

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. UIC-09-2020-0003
)	
Group Investments, LLC.)	
73-5562 Kauhola Street)	
Kailua-Kona, HI 96740)	
)	CONSENT AGREEMENT
)	AND
Respondent.)	FINAL ORDER
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<u>Proceedings under Section 1423(c) of the Safe</u>)	
<u>Drinking Water Act, 42 U.S.C. § 300h-2(c).</u>)	

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency (“EPA” or “Complainant”), Region IX and Respondent Group Investments, LLC. (“Group Investments”) (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”), 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 and Compliance Assurance Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring and settle this action under SDWA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring and sign a consent agreement settling this action under SDWA to the Director of the Enforcement and Compliance Assurance Division.

4. Respondent, Group Investments, is a Hawaii company with its principal place of business located at 511 Mokauea Street, Honolulu, Hawaii, 96819-3232.

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. Parts 124, 144, 146, 147 (Subpart M), and 148 establishing minimum requirements for State UIC programs to prevent underground injection that endangers drinking water sources within the meaning of Section 1421(d)(2) of the SDWA, 42 U.S.C. § 300h(d)(2).

6. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), authorizes EPA to administer the UIC program in states that do not have EPA-approved state programs. The State of Hawaii has not acquired primacy of the UIC program. Therefore, EPA Region IX directly implements UIC program in the State of Hawaii. *See* 40 C.F.R. § 147.601.

7. Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), defines a “person” to mean an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any

corporation, company, association, State municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

8. Section 1421(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), and 40 C.F.R. § 144.3, defines “underground injection” to mean, in relevant part, “the subsurface emplacement of fluids by well injection.” *See also* 40 C.F.R. § 144.3.

9. 40 C.F.R. § 144.3 defines “well injection” to mean “the subsurface emplacement of fluids through a well.”

10. 40 C.F.R. § 144.3 defines a “well” to mean, in relevant part, “[a] bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.”

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

12. 40 C.F.R. § 144.3 defines “injection well” to mean “a ‘well’ into which ‘fluids’ are being injected.”

13. 40 C.F.R. § 144.3 defines “fluid” to mean “any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.”

14. 40 C.F.R. § 144.3 defines “contaminant” to mean “any physical, chemical, biological, or radiological substance or matter in water.”

15. 40 C.F.R. § 144.3 defines “owner or operator” as “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.”

16. 40 C.F.R. § 144.3 defines “facility or activity” to mean “any UIC ‘injection well,’ or any other facility or activity that is subject to regulation under the UIC program.”

17. 40 C.F.R. § 144.6 provides for six classes of injection wells, and 40 C.F.R. § 144.81 provides that “Class V” injection wells include large capacity cesspools (“LCCs”), which 40 C.F.R. § 144.81(2) defines to 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” and which 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.”

18. 40 C.F.R. § 144.82 provides that the “owner or operator” of a Class V UIC well “must comply with other Federal UIC requirements in 40 C.F.R. parts 144 through 147,” and must also “comply with any other measures required by your State or EPA Regional Office UIC Program to protect [underground sources of drinking water].”

19. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required the owners or operators of all existing LCCs to have closed these wells by April 5, 2005.

20. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or both, against any person who violates the SDWA or any requirement of an applicable UIC program.

III. ALLEGATIONS

21. Respondent is a company and thus 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.

22. Since at least 2008, Respondent has been the owner and the landlord of a commercial property located at 73-5562 Kauhola Street, Kailua-Kona, HI 96740 (the “Property”), which includes a warehouse with two commercial tenants and a restroom.

23. Since at least 2008, Respondent has owned and operated a cesspool located on the Property with the capacity to serve at least 20 persons. This cesspool is therefore considered an LCC pursuant to 40 C.F.R. § 144.81(2).

24. Respondent’s failure to close the LCC at the Property by April 5, 2005 or anytime thereafter constitutes an ongoing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

IV. SETTLEMENT TERMS

A. GENERAL PROVISIONS

25. 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. 40 C.F.R. § 22.18(b)(2).

26. 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 violation identified in Section III of this CA/FO. Full compliance with this CA/FO, which includes (1) payment of an administrative civil penalty in accordance with Section IV.B of this CA/FO and; (2) closing the LCC at the Property in accordance with Section IV.C of this CA/FO to bring it into compliance with the UIC requirements set forth at 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a); shall constitute full settlement of Respondent's liability for federal civil claims for the specific SDWA violation identified in this CA/FO.

27. 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.

28. 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 the claim that has been specifically resolved pursuant to Paragraph 24 above.

