



REGION 9

SAN FRANCISCO, CA 94105

April 8, 2024

Via Electronic Mail

(b) (6)

Member

(b) (6)

C/O **(b) (6)**

(b) (6) Rice Street, **(b) (6)**

(b) (6)

Re: Show Cause and Notice of Opportunity to Discuss Settlement for Violation of the Safe Drinking Water Act: Failure to Close three (3) Large Capacity Cesspools at the (b) (6)

Dear **(b) (6)**

The United States Environmental Protection Agency (EPA) Region 9 is issuing this letter to **(b) (6)** for failure to close three (3) large capacity cesspools (LCCs) that serve the **(b) (6)** located at **(b) (6)** Koloa, HI 96756 (TMK: **(b) (6)**

). The LCCs have not been closed in accordance with the Underground Injection Control (UIC) Program regulations at 40 C.F.R. part 144, which were promulgated pursuant to the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

The UIC regulations classify LCCs as 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 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 a day. 40 C.F.R. § 144.81(2). All LCCs were required to be closed by April 5, 2005. 40 C.F.R. § 144.88. EPA has determined that, **(b) (6)**, as the listed fee owner of the **(b) (6)**, is liable for failing to close the LCCs serving the **(b) (6)** by the April 5, 2005 regulatory deadline, or any time afterwards.

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 requiring compliance and/or assessing a civil administrative penalty of up to \$27,894 for each day for each violation, up to a maximum penalty of \$348,671, against any person who violates the SDWA or any requirement of an applicable UIC program. The SDWA also provides that a violator may be subject to civil judicial penalties of up to \$69,733 for each

day for each violation. 42 U.S.C. § 300h-2(b); 40 C.F.R. § 19.4. EPA is preparing to issue an administrative order against **(b) (6)**, which would take the form of an administrative complaint filed under our Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. Part 22 (Consolidated Rules) that will seek both compliance with the LCC closure requirements and an administrative penalty to address the ongoing violations of the SDWA.

Although EPA intends to file an administrative complaint in this matter, that intent does not preclude EPA from entering into negotiations to resolve the violations, and we therefore extend to **(b) (6)** the opportunity to engage in settlement negotiations with EPA. If an agreement can be reached, the settlement would include both compliance and penalty conditions and would be in the form of a consent agreement and final order filed under the Consolidated Rules. This letter also provides **(b) (6)** with an opportunity to provide additional information it believes EPA should consider before we proceed with an enforcement action or as part of negotiations to resolve the violations.

As part of a settlement, **(b) (6)** may also propose to undertake an environmentally beneficial project(s) that is closely related to the underlying violations, such as closure of residential small capacity cesspools. The voluntary agreement to perform a Supplemental Environmental Project (SEP) may be the basis for mitigating the final assessed penalty. More information about SEPs is available at: <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>.

In addition, EPA encourages regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations. Information on how to self-disclose potential environmental violations is available at: <https://www.epa.gov/compliance/epas-edisclosure>. While self-disclosure would not be available for the LCCs identified in this letter because EPA independently identified the violations, self-disclosure of other violations independently identified by **(b) (6)** may be subject to penalty mitigation under EPA's audit policy.

If **(b) (6)** would like to discuss settlement, has any questions about this letter, or has other information that it would like EPA to consider as it proceeds with this case, please contact Jelani Shareem of EPA Region 9's Enforcement and Compliance Assurance Division at (415) 972-3835 or by email at shareem.jelani@epa.gov. **(b) (6)** may also have its legal counsel contact Danita Yocom in EPA Region 9's Office of Regional Counsel at (415) 972-3885 or by email at yocom.danita@epa.gov.

Please either contact Jelani Shareem, or have [REDACTED] legal counsel contact Danita Yocom, by **April 19, 2024** if it is interested in pursuing settlement. Should [REDACTED] fail to contact EPA by this date, or not agree to discuss settlement, EPA will proceed with filing an administrative complaint in this matter.

Sincerely,

**ROBERTO
RODRIGUEZ**

Digitally signed by
ROBERTO RODRIGUEZ
Date: 2024.04.08 14:38:38
-07'00'

Roberto Rodriguez, Assistant Director
Enforcement and Compliance Assurance Division

cc:

[REDACTED]

Johnathan Nagato, Hawaii Department of Health Wastewater Branch
(jonathan.nagato@doh.hawaii.gov)