

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

Sarah Ferrif
Attorney Advisor
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3854

Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. UIC-09-2023-0032
)	
Extra Space Management, Inc.)	
2795 East Cottonwood Pkwy, Suite 300)	
Salt Lake City, UT 84121)	CONSENT AGREEMENT
)	AND
Kaloko Storage 18 (HI) LLC)	FINAL ORDER
One Manhattan West)	
395 9 th Avenue, 58 th Floor)	
New York, NY 10001)	
)	
Respondents.)	
)	
Proceedings under Sections 1423(c) of the)	
Safe Drinking Water Act,)	
42 U.S.C. §§ 300h-2(c).)	
	—)	

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency (“EPA”), Region IX and Extra Space Management Inc. and Kaloko Storage 18 (HI) LLC, (“Respondents”) (collectively the “Parties”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CA/FO”). This CA/FO is an administrative action commenced and concluded

under Section 1423(c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9. The Administrator of EPA delegated to the Regional Administrator of EPA Region 9 the authority to bring and settle this action under the SDWA. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division of EPA Region 9.

3. Respondents are Extra Space Management Inc., whose headquarters is located at 2795 East Cottonwood Pkwy, Suite 300, Salt Lake City, UT 84121 and Kaloko Storage 18 (HI) LLC., whose headquarters are located at One Manhattan West, 395 9th Avenue, 58th Floor, New York, NY 10001.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order. *See* 40 C.F.R. § 22.13(b).

5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the terms of this CA/FO, including the assessment of the civil penalty of \$130,000.

II. JURISDICTION AND WAIVER OF RIGHT TO JUDICIAL REVIEW AND HEARING

7. Consistent with 40 C.F.R. 22.18(b)(2), for the purpose of this proceeding, Respondents: admit the jurisdictional allegations in this CA/FO; neither admit nor deny the

specific factual allegations contained in this CA/FO; consent to the assessment of the stated civil penalty, and to all conditions specified in the CA/FO; and waive any right to contest the allegations and their right to appeal the proposed Final Order accompanying the Consent Agreement.

8. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondents may have with respect to any issue of fact or law set forth in this CA/FO including, but not limited to, their right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); their right to seek federal judicial review of the CA/FO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and their right to appeal this CA/FO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6). Respondents also consent to the issuance of this CA/FO without further adjudication.

III. STATUTORY AND REGULATORY BACKGROUND

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping and reporting requirements, for state underground injection control (“UIC”) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

12. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells, and all owners or operators of these injection wells must be authorized either by permit or rule.

13. Section 1401(6) of SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

14. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

15. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.

16. 40 C.F.R. § 144.3 defines “well” to mean, in relevant part, a dug hole whose depth is greater than the largest surface dimension.

17. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which is a type of “well” that is completed above the water table.

18. 40 C.F.R. § 144.81(2) defines “large capacity cesspools” (“LCCs”) as cesspools, including “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.” 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.*

19. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V UIC injection wells.

20. 40 C.F.R. § 144.3 defines Class V UIC injection wells as a “facility or activity” subject to regulation under the UIC program.

21. Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), defines “person” as 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.

22. 40 C.F.R. § 144.3 defines “owner or operator” to mean the owner or operator of any “facility or activity” subject to regulation under the UIC program.

23. Pursuant to 40 C.F.R. § 144.82, 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].”

24. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required that owners or operators of existing LCCs to have closed those LCCs by no later than April 5, 2005 and banned new LCCs.

25. 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.

26. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

27. Under Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$27,018 for each day of violation, up to a maximum administrative penalty of \$337,725 for violations occurring after November 2, 2015 and where penalties are assessed on or after January 12, 2022 and/or issue an order requiring compliance.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

28. Respondents are corporations and thus qualify as “persons” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

29. Since at least July 2019, the Respondents have collectively owned and operated the property located at 73-4864 Kanalani Street, Kailua-Kona HI, Tax Map Key 3-7-3-051-016 (the “Property”), which serves as a self-storage business. The Property contains one restroom.

30. Since at least July 2019, Respondents have owned and/or operated one cesspool servicing the restroom at the Property. The cesspool has the capacity to serve twenty or more people per day.

31. Respondents backfilled the cesspool at the Property on December 2, 2022.

32. The cesspool identified in Paragraph 30 meets the definition of an LCC as that term is defined at 40 C.F.R. § 144.81(2).

33. Each day that the Respondents failed to close the LCC at the Property identified in Paragraph 30 after April 5, 2005, constituted a day of violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

V. SETTLEMENT TERMS

A. Civil Penalty

34. Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of the SDWA.