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

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

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

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

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

34. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.C (Compliance Requirements) is restitution or required to come into compliance with law.

B. CIVIL ADMINISTRATIVE PENALTY

35. Respondent agrees to the assessment of a civil administrative penalty in the amount of fifty-six thousand one hundred fifty-one dollars (\$56,151).

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

37. The penalty may be paid by check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or

certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

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

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

Christina Carroll, Compliance Officer
U.S. Environmental Protection Agency
Region IX – Enforcement and Compliance Assurance Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

Julia Jackson, Attorney Advisor
U.S. Environmental Protection Agency
Region IX – Office of Regional Counsel
75 Hawthorne Street (ORC-3)
San Francisco, CA 94105

39. 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 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 36.

40. 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).

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

42. In addition, 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).

43. Failure to pay any civil administrative penalty by the deadline may also 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 CA/FO shall not be subject to review.
- b. The department or agency to which this matter is referred (e.g., the Department of Justice, the Internal Revenue Service) may assess administrative costs for handling and collecting Respondent's overdue

debt in addition to EPA's administrative costs.

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

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

C. INJUNCTIVE RELIEF

45. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and consistent with the timeframes set forth below, Respondent shall:

- a. no later than 7 months from this CA/FO's Effective Date, close the LCC located at the Facility in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable requirements, including all Hawai'i Department of Health ("HDOH") closure, conversion, and/or replacement requirements. If Respondent installs one or more replacement wastewater systems, such as Individual Wastewater Systems ("IWSs"), then installation and operation of such systems shall comply with all HDOH requirements; and
- b. within thirty (30) days of closure of the LCC, submit to EPA a description of how the LCC was closed and identify the contractor(s) providing the service as well as copies of the cesspool Backfill Closure Report(s) for the closure of the cesspool. Respondent shall also submit

all related approvals, including for any replacement systems, issued by HDOH within thirty (30) days of closure of the LCC, provided that, should HDOH not issue any approval within thirty (30) days of closure, Respondent shall submit HDOH's approval to EPA within fourteen (14) days of receipt of any approval.

D. STIPULATED PENALTIES

45. Respondent shall pay stipulated penalties in accordance with this Section for any violations of this CA/FO.

46. If Respondent fails to pay the assessed civil administrative penalty specified in Section IV.B of this CA/FO by the deadline specified in that section, or fails to meet the compliance deadline for closure of the cesspool at the Facility by the deadline specified in Section IV.C of this CA/FO, Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$250 per day for each day the Respondent is late in making the penalty payment and/or meeting the closure deadline for the Facility's LCC.

47. If Respondent fails to timely submit any reports in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after the report was due until it submits the report in its entirety.

48. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in Paragraphs 37 and 38, and agrees to pay interest, handling charges

and penalties that accrue for late payment of the stipulated penalty in the same manner as set forth in Paragraphs 39 through 43.

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

50. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties and/or reduce or waive stipulated penalties due under this CA/FO.

E. FORCE MAJEURE

51. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

52. If EPA agrees in writing that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for the period of the delay resulting from the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of time. An extension of the time for performing an obligation

granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation. EPA also retains discretion to grant extensions for reasons other than those established as *force majeure* events.

53. EPA will not impose stipulated penalties for performance of a task during any time period covered by an extension of time for that task granted pursuant to Paragraph 51.

E. NOTICES

54. Respondent must send any written communications to the following addresses:

Christina Carroll, Compliance Officer
U.S. Environmental Protection Agency
Region IX - Enforcement and Compliance Assurance Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

Julia Jackson, Attorney-Advisor
U.S. Environmental Protection Agency
Region IX – Office of Regional Counsel
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

For each written communication and/or submittal, Respondent shall identify the case name, the case Docket Number, and the paragraph and/or requirement of this CA/FO under which the submission is being made.

55. Respondent shall include the following signed certification made in accordance with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

V. EFFECTIVE DATE

56. Pursuant to 40 C.F.R. § 22.45, this 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.

57. 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.

FOR THE CONSENTING PARTIES:

FOR GROUP INVESTMENTS, LLC:

_____/s/_____

Anacleto R. Alcantra
Manager

Date: 11/18/19_____

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____/s/_____

Date: 12/3/19

Amy C. Miller

Director

Enforcement and Compliance Assurance Division, Region IX

U.S. Environmental Protection Agency

75 Hawthorne Street

San Francisco, CA 94105

Of counsel:

Julia Jackson

Attorney-Advisor

Office of Regional Counsel

U.S. Environmental Protection Agency, Region IX

