14 San Francisco, CA 94105

15 Aaron Setran, Compliance Officer
16 U.S. Environmental Protection Agency
17 Region IX - Enforcement Division
18 75 Hawthorne Street (ENF-3-3)
19 San Francisco, CA 94105

20 Rich Campbell, Attorney-Advisor
21 U.S. Environmental Protection Agency
22 Region IX – Office of Regional Counsel
23 75 Hawthorne Street (ORC-2)
24 San Francisco, CA 94105

25 40. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
interest, penalty charges, and administrative costs will be assessed against the outstanding
amount that Respondents owe to EPA for Respondents' failure to pay the civil administrative
penalty by the deadline specified in Paragraph 37.

- a. Interest on delinquent penalties 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).

1 b. A penalty charge will be assessed on all debts more than 90 days delinquent. The
2 penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40
3 C.F.R. § 13.11(c).

4 c. Administrative costs for handling and collecting Respondents' overdue debt will
5 be based on either actual or average cost incurred, and will include both direct and
6 indirect costs. 40 C.F.R. § 13.11(b).

7 41. Failure to pay any civil administrative penalty by the deadline may also lead to
8 any or all of the following actions:

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

14 b. The department or agency to which this matter is referred (e.g., the
15 Department of Justice, the Internal Revenue Service) may assess
16 administrative costs for handling and collecting Respondents' overdue debt in
17 addition to EPA's administrative costs.

18 c. EPA may (i) suspend or revoke Respondents' licenses or other privileges; or
19 (ii) suspend or disqualify Respondents from doing business with EPA or
20 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

21 42. Respondents shall tender any interest, handling charges, late penalty payments,
22 and stipulated penalties in the same manner as described in Paragraphs 38 and 39.

23 C. STIPULATED PENALTIES

24 43. If Respondents fail to pay the assessed civil administrative penalty specified in
25 Paragraph 36 by the deadline specified in Paragraph 37, Respondents agree to pay a stipulated
penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
penalty.

1 44. Respondents agree to pay any stipulated penalties within thirty (30) days of
 2 receipt of EPA’s written demand for such penalties. All penalties shall begin to accrue on the
 3 first date of noncompliance, and shall continue to accrue through the date of completion of the
 4 delinquent CA/FO requirement. Respondents will use the method of payment specified in
 5 Paragraphs 38 and 39, and agrees to pay interest, handling charges and penalties that accrue for
 6 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 and 39.

7 45. Neither the demand for, nor payment of, a stipulated penalty relieves Respondents
 8 of their obligation to comply with any requirement of this CA/FO.

9 46. EPA may, in the unreviewable exercise of its discretion, reduce or waive
 10 stipulated penalties due under this CA/FO.

11 47. EPA must send any written communications to the following addresses:

12 For Fileminders:

13 Chris Harris
 14 Regional Vice President – Pacific Region
 15 Fileminders of Hawaii, LLC
 16 91-238 Kauhi Street, Kapolei, Hawaii 96707
 17 charris@accesscorp.com

18 For MMGD:

19 Hawaii MMGD LLC
 20 c/o The RMR Group LLC
 21 220 King Street, Suite 2150
 22 Honolulu, Hawaii 96813
 23 Attention: Jan S. Yokota, Vice President, Pacific Region
 24 JYokota@rmrgroup.com

25 **IV. EFFECTIVE DATE**

 48. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to a 30-day
 public notice and comment period at least 40 days prior to it becoming effective though the
 issuance of the Final Order by the Regional Judicial Officer.

 49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
 effective on the date that the Final Order contained in this CA/FO, having been approved and

1 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
2 Regional Hearing Clerk.

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1 FOR THE CONSENTING PARTIES:

2 FOR FILEMINDERS OF HAWAII LLC:

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Date: _____

Name

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Title

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9 FOR HAWAII MMGD LLC:

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Date: _____

Name

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Title

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1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

2 /S/Kathleen Johnson

Date: 08/18/2017

3 _____
Kathleen H. Johnson
4 Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
5 75 Hawthorne Street
San Francisco, CA 94105

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7 Of counsel:

8 Rich Campbell
9 Attorney-Advisor
Office of Regional Counsel
10 U.S. Environmental Protection Agency, Region IX

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1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 75 Hawthorne Street
4 San Francisco, California 94105

5 IN THE MATTER OF:) DOCKET NO. UIC-09-2017-0004

6 Fileminders of Hawaii, LLC,
7 Hawaii MMGD LLC,
8 91-238 Kauhi St., Kapolei, HI 96707

9 PROPOSED FINAL ORDER

10 Respondents.

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

13 **FINAL ORDER**

14 The United States Environmental Protection Agency Region IX (“EPA”), and
15 Respondents Fileminders of Hawaii, LLC (“Fileminders”) and Hawaii MMGD LLC (“MMGD”)
16 (collectively the “Parties”), having entered into the foregoing Consent Agreement, and EPA
17 having duly publicly noticed the Consent Agreement and Proposed Final Order,

18 IT IS HEREBY ORDERED THAT:

- 19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09- 2017-0004) be
20 entered; and
21 2. Respondent pay an administrative civil penalty of \$122,000 dollars to the Treasurer of the
22 United States of America in accordance with the terms set forth in the Consent Agreement.

23 This Final Order is effective on the date that it is filed. This Final Order constitutes full
24 adjudication of the allegations in the Consent Agreement entered into by the Parties in this
25 proceeding.

Date: _____

Regional Judicial Officer,
Region IX U.S. Environmental Protection Agency