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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-09-2023-0060
)	
Hawaii Conference Foundation,)	
)	
Respondent.)	CONSENT AGREEMENT
)	AND
)	FINAL ORDER
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, Region 9 (“EPA”) and Hawaii Conference Foundation (“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 the authority to bring and settle this action under the SDWA to the Regional Administrator of EPA Region 9. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division.

3. Respondent is the Hawaii Conference Foundation, a non-profit corporation whose headquarters is located at 700 Bishop Street, Suite 825, 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 \$50,633, and the performance of the compliance requirements specified below.

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

7. Consistent with 40 C.F.R. § 22.18(b), for purposes of the proceeding, Respondent: admits the jurisdictional allegations of the CA/FO; neither admits nor denies specific factual allegations contained in the CA/FO; consents to the assessment of any stated civil penalty, and to any conditions specified in the Consent Agreement; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

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 from endangering 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 were 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 where penalties are assessed between January 12, 2022 and January 6, 2023, and issue an order requiring compliance.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

28. Respondent is a non-profit corporation 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 one (1) parcel property, located at 54-364 Kamehameha Park Road (TMK 3-5-4-009-016) in Kapaau on the Island of Hawaii, since February 20, 2015, and one (1) parcel property, located at 66-090 Kamehameha Highway (TMK 1-6-2-005-005) in

Haleiwa on the Island of Oahu, since at least April 5, 2005 (hereafter, the “Properties” or “Property”).

30. During all times that Respondent has owned and operated the Properties, the Properties have each been serviced by one (1) cesspool located on each Property, a total of two (2) cesspools, for the disposal of sanitary wastewater.

31. Cesspools like the two (2) servicing the Properties are used throughout the state of Hawaii, including the Islands of Oahu and 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.¹

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

33. The EPA alleges that each day that Respondent failed to close the alleged LCCs at the Kapaau Property after February 20, 2015, and the Haleiwa Property after April 5, 2005, constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

¹ 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

34. 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.

35. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay a civil penalty of fifty thousand six hundred and thirty-three dollars (\$50,633) 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 979078
St. Louis, Missouri 63197-9000

For checks sent by express mail (non-U.S. Postal Service which will not 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.

In re: Hawaii Conference Foundation
UIC-09-2023-0060

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. 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.

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

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

Respondent shall also send notice of payment and a transmittal letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division’s Enforcement Officer and the EPA Region 9 Office of Regional Counsel attorney identified in Paragraph 70.

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

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, in addition to any stipulated penalties due under Paragraphs 61, 62, and 63, 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.

39. If Respondent does not pay timely the civil penalty due under Paragraph 35 and/or any stipulated penalties due under Paragraphs 61, 62, and 63, 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

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

- a. By June 30, 2025, close the LCCs at the Properties in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a), and 144.89(a), and all other applicable requirements, including all Hawaii Department of Health ("HDOH") closure, conversion, and/or replacement requirements. If Respondent installs one or more replacement

wastewater systems, such as Individual Wastewater Systems (“IWS”), then installation and operation of such systems shall comply with all HDOH requirements. If Respondent connects to a municipal sewer system, then that connection shall comply with all applicable sewer connection requirements; and

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

- i. A description of the process by which the LCC was closed, including the equipment used;
- ii. Photographic evidence of construction and completion;
- iii. Identification of the contractor(s) providing the service;
- iv. A copy of the cesspool backfill closure report; and
- v. A copy of all approvals related to the closure of the LCCs and any replacement wastewater systems, such as an IWS or sewer connection, issued by HDOH, the County, or any other agency. Should the applicable agency issue its approval after the Final LCC Closure Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent’s receipt of the approval.

41. If Respondent fails to comply with the requirements set forth in Paragraph 40, 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. Compliance Audit

42. Respondent shall perform a compliance audit (“Audit”) of all properties it owns or operates in the state of Hawaii to identify and close all LCCs in accordance with this Section.²

43. The Parties agree that violations reported or otherwise disclosed to EPA and corrected under and in accordance with this Section shall be eligible for 100% mitigation of gravity-based penalties.

