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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. UIC-09-2023-0002
	)	
American Savings Bank,	)	
	)	
Respondent.	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND</b>
	)	<b>FINAL ORDER</b>
Proceedings under Sections 1423(c) of the	)	
Safe Drinking Water Act,	)	
42 U.S.C. §§ 300h-2(c).	)	
_____	)	

**CONSENT AGREEMENT**

**I. AUTHORITIES AND PARTIES**

1. The United States Environmental Protection Agency (“EPA”), Region 9 and American Savings Bank, (“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) for Class V wells 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 to the Regional Administrator of EPA Region 9 the authority to bring and settle this action under the SDWA. 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 American Savings Bank, federal savings bank, whose headquarters is located at 300 N. Beretania Street, Honolulu, Hawaii.

4. 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).

5. 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.

6. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of \$30,427, the performance of the compliance requirements in Section V.B. and the supplemental environmental project in Section V.C., specified below.

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

7. Respondent admits the jurisdictional allegations in this CA/FO and neither admits nor denies the factual allegations in this CA/FO.

8. 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

9. 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 which endangers drinking water sources.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.

16. 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.

17. 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.

18. 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.*

19. 40 C.F.R. §§ 144.80(e) and 144.81(2) classifies LCCs as Class V UIC injection wells.

20. 40 C.F.R. § 144.3 defines Class V UIC injection wells as a “facility or activity” subject to regulation under the UIC program.

21. 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.

22. 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.

23. Pursuant to 40 C.F.R. § 144.82, 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].”

24. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required that owners or operators of existing LCCs to have closed those LCCs by no later than April 5, 2005 and banned new LCCs.

25. 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.

26. 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).

27. 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 \$25,076 for each day of violation, up to a maximum administrative penalty of \$313,448 for violations occurring after November 2, 2015 and where penalties are assessed on or after January 12, 2022 and/or issue an order requiring compliance.

#### IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

28. Respondent is a federal savings bank and thus qualifies as 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.

29. Respondent has owned a parcel of land (TMK: 3-8-1-002-047), located at 81-6644 Mamalahoa Highway, Kealahou, Hawaii 96750-8129, on the Island of Hawaii (the “Property”), since at least April 5, 2005. Respondent has operated the land parcel as a

commercial bank branch under the name Kealakekua Branch of American Savings Bank. The Kealakekua Branch was closed on February 4, 2022.

30. During all times that Respondent has owned and operated the Property until August 15, 2022, the Property has been serviced by one (1) cesspool located on the Property for the disposal of sanitary wastewater.

31. Cesspools like the one servicing the Property are used throughout the State and Island of Hawaii for the disposal of untreated sanitary waste. The subsurface discharge of raw, untreated sewage to a cesspool can contaminate groundwater that may serve as an underground source of drinking water, thereby impacting human health. The subsurface discharge of untreated sewage can also contaminate oceans and streams via groundwater, thereby causing damage to land or aquatic ecosystems, including the nearshore ecosystems of the Hawaiian Islands.<sup>1</sup>

32. The EPA alleges that the cesspool that serviced the Property meets the definition of an LCC, as that term is defined at 40 C.F.R. § 144.81(2), in that it had the capacity to serve twenty (20) or more persons per day.

33. The alleged LCC identified in the preceding paragraphs was closed by ASB on August 15, 2022.

34. The 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.

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<sup>1</sup> See, <https://www.epa.gov/uic/cesspools-hawaii#:~:text=There%20are%20approximately%2088%2C000%20cesspools,onsite%20wastewater%20systems%2C%20including%20cesspools.>

See also,

[https://www.coris.noaa.gov/activities/coral\\_research\\_plan/pdfs/hawaiian\\_islands.pdf#:~:text=The%20Hawaiian%20Archipelago%20stretches%20for%20over%202%2C500%20km,\(NWHI\)%20consisting%20of%20mostly%20uninhabited%20atolls%20and%20banks.](https://www.coris.noaa.gov/activities/coral_research_plan/pdfs/hawaiian_islands.pdf#:~:text=The%20Hawaiian%20Archipelago%20stretches%20for%20over%202%2C500%20km,(NWHI)%20consisting%20of%20mostly%20uninhabited%20atolls%20and%20banks.)

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, Respondent must pay a \$30,427 civil penalty by sending a check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at:

<http://www2.epa.gov/financial/makepayment>.

For checks sent by regular U.S. Postal Service mail: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes): sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must state Respondent's name and the docket number of this CA/FO.

For electronic funds transfer: electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045

The comment or description field of the electronic funds transfer must state Respondent’s name and the docket number of this CA/FO.

