

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region IX

3 JANET A. MAGNUSON
Attorney Advisor
4 United States Environmental Protection Agency, Region IX
75 Hawthorne Street
5 San Francisco, California 94105
6 (415) 972-3887

7 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0005
)
12 Honolulu, LLC dba Hon Realty, LLC)
3660 Waialae Avenue, Suite 400)
13 Honolulu, Hawai'i 96816) **CONSENT AGREEMENT**
) **AND**
14) **FINAL ORDER**
)
15 Respondent.)
)
16 Proceedings under Sections 1423(c) of the)
Safe Drinking Water Act,)
17 42 U.S.C. §§ 300h-2(c).)

18 **CONSENT AGREEMENT**

19 **I. AUTHORITIES AND PARTIES**

20 1. The United States Environmental Protection Agency ("EPA"), Region IX and
21 Honolulu, LLC dba Hon Realty, LLC, ("Respondent") (collectively the "Parties") agree to settle
22 this matter and consent to the entry of this Consent Agreement and Final Order ("CA/FO"). This
23 CA/FO commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b),
24 22.18(b)(2) and 22.45(b).
25

1 not include single-family residential cesspools or non-residential cesspools which receive solely
2 sanitary waste and have the capacity to serve fewer than 20 persons per day. *Id.*

3 11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R.
4 § 144.80(e).

5 12. Class V UIC injection wells are considered a “facility or activity” subject to
6 regulation under the UIC program. 40 C.F.R. § 144.3.

7 13. “Owner or operator” means the owner or operator of any “facility or activity”
8 subject to regulation under the UIC program. 40 C.F.R. § 144.3.

9 14. The “owner or operator” of a Class V UIC well “must comply with Federal UIC
10 requirements in 40 C.F.R. Parts 144 through 147,” and must also “comply with any other
11 measures required by States or an EPA Regional Office UIC Program to protect [underground
12 sources of drinking water].” 40 C.F.R. § 144.82.

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

15 16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.
16 § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists
17 of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

18 17. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40
19 C.F.R. § 19.4, EPA may issue an administrative order either assessing a civil penalty of not more
20 than \$22,363 per day per violation up to a maximum of \$279,536, or requiring compliance, or
21 both, against any person who violates the SDWA or any requirement of an applicable UIC
22 program.

23 III. ALLEGATIONS

24 18. Respondent is a limited liability company and thus qualifies as a “person” within
25 the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

1 and 144.89(a) and in accordance with Section IV.B of this CA/FO; and (2) payment of an
2 administrative civil penalty of \$126,652 in accordance with Section IV.C of this CA/FO; shall
3 constitute full settlement of Respondent's liability for federal civil claims for the alleged SDWA
4 violations specifically identified in Section III of this CA/FO.

5 25. The provisions of this CA/FO shall apply to and be binding upon Respondent, its
6 officers, directors, agents, servants, authorized representatives, employees, and successors or
7 assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations
8 acting under, through, or for Respondent shall not excuse any failure of Respondent to fully
9 perform its obligations under this CA/FO.

10 26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue
11 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law,
12 except with respect to the claim described in Paragraph 2 that has been specifically resolved by
13 this CA/FO.

14 27. This CA/FO is not a permit or modification of a permit, and does not affect
15 Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations,
16 permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish,
17 satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements
18 of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder,
19 except as specifically set forth herein.

20 28. EPA reserves any and all legal and equitable remedies available to enforce this
21 CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in
22 any actions against Respondent for noncompliance with this CA/FO.

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

1 30. This CA/FO may be executed and transmitted by facsimile, email or other
2 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
3 of which shall constitute an instrument. If any portion of this CA/FO is determined to be
4 unenforceable by a competent court or tribunal, the Parties agree that the remaining portions
5 shall remain in full force and effect.

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

8 32. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the
9 Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section IV.B (Compliance
10 Requirements) is restitution or required to come into compliance with law.

