1 2	SYLVIA QUAST Regional Counsel United States Environmental Protection Agency, Region IX			
3 4 5 6	JANET A. MAGNUSON Attorney-Advisor United States Environmental Protection Agency, Region IX 75 Hawthorne Street San Francisco, California 94105 (415) 972-3887			
7	Attorneys for Complainant			
8		ENTAL PROTECTION AGENCY		
9 10	<b>REGION IX</b> 75 Hawthorne Street San Francisco, California 94105			
11 12	IN THE MATTER OF:	DOCKET NO. UIC-09-2016-0002		
13	County of Maui,			
14 15	Maui, Hawaii Respondent.	CONSENT AGREEMENT AND [PROPOSED] FINAL ORDER		
16 17	Proceedings under Sections 1423(c) and 1445(a) of the Safe Drinking Water Act, 42 U.S.C. §§ 300h-2(c) and 300j-4(a).			
18 19	/			
20	CONSENT AGREEMENT			
21	I. <u>AUTHORITY</u>			
22	1. This Consent Agreement is entered into and the [Proposed] Final Order is issued under the authorities vested in the Administrator of the United States Environmental Protection			
23	Agency ("EPA") by Sections 1423(c) and 1445(			
24	"the Act"), 42 U.S.C. §§ 300h-2(c) and 300j-4(a	-		
25				

In re: Maui County

2. The Administrator has delegated the authority to enter into this Consent 1 Agreement and issue a Final Order ("CA/FO") to the Regional Administrator of EPA Region IX. 2 The Regional Administrator in turn has delegated the authority to enter into this Consent 3 Agreement to the Director of the Enforcement Division, EPA Region IX. In accordance with this 4 authority, and with the "Consolidated Rules of Practice Governing the Administrative 5 Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 6 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice"), the Director of the Enforcement 7 Division, EPA Region IX, and the County of Maui ("Respondent"), together referred to as "the 8 9 Parties," hereby agree to the terms of this Consent Agreement and to the issuance of the proposed Final Order. 10

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of this CA/FO commences this proceeding. In addition, pursuant to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final order by the Regional Judicial Officer. 4. Part II of this CA/FO contains a concise statement of the factual basis of the 14 violations of the SDWA in accordance with 40 C.F.R. § 22.18(b)(2).

16

11

12

13

15

17

18

19

20

21

22

## **II. STIPULATIONS AND FINDINGS**

5. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, Sections 1421 to 1429 of the SDWA, 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. Part 144.

6. "Underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1); 40 C.F.R. § 144.3.

23 7. "Well injection" means the subsurface emplacement of fluids through a well. 40 24 C.F.R. § 144.3.

25

In re: Maui County

1	8. A "cesspool" is a "drywell," which in turn is a "well," as those terms are defined	
2	in 40 C.F.R. § 144.3. "Large capacity cesspools" ("LCCs") include "multiple dwelling,	
3	community or regional cesspools, or other devices that receive sanitary wastes, containing	
4	human excreta, which have an open bottom and sometimes perforated sides." 40 C.F.R. §	
5	144.81(2). LCCs do not include single family residential cesspools or non-residential cesspools	
6	which receive solely sanitary waste and have the capacity to serve fewer than 20 persons per day	
7	Id.	
8	9. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R	
9	§ 144.80(e).	
10	10. Class V UIC injection wells are considered a "facility or activity" subject to	
11	regulation under the UIC program. 40 C.F.R. § 144.3.	
12	11. "Owner or operator" means the owner or operator of any "facility or activity"	
13	subject to regulation under the UIC program. 40 C.F.R. § 144.3.	
14	12. The "owner or operator" of a Class V UIC well "must comply with Federal UIC	
15	requirements in 40 C.F.R. parts 144 through 147," and must also "comply with any other	
16	measures required by States or an EPA Regional Office UIC Program to protect [underground	
17	sources of drinking water]." 40 C.F.R. § 144.82.	
18	13. Owners or operators of existing LCCs were required to have closed those LCCs	
19	no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.	
20	14. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R.	
21	§ 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists	
22	of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.	
23	15. Respondent is a county and thus qualifies as a "person" within the meaning of	
24	Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.	
25		

In re: Maui County

Since at least April 5, 2005, Respondent owned and/or operated a cesspool
 located at Maui Raceway Park, Maui (the "Property"), and is an "owner or operator," as that
 term is defined at 40 C.F.R. § 144.3.

