

US EPA ARCHIVE DOCUMENT

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0001

Uilani Associates, Inc.,)

Respondent.)

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

**CONSENT AGREEMENT
AND
FINAL ORDER**

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency (“EPA” or “Complainant”),
Region IX and Uilani Associates, Inc., (“Respondent”) (collectively the “Parties”) agree to settle
this matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”),
which commences this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and

22.45(b). Pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final order by the Regional Judicial Officer.

2. This is a civil administrative action instituted by EPA Region IX against Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act (“SDWA” or “the Act”), 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.

3. Complainant is the Director of the Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to initiate and settle this action under SDWA. The Regional Administrator of EPA Region IX has further delegated the authority to enter into a consent agreement settling this action under SDWA to the Director of the Enforcement Division.

4. Respondent is a corporation headquartered at 25312 Bowspirit Drive, Dana Point, California 92629-1419.

II. APPLICABLE STATUTES AND REGULATIONS

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

6. Per Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 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.

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

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

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

11. “Large capacity cesspools” (“LCCs”) 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). LCCs do not include single-family residential cesspools or non-residential cesspools which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

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

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

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

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

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

III. ALLEGATIONS

17. Respondent is a corporation and thus qualifies as 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.

1 18. Since at least September 17, 1990, there has been one cesspool located at and
2 servicing the Uilani Plaza located at 64-1035 Mamalahoa Highway, Kamuela, Hawaii.

3 19. Since at least September 17, 1990, Respondent has owned and operated at the
4 Uilani Plaza, including the cesspool receiving sanitary waste from those businesses operating at
5 the Plaza.

6 20. Since at least September 17, 1990, Respondent has been the “owner or operator”
7 of the cesspool referred to in Paragraph 18, within the meaning of 40 C.F.R. § 144.3.

8 21. Since at least April 5, 2005, the cesspool referred to in Paragraph 18 had the
9 capacity to serve 20 or more persons per day, and thus is considered an LCC pursuant to 40
10 C.F.R. § 144.81(2).

11 22. Since at least April 5, 2005, Respondent failed to close the cesspool referred to in
12 Paragraph 18 in violation of the requirement for owners and operators to close all LCCs by that
13 date, as set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

14 23. On July 7, 2016, Respondent commenced the work to close the cesspool referred
15 to in Paragraph 18, and on October 5, 2016, Respondent completed the work to clean, backfill
16 and close the LCC in accordance with 40 C.F.R. §§ 144.84(b)(2) and 144.88 and Hawaii
17 Department of Health requirements.

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

23 IV. SETTLEMENT TERMS

24 A. General Provisions

25

25. Consistent with the requirements of 40 C.F.R. § 22.18(b)(2), for the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2) neither admits nor denies the specific factual allegations contained in this CA/FO; (3) consents to the assessment of the penalty and to the specified compliance obligations contained in this CA/FO, and (4) and waives any right to contest the allegations or to appeal the Final Order accompanying this CA/FO.

26. Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order under the SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706, including any right to confer with the EPA Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).

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

28. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. 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.

29. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, except with respect to those claims that have been specifically resolved pursuant to Paragraph 27 above.

1 30. This CA/FO is not a permit or modification of a permit, and does not affect
2 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
3 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
4 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
5 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
6 except as specifically set forth herein.

7 31. EPA reserves any and all legal and equitable remedies available to enforce this
8 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
9 any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO
10 shall be deemed a violation of the SDWA.

11 32. Unless otherwise specified, the Parties shall each bear their own costs and
12 attorneys' fees incurred in this proceeding.

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

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

20 B. Penalty

21 35. Respondent agrees to the assessment of a civil penalty in the amount of SIX
22 THOUSAND DOLLARS (\$6,000). EPA considered the nature, circumstances, extent, and
23 gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of
24 culpability, and any economic benefit or savings accruing to Respondent as a result of the
25 violations. EPA determined that Respondent had a limited ability to pay a penalty greater than
the one assessed in this CA/FO.

1 36. Respondent shall pay the assessed penalty identified in Paragraph 35 no later than
2 thirty (30) days from the Effective Date of this CA/FO.