11 B. Compliance Requirements

12 33. As required by Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and
13 consistent with the timeframes set forth below, Respondent shall:

- 14 a. By April 30, 2019, close the LCCs located at the Kalaeloa and Kuhela
15 Facilities in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and
16 144.89(a), and all other applicable requirements, including all Hawaii
17 Department of Health (“HDOH”) closure, conversion, and/or replacement
18 requirements. If Respondent installs one or more replacement wastewater
19 systems, such as Individual Wastewater Systems (“IWSs”), then installation
20 and operation of such systems shall comply with all HDOH requirements; and
21 b. Within thirty (30) days of closure of the LCCs, submit to EPA a description of
22 how the LCCs were closed and identify the contractor(s) providing the service
23 as well as copies of the cesspool Backfill Closure Reports for the closure of
24 the cesspools. Respondent shall also submit all related approvals, including
25 for any replacement systems, issued by HDOH within thirty (30) days of

1 closure of the LCCs, provided that, should HDOH not issue any approval
2 within thirty (30) days of closure, Respondent shall submit HDOH's approval
3 to EPA within fourteen (14) days of receipt.

4 C. Penalty

5 34. Respondent agrees to the assessment of a civil penalty in the amount of ONE
6 HUNDRED TWENTY-SIX THOUSAND, SIX HUNDRED FIFTY-TWO DOLLARS
7 (\$126,652) for the violations at the Kalaeloa and Kuhela Facilities of the SDWA alleged in
8 Section III of this CA/FO.

9 35. Respondent shall pay the assessed penalty no later than thirty (30) days from the
10 Effective Date of this CA/FO.

11 36. Respondent may pay the penalty by check (mail or overnight delivery), wire
12 transfer, automated clearing house, or online payment. Payment instructions are available at:
13 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
14 check must be payable to the order of "Treasurer, United States of America" and delivered to the
15 following address:

16 U.S. Environmental Protection Agency
17 Fines and Penalties
18 Cincinnati Finance Center
19 P.O. Box 979077
20 St. Louis, Missouri 63197-9000

21 37. Concurrent with making the payment, Respondent must provide a letter with
22 evidence of the payment made pursuant to Paragraphs 34 and 35, accompanied by the title and
23 docket number of this action, to the EPA Region IX Regional Hearing Clerk, the EPA Region IX
24 Enforcement Division Compliance Officer, and the EPA Region IX Office of Regional Counsel
25 attorney, via United States mail, at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency

- 1 a. The debt being referred to a credit reporting agency, a collection agency, or to
2 the Department of Justice for filing of a collection action in the appropriate
3 United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any
4 such collection action, the validity, amount, and appropriateness of the
5 assessed penalty and of this CA/FO shall not be subject to review.
- 6 b. The department or agency to which this matter is referred (e.g., the
7 Department of Justice, the Internal Revenue Service) may assess
8 administrative costs for handling and collecting Respondent's overdue debt in
9 addition to EPA's administrative costs.
- 10 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or
11 (ii) suspend or disqualify Respondent from doing business with EPA or
12 engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

13 43. Respondent shall tender any interest, handling charges, late penalty payments, and
14 stipulated penalties in the same manner as described in Paragraphs 36 and 37.

15 D. Stipulated Penalties

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

18 45. If Respondent fails to meet the LCC closure requirements set forth in Paragraph
19 33, Respondent agrees to pay the following amounts for each cesspool that it fails to properly
20 close on time:

- 21 a. \$75 for each and every day for the first 90 days that Respondent fails to
22 properly close the cesspool;
- 23 b. \$150 for each and every day from days 91 through 365 that Respondent fails
24 to properly close the cesspool; and
25

1 c. \$250 for each and every day from day 366 and afterwards that Respondent
2 fails to properly close the cesspool.

3 46. If Respondent fails to pay the assessed civil administrative penalty specified in
4 Paragraph 34 by the deadline specified in Paragraph 35, Respondent agrees to pay a stipulated
5 penalty of \$250 per day for each day the assessed penalty is late, in addition to the assessed
6 penalty.

7 47. If Respondent fails to timely submit any reports in accordance with the timelines
8 set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after
9 the report was due until it submits the report in its entirety.

10 48. Respondent agrees to pay any stipulated penalties within thirty (30) days of
11 receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the
12 first date of noncompliance, and shall continue to accrue through the date of completion of the
13 delinquent CA/FO requirement. Respondent will use the method of payment specified in
14 Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for
15 late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through
16 42.

17 49. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent
18 of its obligation to comply with any requirement of this CA/FO or modifies or waives any
19 deadlines set forth in this CA/FO.