35. Within thirty (30) days of the Effective Date of this CA/FO, Respondents must pay an administrative civil penalty of ONE HUNDRED AND THIRTY THOUSAND DOLLARS (\$130,000) by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. The payment is a combined amount and can be paid by either Respondent or allocated between the two Respondents. Payment instructions are available at: <http://2.epa.gov/financial/makepayment>.

For checks sent by regular U.S. Postal Service mail: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes): sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state Respondents' name and the docket number of this CA/FO.

For electronic funds transfer: electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CA/FO.

For Automated Clearinghouse (ACH), also known as REX or remittance express: ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

The comment area of the electronic funds transfer must state Respondents' name and the docket number of this CA/FO.

To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

36. Concurrently with payment, Respondents shall provide proof of payment, using the method described in Paragraph 35 above, to the Regional Hearing Clerk and EPA at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
r9HearingClerk@epa.gov

Respondents shall also send notice of payment and transmittal letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer and the EPA Region 9 Office of Regional Counsel attorney in accordance with Paragraph 48.

37. This civil penalty represents an administrative civil penalty and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Section V.B, below, Respondents, either individually or collectively, must pay the following on any amount overdue under this CA/FO: interest accrued on any overdue

amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than 30 days past due; and 6% per year penalty on any principal amount 90 days past due.

39. If the Respondents do not pay timely the civil penalty due under Paragraph 35 and/or any stipulated penalties due under Section V.B, below, EPA may request the United States Department of Justice bring an action against either or both Respondents to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

B. Stipulated Penalties

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

41. If Respondents fail to make the payment specified in Section IV.A of this CA/FO, Respondents, individually and collectively, agree to pay in addition to the assessed penalty, a stipulated penalty of \$250 per day for each day the Respondents are late in making the penalty payment.

42. Respondents, individually and collectively, agree 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. Respondents will use the method of

payment specified in Paragraph 35 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 Paragraph 38.

43. Neither the demand for, nor payment of, a stipulated penalty relieves either 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.

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

VI. SUBMISSIONS REQUIREMENTS

45. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this CA/FO must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: young.emma@epa.gov and ferrif.sarah@epa.gov. The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Emma Young, Life Scientist
U.S. Environmental Protection Agency
Region 9, Enforcement and Compliance Assurance Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

Sarah Ferrif, Attorney Advisor
U.S. Environmental Protection Agency
Region 9, Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)

46. All reports, notifications, documentation, and submissions must be signed by a duly authorized representative of the Respondents and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

“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.”

47. If Respondents find at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondents to criminal prosecution under Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

48. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

49. The information required to be submitted pursuant to the CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44. U.S.C §3501 et seq.

VII. GENERAL PROVISIONS

50. Full payment of the penalty as described in Paragraph 35, above, shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in this CA/FO. Violation of this CA/FO shall be deemed a violation of SDWA for purposes of Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

51. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses:

Complainant: Emma Young, young.emma@epa.gov

Respondents: For Extra Space Management Inc: Scott Furman,
sfurman@sprlaw.com

For Kaloko Storage 18 (HI) LLC: Todd Maiden,
TMaiden@ReedSmith.com

52. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties.

53. The provisions of this CA/FO shall apply to and be binding upon Respondents, their 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 Respondents shall not excuse any failure of Respondents to fully perform its obligations under this CA/FO.

54. Full compliance with 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 civil penalties for the violations and facts alleged in this CA/FO. 40 C.F.R. § 22.18(c)

55. 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 Respondents' 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.

56. 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.

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

58. 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 CA/FO 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.

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

VIII. EFFECTIVE DATE

60. 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.

61. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4), which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

62. 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.

**Consent Agreement and Final Order
In the Matter of: Extra Space Management, Inc.
Docket Number UIC-09-2023-0032**

Extra Space Management, Inc.
2795 East Cottonwood Pkwy, Suite 300
Salt Lake City, UT 84121

Signature: _____

Date: _____

Name: _____

Title: _____

**Consent Agreement and Final Order
In the Matter of: Extra Space Management, Inc.
Docket Number UIC-09-2023-0032**

Kaloko Storage 18 (HI) LLC
One Manhattan West
395 9th Avenue, 58th Floor
New York, NY 10001

Signature: _____

Date: _____

Name: _____

Title: _____

**Consent Agreement and Final Order
In the Matter of: Extra Space Management, Inc.
Docket Number UIC-09-2023-0032**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division
Region IX

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

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

Date: _____