REGION 9
SAN FRANCISCO, CA 94105

IN THE MATTER OF:	)	Docket No. SDWA-UIC-AOC-2017-0002
	)	
County of Hawai'i,	)	**PROPOSED AMENDED ADMINISTRATIVE ORDER ON CONSENT**
	)	
Respondent.	)	Proceeding under Sections 1423(c) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c).
	)	

I. INTRODUCTION

1. The United States Environmental Protection Agency ("EPA") and the County of Hawai'i ("Respondent") voluntarily enter into this Amended Administrative Order on Consent ("Consent Order" or "AOC").

2. Upon the Effective Date of this Consent Order, as defined in section XVI below, this Consent Order supersedes the Revised Administrative Order on Consent for County of Hawai'i Pāhala and Nā'ālehu LCC Closure Projects which was effective August 22, 2022 and which revised the Administrative Order on Consent in the Matter of County of Hawai'i issued June 22, 2017 ("2017 AOC").

3. At the time the 2017 AOC was entered, Respondent owned, controlled, and operated seven large-capacity cesspools ("LCCs") located in the Pāhala and Nā'ālehu

communities in Hawai‘i. At the time of this revision, Respondent continues to own, control, and operate five LCCs in the Pāhala and Nā‘ālehu communities.

4. EPA alleges that Respondent has violated and continues to violate requirements of the federal Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et seq.*, and 40 C.F.R. §§ 144.84(b)(2) and 144.88, which required owners or operators of existing LCCs to close them no later than April 5, 2005.

5. This Consent Order directs Respondent to remedy the ongoing violations relating to the continued operation of LCCs in the Pāhala and Nā‘ālehu communities of Hawai‘i in accordance with the compliance schedules set forth in this Consent Order.

6. EPA and Respondent recognize that this Consent Order was negotiated in good faith and that Respondent has fully cooperated with the EPA.

II. JURISDICTION

7. EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c).

8. The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region 9, through EPA Delegation 9-34 (May 11, 1994). This authority has been further delegated to the Director of EPA Region 9's Enforcement and Compliance Assurance Division by Regional Delegation R9-9-34 (Feb. 11, 2013).

9. The Director of the Enforcement and Compliance Assurance Division of EPA Region 9 and Respondent, together referred to as "the Parties," enter into this Consent Order voluntarily and hereby agree to the terms of and to the issuance of this Consent Order. Respondent agrees not to contest 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. This Consent Order constitutes an enforceable agreement between Respondent and EPA.

10. Respondent agrees to undertake and complete all actions required by this Consent Order. Respondent waives the opportunity to receive 30-days notice of this AOC, and to request a hearing on or to appeal this AOC 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).

III. PARTIES BOUND

11. This AOC shall bind Respondent and its officials, officers, directors, agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with Respondent.

12. The undersigned signatory for Respondent certifies that he or she is authorized to execute this Consent Order and legally bind the Respondent.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Pursuant to Part C of the SDWA, 42 U.S.C. § 300h through 300h-8, 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.

14. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

15. "Well injection" means the subsurface emplacement of fluids through a well. 40 C.F.R. § 144.3.

16. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined in 40 C.F.R. § 144.3. "Large-capacity cesspools" ("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 that receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

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

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

19. "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.

20. 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]." 40 C.F.R. § 144.82.

21. Owners or operators of existing LCCs were required to have closed those LCCs no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

22. 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 Hawai'i. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

23. Since at least April 30, 2010, Respondent has owned and operated two cesspools that serve the Pāhala Community (i.e., community cesspools) on Tax Map Key parcels 3-9-6-016-041 and 3-9-6-002-024 ("Pāhala Community Cesspools"). Respondent is an "owner or operator" of those cesspools as that term is defined at 40 C.F.R. § 144.3.

24. Since at least April 30, 2010, Respondent has owned and operated three community cesspools located in the Nāʻālehu Community, two of which are located on Tax Map Key parcels 3-9-5-024-011 and 3-9-5-024-001, respectively, and the third of which is situated between Tax Map Key parcels 3-9-5-024-010 and 3-9-5-024-009 ("Nāʻālehu Community Cesspools"). Respondent is an "owner or operator" of those cesspools as that term is defined at 40 C.F.R. § 144.3.