3 37. Respondent may pay the penalty by check (mail or overnight delivery), wire
4 transfer, automated clearing house, or online payment. Payment instructions are available at:
5 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
6 check must be payable to the order of "Treasurer, United States of America" and delivered to the
7 following address:

8 U.S. Environmental Protection Agency
9 Fines and Penalties
10 Cincinnati Finance Center
11 P.O. Box 979077
12 St. Louis, Missouri 63197-9000

13 38. Respondent must provide a letter with evidence of the payment made pursuant to
14 this CA/FO, accompanied by the title and docket number of this action, to the EPA Region IX
15 Regional Hearing Clerk, the EPA Region IX Enforcement Division Compliance Officer, and the
16 EPA Region IX Office of Regional Counsel attorney, via United States mail, at the following
17 addresses:

18 Regional Hearing Clerk
19 U.S. Environmental Protection Agency
20 Region IX - Office of Regional Counsel
21 75 Hawthorne Street (ORC-1)
22 San Francisco, CA 94105

23 Jelani Shareem, Compliance Officer
24 U.S. Environmental Protection Agency
25 Region IX - Enforcement Division
26 75 Hawthorne Street (ENF-3-3)
27 San Francisco, CA 94105

28 Janet Magnuson, Assistant Regional Counsel
29 U.S. Environmental Protection Agency
30 Region IX – Office of Regional Counsel
31 75 Hawthorne Street (ORC-2)
32 San Francisco, CA 94105

1 39. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13
2 interest, penalty charges, and administrative costs will be assessed against the outstanding
3 amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative
4 penalty by the deadline specified in Paragraph 36.

5 a. Interest on delinquent penalties will be assessed per 40 C.F.R. § 13.11(a)(1) at
6 an annual rate that is equal to the rate of current value of funds to the United
7 States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and
8 published by the Secretary of the Treasury in the Federal Register and the
9 Treasury Fiscal Requirements Manual Bulletins.

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

13 c. In addition, administrative costs for handling and collecting Respondent's
14 overdue debt will be based on either actual or average cost incurred, and will
15 include both direct and indirect costs, as provided in 40 C.F.R. § 13.11(b).

16 40. Failure to pay any civil administrative penalty by the deadline may also lead to
17 any or all of the following actions:

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

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

- 1 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
2 (ii) suspend or disqualify Respondent from doing business with EPA or
3 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

4 41. Respondent shall tender any interest, handling charges, late penalty payments, and
5 stipulated penalties in the same manner as described in Paragraphs 37 and 38.

6 C. Stipulated Penalties

7 42. If Respondent fails to pay the assessed civil administrative penalty specified in
8 Paragraph 35 by the deadline specified in Paragraph 36, Respondent agrees to pay a stipulated
9 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
10 penalty.

11 43. Respondent agrees to pay any stipulated penalties within thirty (30) days of
12 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
13 first date of noncompliance, and shall continue to accrue through the date of completion of the
14 delinquent CA/FO requirement. Respondent will use the method of payment specified in
15 Paragraphs 37 and 38, and agrees to pay interest, handling charges and penalties that accrue for
16 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 37 and 38.

17 44. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
18 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
19 deadlines set forth in this CA/FO.

20 45. EPA may, in the unreviewable exercise of its discretion, reduce or waive
21 stipulated penalties due under this CA/FO.

22 D. Notices

23 46. EPA must send any written communications to the following addresses:

24 Helene Fukamizu
25 25312 Bowspirit Drive
Dana, California 92629-1419

David L. Brault
Law Offices of David L. Brault

68 Liberty, Suite 240
Aliso Viejo, California 92656

IV. EFFECTIVE DATE

47. Pursuant to 40 C.F.R. § 22.45, the proposed CA/FO will be subject to public notice and comment at least 40 days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

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

CONSENTING PARTIES:

For Respondent Uilani Associates, Inc.

H C Fukamizu “/s/”

Date: 10/11/17

For Complainant U.S. Environmental Protection Agency, Region IX:

Kathleen H. Johnson “/s/”

Date: 11/07/17

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

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-09-2018-0001
6))

7 Uilani Associates, Inc.))

8 Respondent.))

9) **FINAL ORDER**
10))

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 Respondent Uilani Associates, Inc. (“Uilani”) (collectively the “Parties”), having entered into the
16 foregoing Consent Agreement, and EPA having duly publicly noticed the Consent Agreement
17 and Final Order.

18 It is Hereby Ordered that this Consent Agreement and Final Order (Docket No. UIC-09-
19 2018-0001) be entered and that Respondent shall pay a civil penalty in the amount of \$6,000
20 dollars, in accordance with the terms of this Consent Agreement and Final Order.

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

24 Steven L. Jawgiel “/s/” Date: 01/04/18

25 Steven L. Jawgiel
Regional Judicial Officer,
U.S. EPA, Region IX
UIC-09-2018-0001