



REGION 9

SAN FRANCISCO, CA 94105

IN THE MATTER OF:)	Docket No. SDWA-UIC-AOC-2025-003
)	
Dorothy K. Awai Revocable Living Trust)	ADMINISTRATIVE
)	ORDER ON CONSENT
Respondent.)	
)	
)	Proceeding under Section 1423(c)
)	of the Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)

I. JURISDICTION AND AUTHORITY

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Dorothy K. Awai Revocable Living Trust ("Respondent") together as the "Parties", for the purpose of closing seven (7) large-capacity cesspools ("LCCs") that serve a residential housing complex on Awai Lane, Haleiwa, HI 96712 ("Facility").
2. This Order is issued under the authority vested in the Administrator of the EPA by section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c). This authority was delegated to Regional Administrators by delegation 9-34 (May 11, 1994). This authority was further redelegated to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 9 by R9-1200-TN 100 (February 10, 2025).
3. The EPA and Respondent recognize that this Consent Order was negotiated in good faith and that Respondent has fully cooperated with the EPA.

II. PARTIES BOUND

4. This Consent Order is binding upon the EPA and upon Respondent and its heirs and successors.
5. Respondent shall provide notice of this Consent Order to employees, agents, contractors, subcontractors, or any person representing Respondent with respect to the Facility or the actions required by this Consent Order. Respondent is responsible for ensuring that such parties act in accordance with the terms of this Consent Order.

III. STATUTORY AND REGULATORY FRAMEWORK

6. Pursuant to Part C of the SDWA, 42 U.S.C. §§ 300h through 300h-9, the EPA has promulgated regulations, set forth at 40 C.F.R. Part 144, establishing minimum requirements for Underground Injection Control (“UIC”) programs to prevent underground injection that endangers drinking water sources.
7. Under section 1423(d)(1) of the SDWA, 42 U.S.C. § 300h(d)(1), and 40 C.F.R. § 144.3, “underground injection,” means “the subsurface emplacement of fluids by well injection.”
8. Under 40 C.F.R. § 144.3, “well injection,” means “the subsurface emplacement of fluids through a well.”
9. Under 40 C.F.R. § 144.3, a “cesspool” means a “drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.”
10. Under 40 C.F.R. § 144.81(2), 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” and do not include “single family

residential cesspools” nor “non-residential cesspools that receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day.”

11. Under 40 C.F.R. § 144.80(e), LCCs are classified as Class V UIC injection wells.
12. Under 40 C.F.R. § 144.3, “facility or activity” includes class V UIC injection wells.
13. Under 40 C.F.R. § 144.3, “owner or operator” means “the owner or operator of any ‘facility or activity’ subject to regulation under the UIC program.”
14. Under 40 C.F.R. § 144.82, 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].”
15. Under 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1), owners or operators of existing LCCs were required to have closed those LCCs no later than April 5, 2005.
16. Pursuant to section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, the 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, and 148.
17. Pursuant to section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), the EPA may issue an order requiring compliance against any person who violates the SDWA or any requirement of an applicable UIC program.

IV. The EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. 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.

19. Since at least March 16, 2017, Respondent is an “owner or operator” of the seven cesspools serving a residential housing complex on Awai Lane, which is a “facility,” within the meaning of 40 C.F.R. § 144.3.
20. The seven cesspools serve multiple dwellings, and thus each is considered an LCC pursuant to 40 C.F.R. § 144.81(2).
21. By failing to close the seven LCCs by April 5, 2005, Respondent is in continuing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

V. ORDER

22. Based on the foregoing findings, and pursuant to the EPA’s authority under section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), the EPA hereby ORDERS:
23. As soon as practicable, but no later than the deadlines specified herein, Respondent shall complete the following milestones to close the seven LCCs at the Facility:
- a. Within fourteen (14) days of the Effective Date of this Consent Order, as defined in Section XV (Effective Date), Respondent shall provide to the EPA a copy of the contract with the engineering firm that it has retained to design the closure of the seven LLCs at the Facility.
 - b. The engineering firm retained by Respondent must have successfully closed or converted at least one (1) LCC in the past five (5) years or have equivalent experience.
 - c. Within ninety (90) business days of the Effective Date of this Consent Order, Respondent shall submit all necessary documents to the Hawaii Department of Health (“HDOH”) to acquire permits for the alternative wastewater systems;