25. From at least July 31, 1985, until June 29, 2018 Respondent owned two cesspools serving the Pāhala Elderly Apartments, located on Tax Map Key parcel 3-9-6-017-038 ("Pāhala Elderly Apartments Cesspools"). Respondent was an "owner" of those cesspools as that term is defined at 40 C.F.R. § 144.3.

26. Respondent closed the two LCCs referenced in Paragraph 25, as required by the 2017 AOC.

27. EPA alleges that each of the cesspools referred to in Paragraphs 23, 24, and 25, at all times relevant to this Consent Order, served multiple dwellings, and thus each is considered an LCC pursuant to 40 C.F.R. § 144.81(2).

28. Respondent failed to close the LCCs referenced in Paragraph 25 by April 5, 2005, as required by 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1). In addition, Respondent has failed to close the LCCs referenced in Paragraphs 23 and 24.

29. EPA therefore alleges that Respondent is in continuing violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

30. Pursuant to section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), EPA may issue an order requiring compliance against any person who violates the SDWA or any requirement of an applicable UIC program.

V. COMPLIANCE PROVISIONS

31. Based on the foregoing findings and pursuant to EPA's authority under section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), in order to come into compliance with the LCC closure requirements of the UIC program, Respondent agrees and is hereby ORDERED to complete the following work:

A. Planning

32. Respondent shall conduct a review of potential projects that meet the requirements listed in Sections V.B and V.C. Respondent shall complete the following milestones as part of the review and planning process:

a. Feasibility Evaluation Report. Within 60 days of execution of this Consent Order, Respondent shall evaluate the feasibility of potential projects that would meet the requirements of Sections V.B and V.C and submit for EPA's approval a Feasibility Report identifying the project options evaluated, the factors considered and the feasibility of each project option. A project shall be considered feasible if Respondent has the legal authority to implement the project and the project meets the requirements of Hawai'i Administrative Rules Title 11, Chapter 62. At a minimum Respondent shall evaluate the feasibility of the following four project options for the communities of Pāhala and Nā'ālehu (i) package plants and new

collection systems for each community; (ii) package plants connected to the existing collection systems in each community; (iii) a maintenance contract model individual wastewater system program for both communities; and (iv) an operating permit model individual wastewater system program for both communities. Respondent may evaluate additional project options.

b. Preliminary Engineering Report. Within 180 days of EPA's written approval of the Feasibility Report, have a licensed professional engineer who has experience with wastewater treatment, including individual wastewater systems and municipal treatment facilities, prepare and submit for EPA's approval a Preliminary Engineering Report for Pāhala. Within 300 days of EPA's approval of the Feasibility Report, have a licensed professional engineer who has experience with wastewater treatment, including individual wastewater systems and municipal treatment facilities, prepare and submit a Preliminary Engineering Report for Nāʻālehu for EPA's approval. The Preliminary Engineering Reports shall describe the project details for each feasible option, including the planning area description, planning period, description of construction phases, owner and operator of the facilities, and location of facilities (including a map); the design parameters for each feasible option (for example, major unit processes, flow diagrams, pipe lengths, sizes and locations, design criteria); and project costs for each feasible option.

c. Environmental Review. By July 30, 2024, submit for EPA's approval an Environmental Information Document ("EID") for Pāhala. Within 365 days of EPA's approval of the Nāʻālehu Preliminary Engineering Report submit for EPA's approval an EID for Nāʻālehu. Respondent shall have a qualified professional conduct environmental review of the feasible options identified in the Feasibility Evaluation Report as well as a no action alternative. The

qualified professional shall have experience conducting environmental reviews for community wastewater projects. The environmental review shall be consistent with the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., and shall be documented in the EID. The EID shall include, at a minimum, the following nine components: i) a description of the purpose and need for the project; ii) identification of the preferred project and funding status; iii) description of the affected environment, including baseline conditions that may be impacted by the proposed project; iv) analysis comparing the feasible project options and the no action alternative; v) assess and describe the environmental impacts and mitigation measures for each feasible project option; vi) a description of consultation activities and coordination with state and federal agencies; vii) a description of public engagement in preparation of the EID; viii) a list of preparers; and ix) a list of references.

