

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

IN THE MATTER OF:	)	Docket No. SDWA-UIC-UAO-09-2024-001
	)	
<b>Kalani Honua Inc. and</b>	)	<b>ORDER FOR COMPLIANCE</b>
<b>Retreat Village at Kalani Kai, LLC</b>	)	
	)	<i>Proceeding under Sections 1423(c) of the</i>
Respondents.	)	<i>Safe Drinking Water Act,</i>
	)	<i>42 U.S.C. § 300h-2(c)</i>
_____	)	

**I. INTRODUCTION**

1. The United States Environmental Protection Agency (“EPA”) hereby issues this Administrative Order for Compliance (“Order”) to Kalani Honua Inc. and Retreat Village at Kalani Kai, LLC (“Respondents”). Each Respondent is the owner or operator of a large capacity cesspool (“LCC”) located at 12-6870 Kalapana Kapoho Beach Road, Pahoia, Hawai’i, 96778, Tax Map Key: 3-1-2-009-029 (“the Property”).

2. EPA alleges that Respondents have violated and continue to violate requirements of the federal Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, and 40 C.F.R. §§ 144.84(b)(2) and 144.88, which required owners or operators of existing LCCs to close them no later than April 5, 2005. This Order directs Respondents to remedy the ongoing alleged violations relating to the continued ownership or operation of the LCC at the Property in accordance with the compliance schedule set forth in this Order.

## II. JURISDICTION

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

4. Pursuant to section 1423(c)(3)(A) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(A), Complainant is providing notice to Respondents that they may request a hearing on this Order within 30 days of receipt of the proposed Order.

## III. PARTIES BOUND

5. This Order applies to Respondents and their officials, officers, directors, agents, employees, attorneys, successors, and assigns, and all persons, contractors, and consultants acting in concert with either Respondent.

6. Should either Respondent convey any interest in the Property to any other person, whether by sale, foreclosure, assignment, lease, mortgage, or otherwise, that Respondent must provide a copy of this Order to that person.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h through 300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control ("UIC") programs to prevent underground injection that endangers drinking water sources. These regulations are set forth at 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

### **Statutory and Regulatory Authority**

8. 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.

9. 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. “Well injection” means the subsurface emplacement of fluids through a well. 40 C.F.R. § 144.3.

10. 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.

11. 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.

12. 40 C.F.R. § 144.3 defines “well injection” to mean the subsurface emplacement of fluids through a well.

13. 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.

14. 40 C.F.R. § 144.3 defines a “cesspool” as a “drywell,” which in turn is a “well” that is completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

15. 40 C.F.R. § 144.81(2) defines “large capacity cesspools” (“LCCs”) to be a cesspool including “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”, but excluding (i) single-family residential cesspools and (ii) non-residential cesspools that receive solely sanitary waste and have the capacity to serve fewer than twenty (20) persons per day. *Id.*

16. 40 C.F.R. §§ 144.80(e) and 144.81(2) classifies LCCs as Class V UIC injection wells.

17. 40 C.F.R. § 144.3 defines Class V UIC injection wells as a “facility or activity” subject to regulation under the UIC program.

18. 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.

19. 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.

20. 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].”

21. 40 C.F.R. §§ 144.84(b)(2) and 144.88 required that owners or operators of existing LCCs close those LCCs by no later than April 5, 2005. New LCCs (constructed before April 5, 2000) were prohibited by April 5, 2000. *See* 40 C.F.R. § 144.88.

22. Pursuant to section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. § 147.601, EPA administers the UIC program for all classes of wells in the State of Hawaii, and therefore has “primacy” for the entire program in Hawaii.

23. 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 subject to an order by EPA pursuant to section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1).

24. Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), authorizes EPA to issue either a penalty order or a compliance order, or both, against any person for violations of any requirement of an applicable UIC program.

#### **Alleged Violations**

25. Since at least April 5, 2005, Respondent Kalani Honua Inc. has owned or operated a cesspool that serves a campground restroom on the Property, located at 12-6870 Kalapana Kapoho Beach Road, Pahoā, Hawai‘i, 96778 (Tax Map Key: 3-1-2-009-029).

26. Since at least May 21, 2009, Respondent Retreat Village at Kalani Kai, LLC, has owned or operated a cesspool that serves a campground restroom on the Property.

27. Each Respondent is an “owner or operator” of the cesspool, as that term is defined at 40 C.F.R. § 144.3.

28. Respondent Kalani Honua Inc. is a corporation in the State of Hawai‘i, 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 Retreat Village at Kalani Kai, LLC is a limited liability company in the State of Hawai'i, 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.

30. The cesspool serves a restroom facility that contains three toilets, sinks, and an independent laundry facility, at a campground. In prior years, the campground was used by approximately 30 people per day. Since at least 2022, Respondents have used the Property, including campground facilities, to host large events attended by dozens of persons.

31. Pursuant to 40 C.F.R. § 144.81(2), the cesspool referred to in Paragraphs 25, 26 and 30 meets the definition of an LCC, as it does not service a single-family residence, and has the capacity to serve twenty or more persons per day.

32. Respondents failed to close the LCC referenced in Paragraphs 25, 26 and 30 by April 5, 2005, or any time thereafter, as required by 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

33. EPA therefore alleges that each Respondent is in continuing violation of the LCC prohibition set forth in 40 C.F.R. §§ 144.84(b)(2) and 144.88(a)(1).

