

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

2009 FEB 22 AM 9:20

REGIONAL ADMINISTRATOR

IN THE MATTER OF

Fred Romanchak and Kula  
Lodge & Restaurant, Inc.  
Kula, Hawaii

Proceedings under Section 1423(c)  
of the Safe Drinking Water Act,  
42 U.S.C. § 300h-2(c)

DOCKET NO. UIC-09-2009-0003

CONSENT AGREEMENT  
AND  
██████████ FINAL ORDER

**CONSENT AGREEMENT**

1. This Consent Agreement and Final Order ("CA/FO") is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "SDWA" or the "Act"), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, and with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"), the Director of the Water Division, EPA Region IX, hereby issues, and Fred Romanchak and Kula Lodge & Restaurant, Inc. ("Respondents"), hereby agree to the issuance of, this CA/FO.

2. Respondents and Complainant (the "Parties") agree that settlement of the matters at issue in the attached "Complaint and Proposed Administrative Order with Administrative Civil Penalty" ("Complaint"), Docket No. UIC-09-2009-0003, without further litigation, will save time and resources, is in the public interest, is consistent with the provisions and objectives of the Act and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such matters.

**COMPLIANCE REQUIREMENTS**

3. Respondents represent that they have properly closed the two large capacity cesspools referred to in paragraph 13 of the Complaint in accordance with 40 C.F.R. § 144.89(a) and all other applicable requirements, including the Hawaii Department of Health (DOH) closure, conversion, and/or replacement requirements, and that such closure was completed on December 15, 2009. For purposes of this Consent Agreement, the two large capacity cesspools will be considered properly closed when Respondents submit to EPA a "Large Capacity Cesspool

Backfilling Final Completion Report". Respondents shall submit to EPA all documentation relating to the proper closure of the two large capacity cesspools, including copies of all approvals, permits, and final inspections, within ten days of receipt of final approval from DOH. Respondents must sign and certify all submittals in accordance with 40 C.F.R. § 144.32(b) and (d). The documentation shall be sent to the EPA LCC Project Coordinator, at the following address:

LCC Project Coordinator  
Water Division  
Ground Water Office, WTR-9  
Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
Fax: (415) 947-3545

4. If Respondents install a new Individual Waste System (IWS), installation and operation of the IWS shall comply with DOH's wastewater requirements.

#### PENALTY

5. To account for the violations alleged in the Complaint, Respondents agree to pay to the United States an administrative civil penalty of **Fifty-One Thousand dollars (\$51,000)**, no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the "due date").

6. The administrative civil penalty referred to in paragraph 5 of this Consent Agreement shall be made payable to the Treasurer, United States of America, in accordance with any acceptable method of payment listed in Attachment A "EPA Region 9 Collection Information," which is incorporated by reference as part of this CA/FO.

7. Concurrent with the payment of the penalty, Respondents shall provide written notice of payment, referencing the title and docket number of this case, via certified mail, to each of the following:

Steven Armsey  
Regional Hearing Clerk (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Gretchen Busterud  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

8. Payment must be received on or before the due date specified in paragraph 5 of this Consent Agreement.

9. If the full penalty payment is not received on or before the due date, interest shall accrue on any overdue amount from the due date through the date of payment, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date. Respondents shall tender any interest, handling charges, or late penalty payments in the same manner as described above.

10. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondents fail to pay by the due date the administrative civil penalty assessed in paragraph 5 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

#### **GENERAL PROVISIONS**

11. Respondents consent to the issuance of this CA/FO and the conditions specified herein, including the compliance requirements and payment of the administrative civil penalty in accordance with the terms of this CA/FO.

12. Respondents admit the jurisdictional allegations in the Complaint and this CA/FO and agree not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.

13. Respondents neither admit nor deny the non-jurisdictional allegations set forth in the Complaint.

14. In accordance with Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B), and 40 C.F.R. Section 22.45(b), Complainant published public notice of the Complaint on the EPA Region 9 website on September 30, 2009 and the public comment period closed on October 30, 2009.

15. Respondents waive any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondents waive any right to contest the allegations contained in the Complaint and in this CA/FO, or to appeal the CA/FO.

16. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement between the Parties to resolve EPA's administrative order and civil penalty claim against Respondents for the specific SDWA violations alleged in the Complaint. Full compliance with this CA/FO shall constitute full settlement only of Respondent's liability for

federal administrative civil penalties for the SDWA violations specifically alleged in the Complaint.

17. The provisions of this CA/FO shall apply to and be binding upon Respondents, their officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondents shall not excuse any failure of Respondents to fully perform their obligations under this CA/FO.

18. Respondents shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large capacity cesspools referred to in paragraph 13 of the Complaint. Such transfer, however, shall have no effect on Respondents' obligation to comply with this CA/FO. Respondents shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in paragraph 13 of the Complaint.

19. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.

20. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, nor does it affect Respondents' rights to contest any such action by EPA.

21. This CA/FO is not a permit or modification of a permit. It shall not affect Respondents' obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondents' obligation to comply with all applicable requirements of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder.

22. 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 Respondents for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.

23. Except as stated in paragraph 22 of this Consent Agreement, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

24. Respondents shall not deduct the administrative civil penalty, nor any interest, late penalty payments, or administrative handling fees provided for in this CA/FO from its federal, state, or local income taxes.

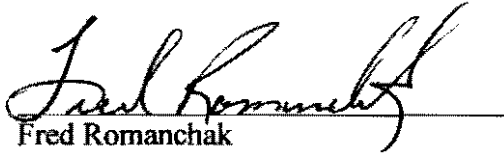
25. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.

**EFFECTIVE DATE**

26. The effective date of the CA/FO shall be the date that the Final Order is filed.

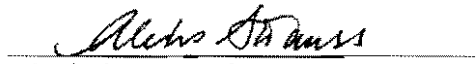
**FOR THE CONSENTING PARTIES:**

**For Fred Romanchak and Kula Lodge & Restaurant, Inc.:**

  
Fred Romanchak  
President

Date: 1-29-10

**For the United States Environmental Protection Agency:**

  
Alexis Strauss, Director  
Water Division

Date: 12 February 2010

ATTACHMENT A

In the Matter of Fred Romanchak and Kula Lodge & Restaurant, Inc.

DOCKET NO. UIC-09-2009-0003

**EPA REGION 9 COLLECTION INFORMATION:**

**ELECTRONIC FUNDS TRANSFERS**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency "

**CHECK PAYMENTS**

If payment is made by check, the check should be made payable to: U.S. EPA

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087