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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Vacation Inns International, Inc.

Haleiwa, Hawaii,

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).

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) DOCKET NO. UIC-09-2015-0002

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) **CONSENT AGREEMENT**
) **AND**
) **[PROPOSED] FINAL ORDER**
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CONSENT AGREEMENT

I. AUTHORITY

I. 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 Agency ("EPA") by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the "SDWA"), 42 U.S.C. §§ 300h-2(c), 300j-4(a).

**In re: Backpackers Vacation Inn and Plantation Village
Consent Agreement and Final Order**

2. The Administrator has delegated the authority to enter into this Consent Agreement and issue a Final Order (“CA/FO”) to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated the authority to enter into this Consent Agreement to the Director of the Enforcement Division, EPA Region IX.

3. In accordance with this authority, 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 Enforcement Division, EPA Region IX, and Vacation Inns International, Inc., (“Respondent”), together referred to as “the Parties,” hereby agree to the terms of this Consent Agreement and to the issuance of the proposed Final Order.

4. 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 when the Final Order becomes effective.

5. Part II of this CA/FO contains a concise statement of the factual and legal basis for the alleged violations of the SDWA, together with the specific provisions of the SDWA and implementing regulations that Respondent are alleged to have violated, in accordance with 40 C.F.R. § 22.18(b)(2).

II. STIPULATIONS AND FINDINGS

6. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 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. Part 144.

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

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

9. A “cesspool” is a “drywell,” which in turn is a “well,” as those terms are defined in 40 C.F.R. § 144.3.

10. “Large capacity cesspools” (or “LCCs”) 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.” 40 C.F.R. § 144.81(2). 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 20 persons per day. *Id.*

11. UIC program regulations classify LCCs as Class V UIC injection wells. 40 C.F.R. § 144.80(e).

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

13. “Owner or operator” means the owner or operator of any “facility or activity” subject to regulation under the UIC program. 40 C.F.R. § 144.3.

14. 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 EPA Regional Office UIC Programs to protect underground sources of drinking water. 40 C.F.R. § 144.82.

15. Owners or operators of existing LCCs were required to have closed such cesspools no later than April 5, 2005. 40 C.F.R. §§ 144.84(b)(2) and 144.88.

16. Pursuant to Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart M, § 147.601, EPA administers the UIC program in the State of Hawaii. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

17. Respondent Vacation Inns International, Inc. is a domestic profit corporation, incorporated in the state of Hawaii in 1987. Thus, Respondent is 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.

18. Respondent owns and operates 6 cesspools connected to the 5 houses and cabins listed in Attachment A to this CA/FO located at Backpackers Hawaii Vacation Inn and Plantation Village, on Kamehameha Highway, Haleiwa, Hawaii 96712. The houses and cabins listed in Attachment A are zoned by the County of Honolulu as single family residential. Respondent rents the houses and cabins listed in Attachment A. Sometimes Respondent also rents rooms separately within the houses and cabins and any living, food preparation, or eating facilities are shared.

19. Respondent has failed to close the 6 cesspools connected to the 5 houses and cabins listed in Attachment A.

20. EPA alleges that Respondent is thus an “owner or operator,” as that term is defined at 40 C.F.R. § 144.3.

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.

22. Pursuant to Section 1445(a)(1)(A) of the SDWA, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the SDWA’s requirements to submit information relating to such person’s compliance with those requirements.

III. SETTLEMENT TERMS

The Parties agree as follows:

A. General Provisions

23. Respondent admits the jurisdictional allegations contained in this CA/FO, and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO or to enforce this CA/FO's terms.

24. Respondent neither admits nor denies the specific factual allegations set forth in this CA/FO.

25. Respondent consents to the issuance of this CA/FO and the conditions specified herein, including the assessment and payment of the administrative penalty in accordance with this CA/FO's terms.