44. Respondent shall comply with the following Audit requirements:

a. **Retain an Auditor to Conduct LCC Inspections.**

- i. Within forty-five (45) days of the Effective Date of this CA/FO, Respondent shall identify and submit to EPA for its review and approval a proposed Auditor.
- ii. Qualifications. The proposed Auditor shall have a technical or educational background relevant to LCCs and at least five years of experience conducting inspections or working on LCCs. Respondent shall provide EPA with a curriculum vitae and list of past cesspool projects performed by the proposed Auditor.
- iii. Approval. Upon written EPA approval, Respondent shall proceed to the next step of the Audit. If EPA does not respond to Respondent’s proposed Auditor within two (2) weeks of Respondent’s submission, then the Auditor shall be deemed to be approved.

² To the extent Respondent includes properties that Respondent does not own or operate in its Audit, EPA will extend the same offer of 100% mitigation of gravity-based penalties to the applicable owners or operators.

- iv. Disapproval. EPA shall have two (2) weeks from its receipt of Respondent's submission to disapprove the proposed Auditor. Any EPA disapproval will be in writing and include a rationale for disapproval and instructions on how to address any identified concerns. Within one (1) month of EPA's disapproval, Respondent shall propose a new Auditor, address any additional directions contained in EPA's disapproval, and provide the new proposed Auditor's curriculum vitae and list of past cesspool projects performed by the Auditor.
- v. Auditor's Obligations. Respondent shall ensure that the Auditor supervises the preparation of and signs and certifies the Inspection Completion Report as required by Paragraph 44.d. and the Final LCC Closure Reports as required by Paragraph 44.f.
- vi. Record Retention. Respondent shall include in its written agreement with the Auditor a provision requiring (1) the Auditor maintain all records pertaining to the undertaking or oversight of the Audit for at least five (5) years after the Audit is complete, and (2) the Auditor's records of the Audit shall be made available to EPA upon request.

b. **Develop a Target and Non-Target Property Report.**

- i. Within six (6) months of EPA's written approval of Respondent's proposed Auditor, Respondent shall submit to EPA for review and approval a Target and Non-Target Property Report for all properties owned or operated by Respondent that includes a list of Target Properties to be inspected by the Auditor, and a list and narrative description of Non-

Target Properties that Respondent proposes not to inspect accompanied with Sufficient Documentation.

- ii. Target Properties. All Properties owned or operated by Respondent in the state of Hawaii are presumptively Target Properties for purposes of this Audit, unless Respondent produces Sufficient Documentation to properly classify the property as a Non-Target Property.
- iii. Non-Target Properties. Non-Target Properties include those that (1) are connected to a sewer system; (2) contain an on-site wastewater treatment facility permitted by the HDOH; (3) contain an HDOH-permitted IWS that is not a cesspool; (4) are residential properties that contain one single-family residence; (5) are non-residential properties that have the capacity to serve fewer than 20 persons per day; or (6) are undeveloped land with no restrooms or other structure associated with a sanitary wastewater disposal system. For each property classified as a Non-Target Property, Respondent must summarize the factual basis for the conclusion and provide Sufficient Documentation to support the conclusion.
- iv. Sufficient Documentation: Respondent shall provide Sufficient Documentation for each Non-Target Property identified on the Non-Target Property list. In addition to the documentation identified in subparts (1) – (6) below, Respondent may support its position with other relevant records, such as interviews, oral testimony, and/or e-mail correspondence with Respondent’s employees, occupants, tenants and/or lessees, and other individuals with knowledge, including members of a religious

organizations utilizing the site, as needed to confirm the presence (or absence) and location of any LCCs. If Respondent obtains information through databases maintained by a government entity, Respondent shall identify the government entity and the name of the database, provide EPA with a copy or screenshot of the database, identify the pertinent information thereon, and include a statement documenting the date and time the information was obtained. Notwithstanding the above, for the purposes of this CA/FO, the following will qualify as Sufficient Documentation:

1. For properties connected to a sewer: written confirmation of the connection from HDOH or private sewer operator; building plans documenting the connection to a county or private sewer system; or a sewer bill within the last year.
2. For properties that contain an on-site wastewater treatment system: an HDOH permit or written documentation from HDOH of approval to operate the wastewater treatment system.
3. For properties that contain a non-cesspool IWS: an IWS permit from HDOH or written documentation from HDOH showing that the IWS is permitted.
4. For properties that contain one single-family residence: a Tax Map Key code, or other reliable documentation, showing that the cesspool on the property is connected exclusively to one (1) single-family residence. The property may, however, contain other buildings or structures thereon that are not connected to or

otherwise utilize the cesspool on the property.