- d. Within seven (7) business days of submitting the permit application to HDOH as described in subparagraph b., above, Respondent shall submit to the EPA a copy of the permit application;
- e. Respondent shall respond, with a copy of the response to the EPA simultaneously, to any follow up requests by HDOH for more information as part of the permit application in a timely manner;
- f. Within seven (7) business days of receiving HDOH's final approval of alternative wastewater system design plans, Respondent shall submit to the EPA copies of HDOH's approval;
- g. Within sixty (60) business days of receiving HDOH's final approval of alternative wastewater system design plans, Respondent shall retain a contractor to close the seven LCCs at the Facility and submit to the EPA a copy of the contract. The contractor must have successfully closed or converted at least one (1) LCC in the past five (5) years or have equivalent experience;
- h. Within two hundred seventy (270) business days of receiving HDOH's final approval of alternative wastewater system design plans, or by no later than September 30, 2026, Respondent shall close the seven LCCs at the Facility; and
- i. Within ten (10) business days of closing the last of the seven LCCs at the Facility, Respondent shall submit to the EPA a copy of a Large Capacity Cesspool Backfilling Final Completion Report using the template available at <https://www.epa.gov/uic/pacific-southwest-large-capacity-cesspool-backfilling-final-completion-report>.

24. In complying with Paragraphs 23(a)-(h) of this Consent Order, Respondent must comply

with the SDWA and its implementing regulations, including closing the seven LCCs at the Facility, in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), HDOH's closure, conversion, and/or replacement requirements, and all other applicable requirements. In addition, Respondent must follow any applicable federal, Hawaii or local requirements for design, construction, operation, and permitting of any alternative wastewater system that is installed.

25. Until the LCC Backfilling Completion Report has been submitted to the EPA, Respondent

shall submit to the EPA a quarterly progress report ("Progress Report") detailing Respondent's work towards meeting the applicable compliance deadlines since the Effective Date or since the preceding Progress Report. Respondent shall submit each Progress Report before the last day of the last month of every quarter (i.e., March 31, June 30, September 30, and December 31). Respondent shall include in each Progress Report the following information:

- a. All significant developments since the preceding Progress Report, including the actions performed and any problems encountered; and
- b. The developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. Unless otherwise directed by EPA, until the LCC Backfilling Completion Report has been

submitted to the EPA, Respondent shall convene quarterly virtual meetings before the last

day of the last month of every quarter (i.e., March 31, June 30, September 30, and December 31) to:

- a. Discuss the adequacy of Respondent's compliance with the Consent Order; and
- b. Establish any necessary managerial and governance protocols that will assist in Respondent's compliance with the Consent Order.

Respondent shall send invitations to the quarterly meeting at least fourteen (14) business days in advance of the meeting to the point of contact identified in Paragraph 29.

27. All information and documents submitted pursuant to this Consent Order shall be signed by a duly authorized representative of the Dorothy K. Awai Revocable Living Trust.

28. The person signing Respondent's submissions under this Consent Order shall 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 information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that 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.

29. Unless otherwise directed by the EPA, all submissions to the EPA required by this Consent Order shall be sent electronically to the EPA Region 9 Compliance Officer at:

Jelani Shareem
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
shareem.jelani@epa.gov

30. If Respondent is unable to complete any of the requirements in this Section within the applicable deadline, Respondent shall submit to the EPA a written request for a change in deadline, including the basis for the request. Respondent shall submit this request within seven (7) business days of identifying a need for a change in deadline. Based on this request, the EPA's compliance officer may in its sole discretion grant or deny, in full or in part, the request for a change in deadline. Any request to change the requirements of this Section other than a change in deadline is subject to the process outlined in Section XIII (Modification of Consent Order).

