



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Via Electronic Mail

Scot Nonaka, President
Kauai Producers, Limited
P.O. Box 767
Lihue, HI 96766
scot@kauaiproducers.com

RE: Request for Information Pursuant to Section 1445 of the Safe Drinking Water Act (42 USC § 300j-4) for the Wastewater Disposal System(s) that serves Tax Map Key (TMK): 4-3-6-012-001.

Dear President Nonaka:

Information in the Environmental Protection Agency, Region IX's (EPA) possession indicates that Kauai Producers, Limited is the registered fee owner of a multi-building non-residential property located at 3176 Oihana Street, Lihue, HI 96766 (TMK: 4-3-6-012-001), hereinafter referred to as "the Subject Property." Since EPA has additional information that indicates the Subject Property may be utilizing one or more cesspools that fit the regulatory definition of a non-residential large capacity cesspool (LCC), EPA requires a written response with information related to the subsurface wastewater infrastructure serving the Subject Property.

The underground injection control (UIC) regulations promulgated by EPA pursuant to the Safe Drinking Water Act (SDWA) required that all existing LCCs be closed by April 5, 2005. 40 C.F.R. §§ 144.81(2), 144.88. The UIC regulations define LCCs as residential cesspools that serve multiple dwellings or non-residential cesspools that have the capacity to serve 20 or more persons per day. *Id.* § 144.81(2). Cesspools allow raw sewage to be discharged into the ground and are a public health and environmental concern, particularly with regard to the threat they pose to underground sources of drinking water. Additional information on the impact of LCCs and EPA's efforts to address these impacts can be found at EPA's website: <https://www.epa.gov/uic/cesspools-hawaii>.

The SDWA provides EPA with the authority to request information for the purpose of determining compliance with the SDWA and its UIC regulations. 42 U.S.C. § 300j-4(a); 40 C.F.R. § 144.17. Pursuant to this authority, EPA hereby requires Kauai Producers, Limited to provide the following information about the subsurface wastewater disposal unit(s)/system(s) that it owns and/or operates at the Subject Property:

1. A narrative description of the nature and physical characteristics of each subsurface wastewater disposal unit(s)/system(s) (e.g., cesspool, septic tank, seepage pit) located at the Subject Property or associated with activities at the Subject Property. The description must include the depth, width, and volume of the unit(s)/system(s) (including any associated tanks); and the material,

nature, and porosity of the lining, floor, and roof/cap/ceiling of the unit(s)/system(s) (including any associated tanks).

2. For each subsurface wastewater disposal unit/system identified in response to Request #1, a description of how the unit/system operates to treat and/or dispose of wastewater and whether it is currently in use.
3. A map or drawing, made at a minimum 1:10 scale (or some other easily readable scale) of the TMK (and surrounding areas if necessary) that clearly identifies the location of each wastewater disposal unit identified in response to Request #1 and the dwellings, buildings or facilities that are contributing wastewater to those unit(s).
4. Copies of the following existing documents pertaining to the subsurface wastewater disposal unit(s)/system(s) identified in response to Request #1:
 - a. any blueprints or drawings for the unit(s)/system(s);
 - b. all permits issued by any local, state, or federal agency for the construction or use of the unit(s)/system(s); and
 - c. any reports and data from any tests that have been performed on or at the unit(s)/system(s), including, but not limited to, pumping records, records of installation, inspection reports, percolation tests, and camera and video records.
5. A description of each dwelling, building, and facility that contributes sewage or wastewater to each subsurface wastewater disposal unit/system identified in response to Request #1 and provide any copies of site plans or as-built drawings for each.
6. A description of the ownership and operational control of the Subject Property, including, but not limited to, the percentage ownership of each owner, the nature of operational control for each operator, and the contact information for all owners and operators or managers of the Subject Property. Provide copies of any/all documents which support the ownership and/or operational control of the Subject Property, including, but not limited to, leases, sales agreement, management agreements, operator agreements, etc.
7. A description of the ownership and operational control of each wastewater disposal unit/system identified in response to Request #1 (e.g., ownership by a homeowner's association) as well as contact information for each owner or operator of the wastewater disposal unit(s)/system(s). If the wastewater disposal unit/system is located off the Subject Property (e.g., located on an easement on an adjacent property), provide information regarding this arrangement.
8. For each subsurface wastewater disposal unit/system identified in response to Request #1, an identification and/or description of the following:

- a. the type of business or activity operated on the Subject Property (as identified in response to Request #5) that contributes wastewater to that unit, along with a description of the nature of the wastewater (e.g., sewage, rinse water, etc.) and
- b. any time during the past three years, the maximum daily number of persons that cumulatively use or visit the Subject Property, along with an identification of the source of the data.

All submittals made in response to this letter must be accompanied by the following certification, which is to be signed by a duly authorized representative in accordance with 40 C.F.R. § 144.32(b) and (d):

"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."

Kauai Producers, Limited's response to this information request must be submitted by **June 01, 2023** to Jelani Shareem at shareem.jelani@epa.gov. In lieu of submitting the information by email, Kauai Producers, Limited may submit its response to the following address if post-marked by **June 01, 2023**:

Jelani Shareem
USEPA, Region 9
Enforcement and Compliance Assurance Division
Drinking Water Section (ECAD-3-3)
75 Hawthorne Street
San Francisco, CA 94105

Please be advised that failure to submit the information requested pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), and 40 C.F.R. § 144.17, is a violation of SDWA and may subject Kauai Producers, Limited, to an enforcement action by EPA, including an action for monetary penalties. Pursuant to Section 1445(c) of the SDWA, 42 U.S.C. § 300j-4(c), EPA may seek penalties of up to \$62,689 in any such action.

The EPA has promulgated regulations to protect the confidentiality of business information it receives. These regulations are set forth in 40 C.F.R. Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified in 40 C.F.R. § 2.203(b) for part or all of the information submitted in response to this letter. EPA will disclose business information covered by such a claim only to the extent authorized by 40 C.F.R. Part 2, Subpart B. If no business confidentiality claim accompanies the information when EPA receives it, EPA may make it available to the public without further notice. Kauai Producers, Limited may not withhold any information from EPA on the ground that it is confidential business information.

This request for information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” under 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1).

Thank you for your attention to this matter. Please feel free to contact Jelani Shareem at (415) 972-3095 or shareem.jelani@epa.gov with any questions and/or concerns.

Sincerely,

**LAWRENCE
TORRES**

Digitally signed by LAWRENCE
TORRES
Date: 2023.04.24 14:30:32 -07'00'

Lawrence Torres, Manager
Drinking Water Section
Enforcement and Compliance Assurance Division

cc: Merlyn Nonaka, Kauai Producers, Limited, merle@kauaiproducers.com