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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF: The Gas Company, LLC dba Hawaii Gas Respondent. Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c).	DOCKET NO. SDWA-09-2025-0101 **CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency, Region 9 ("EPA") and The Gas Company, LLC dba Hawaii Gas ("Respondent") (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)(1) 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*, 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 the authority to bring and settle this action under the SDWA to the Regional Administrator of EPA Region 9. 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.

3. Respondent is The Gas Company, LLC dba Hawaii Gas, a synthetic natural gas and propane gas provider incorporated in the State of Hawaii.

4. Respondent is the "owner" of the premises located at 3990C Rice Street, Lihue, Hawaii 96766 (Tax Map Key: (4) 3-6-012-026), ("the Property"), where a large capacity cesspool serviced the Property.

5. 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).

6. 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.

7. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of $45,840, and the performance of the compliance requirements specified below.

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

8. Consistent with 40 C.F.R. § 22.18(b), for purposes of the proceeding, Respondent admits the jurisdictional allegations of the CA/FO; neither admits nor denies specific factual allegations contained in the CA/FO; consents to the assessment of any stated

civil penalty, and to any conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3); its 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 its right to appeal this CA/FO under Section 1423(c)(6) of the SDWA, 42 U.S.C. § 300h-2(c)(6). Respondent also consents to the issuance of this CA/FO without further adjudication.

III. STATUTORY AND REGULATORY AUTHORITY

10. Section 1421 of the 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 from endangering drinking water sources.

11. Section 1421(d)(1) of the 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.

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

13. 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.

14. Section 1401(6) of the 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.

15. 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.

16. 40 C.F.R. § 144.3 defines "well injection" to mean the subsurface emplacement of fluids through a well.

17. 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.

18. 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.

19. 40 C.F.R. § 144.81(2) defines "large capacity cesspools" ("LCCs") 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." 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 twenty (20) persons per day. *Id.*

20. 40 C.F.R. §§ 144.80(e) and 144.81(2) classify LCCs as Class V injection wells.

21. 40 C.F.R. § 144.3 defines Class V injection wells as a "facility or activity" subject to regulation under the UIC program.

22. Section 1401(12) of the 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.

23. 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.

24. Pursuant to 40 C.F.R. § 144.82, the "owner or operator" of a Class V 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]."

25. 40 C.F.R. §§ 144.84(b)(2) and 144.88 requires owners or operators of existing LCCs to have closed them by April 5, 2005. New LCCs were prohibited as of April 5, 2000. Id.

26. 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.

27. Section 1423(a)(2) of the 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 the SDWA, 42 U.S.C. § 300h-2(c)(1).

28. Under Section 1423(c)(1) of the 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 $27,894 for each day of violation, up to a maximum administrative penalty of $348,671, for violations occurring after November 2, 2015 where penalties are assessed on or after December 27, 2023, and issue an order requiring compliance.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

29. Respondent is a limited liability company and therefore 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.

30. Respondent owns the Property located at 3990C Rice Street, Lihue, HI 96766 (Tax Map Key: (4) 3-6-012-026). The Property has been in Respondent's ownership since at least 1972.

31. The Property is leased by Respondent's lessee and used as a combined commercial showroom/sales area and business office, and gas products storage warehouse.

32. The Property has one cesspool that collects sanitary wastewater from the restroom.

33. EPA alleges that the cesspool that services the Property meets the regulatory criteria of a LCC, as that term is described at 40 C.F.R. § 144.81(2), in that the cesspool has the capacity to serve twenty (20) or more persons per day.

34. EPA alleges that each day that Respondent failed to close the alleged LCC at the Property after April 5, 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

V. SETTLEMENT TERMS

a. Civil Penalty

35. 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.

36. Within thirty (30) days of the Effective Date of this CA/FO, Respondents must pay a civil penalty of FORTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS ($45,840) by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: https://www.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 979078
St. Louis, Missouri 63197-9000

37. After payment, Respondent shall immediately provide proof of payment to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, ORC-1
75 Hawthorne Street
San Francisco, CA 94105
r9HearingClerk@epa.gov

Respondent shall also send notice of payment and a 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 identified in Paragraph 68.

