

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF

Costco Wholesale Corporation,

Kailua-Kona, HI

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

DOCKET NO. UIC-AO-2006-0002

CONSENT AGREEMENT
AND [PROPOSED] FINAL ORDER

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

This Consent Agreement and 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 “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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 64 Fed. Reg. 40,176, Subpart I (July 23, 1999) (hereinafter “Consolidated Rules of Practice”), the Director of the Water Division, EPA Region IX, hereby issues, and Costco Wholesale Corporation (“Respondent”) hereby agrees to the issuance of, this Consent Agreement and Final Order (“CA/FO”).

II. STIPULATIONS AND FINDINGS

Respondent stipulates, and EPA finds as follows:

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations establishing minimum requirements for Underground Injection Control (“UIC”) programs, to prevent underground injection which endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.
2. “Underground injection” means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.

3. 40 C.F.R. § 144.3 defines a “well” as “a subsurface fluid distribution system” and “well injection” as “the subsurface emplacement of fluids through a well.”
4. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools were required to be closed no later than April 5, 2005. “Large capacity cesspools” 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). Large capacity cesspools 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. A “cesspool,” is a “drywell,” which in turn is a “well,” as those terms are defined in 40 C.F.R. § 144.3.
5. Pursuant to Section 1422(c) of the Act, 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.
6. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4, EPA may issue an order assessing an administrative civil penalty of not more than \$11,000 for each day of each violation, up to a maximum penalty of \$157,500, or requiring compliance, against any person who violates the Act or any requirement of an applicable Underground Injection Control (“UIC”) program. In assessing a penalty for such violations, EPA must take into account: (1) the seriousness of the violations; (2) the economic benefit resulting from the violations; (3) the history of such violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
7. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a), EPA may require any person who is subject to the requirements of the Act to submit information relating to such person’s compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).
8. Costco Wholesale Corporation is a corporation. 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.
9. Respondent owns and operates three (3) large capacity cesspools at 73-5600 Maiiau Street, Kailua, HI.
10. In addition, Respondent owns and operates two (2) industrial wells at this address.
11. Respondent did not close the large capacity cesspools referred to in paragraph 9 by April 5, 2005 as required by 40 C.F.R. § 144.88.

12. Based on all the foregoing, Respondent has violated the requirement that all large capacity cesspools be closed by April 5, 2005, and is therefore in violation of 40 C.F.R. § 144.88.
13. Respondent intends to undertake the measures in Section III., including closure of the large capacity cesspools referred to in paragraph 9 by **July 31, 2007**.

III. PROPOSED ORDER

Respondent and EPA agree to issuance of the following order:

A. Compliance Requirements

14. Respondent shall close the three (3) large capacity cesspools and two (2) industrial wells referred to in paragraphs 9 and 10 in accordance with 40 C.F.R. § 144.89(a) or convert them by adding wastewater treatment, as specified below, no later than **July 31, 2007**.

- A. The three (3) large capacity cesspools and two (2) industrial wells referred to in paragraphs 9 and 10 shall have the following wastewater treatment added:

The North System, which consists of the tire center restroom waste stream and the deli waste stream, shall have a dual compartment septic tank with an effluent filter. The deli waste stream shall have a grease interceptor upstream of the septic tank.

The Main System, which consists of the men's and women's public restrooms waste stream, shall have a dual compartment septic tank with an effluent filter.

The South System, which consists of the employee restroom waste stream, shall have a dual compartment septic tank with an effluent filter.

The Bakery/Butcher System, which consists of the bakery and butcher waste stream, shall have a grease interceptor and a dual compartment septic tank with an effluent filter.

If the Hawaii Department of Health ("DOH") requires the Respondent to install another type of wastewater treatment on any of the aforementioned waste streams, the Respondent must notify the Large Capacity Cesspool ("LCC") Project Coordinator, in writing, within five (5) business days of receipt of DOH's new requirement and EPA shall, at its sole discretion, approve or disapprove substitution of the DOH required wastewater treatment alternative under this CA/FO within thirty (30) business days. If

Respondent has not received a written disapproval within 30 days, the DOH required wastewater treatment alternative shall be deemed acceptable.