B. Pāhala Community Cesspool Closure Project

33. Respondent shall fully and properly comply with the SDWA with respect to the Pāhala Community Cesspools identified in Paragraph 23, by providing wastewater treatment that is protective of surface water and underground sources of drinking water for 174 properties in Pāhala, including 109 properties that are currently connected to the Pāhala Community Cesspools, and closing the Pāhala Community Cesspools. As soon as practicable, but no later than the deadlines specified herein, Respondent shall complete the following milestones to achieve compliance with the SDWA:

a. Pāhala Implementation Plan. Within 60 days of the effective date of the Amended AOC, Respondent shall submit for EPA approval a revised implementation plan for the selected project prepared by a licensed professional engineer identifying the steps required

to design and implement the selected project for Pāhala ("2026 Revised Pāhala Implementation Plan"). Respondent must follow applicable federal, Hawai'i state, and local requirements for design, construction, and operation of such facilities and shall diligently pursue all necessary permits and approvals. The 2026 Revised Pāhala Implementation Plan shall include steps for obtaining all required permits and approvals. The 2026 Revised Pāhala Implementation Plan shall include a schedule and completion dates for each step required to implement the selected alternative, provide wastewater services for 174 properties, and to close the Pāhala Community Cesspools no later than January 31, 2029.

b. Upon approval by EPA, Respondent shall implement the Pāhala Community Cesspool Closure Project in accordance with the provisions and schedule set forth in the 2026 Revised Pāhala Implementation Plan.

C. Nā'ālehu Community Cesspool Closure Project

34. Respondent shall fully and properly comply with the SDWA with respect to the Nā'ālehu Community Cesspools identified in Paragraph 24, by providing wastewater treatment that is protective of surface water and underground sources of drinking water for 194 properties in Nā'ālehu, including 164 properties that are currently connected to the Nā'ālehu Community Cesspools, and closing the Nā'ālehu Community Cesspools. As soon as practicable, but no later than the deadlines specified herein, Respondent shall complete the following milestones to achieve compliance with the SDWA:

a. <u>Nā'ālehu Implementation Plan.</u> Within 60 days of receiving written approval of the EID prepared pursuant to Paragraph 32.c, Respondent shall submit for EPA approval an implementation plan for the selected project prepared by a licensed professional

engineer identifying the steps required to design and implement the selected project for Nāʻālehu ("Nāʻālehu Implementation Plan"). Respondent must follow applicable federal, Hawaiʻi state, and local requirements for design, construction, and operation of such facilities and shall diligently pursue all necessary permits and approvals. The Nāʻālehu Implementation Plan shall include steps for obtaining all required permits and approvals. The Nāʻālehu Implementation Plan shall include a schedule and completion dates for each step required to implement the selected alternative, provide wastewater services for 194 properties, and to close the Nāʻālehu Community Cesspools no later than December 31, 2032.

b. Upon approval by EPA, Respondent shall implement the Nāʻālehu Community Cesspool Closure Project in accordance with the provisions and schedule set forth in the Nāʻālehu Implementation Plan.

D. Outreach

35. Webpage. Starting on the effective date of this Consent Order, Respondent must maintain a public webpage to keep EPA and the public informed of the status of the Community Cesspool Closure Projects. The webpage must be updated at least monthly and must at a minimum identify all milestones completed since the last update, post Semiannual Reports, and provide a schedule of upcoming meetings and opportunities for public engagement. Respondent shall submit the webpage address to EPA when the webpage becomes public and shall include the status of webpage updates in the Semiannual Reports and Quarterly Meetings with EPA.

36. Respondent shall maintain a list of persons interested in the Pāhala and Nāʻālehu Community Cesspool Closure Projects. The list shall include persons who have provided their

contact information at a public meeting regarding the Pāhala and Nāʻālehu Community Cesspool Closure Projects, persons who have previously contacted Respondent regarding the Projects, and persons who request that Respondent include them on the list.