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

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Paragraphs 52-54 and 59-61, Respondent must pay the following on any penalty 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 thirty (30) days past due; and 6% per year penalty on any principal amount ninety (90) days past due.

40. If Respondent does not pay timely the civil penalty due under Paragraph 36 and/or any stipulated penalties due under Paragraphs 52-54 and 59-61, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expense for the collection action under Section 1423(c)(7) of the 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. Compliance Requirements

41. 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. By December 31, 2024, close the LCC at 3990 Rice Street, Lihue, HI 96766 (TMK: 4-3-6-012-026) 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 Hawaii Department of Health ("HDOH") closure, conversion, and/or replacement requirements. If Respondent installs one or more replacement wastewater systems, such as Individual Wastewater Systems ("IWS"), then installation and operation of such systems shall comply with all HDOH requirements. If Respondent connects to a municipal sewer system, then that connection shall comply with all applicable sewer connection requirements; and

b. Within thirty (30) days of the closure of the LCC, submit to EPA a Final LCC Closure Report which includes the following information:

i. A description of the process by which the LCC was closed, including the equipment used;

ii. Photographic evidence of construction and completion;

iii. Identification of the contractor(s) providing the service;

iv. A copy of the cesspool backfill closure report; and

v. A copy of all approvals related to the closure of the LCCs and any replacement wastewater systems, such as an IWS or sewer connection,

issued by HDOH, the County, or any other agency. Should the applicable agency issue its approval after the Final LCC Closure Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent's receipt of the approval.

42. Permits. Where any compliance obligation under this Section requires Respondent to obtain a federal, state, or local permit or approval, Respondent shall submit timely and complete applications to obtain all such permits or approvals. Respondent may seek relief under the provisions of Section F ("Force Majeure") of this CA/FO for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Respondent has submitted timely and complete applications to obtain all such permits or approvals.

43. If Respondent fails to comply with the requirements set forth in Paragraph 41 above, EPA may request the United States Department of Justice bring an action to seek penalties for violating this CA/FO under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b).

Supplemental Environmental Project

44. In response to the alleged violations of the SDWA and in settlement of this matter, although not required by the SDWA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in Paragraphs 45—51.

45. Respondent shall complete a SEP consisting of: (1) closing the small capacity cesspools ("SCCs") associated with the following two single family homes and (2) installing

individual Wastewater Systems ("IWS") in their place:

a. 67-140 Komo Street, Waialua, HI 96791

b. 67-239 Farrington Highway, Waialua, HI 96791

46. Respondent shall spend no less than ONE HUNDRED FIFTEEN THOUSAND DOLLARS ($115,000) implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

47. Respondent shall complete the closure of SCCs and installation of IWS at the locations referenced in Paragraph 45 no later than 180 days following receipt of approvals by HDOH, the County, or any other agency related to the closure of the SCCs and any replacement wastewater systems.

48. The SEP is consistent with applicable EPA policy and guidelines regarding SEPs, including EPA's *2015 Update to the 1988 Supplemental Environmental Projects Policy* (March 10, 2015).[1] The SEP advances at least one of the objectives of the SDWA and the UIC regulations cited above by reducing the potential for releases of untreated sanitary waste to groundwater, which can serve as an underground source of drinking water. The SEP is not inconsistent with any provision of the SDWA. The SEP relates to the violations alleged in Section IV of this CA/FO, in that it is designed to reduce the adverse impact and overall risk to public health and/or the environment to which these violations contribute. The SEP and the violations relate to the same contaminants (untreated sanitary waste), the same media (groundwater), the same potential human health exposure pathways (ingestion of impacted groundwater or contact with surface or coastal waters impacted via groundwater). The SCCs are located in the same geographic area as

[1] See, https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf.

the violation (the Hawaiian Islands), and the reduction in pollutant loading from closing the SCCs is to the same types of ecosystems that may have been impacted by the violations, namely the nearshore aquatic ecosystems of the Hawaiian Islands. Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is a minimum of ONE HUNDRED FIFTEEN THOUSAND DOLLARS ($115,000);

b. That Respondent will not include administrative costs for employee oversight of the implementation of the SEP in its project costs;

c. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;

e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 45; and

h. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

49. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the Effective Date of this CA/FO shall include the following language:

> "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Safe Drinking Water Act."