VI. Stipulated Penalties

31. If Respondent fails to comply with any provision of this Consent Order, Respondent agrees to pay upon the EPA's demand the stipulated penalties set forth in this paragraph unless the EPA has excused Respondent's delay according to the procedures provided in Subsection C of this Consent Order. Stipulated penalties shall begin to accrue on the day after complete performance is due, or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Stipulated penalties are calculated as follows:

- a. \$300 per day per violation for the first through the thirtieth day of noncompliance;
- b. \$500 per day per violation for the thirty-first through the sixtieth day of noncompliance;
- c. \$1,000 per day per violation for the sixty-first day of violation and beyond.

32. Respondent must pay the stipulated penalty within thirty (30) business days of receipt of the EPA's stipulated penalty demand, according to the process provided in the demand. If any payment is not received within thirty (30) business days of being due, interest, handling charges, and late payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11.
33. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent of the obligation to comply with any requirement or deadline of this Consent Order.
34. The EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in lieu of assessing some or all of the stipulated penalties due under this Consent Order.
35. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties due under this Consent Order.
36. Unless otherwise specified by the EPA, Respondent shall pay the stipulated penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
37. When making a payment, Respondent shall identify every payment with Respondent's name and the docket number of this Agreement, Docket No. SDWA-UIC-AOC-2025-003.
38. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve via electronic mail proof of such payment to the following persons:

Jelani Shareem
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
shareem.jelani@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

C. Delays

39. “*Force majeure*,” for purposes of this Consent Order, is defined as any event arising from causes beyond Respondent’s control, the control of any entity controlled by Respondent, or the control of Respondent’s contractors, which delays or prevents the performance of any obligation under this Consent Order, despite Respondent’s reasonable best efforts to fulfill the obligation. The requirement that Respondent exercise “reasonable best efforts to fulfill the obligation” includes using reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event as it is occurring and/or after it has occurred, including to prevent or minimize any resulting delay to the greatest extent possible. Examples of events that are not *force majeure* include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order, failure to diligently pursue funding source(s) for work to be performed

under this Consent Order including federal, state, and local funding sources, or normal inclement weather.

40. Respondent shall notify the EPA in writing, within ten (10) business days, of any event that occurs that causes or is likely to cause delay in compliance with any deadline specified in this Consent Order. The notification should explain whether the delay was caused by *force majeure*, as defined in Paragraph 39, should describe the measures Respondent has taken and/or will take to prevent or minimize the delay, and should specify the timetable by which Respondent intends to implement these measures to ensure compliance with the applicable requirement or deadline. Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to the EPA required by this paragraph does not, by itself, extend any deadline or timeframe in this Consent Order.

41. If, upon receiving notice required under Paragraph 40, the EPA agrees that the delay or anticipated delay in compliance with this Consent Order has been or will be caused by circumstances that constitute *force majeure* as defined in Paragraph 39, and upon request by Respondent, the EPA may extend the applicable compliance deadline. A *force majeure* extension of any particular deadline shall not be considered a modification of this Consent Order nor affect any other provisions under this Consent Order.

42. Respondent has a burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by *force majeure*, that the duration of the delay was, or will be warranted under the circumstances, that Respondent exercised or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this subsection.

43. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Order has been or will be caused by *force majeure*, the EPA will notify Respondent in writing of the EPA's decision and any delays will not be excused.

VII. RECORD PRESERVATION

44. Until five (5) years after termination of this Consent Order, Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this Consent Order. Until five (5) years after termination of this Consent Order, Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this Consent Order.

VIII. SCOPE OF CONSENT ORDER

45. This Consent Order is not and shall not be construed to be a permit under the SDWA, nor shall it in any way relieve or affect Respondent's obligations under the SDWA, or any other applicable federal or State laws, regulations, or permits. Compliance with this Consent Order shall not be a defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.
46. Issuance of this Consent Order is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief for any violations of law. The EPA reserves all available legal and equitable rights and remedies to enforce any violation cited in this Consent Order, and to enforce this Consent Order, and the right to seek recovery of

any costs and attorney fees incurred by EPA in any actions against Respondent for non-compliance with this Consent Order.

