

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

2012 MAR 29 AM 10: 22

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF

Jose P. Jazmin and Betty Jazmin,
Trustees of the JAZMIN FAMILY TRUST

Respondents.

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

DOCKET NO. UIC-09-2010-0006

CONSENT AGREEMENT

and

[REDACTED] FINAL ORDER

CONSENT AGREEMENT

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

2. Respondents and Complainant (the "Parties") entered into negotiations and have reached a settlement resolving the matters alleged in the Complaint. This CA/FO is the result of those negotiations, and resolves all allegations in the Complaint in a manner that is consistent with the public interest and with the provisions and objectives of the Act and applicable regulations.

SETTLEMENT TERMS

A. Penalty

3. To account for the violations alleged in the Complaint, Respondents agree to pay to the United States an administrative civil penalty of **Sixty Thousand dollars (\$60,000)**, no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the “due date”).

4. The administrative civil penalty referred to in paragraph 3 shall be made payable to the Treasurer, United States of America, in accordance with any acceptable method of payment listed in Attachment A, “EPA Region 9 Collection Information,” which is incorporated by reference as part of this CA/FO.

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

a) Bryan Goodwin
Regional Hearing Clerk
Office of the Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

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

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

7. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondents fail to pay by the due date the administrative civil penalty assessed in paragraph 3 of this CA/FO, EPA shall bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

B. Compliance Requirements and Stipulated Penalties

LCC Closure Requirements

8. Respondents agree to properly close and abandon all Large Capacity Cesspools (LCCs) associated with the property at 75-177 Ala Onaona Street, Kailua-Kona, Hawaii (TMK: 3-7-5-022-170), by the earliest of the following dates:

a. by October 31, 2013, if closure is achieved by connecting the property to an operational sewer system;

b. otherwise, within three months of the date (if any) on which current community efforts to extend the sewer system to a point accessible to Respondents' property are abandoned, or so delayed, that there is no reasonable possibility that Respondents can meet the deadline in subparagraph 8.a. Such circumstances include, but are not limited to, the following:

- i. the Hawaii County Council votes to not approve the Lono Kona Sewer Improvement District;
- ii. the County of Hawaii fails to submit a Rural Development Loan (Wastewater Grant) application for the Lono Kona Sewer Improvement Project to the US Department of Agriculture, or such an application is rejected;
- iii. a majority of the property owners of the proposed Lono Kona Sewer Improvement District vote against, or file objections, to the Lono Kona Sewer Improvement Project;

c. in no event, later than January 31, 2014.

9. For purposes of subparagraph 8.b, if none of the listed events occurs, but EPA determines, based on the course of events and/or information provided by the County of Hawaii, that there is no reasonable possibility that Respondents can meet the deadline in subparagraph 8.a., EPA will notify Respondents of its determination, and the date of such notice will become the trigger date for compliance as set forth in subparagraph 8.b. Respondents may request a meeting with EPA to discuss the matter, however, if after such a meeting EPA does not rescind or modify its determination, which shall not be unreasonably withheld, the original EPA determination and trigger date is final.

10. Respondents must close all of the LCCs in accordance with the well abandonment procedures and techniques, and any other requirements, of the Hawaii Department of Health's ("DOH") UIC program. If Respondents install a new Individual Wastewater System ("IWS"), installation and operation of the IWS shall comply with DOH's requirements.

11. For purposes of paragraph 8, Respondents must properly complete all required closure work by the applicable deadline, unless expressly excused by EPA, as set forth in paragraph 29. Respondents must confirm compliance by submitting to EPA, within ten (10) days of receipt, a copy of the Existing Large Capacity Cesspool Abandonment Permit or Backfill Closure Report for the LCCs and, as applicable, written verification of a sewer connection from the County of Hawaii or DOH approval to use an IWS.

12. If at any time Respondents' LCCs overflow, are found to be contaminating another well or waterbody, Respondents shall notify EPA as soon as possible, but in no event more than 48 hours after discovery, discontinue use of the LCCs, install an alternative wastewater system, properly close the LCCs, and reasonably comply with any specific EPA directions.