5. For non-residential properties where a cesspool has capacity to serve less than 20 people: present and historical documentation identifying the nature and use of the property and the structure connected to the cesspool, and any other relevant information.
 6. For undeveloped land: a “Building Value” of zero according to government tax records as of the Effective Date of this CA/FO.
- v. Approval. Upon written EPA approval, Respondent shall proceed to the next step of the Audit.
- vi. Disapproval. If EPA disapproves the Target and Non-Target Property Report and determines that a Non-Target Property should have been included in the Target Property list, EPA will provide its rationale for disapproval and instructions on how to address any identified concerns in writing.
1. Within one (1) month of receiving EPA’s disapproval of the Target and Non-Target Property Report, Respondent shall provide EPA with a written response, identified as an “Addendum,” to the Target and Non-Target Property Report. The Addendum shall address EPA’s identified concerns and either confirm EPA’s Target Property determination(s) or reaffirm Respondent’s initial characterization.
 2. After consideration of Respondent’s Addendum, EPA shall make, in its sole discretion, the final determination in writing on whether the property is subject to the Target or Non-Target

Property list.

3. Upon receipt of EPA's final determination, Respondent shall proceed to the next step of the Audit in accordance with EPA's final approved Target and Non-Target Property Report, as modified by any final determination by EPA on the Target and Non-Target Property lists.

- vii. Certification. The Target and Non-Target Property Report and Addendum must be signed and accompanied by a certification from Respondent, pursuant to Paragraph 71.

c. **Conduct Target Property Inspections.**

- i. Within eighteen (18) months of EPA's approval of the Target and Non-Target Property Report or EPA's final determination following a disapproval, whichever comes later, the Auditor shall perform an on-site visual inspection for the presence of an LCC for all properties identified on the Target Property list.
- ii. All work shall be conducted in accordance with accepted standards of professional engineering procedures as practiced by members of the local engineering profession currently practicing in Hawaii under similar conditions.

d. **Develop Inspection Completion Report.**

- i. Within three (3) months of inspecting the last Target Property, the Respondent shall require the Auditor to submit an Inspection Completion Report to EPA for review and approval that documents the Auditor's

findings from the Target Property inspections. The Inspection Report shall include:

1. A description of the procedures followed in completing the Audit.
 2. The number of LCCs located on each Target Property, a description of each LCC, and a description of how the LCC was identified and/or confirmed, along with any supporting documentation.
 3. For those Target Properties that were determined not to contain an LCC, a description of how it was determined that the property did not contain an LCC and what, if any, other sewer, wastewater treatment facility, or IWS is being used, along with any supporting documentation.
- ii. Approval. Upon written EPA approval of the Inspection Completion Report, Respondent shall proceed to the next step of the Audit.
 - iii. Disapproval. Any EPA disapproval will be in writing and include a rationale for disapproval and instructions on how to address any identified concerns. Within one (1) month of EPA's disapproval, the Respondent shall have the Auditor provide an amended Inspection Completion Report to EPA and address any additional directions contained in EPA's disapproval.
 - iv. Certification. The Inspection Completion Report submitted to EPA must be signed and accompanied by a certification from the Respondent, pursuant to Paragraph 71.

e. **LCC Closure Plan.**

- i. Within four (4) months of EPA's approval of the Inspection Completion Report to EPA, Respondent shall submit an LCC Closure Plan to EPA for review and approval.
- ii. Schedule. The LCC Closure Plan should ensure the closure of all identified LCCs as soon as reasonably possible, and in no case shall the schedule for closure extend beyond three (3) years from the date of the EPA's approval of the LCC Closure Plan. HCF may request an extension of this three-year deadline if necessary to comply with historic preservation, native Hawaiian burial sites, and related laws and regulations. HCF's request for an extension of time must be supported with evidence demonstrating HCF's exercise of reasonable best efforts to comply with the original deadline.
- iii. Approval: Upon written EPA approval of the LCC Closure Plan, Respondent shall implement the LCC Closure Plan in accordance with the approved schedule.
- iv. Disapproval. EPA shall have two (2) months to disapprove the LCC Closure Plan. Any EPA disapproval will be in writing and include a rationale for disapproval and instructions on how to address any identified concerns. Within one (1) month of receipt of EPA's disapproval, Respondent shall submit a revised LCC Closure Plan that addresses any concerns identified by EPA for review and approval. Any LCC Closure Plan not disapproved by EPA within two (2) months, shall be deemed approved by EPA.