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

23 E. Force Majeure

24 51. Respondent shall exercise its best efforts to avoid or minimize any delay and any
25 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 forty-eight (48) hours of the

1 delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay,
2 whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days
3 thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration
4 of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable
5 by which those measures will be implemented. Failure to comply with the notice requirement of
6 this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

7 52. If EPA agrees in writing that the delay or anticipated delay in compliance with
8 this CA/FO has been or will be caused by circumstances entirely beyond the control of
9 Respondent, the time for performance may be extended for a period of no longer than the delay
10 resulting from the circumstances causing the delay. In such event, EPA will grant, in writing an
11 extension of time. An extension of the time for performing an obligation granted by EPA
12 pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent
13 obligation.

14 53. EPA will not impose stipulated penalties for performance of a task during any
15 time period covered by an extension of time for that task granted pursuant to Paragraph 52.

16 F. Notices

17 54. Respondent must send written communications and/or submittals under this
18 CA/FO, including any requests for extensions of time to meet the compliance deadlines, to the
19 following:

20 Christina Carroll, Enforcement Officer
21 U.S. Environmental Protection Agency
22 Region IX - Enforcement Division
23 75 Hawthorne Street (ENF-3-3)
24 San Francisco, CA 94105
25 Carroll.Christina@epa.gov

26 Janet A. Magnuson, Attorney Advisor
27 U.S. Environmental Protection Agency
28 Region IX - Office of Regional Counsel
29 75 Hawthorne Street (ORC-2-3)
30 San Francisco, CA 94105

Magnuson.Janet@epa.gov

1 For each written communication and/or submittal, Respondent shall identify the case name, the
2 case Docket Number, and the paragraph and/or requirement of this CA/FO under which the
3 submission is being made.
4

5 55. Respondent shall include the following signed certification made in accordance
6 with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

7 *I certify under penalty of law that this document and all attachments*
8 *were prepared under my direction or supervision in accordance with*
9 *a system designed to assure that qualified personnel properly gather*
10 *and evaluate the information submitted. Based on my inquiry of the*
11 *person or persons who manage the system, or those persons directly*
12 *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.

13 56. EPA must send any written communications under this CA/FO to the following
14 address:

15 Honolulu, LLC dba Hon Realty, LLC
16 3660 Waiialae Avenue, Suite 400
17 Honolulu, Hawai'i 96816

18 V. EFFECTIVE DATE

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

22 58. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be
23 effective on the date that the final order contained in this CA/FO, having been approved and
24 issued by either the Regional Judicial Officer or Regional Administrator, is filed with the
25 Regional Hearing Clerk.

1 FOR THE CONSENTING PARTIES:

2 Honolulu, LLC dba Hon Realty LLC:

3
4 _____
5 /s/

Date: 7/19/18

Jayna Osada, Its Vice President

6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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8 _____
9 /s/

Date: 7/25/18

Kathleen H. Johnson
Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

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1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
San Francisco, California 94105

4 IN THE MATTER OF:) DOCKET NO. UIC-09-2018-0005
5)
6 Honolulu, LLC dba Hon Realty, LLC)
7) **CONSENT AGREEMENT**
8 Respondent.) **AND**
9) **FINAL ORDER**
10 Proceedings under Sections 1423(c) of the)
11 Safe Drinking Water Act,)
12 42 U.S.C. §§ 300h-2(c).)

13 **FINAL ORDER**

14 The United States Environmental Protection Agency Region IX (“EPA”), and the
15 Respondent Honolulu, LLC dba Hon Realty, LLC, (“Respondent”), having entered into the
16 foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and
17 Findings and Final Order regarding the matters alleged therein,

18 **IT IS HEREBY ORDERED THAT:**

- 19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-
20 2018-0005) be entered;
- 21 2. Respondent pay an administrative civil penalty of **\$126,652** dollars to the
22 Treasurer of the United States of America in accordance with the terms set forth in the Consent
23 Agreement;
- 24 3. Respondent close two LCCs by April 30, 2019 in accordance with the terms set
25 forth in Paragraph 33 of the Consent Agreement; and

1 5. Respondent comply with all other requirements of the Consent Agreement.

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

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6 _____ Date: _____

7 Regional Judicial Officer, Region IX
8 U.S. Environmental Protection Agency
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