Quarterly Reports and Notification of Significant Events

13. Respondents shall submit to EPA quarterly reports describing all relevant developments regarding the Lono Kona sewer improvement project, and efforts by Respondents to design or implement any alternative compliance project(s), during the preceding quarter. The reports must describe all significant activities conducted, and decisions made, regarding the planning, financing, design, approval and construction of the sewer improvement project, and efforts by Respondents to design or implement any alternative wastewater system (e.g. septic system, different sewer connection) to serve their property.

14. Quarterly reports shall be submitted via email to Kate Rao (rao.kate@epa.gov), or any other designated EPA representative, by the 15th of June, September, December, and March of each year, and shall cover the development of the preceding three full calendar months (i.e., March 1 – May 31, June 1 – August 31, September 1 – November 30, and December 1- February 28). The requirement for quarterly reports shall continue until EPA has issued written confirmation that Respondents have met the compliance requirements of this CA/FO.

15. In addition, Respondents shall immediately notify EPA of any event which appears likely to terminate the Lono Kona sewer improvement project, or of any event likely to cause a material delay in the project schedule.

Stipulated Penalties

16. For failure to comply with the schedule set forth in paragraph 8, above, Respondents agree to pay upon EPA's demand the stipulated penalties set forth below, subject to any subsequent written determinations by EPA made under paragraphs 20 or 29. Stipulated penalties begin to accrue on the date performance is due and are calculated as follows:

- a. \$2500 per month (or partial month), for each of the first 3 months following the applicable deadline.
- b. \$5000 per month (or partial month), for each of months 4 through 12 following the applicable deadline.
- c. \$8,000 per month (or partial month), for each of months 13 and thereafter following the applicable deadline.

17. EPA may demand stipulated penalties within one (1) year after the date Respondents become subject to the stipulated penalty. Respondents must pay the stipulated penalty within thirty (30) days of receipt of EPA's demand, according to the process provided in the demand. If any payment is not received within thirty (30) calendar days of being due, interest, handling charges and late-payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11.

18. Neither the demand for, nor payment of, a stipulated penalty relieves Respondents of their obligation to comply with any requirement of this CA/FO, nor modifies any subsequent deadline.

19. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in lieu of assessing stipulated penalties due under this CA/FO.

20. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties due under this CA/FO.

GENERAL PROVISIONS

21. Respondents waive any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondents waive any right to contest the allegations contained in the Complaint and this Consent Agreement, or to appeal the CA/FO. The parties acknowledge that the Presiding Officer retains jurisdiction to hear motions pertaining to enforcement of the compliance requirements of the Consent Agreement, including disputes regarding the assessment of stipulated penalties.

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

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

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

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

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

27. Force Majeure, for purposes of this Consent Order, applies only to events affecting Respondents' closure of their LCCs, construction of a sewer lateral to an operational sewer system, or construction of an individual wastewater system. Force Majeure does not apply to any events affecting implementation of the community sewer project referenced in paragraph 8 of this Consent Agreement. "Force Majeure" is any event entirely beyond the control of Respondents, or any entity controlled by Respondents, that delays or prevents performance of any obligation under this Consent Order notwithstanding Respondents best efforts to avoid the delay. The best efforts requirement includes using best efforts to anticipate any such event and minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order, financial or business difficulties of Respondents, and normal inclement weather.

28. If any event may occur or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure, Respondent shall notify by telephone and email Kate Rao (rao.kate@epa.gov), or in his absence, the Manager of the Ground Water Office (WTR-6), EPA, Region IX, within 48 hours of when Respondent knew or reasonably should have known that the event might cause a delay. Within ten (10) 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. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

29. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligation shall be extended by EPA, or by written agreement of the parties. It is within EPA's sole discretion to determine whether or not Respondents shall be relieved of an obligation of this CA/FO. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation.

30. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by a force majeure event, EPA will notify Respondents in writing of its decision and any delays will not be excused.

31. Respondents shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this section.

32. If ownership or operation of the property is transferred prior to termination of this CA/FO, Respondents shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer. Any such transfer shall have no effect on Respondents' obligation to comply with this CA/FO, or on the accrual of stipulated penalties.

33. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

34. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondents' obligation to comply with all applicable requirements of the Act, regulations promulgated thereunder, and any order or permit issued thereunder

35. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondents for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.

36. Except as stated in paragraph 30, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

37. The civil penalty, and any interest, late penalty payments, administrative handling fees, and stipulated penalties provided for in this CA/FO, shall not be deducted from Respondents' federal, state, or local income taxes.

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

EFFECTIVE DATE AND TERMINATION

39. This CA/FO shall terminate only after Respondents have complied with all requirements of the CA/FO, including payment of any interest, late fees and stipulated penalties, and EPA has issued a written notice of termination.

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

FOR THE CONSENTING PARTIES:

For Jose P. Jazmin, as an individual and Trustee of the Jazmin Family Trust:

Jose P. Jazmin

Date: _____

For Betty Jazmin, as an individual and Trustee of the Jazmin Family Trust:

Betty Jazmin

Date: _____

For the United States Environmental Protection Agency:



Alexis Strauss, Director
Water Division

Date: 22 March 2012

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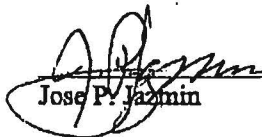
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FOR THE CONSENTING PARTIES:


For Jose P. Jazmin, as an individual and Trustee of the Jazmin Family Trust:



Jose P. Jazmin

Date: 3/12/12

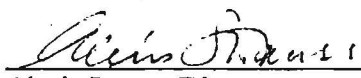
For Betty Jazmin, as an individual and Trustee of the Jazmin Family Trust:



Betty Jazmin

Date: 3/12/12

For the United States Environmental Protection Agency:



Alexis Strauss, Director
Water Division

Date: 22 March 2012

ATTACHMENT A

In the Matter of Jose P. Jazmin and Betty Jazmin, Trustees of the Jazmin Family Trust
Docket No. UIC-09-2010-0006

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

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

CHECK PAYMENTS

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

OVERNIGHT MAIL

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

Contact: Natalie Pearson
314-418-4087

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

Jose P. Jazmin and Betty Jazmin,
Trustees of the JAZMIN FAMILY TRUST

Proceedings under Section 1423(c)
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DOCKET NO. UIC-09-2010-0006

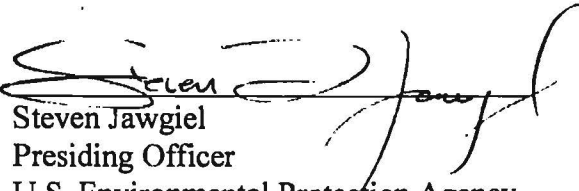
**CONSENT AGREEMENT
AND
~~PROPOSED~~ FINAL ORDER**

The United States Environmental Protection Agency Region IX ("EPA"), and Jose P. Jazmin and Betty Jazmin, Trustees of the Jazmin Family Trust ("Respondents"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the "Findings and Proposed Administrative Order with Administrative Civil Penalty" ("Complaint"), regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2010-0006) be entered; and
2. Respondents shall pay an administrative civil penalty of sixty thousand dollars (\$60,000) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.
3. Pursuant to 40 C.F.R. §§ 22.4(c) and 22.31(d), the Presiding Officer retains jurisdiction to hear motions pertaining to enforcement of the compliance requirements of the Consent Agreement, including disputes regarding the assessment of stipulated penalties.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.


Steven Jawgiel
Presiding Officer
U.S. Environmental Protection Agency
Region 9

Date: 03/28/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. UIC-09-2010-0006) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

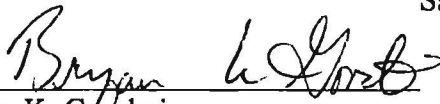
A copy was mailed via CERTIFIED MAIL to:

Jeffrey W. Allen, Esq.
Stephen Fleisher, Esq.
Van De Poel, Levy & Allen LLP
1600 South Main Plaza, Suite 325
Walnut Creek, CA 94596

CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 7672

And additional copy was hand-delivered to the following U.S. EPA case attorneys:

Brett Moffatt, Esq.
Maya Kuttan, Esq.
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

3/29/12
Date