- v. Submission of Applications. Excluding LCCs that will be permanently closed and not replaced, if any, within six (6) months of EPA's approval of the LCC Closure Plan, Respondent shall submit construction plans for IWS(s) to HDOH for approval or apply for a sewer connection for each LCC targeted for closure, irrespective of the EPA approved closure date. Proof of submission shall be made available to EPA upon request.
- vi. Closure Requirements. All LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a) and 144.89(a), and all applicable federal, state, and local closure requirements.
- f. **Final LCC Closure Report for Audited Properties.** Within one (1) month of the closure of the LCC(s) of each Target Property, Respondent shall submit to EPA a Final LCC Closure Report for that Audited Property,³ accompanied with a signature and certification, as described in Paragraph 71. The Final LCC Closure Report for each Audited Property shall include and the following:
 - i. A description of the process by which the LCC was closed, including the equipment used;
 - ii. Photographic evidence of construction and completion;
 - iii. Identification of the contractor(s) providing the service;
 - iv. A copy of the cesspool backfill closure report; and
 - v. A copy of all approvals related to the closure of the LCCs and any replacement wastewater systems, such as an IWS or sewer connection,

³ Each Target Property with LCC closures will have its own Final LCC Closure Report.

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

45. The Audit shall not affect EPA's right to bring a claim or cause of action other than those specified in this CA/FO, including a claim or cause of action for an LCC violation that could have been, but was not, reported and closed as part of the Audit or was identified and closed inconsistent with the process and procedures set forth in this CA/FO.

46. Respondent shall bear all costs associated with the Audit.

D. Supplemental Environmental Project

47. In response to the alleged violations of the SDWA and in settlement of this matter, although not required by the SDWA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in Paragraphs 48 – 57.

48. As a SEP, Respondent shall:

- a. Convert no fewer than one (1) HCF owned or operated single-family home small-capacity cesspool ("SCC") to an IWS, approved by HDOH; and
- b. Convert no fewer than one (1) single-family home SCC to IWS, approved by HDOH, that satisfies the following criteria:
 - i. The SCC is located on the island of Hawaii;
 - ii. The SCC must be in close proximity to a surface water or coastal waters;
 - iii. The SCC must be located in an area with a high density of cesspools;

- iv. The SCC must be located in a disadvantaged community, where the median household income is below \$75,000 per year;
- v. The owner(s) of the SCC must certify that he/she/they cannot afford the SCC conversion; and
- vi. There are no approved plans or allocated funding to connect the SCC to a sewer system.

49. Respondent shall complete closure and replacement of the SCCs referenced in Paragraph 48 no later than June 30, 2025.

50. Respondent shall spend no less than fifty thousand four hundred and sixty dollars (\$50,460) on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

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

- a. Within two (2) weeks of identifying the SCC to be converted in accordance with Paragraph 48(b) above, submit to EPA for review and approval the location of that SCC and a description of how the criteria in Paragraph 48(b) were met, along with supporting documentation.
- b. Within one (1) month of the closure of the last SCC, Respondent shall submit to EPA a SEP completion report (“SEP Completion Report”), accompanied by certification from a responsible corporate official. The SEP Completion Report must include the following information:
 - i. A detailed description of the process by which the SCCs were closed, including the equipment used;
 - ii. Itemized costs;

- iii. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO;
- iv. A description of the environmental and public health benefits resulting from implementation of the SEP;
- v. Photographic evidence of construction and completion of the closure and replacement of each SCC;
- vi. Identification of the contractor(s) providing the services;
- vii. A copy of the cesspool backfill closure reports for each closure; and
- viii. A copy of all approvals related to the closure of the SCCs and any replacement wastewater systems, such as an IWS or sewer connection, issued by HDOH, the County, or any other agency. Should the applicable agency issue its approval after the SEP Completion Report is due, Respondent shall note the pending status and submit the approval to EPA within fourteen (14) days of Respondent's receipt of the approval

52. The SEP will be deemed to be satisfactorily completed only when Respondent has (a) closed at least the two SCCs referenced in Paragraph 48(a) and (b) and replaced them with appropriate wastewater systems, such as an IWS; (b) expended the minimum amount identified in Paragraph 50; and (c) submitted the SEP Completion Report to EPA. Respondent agrees that failure to submit the SEP Completion Report or any periodic report required by Paragraph 58 below shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraphs 61, 62, 63 below.