For Automated Clearinghouse (ACH), also known as REX or remittance express: ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

The comment area of the electronic funds transfer must state Respondent’s name and the docket number of this CA/FO.

For on-line payment, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

37. Currently with payment, Respondent shall 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](mailto: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 64.



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 55, 56, and 57 below, 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 55, 56, and 57 below, 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. Within thirty (30) days of the Effective Date of this CA/FO, submit to EPA a final report ("LCC Final Report") describing how the alleged LCC was closed and identify the contractor(s) providing the service as well as copies of the cesspool Backfill Closure Report for the closure of the cesspool. At the same time,

Respondent shall also submit all approvals, if any, related to the closure of the alleged LCC, including for any replacement systems, issued by HDOH or any other agency provided that, should the applicable agency not issue any approval within thirty (30) days of closure, Respondent shall submit the approval to EPA within fourteen (14) days of its receipt of the approval.

42. 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).

### **C. Supplemental Environmental Project**

43. As a supplemental environmental project (“SEP”), Respondent shall convert no fewer than three (3) single-family home small-capacity cesspools (“SCCs”) to IWSs approved by HDOH. Each SCC must satisfy the following criteria:

- a. The SCC is located on the island of Hawaii;
- b. The SCC must be in close proximity to a surface water or coastal waters;
- c. The SCC must be located in an area with a high density of cesspools;
- d. The SCC must be located in a disadvantaged community, where the median household income is below \$75,000 per year;
- e. The owner(s) of the SCC must certify that he/she/they cannot afford the SCC conversion; and
- f. There are no approved plans or allocated funding to connect the SCC to a sewer system.

44. Respondent shall complete closure and replacement of the SCCs referenced in Paragraph 43 by no later than December 31, 2024.

45. In performing this SEP, Respondent must spend a minimum of ONE HUNDRED TWENTY-TWO THOUSAND AND FORTY-TWO DOLLARS (\$122,042).

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

- a. Within two (2) weeks of identifying an SCC to be converted in accordance with Paragraph 43 above, submit to EPA for review and approval the location of that SCC and a description of how the criteria in Paragraph 43 was met, along with supporting documentation.
- b. Within ten (10) days of receipt from HDOH, Respondent shall submit to EPA copies of the following for each SCC: (1) HDOH approval of the closure of the SCC, and (2) HDOH approval to operate any new IWS.
- c. Within thirty (30) days of the closure of the last SCC, Respondent shall submit to EPA a final SEP completion report (“SEP Final Report”). Respondent’s General Counsel or other appropriate corporate official, acceptable to EPA, shall certify the report. The report must include, at a minimum, evidence of SEP completion (which may include, but is not limited to, a description of the closure activities, cesspool Backfill Closure Reports, photos, vendor invoices or receipts, etc.) and documentation of all SEP expenditures.

47. The SEP will be deemed to be satisfactorily completed only when Respondent has (a) closed all three (3) SCCs referenced in Paragraph 43 and replaced them with appropriate wastewater systems, such as septic systems; (b) expended the minimum amount identified in Paragraph 45; and (c) submitted the SEP Final Report to EPA. 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.

48. The parties have determined that the SEP is consistent with applicable EPA policy and guidelines regarding SEPs, including the *U.S. Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update*.<sup>2</sup> 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 potential 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 the violation—the Island of Hawaii, 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.

49. 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.

50. Regarding the performance of this SEP, Respondent certifies the truth and accuracy of each of the following:

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<sup>2</sup>See, <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>.

- 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 \$122,042;
- b. That Respondent will not include 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 43;
- 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; and
- i. That each SCC selected as part of the SEP satisfies the criteria in Paragraph 43.

51. 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 must reference that the 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.

**D. Reporting Requirements**

52. Respondent shall submit compliance reports to the EPA Region 9 Compliance Officer identified in Paragraph 64 on a semiannual basis, with the first report (covering the period of July 1, 2022-December 31, 2022) due on January 6, 2023, and the second report due on July 6, 2023. Subsequent reports shall be due on the first business day following each six-month period thereafter, until the final reports (LCC Final Report and SEP Final Report) are submitted pursuant to Paragraphs 41 and 46(c). Each compliance report shall discuss Respondent's progress towards meeting the compliance deadlines in Paragraphs 41 and 44.

53. Each compliance report must be accompanied with a certification, as described in Paragraph 65, from Respondent's authorized representative documenting the progress towards meeting the compliance deadlines in Paragraphs 41 and 44.