37. Respondent shall provide notice of all public meetings and opportunities for public engagement at least 14 days in advance by sending the notice to all persons identified on the list in Paragraph 36, posting the notice on the homepage of the webpage required by Paragraph 35, publishing the notice in local newspapers, and posting the notice at the Pāhala and Nāʻālehu Community Centers located at 96-1149 Kamani Street Pāhala, Hi 96777 and 95-5635 Māmalahoa Highway Nāʻālehu, Hi 96772 respectively, and at the facility where the meeting will be held, if possible, if the public meeting is not held at one of the Community Centers.

38. Public meetings shall be designed to foster an atmosphere that encourages participation by being held in locations accessible to all community members that wish to attend and that allow for maximum attendance by community members, and by occurring at times selected to reasonably accommodate the schedules of community members that wish to attend.

39. Respondent shall solicit public comment on a draft of each EID. The draft EID shall include the nine components listed in Paragraph 32.c. Component ii) of each draft EID shall tentatively identify Respondent's preferred option and provide a draft basis for the tentative selection. Components vi) and vii) of the draft EIDs shall describe consultation activities and public engagement that have already occurred and may contain placeholders for any incomplete consultations and for the response to comments submitted by the public. The

draft EIDs presented to the public shall be clearly labeled "Draft Environmental Information Document – May be Subject to Change Based on Public Comments." For each project, Respondent shall allow at least 30 days for the public to submit written comments on the draft EID. During the public comment period for each project Respondent shall hold at least one public meeting within the community where the project will take place. Notice of the opportunity to submit written comments and/or public testimony shall be provided as specified in Paragraph 37 and shall include instructions for submitting comments. The description of public engagement in preparation of the EIDs submitted to EPA pursuant to Paragraph 32.c.vii shall include a summary response document showing that Respondent has responded to all substantive comments submitted by the public. Respondent shall post the document on the webpage required by Paragraph 35.

40. Semiannual Outreach Meetings. Respondent shall hold public outreach meetings at least twice per year, once in February and once in August to update the public on the status of the cesspool closure projects required by this Consent Order. At these meetings Respondent shall present the contents of the Semiannual Reports to the communities of Pāhala and Nāʻālehu.

E. General Requirements

41. Respondent shall inform the EPA in writing if any new information or circumstances cause Respondent to modify any planned actions or schedule for achieving compliance with this Consent Order. Respondent may, where appropriate, petition for an extension of any deadline contained in Paragraph 32 through 34. Any such request should be made according to the procedures set forth in Section V.H of this Consent Order. Extensions of

any particular deadline shall only become effective upon approval by EPA and shall not affect any other deadlines under this Consent Order not specifically addressed in the approved extension.

42. Construction of the selected projects shall be considered complete once the Hawai‘i Department of Health ("HDOH") issues necessary approvals to operate.

43. In complying with Paragraphs 33 and 34 of this Consent Order (cesspool closures), Respondent must follow HDOH's well abandonment procedures and techniques and any other requirements of HDOH's UIC program. Respondent shall notify HDOH when closure of each LCC is complete. EPA will consider the LCCs to be closed when either (a) HDOH issues an Injection Well Cesspool Backfilling Final Completion Report, or (b) Respondent submits to EPA a completed Large Capacity Cesspool Backfilling Final Completion Report.

44. Respondent shall submit to EPA copies of HDOH's "Injection Well Cesspool Backfilling Final Completion Report" for each cesspool referenced in this AOC within 10 days of receipt from HDOH. Documents should be sent to the EPA Region 9 Compliance Officer, and the EPA Region 9 LCC Project Coordinator at the addresses specified in Paragraphs 67 and 68 of this Consent Order.

45. Respondent shall fully implement each requirement of this Consent Order, including meeting the deadlines contained in Paragraphs 32 through 34 or any approved modifications to the compliance schedules as set forth in Paragraph 82 of this Consent Order. Respondent's failure to fully implement all requirements of this Consent Order in the manner and timeframe required shall be deemed a violation of this Consent Order.