#### **V. COMPLIANCE REQUIREMENTS**

34. Based on the foregoing findings and pursuant to EPA's authority under section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), Respondents are hereby ORDERED to complete the following work:

- a. By **July 1, 2025**, close the LCC located at the Property (identified in Paragraphs 25, 26 and 30), 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 and conversion

requirements. If Respondents install one or more replacement wastewater systems, such as an Individual Wastewater Systems (“IWS”), then installation and operation of such system shall comply with all HDOH requirements; and

b. Within thirty (30) days of closure of the LCC, Respondents shall submit to EPA a Final Report describing how the LCC was closed, including copies of any backfill closure reports for the closure of the cesspool and all related approvals, such as for any replacement systems, issued by HDOH. Should HDOH not issue an approval by the time the Final Report is due, Respondents shall submit HDOH’s approval to EPA within fourteen (14) days of its receipt of the HDOH approval. The fully compliant submission of either of these deliverables by one Respondent shall be considered compliance by both Respondents.

35. Respondents shall submit Quarterly Compliance Reports no later than the fifteenth day of every third month, beginning the July following the Effective Date of this Order. These compliance reports shall describe the progress that has been made toward closure of the LCC in accordance with Paragraph 34. Respondents shall submit quarterly compliance reports until Respondents have completed closure of the LCC in accordance with Section VI.

36. The compliance report must be accompanied by a certification, as described in Paragraph 39, from Respondents’ authorized representatives.

37. Respondents shall take all reasonable measures to avoid or minimize the potential for delays in compliance. Respondents shall notify EPA in writing, within 48 hours of any event that causes or is likely to cause a delay in compliance with any deadline specified in this Order. The notification shall explain how the event affects Respondents’ compliance with

the deadlines set forth in this Order, describe the measures Respondents have taken and/or will take to prevent or minimize delay, and specify the timetable by which Respondents intend to implement these measures to ensure compliance with the applicable requirement or deadline.

## **VI. SUBMISSIONS AND NOTIFICATIONS**

38. All information and documents submitted pursuant to this Order shall be signed by a duly authorized representative of the Respondent making the submission.

39. The person signing a Respondent's submissions under this Order shall make the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

40. Submissions by Respondents shall be deemed made on the date they are sent electronically, or on the date postmarked if sent by U.S. mail.

41. Unless otherwise specified, all reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order should be submitted to EPA electronically to the following address: [Shareem.Jelani@epa.gov](mailto:Shareem.Jelani@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.



42. If electronic submittal is not possible, or if specified by EPA, submissions must be made by certified mail (return receipt requested) to the EPA Region IX Compliance Officer at the following address:

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

#### **VII. RECORD PRESERVATION**

43. Until five (5) years after issuance of the completion letter by EPA pursuant to Paragraph 54 for the requirements of this Order, Respondents shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this Order. Until five (5) years after completion of the requirements of this Order, Respondents shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this Order.

#### **VIII. SCOPE OF ORDER**

44. Respondents shall fully implement each requirement of this Order, including meeting the compliance and reporting provisions contained in Section V.

45. Respondents' failure to fully implement all requirements of this Order in the manner and timeframe required shall be deemed a violation of this Order. EPA may seek administrative penalties for the violations of this Order pursuant to 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), or request the United States Department of Justice bring an action to seek

compliance and/or penalties for violating this Order pursuant to section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

46. EPA may use any information submitted in accordance with this Order in support of an administrative, civil, or criminal action against Respondents.

47. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

48. This Order is not and shall not be construed to be a permit under the SDWA, nor shall it in any way relieve or affect Respondents' obligations under the SDWA, or any other applicable federal or State laws, regulations, or permits. Compliance with this Order shall not be a defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

49. Issuance of this Order is not an election by EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief for any violations of law. EPA reserves all available legal and equitable rights and remedies to enforce any violation alleged in this Order, and to enforce this Order, and the right to seek recovery of any costs and attorney fees incurred by EPA in any actions against Respondents for non-compliance with this Order.

50. This Order shall in no way affect the rights of EPA or the United States against any person.

## **IX. INTEGRATION**

51. This Order, including any modification or supplementation of this Order pursuant to Section XI, and any schedules, documents, plans, etc. that will be developed pursuant to this Order, are incorporated into and enforceable pursuant to this Order.

## **X. SEVERABILITY**

52. The provisions of this Order shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

## **XI. MODIFICATIONS OF ORDER**

53. EPA may modify or supplement this Order. Any such modification or supplementation shall be in writing to Respondents, effective upon EPA's issuance of the supplement or modification, or after any public notice required by section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), unless explicitly stated, and shall not otherwise terminate or change any compliance obligations contained in this Order.

## **XII. COMPLETION**

54. Respondents may request that EPA issue a written notice of completion once Respondents have fully completed all work required under this Order.

## **XIII. PUBLIC NOTICE**

55. This Order is subject to the requirements of section 1423(c)(3)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(B), that EPA provide public notice of, and reasonable opportunity to comment on, any proposed Order. EPA will publicly notice this proposed Order and provide the opportunity to the public to comment for thirty (30) days prior to its issuance by EPA. EPA

reserves the right to withdraw or seek modification to the proposed Order in response to public comments. In such case, Respondents will have no obligations under the proposed Order unless and until a revised Order is issued by EPA. Until such time, EPA may pursue any and all enforcement options provided by law.

**XIV. EFFECTIVE DATE**

56. Pursuant to section 1423(c)(3)(D) of the SDWA, 42 U.S.C. § 300h-2(c)(3)(D), this Order shall become effective thirty (30) days following its issuance.

IT IS SO ORDERED:

Amy C. Miller-Bowen “/s/”  
Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division

March 7, 2024  
Date