- B. Respondent shall provide EPA with plans and specifications for the wastewater treatment systems outlined in paragraph **14** above within sixty (60) days of signature of the Final Order. Within thirty (30) days of receipt of the plans and specifications, the LCC Coordinator will disapprove, in writing, any plans and specifications that are unacceptable. If Respondent has not received a written disapproval within 30 days, the plans and specifications will be deemed acceptable. In addition, Respondent shall submit copies of all applications to and letters of approval received from DOH for the construction and operation of all wastewater treatment systems within one week of receipt or submission.

15. In addition, Respondent shall:

- A. Monitor monthly the volume of the water flow to the front wastewater treatment systems (i.e., North System and Main System) and the back wastewater treatment systems (i.e., South System and Butcher/Bakery System). The monthly flow volume to the front wastewater treatment systems and the monthly flow volume to the back wastewater systems shall be reported separately in the injection well status reports described in III.A.13.D. Each injection well status report shall contain the daily averaged flow volumes for the preceding period.
- B. Perform monthly sampling of the influent into the first chamber and effluent from the last chamber of the Bakery/Butcher system tanks. For each sample, Respondent shall composite three grab samples collected at 9:30 am, 12:30 pm and 3:30 pm. Respondent shall perform monthly grab sampling on the remaining three septic tank systems by taking a single grab sample at 12:30 pm according to the following schedule.

B1 – North System – combined flow, 500 est ave gpd – sample from the influent and effluent chambers;

B2 – Main System – sanitary only flow, 4,385 est ave gpd – sample from the effluent chamber only; and

B3 – South System – sanitary only flow, 400 est ave gpd – sample from the effluent chamber only.

Respondent shall use proper Quality Assurance/Quality Control.

Respondent shall have each monthly sample analyzed for:

- i. Biological Oxygen Demand (mg/l)
- ii. Fats, Oil and Grease (mg/l)
- iii. Total Suspended Solids (mg/l)

These monthly analyses shall be collected for a six month period which shall commence two months after the date that operation of the wastewater treatment systems outlined in paragraph **14** has begun. At the end of the six month period, Respondent may request that sampling frequency, and analytes sampled for, be reduced depending on the results of the sampling. EPA shall approve or disapprove of Respondent's request within 30 days of receipt of the request. Respondent shall submit the sampling results to EPA within one week of receipt by Respondent.

C. Perform monthly analyses for the following constituents:

- i. Nitrate + Nitrite (mg/l)
- i. Dissolved Oxygen (mg/l)
- ii. Temperature (C)
- iii. pH

These monthly analyses shall be collected for a six month period which shall commence two months after the date that operation of the wastewater treatment systems outlined in paragraph **14** has begun. At the end of the six month period, Respondent may request that sampling frequency, and analytes sampled for, be reduced depending on the results of the sampling. EPA shall approve or disapprove of Respondent's request within 30 days of receipt of the request. Respondent shall submit the sampling results to EPA within one week of receipt by Respondent.

- D. Submit an injection well status report semi-annually for the five (5) injection wells referred to in paragraphs **9** and **10**, providing the information in the manner outlined in Attachment 1, attached hereto and incorporated by reference for five (5) years. One semi-annual report shall be the annual report submitted to DOH; the other shall be submitted six months thereafter.
- E. Pump out all septic tanks at least once every two years and more often if necessary as determined by the data in the semi-annual reports. All grease interceptors shall also be pumped out as often as needed.
- F. Allow EPA access to the septic systems and surrounding area to study any impacts to ground water, including, but not limited to, placement of a tracer and collection of groundwater through the installation of monitoring wells or other groundwater collection devices. EPA will use its best efforts to work with the Respondent's store manager to minimize disruption to the store.

16. Respondent shall submit quarterly status reports describing progress that has been made towards compliance with the closure and conversion requirement set forth in paragraph **14** until Respondent receives DOH letters of approval to operate for all wastewater treatment systems. Respondent shall submit copies of the letters of approval to operate to EPA within five (5) days of receipt from DOH.
17. Quarterly status reports shall be sent no later than the **15th** day of every third month, beginning the **4th** month following the effective date of this CA/FO, to the LCC Project Coordinator, as set forth in paragraph **41** until Respondent submits the aforementioned DOH letters of approval.

