

SYLVIA QUAST  
Regional Counsel  
United States Environmental Protection Agency, Region IX

JULIA JACKSON  
Asst. Regional Counsel  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3948

Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. UIC-09-2016-0001
	)	
U.S. Army,	)	
	)	
Respondent.	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND</b>
U.S. Army Garrison, Hawaii	)	<b>[PROPOSED] FINAL ORDER</b>
	)	
Facility	)	
	)	
Proceedings under Sections 1423(c), 1445(a)	)	
and 1447(b) of the Safe Drinking Water Act,	)	
42 U.S.C. §§ 300h-2(c) 300j-4(a) and 300j-	)	
6(b).	)	

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**CONSENT AGREEMENT**

**I. AUTHORITY**

1. This Consent Agreement is entered into and the [Proposed] Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 1423(c), 1445(a) and 1447(b) of the Safe Drinking Water Act (the “SDWA”), 42 U.S.C. §§ 300h-2(c), 300j-4(a), 300j-6(b).

**In re: U.S. Army  
Consent Agreement and Final Order**

2. The Administrator has delegated the authority to enter into this Consent Agreement and issue a Final Order (“CA/FO”) to the Regional Administrator of EPA Region IX.

3. In accordance with this authority, and with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the Director of the Enforcement Division, EPA Region IX, and U.S. Army, (“Respondent”), together referred to as “the Parties,” hereby agree to the terms of this Consent Agreement and to the issuance of the proposed Final Order.

4. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of this CA/FO commences this proceeding. In addition, pursuant to 40 C.F.R. §22.18(b)(3), this proceeding will conclude upon a Final Order by the Regional Judicial Officer.

5. Part II of this CA/FO contains a concise statement of the factual basis of the violations of the SDWA, in accordance with 40 C.F.R. § 22.18(b)(2).

## **II. STIPULATIONS AND FINDINGS**

6. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, Sections 1421 to 1421 of the SDWA, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (“UIC”) programs to prevent underground injection that endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

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 et seq.

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

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

10. “Large capacity cesspools” (or “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.*

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

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

13. “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.

14. 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 EPA Regional Office UIC Programs to protect underground sources of drinking water. 40 C.F.R. § 144.82.

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

16. Pursuant to 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.

17. Respondent, the United States Army (“U.S. Army”), is a department, agency, and/or instrumentality of the United States. Thus, Respondent is 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.

18. Respondent has owned and operated 12 cesspools at three different military facilities in the State of Hawaii past the required closure date of April 5, 2005. Four were located at Wheeler

Army Airfield/Schofield Barracks (“Wheeler”) and have been closed. Six are located at Pohakuloa Training Area (“PTA”) and two are located at the Kilauea Military Camp (“KMC”).

19. The 12 cesspools referred to in Paragraph 18 at all times relevant to this CA/FO, have had the capacity to serve 20 or more persons per day, and thus are considered LCCs pursuant to 40 C.F.R. § 144.81(2).

20. The KMC is located completely within the boundaries of the Hawa’ii Volcanoes National Park and many of its structures are subject to the requirements of the National Historic Preservation Act (“NHPA”). The National Park Service (“NPS”) is the entity responsible for completion of the NHPA Section 106 consultation process and must approve any modifications to structures at KMC.

21. Respondent is an “owner or operator,” as that term is defined at 40 C.F.R. § 144.3.

22. Respondent failed to close the 12 cesspools listed in paragraph 18 by April 5, 2005, which is a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

23. 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 order either assessing an administrative civil penalty of not more than \$16,000 per day per violation up to a maximum of \$187,500, or requiring compliance, or both, against any person who violates the SDWA or any requirement of an applicable UIC program.

### **III. SETTLEMENT TERMS**

The Parties agree as follows:

#### **A. General Provisions**

24. For the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2) neither admits nor denies the facts stipulated 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).

25. Respondent also expressly waives any right to contest the allegations contained in the CA/FO 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).

26. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claim 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 \$ **100,000** and closure of all the cesspools pursuant to the timeframes and documentation listed in Section C, shall constitute full settlement of Respondent's liability for federal administrative penalties for the SDWA violations specifically identified in this CA/FO.

27. The provisions of this CA/FO shall apply to and be binding upon Respondent, its authorized representatives, employees, and successors or assigns. Action or inaction of any persons 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 case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

29. This CA/FO is not a permit or modification of a permit, and does not affect Respondent's obligation to comply with 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.

30. This CA/FO does not constitute a waiver, suspension, or modification of the requirements

of any federal, state, or local statute, regulation or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.

31. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO.

Violation of this CA/FO shall be deemed a violation of the SDWA.

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

33. This Consent Agreement 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, it is the Parties' intent that the remaining portions shall remain in full force and effect.

34. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.

#### **B. Penalty**

35. Respondent agrees to pay to the United States an administrative penalty of **One Hundred Thousand Dollars (\$100,000)**, no later than 30 days following the effective date of the Final Order (hereafter referred to as the "Due Date").

36. Respondent shall seek all existing funds to meet the requirements of the CA/FO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligations to comply with the CA/FO. Nothing in this CA/FO shall be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

37. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer, ACH, 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

Respondent's Treasury Account Symbol is 21 2020.

38. Respondent must provide a letter with evidence of the payment made pursuant to paragraphs 35, 36 and 37 above, accompanied by the title and docket number of this action, to the EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 9 - Office of Regional Counsel  
75 Hawthorne Street (ORC-1)  
San Francisco, CA 94105

Jelani Shareem, Compliance Officer  
U.S. Environmental Protection Agency  
Region 9 - Enforcement Division  
75 Hawthorne Street (ENF-3-3)  
San Francisco, CA 94105

Julia Jackson, Asst. Regional Counsel  
U.S. Environmental Protection Agency  
Region 9 - Office of Regional Counsel  
75 Hawthorne Street (ORC-2)  
San Francisco, CA 94105

**C. Compliance Requirements**

39. Respondent shall close the eight cesspools listed in Paragraph 18 in accordance with EPA's closure requirements in 40 C.F.R. § 144.89 and in accordance with any additional Hawaii Department of Health ("HDOH") and National Park Service ("NPS") closure requirements.

40. The six cesspools at PTA shall be closed no later than **September 30, 2016**.

41. No later than 90 days after the NPS has satisfactorily completed the Section 106 process under the NHPA, Respondent shall close the cesspools at KMC. Respondent shall promptly

respond to any requests from NPS for additional information during the NHPA Section 106 process.

42. Respondent shall submit a report to EPA no later than 90 days after the last cesspool has been closed certifying the completion of the requirements in Paragraph 40. Respondent shall also submit any HDOH approvals of the construction of individual wastewater systems within 2 weeks of receiving such approval.

**D. Notices**

43. Respondent must send any written communications pursuant to this CA/FO to the following address:

Jelani Shareem, Compliance Officer  
U.S. Environmental Protection Agency  
Region 9 - Enforcement Division  
75 Hawthorne Street (ENF-3-3)  
San Francisco, CA 94105

44. The person signing Respondent's submissions must make the following certification:

*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.*

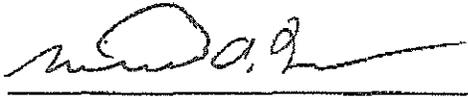
**IV. EFFECTIVE DATE AND TERMINATION**

45. This CA/FO shall terminate only after Respondent has complied with all requirements of the CA/FO and after EPA has issued a written notice of termination.

46. 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 CAFO, 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:

U.S. ARMY:



Richard A. Fromm  
Colonel, U.S. Army  
Commanding  
U.S. Army Garrison Hawaii

Date: 17 MAY 2016

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

*Alexis Strauss*

Alexis Strauss  
Acting Regional Administrator, Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Date: *17 June 2016*