46. Respondent's failure to comply with all of the applicable requirements of the SDWA and 40 C.F.R. Part 144 may subject Respondent to additional enforcement actions, including but not limited to judicial or administrative actions.

47. Where work under this AOC is being performed using federal grant funds directly administered by EPA, including funds provided under Special Appropriation Grant XP-96942401, Respondent shall ensure that the project schedule under such grant is consistent with the requirements and schedules included in this Consent Order.

F. Stipulated Penalties

48. If Respondent fails to comply with any provision of this Consent Order, Respondent agrees to pay upon EPA's demand the stipulated penalties set forth in this Paragraph unless EPA has excused Respondent's delay according to the procedures provided in Section V.H of this Consent Order. Stipulated penalties shall begin to accrue on the date performance is due, and 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. $1000 per day per violation for the sixty-first day of violation and beyond.

49. Respondent must pay the stipulated penalty within 30 days of receipt of EPA's stipulated penalty demand, according to the process provided in the demand. If any payment is not received within 30 calendar 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.

50. 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.

51. 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.

52. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties due under this Consent Order.

53. Respondent may pay the stipulated penalty by check (mail or overnight delivery), wire transfer, Automated Clearing House (ACH), 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 979077
St. Louis, Missouri 63197-9000

54. Respondent shall provide notice of stipulated penalty payments made pursuant to Paragraph 48, accompanied by the title and docket number of this action, to the EPA Region 9 Compliance Officer at the address provided in Paragraph 67 below.

G. Delays

55. "Day," for purposes of this Consent Order, is defined to mean a calendar day, except where otherwise specified.

56. "*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, 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 and state funding sources, or normal inclement weather.

57. Respondent shall notify EPA in writing, within 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 56, 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 EPA required by this Paragraph does not, by itself, extend any deadline or timeframe in this Consent Order.

58. If, upon receiving notice required under Paragraph 57, 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 56, and upon request by Respondent, EPA may extend the applicable compliance deadline. Modification of any particular deadline shall not affect any other deadlines under this Consent Order unless expressly authorized in writing by EPA.

59. 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.

60. In the event that 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*, EPA will notify Respondent in writing of EPA's decision and any delays will not be excused. EPA may demand stipulated penalties for unexcused delay, as set forth in Section V.G.

VI. REPORTING REQUIREMENTS

61. Semiannual Reports. Respondent shall submit compliance reports to the EPA Region 9 Compliance Officer and the EPA Region 9 LCC Project Coordinator twice per year, with the first report (covering the period January 1, 2024 through June 30, 2024) due on July 3, 2024, and the second report due on January 1, 2025. Subsequent reports shall be due on the first

business day following each six-month period thereafter. Each compliance report shall discuss Respondent's progress toward meeting the milestones specified in Sections V.A-V.E of this AOC. Upon notification to Respondent, EPA may require additional status reports, or fewer status reports, and/or request additional documentation to support the compliance reports for purpose of documenting compliance with this AOC. Respondent shall continue to submit semiannual compliance reports until this AOC has been terminated pursuant to the terms of Section XIV (Termination) of this Consent Order.

62. Each compliance report must be accompanied by a certification from Respondent's authorized representative that Respondent has met each milestone identified in this AOC that falls within the preceding two quarters, or, if a milestone was missed, the compliance report must describe why that milestone was missed and the date certain by which it will be met.

63. Quarterly Meetings with EPA. Respondent must continue to convene quarterly meetings (by teleconference or at a centralized meeting location) with EPA to discuss Respondent's progress in complying with the requirements and schedules of this Consent Order. Respondent shall be responsible for scheduling meetings required under this Paragraph to occur no later than 20 days after the last day of every calendar quarter (i.e., by April 20th for the period January through March, by July 20th for the period April through June, by October 20th for the period July through September, and by January 20th for the period October through December). Respondent shall provide the EPA Compliance Officer and the EPA LCC Project Coordinator with notice of the proposed meeting date at the addresses listed in

Paragraphs 67 and 68 of this Consent Order at least 15 days in advance of the proposed meeting. The first quarterly meeting shall take place no later than April 20, 2024.