26. Respondent waives any right to a hearing under Section 1423(c)(3) of the SDWA, 42 U.S.C. § 300h-2(c)(3), and waive 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 any rights of judicial review under the SDWA or the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action.

27. 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 an administrative civil penalty of \$ **40,000**, shall constitute full settlement of Respondent's liability for federal civil penalties for the SDWA violations specifically identified in this CA/FO.

28. 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 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.

29. 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.

30. 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.

31. EPA takes no position on the eligibility of the cesspools connected to the 5 houses and cabins listed in Attachment A as "qualified cesspools" as that term is used in 2015 Hawaii House Bill No. 1140 adopted by the state of Hawaii on June 12, 2015.

32. 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.

33. 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 SDWA.

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

35. 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.

36. 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

37. Respondent agrees to pay to the United States an administrative penalty of **\$ 40,000**, no later than 30 days following the effective date of the Final Order (hereafter referred to as the "Due Date").

38. 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:

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

39. Respondent must provide a letter with evidence of the payment made pursuant to paragraphs 37 and 38 above, accompanied by the title and docket number of this action, to the EPA Region 9 Regional Hearing Clerk, the EPA Region 9 Enforcement Division Compliance Officer, and the EPA Region 9 Office of Regional Counsel attorney, via United States mail, at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

Aaron Setran, Compliance Officer
U.S. Environmental Protection Agency
Region 9 - Enforcement Division
75 Hawthorne Street (ENF-3)
San Francisco, CA 94105

Julia Jackson, Asst. Regional Counsel
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
75 Hawthorne Street (ORC-2)

San Francisco, CA 94105

40. 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 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.

Respondents shall tender any interest, handling charges, or late penalty payments in the same manner as described above.

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

42. Respondent shall not deduct the administrative penalty, nor any interest, late penalty payments, or administrative handling fees provided for in this CA/FO from Respondent's federal, state, or local income taxes.

C. Compliance Requirements

43. Respondent shall close the 6 cesspools connected to the 5 houses and cabins listed in Attachment A in accordance with EPA's closure requirements in 40 C.F.R. § 144.89 and in accordance with any additional Hawaii Department of Health ("HDOH") closure requirements, no later than **June 30th, 2017**.

44. Respondent shall submit a report no later than July 1, 2017 certifying the completion of the requirements in Paragraph 43. Respondent shall also submit any HDOH approvals of the construction of individual wastewater systems within 2 weeks of receiving such approval.

E. Notices

45. Respondent must send any written communications, including any requests for extensions of time to meet the compliance deadline set forth in Part III.C above, to the following address:

Aaron Setran, Compliance Officer
U.S. Environmental Protection Agency
Region 9 - Enforcement Division
75 Hawthorne Street (ENF-1)
San Francisco, CA 94105

46. The person signing Respondent's submissions must 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 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.

IV. EFFECTIVE DATE AND TERMINATION

47. This CA/FO shall terminate only after Respondent has complied with all requirements of the CA/FO, including payment of any interest and late fees, and after EPA has issued a written notice of termination. The "Effective Date" of the CA/FO shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

RESPONDENT VACATION INNS INTERNATIONAL, INC.:

NAME

Date: _____

TITLE

FOR THE CONSENTING PARTIES:

RESPONDENT VACATION INNS INTERNATIONAL, INC.:

Mandy To
NAME

Date: Aug. 9, 2015

PRES
TITLE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



Date: 8/13/15

Kathleen Johnson
Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, California 94105

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) DOCKET NO. UIC-09-2015-_____

**CONSENT AGREEMENT
AND
[PROPOSED] FINAL ORDER**

The United States Environmental Protection Agency Region 9 (“EPA”), and the Respondent Vacation Inns International, Inc., (“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:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2015-_____) be entered; and
2. Respondent pay an administrative civil penalty of \$ 40,000 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.
3. Respondent shall close all 6 cesspools connected to the 5 houses and cabins listed in Attachment A to this CA/FO no later than **June 30th, 2017**.