B. Penalty

18. To account for the violations set forth in the Stipulations and Findings, Respondent agrees to pay to the United States an administrative civil penalty of Seventy Five Thousand dollars (\$75,000), no later than thirty days following the effective date of the Final Order (hereafter referred to as the “due date”).
19. The administrative civil penalty referred to in paragraph **18** shall be made payable via money order or certified check made payable to the Treasurer, United States of America. Respondent shall tender the payment via certified mail to:

U.S. Environmental Protection Agency, Region IX
Regional Hearing Clerk
P.O. Box 371099M
Pittsburgh, PA 15251

20. Respondent shall note on the money order or certified check the title and docket number of this case and mail photocopies of the money order or certified check via certified mail to:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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

21. Payment must be *received* at the address referred to in paragraph **19** on or before the due date specified in paragraph **18**.

22. If payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. 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. Respondent shall tender any interest, handling charges, or late penalty payments in the same manner as described above.
23. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph **18** 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).

C. General Provisions

24. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondent waives any right to contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.
25. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
26. Respondent neither admits nor denies the non-jurisdictional allegations set forth in the Stipulations and Findings in this Consent Agreement.
27. Respondent consents 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.
28. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
29. The provisions of this CA/FO shall 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.
30. Respondent shall give notice, and provide a copy of this CA/FO, to any successor-in-interest prior to transfer of ownership or operation of the large

capacity cesspools referred to in paragraph **9**. Such transfer, however, shall have no effect on Respondent's obligation to comply with Section III. B. of this CA/FO. Respondent shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the large capacity cesspools referred to in paragraph **9**.

31. Respondent shall not deduct the administrative civil penalty, nor any interest, handling fees, or late penalty payments provided for in this CA/FO from its federal, state, or local income taxes.
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. 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 Respondent's 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 Respondent 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 **35**, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.
37. If any event occurs which causes or may cause delays in: 1) submission of quarterly status reports; or 2) submission of sampling results; or 3) submission of semi-annual injection well status reports; or 4) closure of the large capacity cesspools, as set forth in Part III.A. of this CA/FO, Respondent shall, within 48 hours of the delay or within 48 hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify by telephone the EPA Region 9 LCC Project Coordinator or, in her/his absence, the Manager of the EPA Region 9 Ground Water Office. 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, 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.

38. If EPA agrees 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 maybe extended for a period of no longer than the delay resulting from the circumstances causing the delay. In such event, EPA shall grant, in writing signed by the Manager of the EPA Region 9 Ground Water Office, to the 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.
39. 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 circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays will not be excused.
40. Respondent 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 Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.
41. All quarterly status reports, sampling results, injection well status reports and any requests for extension of time required to be submitted pursuant to this CA/FO shall be sent to the following address:

LCC Project Coordinator
 Water Division
 Ground Water Office, WTR-9
 Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105

D. Effective Date

42. The effective date of the Consent Agreement and Final Order shall be thirty (30) days from the date that the Final Order is signed.

FOR THE CONSENTING PARTIES:

For Costco Wholesale Corporation
 Rich Olin

5/22/06

Date: _____

 NAME/POSITION
 Vice President/General Counsel

For the United States Environmental Protection Agency:

Alexis Strauss
Director, Water Division

Date: _____

FINAL ORDER

The United States Environmental Protection Agency Region IX (“EPA”), and Costco Wholesale Corporation, having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Findings and Proposed Administrative Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-AO-2006-0002) be entered; and
2. Respondent, Costco Wholesale Corporation, shall pay an administrative civil penalty of Seventy Five Thousand dollars (\$75,000), plus interest, to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order shall become effective thirty (30) days from the date that it is signed. This Final Order constitutes full adjudication of the Order issued by EPA in this proceeding.

Joanna DeLucia
Presiding Officer
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: _____