VII. SUBMISSIONS AND NOTIFICATIONS

64. All information and documents submitted pursuant to this Consent Order shall be signed by a duly authorized representative of the County of Hawai‘i.

65. 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.*

66. Submissions by Respondent shall be deemed made on the date they are sent electronically, or on the date postmarked if sent by U.S. mail. Electronic submissions are preferred.

67. All submissions made pursuant to this Consent Order shall be sent to the EPA Region 9 Compliance Officer at the following address:

Jelani Shareem
U.S. EPA Region 9
Enforcement and Compliance Assurance Division
Drinking Water Section (ECAD 3-3)
75 Hawthorne Street
San Francisco, CA 94105
shareem.jelani@epa.gov

68. Where the Consent Order so specifies, submissions shall also be sent to the EPA Region 9 LCC Project Coordinator, at the following address:

Kate Rao
U.S. EPA Region 9
Water Division
Groundwater Protection Section (WTR 4-2)
75 Hawthorne Street
San Francisco, CA 94105
rao.kate@epa.gov

69. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted under this Consent Decree, EPA will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

70. If the submission is approved under Paragraph 69(a), Respondent shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part under Paragraph 69(b) or (c), Respondent shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions.

71. If the submission is disapproved in whole or in part under to Paragraph 69(c) or (d), Respondent shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Respondent shall proceed in accordance with the preceding Paragraphs.

72. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Respondent to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the right of EPA to seek stipulated penalties as provided in Section V.G.

VIII. RECORD PRESERVATION

73. Until 5 years after termination of this Consent Order, the 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 years after termination of this Consent Order, the 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.

IX. SCOPE OF CONSENT ORDER

74. 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.

75. Issuance of this Consent Order is not an election by 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 under the SDWA. EPA reserves all available legal and equitable rights and remedies to enforce any violation cited in 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.

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

X. WAIVER

77. 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 Procedure Act. 5 U.S.C. §§ 701-708.

XI. INTEGRATION

78. Schedules, documents, plans, etc. that are developed pursuant to this Consent Order become incorporated into this Consent Order upon written approval by EPA.

79. Any schedule for resubmission of deliverables established in accordance with Paragraph 71 shall become incorporated into this Consent Order.

80. This Consent Order, and any documents that become incorporated into this Consent Order pursuant to Paragraphs 78 and 79, 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.

XII. SEVERABILITY

81. 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.

XIII. MODIFICATIONS OF CONSENT ORDER

82. Modification of this Consent Order including any plans or schedules developed pursuant thereto shall be in writing and shall take effect only when agreed to in writing by both Parties. 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.

XIV. TERMINATION

83. 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 65. This Consent Order shall terminate when EPA issues a written approval of Respondent's written certification that Respondent has fully completed all work required under this Consent Order.

XV. PUBLIC NOTICE

84. 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 EPA provide public notice of, and reasonable opportunity to comment on, any proposed Consent Order. EPA will publicly notice this Consent Order and provide the opportunity to the public to comment for 30 days prior to it

becoming effective pursuant to Paragraph 85. EPA reserves the right to withdraw or seek modification to this Consent Order in response to public comments on the proposed 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 EPA. Until such time, EPA may pursue any and all enforcement options provided by law.

XVI. EFFECTIVE DATE

85. 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 EPA's written notice to the Respondent identifying the Effective Date of the Order.

86. Revisions to this Consent Order shall become effective immediately upon signature by the Parties.

IT IS SO AGREED AND ORDERED:

For the County of Hawai'i:

Daniel Girvan "/s/" July 22, 2026
Daniel Girvan Date
Director
Department of Environmental Management
County of Hawai'i

C. Kimo Alameda "/s/" July 31, 2026
C. Kimo Alameda, Ph.D. Date
Mayor, County of Hawai'i

APPROVED AS TO FORM AND LEGALITY:

Renee N.C., Schoen "/s/" July 30, 2026
RENEE N.C, SCHOEN, ESQ. Date
Corporation Counsel

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

Amy C. Miller-Bowen "/s/" August 10, 2026
Amy C. Miller-Bowen, Director Date
Enforcement Division and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9