**E. Stipulated Penalties**

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

55. If Respondent fails to make the payment specified in Section V.A., fails to comply with the requirements regarding the closure of the alleged LCC at the Property specified in Section V.B., or fails to comply with the requirements regarding the SEP specified in Section V.C., Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$250 per day per violation for each day the Respondent is late meeting the applicable requirement.

56. If Respondent does not expend the entire amount specified in Paragraph 45 of Section V.C., while otherwise meeting the requirements of the SEP, then Respondent shall pay a stipulated penalty equal to the difference between the amount expended as demonstrated in the SEP Final Report and the amount specified in Paragraph 45, multiplied by 1.1 (an additional 10% of the remaining balance). Respondent shall pay the stipulated penalty using the method of payment specified in Paragraph 36, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts that are not paid within thirty (30) days of submission of the final SEP completion report.

57. If Respondent fails to timely submit any reports, such as those referred to in Section V.D., Paragraph 41, or Paragraph 46, in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after the report was due until Respondent submits the report in its entirety.

58. 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 agrees 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 36.

59. 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.

60. 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.

**F. Force Majeure**

61. 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, unforeseen environmental, geological, or archaeological conditions; or pandemics, epidemics, or disease. 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.

62. 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 64 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.



63. 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 entirely 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

64. 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, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: Jelani Shareem – [Shareem.jelani@epa.gov](mailto:Shareem.jelani@epa.gov) and Daron Ravenborg – [ravenborg.daron@epa.gov](mailto:ravenborg.daron@epa.gov). 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. Mailed submissions must be sent to the following addresses:

Jelani Shareem  
U.S. Environmental Protection Agency, ECAD-3-3  
75 Hawthorne Street  
San Francisco, CA 94105  
[shareem.jelani@epa.gov](mailto:shareem.jelani@epa.gov)

and

Daron Ravenborg  
U.S. Environmental Protection Agency, ORC-2-4  
75 Hawthorne Street  
San Francisco, CA 94105  
[ravenborg.daron@epa.gov](mailto:ravenborg.daron@epa.gov)

65. 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.”*

66. 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.

67. 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.

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

69. 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.*

## VI. GENERAL PROVISIONS

70. 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. and V.C. shall only resolve Respondent’s liability for federal civil penalties for the violations and facts alleged in 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).

71. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses: [ravenborg.daron@epa.gov](mailto:ravenborg.daron@epa.gov) (for Complainant) and [slbrown@hunton.com](mailto:slbrown@hunton.com) and [ahamilton@hunton.com](mailto:ahamilton@hunton.com) (for Respondent).

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

73. 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 63.

74. Full compliance with this CA/FO does not in any manner affect 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.

75. 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, and any order or permit issued thereunder, except as specifically set forth herein.

76. 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.

77. Unless otherwise specified, the parties shall each bear its own costs and attorney fees in this action.

78. 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.

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

80. 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. (Compliance Requirements) is restitution or required to come into compliance with law.

#### VII. EFFECTIVE DATE

81. 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.

82. 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.

83. 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.

Dkt No. UIC-09-2023-0002

**Consent Agreement and Final Order  
In the Matter of: American Savings Bank  
Docket No. UIC-09-2023-0002**

AMERICAN SAVINGS BANK:

Michael R. Vieira “/s/”  
Michael R. Vieira  
Senior Vice-President, General Counsel

Date: October 18, 2022

Dkt No. UIC-09-2023-0002

**Consent Agreement and Final Order  
In the Matter of: American Savings Bank  
Docket No. UIC-09-2023-0002**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Amy C. Miller-Bowen “/s/”

Date: November 14, 2022

Amy C. Miller-Bowen  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
Region 9

**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. UIC-09-2023-0002
	)	
American Savings Bank,	)	
	)	
Respondent.	)	<b>CONSENT AGREEMENT</b>
	)	<b>AND</b>
Proceedings under Sections 1423(c) of the	)	<b>FINAL ORDER</b>
Safe Drinking Water Act,	)	
42 U.S.C. §§ 300h-2(c).	)	
	)	
	)	

**FINAL ORDER**

The United States Environmental Protection Agency Region 9 (“EPA”), and the Respondent, American Savings Bank (“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. UIC-09-2023-0002) be entered;
2. Respondent pay an administrative civil penalty of \$30,427 to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;
3. Respondent provide EPA with the large capacity cesspool Final Report within thirty (30) days of the effective date of the Consent Agreement and in accordance with the terms set forth in Paragraph 41 of the Consent Agreement;

4. Respondent complete the Supplemental Environmental in accordance with the terms set forth in Section V.C. of the Consent Agreement.

5. 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: \_\_\_\_\_

Steven L. Jawgiel  
Regional Judicial Officer, Region 9  
U.S. Environmental Protection Agency