50. As part of this SEP, Respondent shall submit the following information and/or reports to EPA:

a. Within one (1) month of the installation of the IWS at both homes, Respondent shall submit to EPA a SEP completion report ("SEP Completion Report"), accompanied by certification from a responsible corporate official. The SEP Completion Report must include the following information:

i. A detailed description of the SEP as implemented;

ii. A description of any problems encountered and the solutions thereto;

iii. Itemized costs;

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO;

v. A description of the environmental and public health benefits resulting from implementation of the SEP;

vi. Photographic evidence of construction and completion of the closure and replacement of each SCC;

vii. Identification of the contractor(s) providing the services;

viii. A copy of the cesspool backfill closure report for each closure; and

ix. A copy of all approvals related to the closure of the SCCs and any replacement wastewater systems, such as an IWS or sewer connection, issued by HDOH, the County, or any other agency. Should the applicable agency issue its approval after the SEP Completion Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent's receipt of the approval.

51. EPA acceptance of SEP Completion Report. After receipt of the SEP Completion Report described in Paragraph 50 above, EPA will, in writing to the Respondent, either:

a. Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or

b. Indicate that EPA concludes that the project has been completed satisfactorily; or

c. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 54 herein.

d. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of completion of the SEP itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any

such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

Stipulated Penalties

52. If Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraph 45 by the deadline in Paragraphs 47, Respondent agrees to pay, in addition to the civil penalty in Paragraph 36, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:

i. $250 per day for days 1-30

ii. $300 per day for days 31– 60

iii. $400 per day after day 61

53. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 50, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:

i. $100 per day for days 1-30

ii. $150 per day for days 31 – 60

iii. $300 per day after day 61

54. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 46 above, Respondent shall pay a stipulated penalty to the United States in the amount of $126,500. “Satisfactory completion” of the SEP is defined as Respondent spending no less than $115,000 to complete the SEP described in

Paragraph 45 within 180 days of receipt of approvals by HDOH, the County, or any other agency related to the closure of the SCCs and any replacement wastewater systems.

55. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.

i. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 36 above. Interest and late charges shall be paid as stated in Paragraph 39.

ii. The SEP will be deemed to be satisfactorily completed only when Respondent has (a) closed the SSCs identified in Paragraph 45; (b) installed the two IWS at the homes identified in Paragraph 45; (c) expended the minimum amount identified in Paragraph 46; and (d) submitted the SEP Completion Report to EPA. Respondent agrees that failure to submit the SEP Completion Report or any periodic report required by Paragraph 50 below shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 60 below.

iii. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of this agreement) shall be reserved to the sole discretion of EPA.

iv. For a period of five (5) years following the Effective Date of this CA/FO, Respondent shall maintain legible copies of all documentation relevant to the SEP or reports submitted to EPA pursuant to this CA/FO and shall provide such documentation or reports to EPA not more than seven (7) days after a request for such information.

c. <u>Reporting Requirements</u>

56. Respondent shall submit progress reports to the EPA Region 9 Compliance Officer

on a quarterly basis, with the first report (covering the preceding three-month period) due three (3) months after the Effective Date of this CA/FO. Subsequent reports shall be due on the first business day following each three-month period, until the Final LCC Closure Report has been submitted. Each progress report shall detail Respondent's work during the three-month period towards meeting all applicable compliance deadlines.

57. Each progress report must be accompanied with a certification, as described in Paragraph 69, from Respondent's authorized representatives.

d. Stipulated Penalties

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

59. If Respondent fails to make the payment specified in Section V.a or fails to comply with the requirements regarding the closure of the alleged LCC at the Site specified in Section V.b, Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of $300 per day per violation for each day the Respondent is late meeting the applicable requirements.

60. If Respondent fails to timely submit any reports, such as those required under Sections V.b or V.c, in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of $100 for each day after the report was due until Respondent submits the report in its entirety.