53. 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.

54. 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 to the 1988 Supplemental Environmental Projects Policy (March 10, 2015)*.⁴ 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.

55. 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.

56. Respondent certifies the truth and accuracy of each of the following:

⁴See, <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 fifty thousand four hundred and sixty dollars (\$50,460);
- b. That Respondent will not include administrative costs for employee oversight of the implementation of the SEP in its project costs;
- c. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
- e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 48; and
- h. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

57. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the Effective Date of this CA/FO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Safe Drinking Water Act.”

E. Reporting Requirements

58. Respondent shall submit progress reports to the EPA Region 9 Compliance Officer on a quarterly basis, with the first report (covering the preceding three-month period) due three (3) months after the Effective Date of this CA/FO. Subsequent reports shall be due on the first business day following each three-month period, until the final reports (Final LCC Closure Report, Final LCC Closure Report for Audited Properties, and SEP Completion Report) have been submitted. Each progress report shall detail Respondent’s work during the three-month period towards meeting all applicable compliance deadlines.

59. Each progress report must be accompanied with a certification, as described in Paragraph 71, from Respondent’s authorized representative.

F. Stipulated Penalties

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

61. If Respondent fails to make the payment specified in Section V.A., fails to comply with the requirements regarding the closure of the alleged LCCs at the properties specified in Section V.B., or fails to comply with the requirements regarding the SEP specified in Section V.D., Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$300 per day per violation for each day the Respondent is late meeting the applicable requirements.

62. If Respondent does not expend the entire amount specified in Paragraph 50 of Section V.D., while otherwise meeting the requirements of the SEP, Respondent shall pay a stipulated penalty equal to the difference between the amount expended as demonstrated in the SEP Completion Report and the amount specified in Paragraph 50, 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 35, 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 SEP Completion Report.

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

64. 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 35 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 35.

65. 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.

66. 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.

G. Force Majeure

67. For purposes of this CA/FO, Force Majeure is defined as any event arising from causes that are beyond the control of Respondent, any entity controlled by Respondent, or Respondent's contractors, which delays or prevents the performance of any obligation under this CA/FO despite Respondent's reasonable best efforts to fulfill the obligation. The requirement that Respondent exercise "reasonable best efforts to fulfill the obligation" includes using reasonable best efforts to anticipate any potential Force Majeure event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of Force Majeure events include, but are not limited to, unforeseeable environmental, geological, or archaeological conditions; or pandemics, epidemics, or disease. 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.

68. 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 70 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.

69. 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

70. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, submissions may be made by certified mail (return receipt requested). The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Electronic or mailed submissions shall be sent to the individuals identified below:

EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer:

Maria Alberty
U.S. Environmental Protection Agency, ECAD-3-3
75 Hawthorne Street
San Francisco, CA 94105
alberty.maria@epa.gov

and

EPA Region 9 Office of Regional Counsel Attorney:

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

71. 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.”

72. 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.

73. 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.

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

75. 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

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

77. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses: ravenborg.daron@epa.gov (for Complainant) and dcodiga@schlackito.com (for Respondent).

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

79. 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 69.

80. 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.

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

82. 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.

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

84. 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.

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

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

VII. EFFECTIVE DATE

87. 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.

88. 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.

89. 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.

In re: Hawaii Conference Foundation
UIC-09-2023-0060

**Consent Agreement and Final Order
In the Matter of: Hawaii Conference Foundation
Docket No. UIC-09-2023-0060**

HAWAII CONFERENCE FOUNDATION

/s/
Andrew R. Bunn
Executive Director

Date: 6/23/2023

In re: Hawaii Conference Foundation
UIC-09-2023-0060

**Consent Agreement and Final Order
In the Matter of: Hawaii Conference Foundation
Docket No. UIC-09-2023-0060**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

/s/

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

Date: 07/12/2023

4. Respondent complete the Supplemental Environmental Project in accordance with the terms set forth in Section V.D. 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: _____

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