17. EPA alleges that the cesspool referred to in Paragraph 16, at all times relevant to this CA/FO, has had the capacity to serve 20 or more persons per day, and thus is considered an LCC pursuant to 40 C.F.R. § 144.81(2).

7 18. Respondent failed to close the cesspool referred to in Paragraph 16 by April 5,
8 2005.

9 19. Respondent contracted an engineering firm and had the subject cesspool
10 backfilled, and therefore closed, on February 10, 2015.

20. Between April 5, 2005 and February 10, 2015, Respondent owned and operated the cesspool referenced in Paragraph 16 and therefore EPA alleges that Respondent was in violation of the requirement to close all LCCs set forth at 40 C.F.R. §§ 144.84(b)(2) and 144.88.

21. Pursuant to Section 1423(c)(1) of the SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than \$16,000 per day per violation up to a maximum of \$187,500, or requiring compliance, or both, against any person who violates the SDWA or any requirement of an applicable UIC program.

19

4

5

6

11

12

13

14

15

16

17

18

20

21

22

23

24

25

## III. <u>SETTLEMENT TERMS</u>

## A. <u>General Provisions</u>

22. For the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO, (2) neither admits nor denies the facts stipulated in this CA/FO; (3) consents to the assessment of the penalty and to the specified compliance obligations contained in this CA/FO, and (4) and waives any right to contest the allegations or to appeal the Final Order accompanying this CA/FO. 40 C.F.R. § 22.18(b)(2).

In re: Maui County

23. Respondent also expressly waives any right to contest the allegations contained in the CA/FO and to appeal the Final Order under the SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action, including any right to confer with the EPA Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3).

24. 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 Respondent for the specific SDWA violations identified in this CA/FO. Full compliance with this CA/FO, which includes payment of administrative civil penalties of \$33,000, shall constitute full settlement only of Respondent's liability for federal civil penalties for the SDWA violations specifically identified in this CA/FO.

25. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or 12 13 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 14 15 perform its obligations under this CA/FO.

26. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue 16 17 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, except with respect to those claims that have been specifically resolved pursuant to Paragraph 24 18 above. 19

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

1

2

3

4

5

6

7

8

9

10

11

20

21

22

23

24

28. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.

29. 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. Violation of this CA/FO shall be deemed a violation of the SDWA.

8 30. Unless otherwise specified, the Parties shall each bear their own costs and
9 attorneys fees incurred in this proceeding.

31. This Consent Agreement 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 Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

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

## B. Penalty

33. Respondent agrees to pay to the United States a single administrative civil penalty of THIRTY-THREE THOUSAND DOLLARS (\$33,000) no later than 30 days following the Effective Date of the Final Order (hereafter referred to as the "Due Date").

34. Respondent may pay the penalty by check (mail or overnight delivery), wire
transfer, ACH, or online payment. Payment instructions are available at:

http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified
check must be payable to the order of "Treasurer, United States of America" and delivered to the
following address:

In re: Maui County

1

2

3

4

5

6

7

10

11

12

13

14

15

16

17

18

19

20

1 2 3 4	U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000	
5	35. Respondent must provide a letter with evidence of the payment made pursuant to	
6	Paragraphs 33 and 34 above, accompanied by the title and docket number of this action, to the	
7	EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance	
8	Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at	
9	the following addresses:	
10	Regional Hearing Clerk Aaron Setran, Compliance Officer	
11	U.S. Environmental Protection Agency Region 9 - Office of Regional CounselU.S. Environmental Protection Agency Region 9 - Enforcement Division	
12	75 Hawthorne Street (ORC-1)75 Hawthorne Street (ENF-3)San Francisco, CA 94105San Francisco, CA 94105	
13	Janet Magnuson, Attorney	
14	U.S. Environmental Protection Agency Region 9 - Office of Regional Counsel	
15	75 Hawthorne Street (ORC-2) San Francisco, CA 94105	
16		
17	36. If the full penalty payment is not received on or before the Due Date, interest shall	
18	accrue on any overdue amount from the Due Date through the date of payment, at the annual rate	
19	established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late	
20	payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion	
21	thereof) following the Due Date in which the balance remains unpaid. A 6% per annum penalty	
22	will also be applied on any principal amount not paid within 90 days of the Due Date.	
23	Respondent shall tender any interest, handling charges, or late penalty payments in the same	
24	manner as described above.	
25		

In re: Maui County

1	37. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if		
2	Respondent fails to pay by the Due Date the administrative civil penalty assessed in this CA/FO,		
3	EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus		
4	costs, attorneys fees, and interest). In such an action, the validity, amount, and appropriateness of		
5	such penalty shall not be subject to review.		
6	38. Respondent shall not deduct the civil penalty, nor any interest, late penalty		
7	payments, or administrative handling fees provided for in this CA/FO from Respondent's		
8	federal, state, or local income taxes.		
9	C. <u>Notices</u>		
10	39. Respondent must send any written communications, to the following address:		
11	Aaron Setran, Compliance Officer		
12	U.S. Environmental Protection Agency Region 9 - Enforcement Division		
13	75 Hawthorne Street (ENF-3) San Francisco, CA 94105		
14	40. EPA must send any written communications to the following address:		
15	Patrick K. Wong, Corporation Counsel		
16	Department of the Corporation Counsel, County of Maui 200 South High Street, 3 <sup>rd</sup> Floor		
17	Wailuku, Maui HI Email: <u>CORPCOUN@MAUICOUNTY.GOV</u>		
18	Telephone: (808) 270-7740		
19	IV. <u>EFFECTIVE DATE</u>		
20	41. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be		
21	effective on the date that the final order contained in this CA/FO, having been approved and		
22	issued by either the Regional Judicial Officer or Regional Administrator, is filed with the		
23	Regional Hearing Clerk.		
24			
25			

1	FOR THE CONSENTING PARTIES:	
2	COUNTY OF MAUI:	
3	Date:	
4	ALAN M. ARAKAWA Its MAYOR	
5		
6	APPROVED AS TO FORM AND LEGALITY:	
7		
8	Date:	
9	Patrick K. Wong Corporation Counsel	
10	County of Maui (LF2015-4276)	
11		
12		
13	FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:	
14		
15	Date	
	Kathleen Johnson     Date:	
15	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency	
15 16	Kathleen Johnson Director, Enforcement Division, Region IX	
15 16 17	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
15 16 17 18	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
15 16 17 18 19	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
15 16 17 18 19 20	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> </ol>	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Kathleen JohnsonDirector, Enforcement Division, Region IXU.S. Environmental Protection Agency75 Hawthorne Street	

	NVIRONMENTAL PROTECTION AGENCY REGION IX 75 Hawthorne Street n Francisco, California 94105
IN THE MATTER OF:	) ) DOCKET NO. UIC-09-2016-0002
County of Maui	)

)

)

)

)

)

)

)

Maui, Hawaii

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Respondent.

Proceedings under Sections 1423(c) and 1445(a) of the Safe Drinking Water Act, 42 U.S.C. §§ 300h-2(c) and 300j-4(a). CONSENT AGREEMENT AND [PROPOSED] FINAL ORDER

The United States Environmental Protection Agency Region 9 ("EPA"), and Maui County ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

 The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2016-0002) be entered; and

2. Respondent pay a single administrative civil penalty of \$33,000 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

In re: Maui County

1	This Final Order's Effective Date is the date that it is filed. This Final Order constitutes
2	full adjudication of the allegations in the Consent Agreement entered into by the Parties in this
3	proceeding.
4	
5	
6	Date:
7	Regional Judicial Officer, Region IX U.S. Environmental Protection Agency
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
	In re: Maui County