61. 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 Paragraph 36 and agree 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 39.

62. 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.

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

e. Tax Identification

64. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, 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 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." 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). 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. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein

requires, and Respondent herein agrees, that:

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/irs-pdf/fw9.pdf;

b. Respondent shall therein certify that its completed IRS Form W-9 include Respondent's correct TINs 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 Center in Paragraph 36 within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and;

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date, as defined in Section VIII. below**,** and

ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

f. Force Majeure

65. For purposes of this CA/FO, Force Majeure is defined as any event arising from causes that are beyond the control of Respondent, any entity controlled by Respondent, or

Respondent's contractors, which delays or prevents the performance of any obligation under

this CA/FO 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 (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of Force Majeure events include, but are not limited to, unforeseeable environmental, geological, or archaeological conditions; or pandemics, epidemics, or disease, or the failure to obtain, or delay in obtaining a permit. 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 CA/FO and normal inclement weather.

66. 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 seventy-two (72) hours of the delay or within seventy-two (72) hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA points of contact in Paragraph 68 by email. 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.

67. 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 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.

VI. SUBMISSIONS REQUIREMENTS

68. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, submissions may be made by certified mail (return receipt requested). 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. Electronic or mailed submissions shall be sent to the individuals identified below:

EPA Region 9 Enforcement and Compliance Assurance Division
Jelani Shareem
U.S. Environmental Protection Agency, ECAD-3-3
75 Hawthorne Street
San Francisco, CA 94105
shareem.jelani@epa.gov

and

EPA Region 9 Office of Regional Counsel
Julia Jackson
U.S. Environmental Protection Agency, ORC-2-3
75 Hawthorne Street
San Francisco, CA 94105 jackson.julia@epa.gov

69. All reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent 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 the 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*."

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

71. 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.

72. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

73. The information required to be submitted pursuant to this 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

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

75. The Parties consent to service of this CA/FO by e-mail at the following valid e- mail addresses: shareem.jelani@epa.gov and jackson.julia@epa.gov (for Complainant) and isandison@wik.com (for Respondent).

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

77. The provisions of this CA/FO shall apply to and be binding upon Respondent and its officers, directors, 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 except for extensions of time to complete such obligations provided by EPA pursuant to Paragraph 67.

78. Full compliance with this CA/FO does not in any manner effect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violation of law, except with respect to the claims described in Section IV that have been specifically resolved by this CA/FO.

79. This CA/FO is not a permit or modification of a permit and does not affect Respondent's obligations 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, or any order or permit issued thereunder, except as specifically set forth herein.

80. 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.

81. Unless otherwise specified, the Parties shall each bear their own costs and attorney fees in this action.

82. 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.

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

84. 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 V.b is restitution or required to come into compliance with law.

VIII. EFFECTIVE DATE

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

86. 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.

87. 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: The Gas Company, LLC dba Hawaii Gas Docket No. SDWA-09-2025-0101

For The Gas Company, LLC dba Hawaii Gas

Nathan C. Nelson "/s/"

Nathan C. Nelson **Date:** July 24, 2025
Vice President, General Counsel, Secretary & Administration

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

Amy C. Miller-Bowen "/s/"

Date: July 24, 2025

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF: The Gas Company, LLC dba Hawaii Gas Respondent. Proceedings under Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c).	)	DOCKET NO. SDWA-09-2025-0101 **CONSENT AGREEMENT AND FINAL ORDER**

FINAL ORDER

The United States Environmental Protection Agency Region 9 ("EPA") and The Gas Company, LLC dba Hawaii Gas ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. SDWA-09-2025-0101) be entered;

2. Respondent pay an administrative civil penalty of $45,840 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;

3. Respondent complete all Compliance Requirements in accordance with the terms set forth in Section V.b of the Consent Agreement;

4. Respondent comply with all other requirements of the Consent Agreement.

This Consent Agreement and Final Order, as agreed to by the Parties, shall become effective on the date that it is filed with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18, 22.31, and 22.45.

IT IS SO ORDERED.

_____ Date: _____

Beatrice Wong
Regional Judicial Officer, Region 9
U.S. Environmental Protection Agency