47. This Consent Order shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

IX. WAIVER

48. Respondent waives any and all remedies, claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of the Consent Order under the Administrative Procedures Act, 5 U.S.C. §§ 701-708.

49. Respondent agrees not to contest the EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. Respondent agrees to undertake and complete all actions required by this Consent Order. Respondent waives the opportunity to receive 30-day notice of this Consent Order, and to request a hearing on or to appeal this Consent Order under sections 1423(c)(3)(A) and 1423(c)(6) of the SDWA, 42 U.S.C. §§ 300h-2(c)(3)(A) and 300h-2(c)(6).

X. INTEGRATION

50. This Consent Order, and any schedules, documents, plans, etc. that will be developed pursuant to this Consent Order are incorporated into and enforceable pursuant to this Consent Order, constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The

Parties acknowledge that there are no representations, agreements or understanding relating to the settlement other than those expressly contained in this Consent Order.

XI. SEVERABILITY

51. The provisions of this Consent Order shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

XII. MODIFICATIONS OF CONSENT ORDER

52. Modification of this Consent Order shall be in writing and shall take effect only when agreed to in writing by both Parties and after any public notice if required by section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B). Any agreed upon Modification may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute the Modification.

XIII. TERMINATION

53. Upon completing the requirements set forth in Section V of this Consent Order, including any Modifications thereto, Respondent shall submit a final written certification of completion documenting the actions taken and that Respondent has complied with the requirements of this Consent Order. Respondent's final written certification of completion shall comply with the requirements set forth above in Paragraph 28. This Consent Order shall terminate when the EPA issues a written approval of Respondent's written

certification that Respondent has fully completed all work required under this Consent Order.

XIV. PUBLIC NOTICE

54. The EPA's consent to this Consent Order is subject to the requirements of section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), that the EPA provide public notice of, and reasonable opportunity to comment on, any proposed Consent Order. The EPA will publicly notice this Consent Order and provide the opportunity to the public to comment for thirty (30) business days prior to it becoming effective pursuant to Paragraph 55. The EPA reserves the right to withdraw or seek modification to this Consent Order in response to public comments on the proposed Consent Order. In such case, Respondent will have no obligations under this Consent Order unless and until a revised Consent Order is agreed upon by the Parties and finalized by the EPA. Until such time, the EPA may pursue any and all enforcement options provided by law.

XV. EFFECTIVE DATE

55. This Consent Order shall become effective no sooner than the end of the 30-day comment period after signature by both EPA and Respondent, in accordance with Section XV, and upon written notice to Respondent identifying the Effective Date of this Consent Order.

XVI. TAX IDENTIFICATION AND REPORTING

56. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), closure of the

seven (7) LCCs and the performance of the Work in this Section V (Order) is restitution, remediation, or required to come into compliance with the law.

57. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to annually send to the Internal Revenue Service (“IRS”) a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F).

Respondent’s failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide the EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irspdf/fw9.pdf>.
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN.

- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at CINWD_AcctsReceivable@epa.gov within 30 days after the Effective Date of this Consent Order per Section XV (Effective Date). EPA recommends encrypting IRS Form W-9 email correspondence.
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide the EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

IT IS SO AGREED AND ORDERED:

In the Matter of the Dorothy K. Awai Revocable Living Trust
Administrative Order on Consent
Docket No. SDWA-UIC-AOC-2025-003

For Dorothy K. Awai Revocable Living Trust:

Keith Awai “/s/”

Date: 06/05/2025

Keith K. Awai, Successor-in-Interest
Dorothy K. Awai Revocable Living Trust

In the Matter of the Dorothy K. Awai Revocable Living Trust
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Docket No. SDWA-UIC-AOC-2025-003

For U.S. Environmental Protection Agency, Region 9:

Amy C. Miller-Bowen “/s/”

Date: 06/10/2025

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