NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 12, 2013

Mr. Aaron Setran
USEPA, Region 9
Enforcement Division
Water and Pesticides Branch
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Setran,

SUBJECT: Re: Notice of Violation/Request for Information: Large Capacity Cesspool at Hana Health Clinic, Hana, Hawaii (TMK: 2-1-4-003-022 and -024)

We are in receipt of your letter dated May 29, 2013 ("Notice of Violation") in regards to the matter referenced above. The failure of lessee Hana Health to resolve the matter, resulting in the issuance of the Notice of Violation by your office, constitutes a breach of the State's lease of the subject property to Hana Health, General Lease S-5548. Pursuant to the provisions of the lease, Hana Health assumed control of the property, including all improvements, on an "as is", no warranty basis, and is also responsible for compliance with all federal, state, and county laws, rules and regulations. However, in order to resolve the matter to the satisfaction of the EPA, the Department of Land and Natural Resources ("DLNR"), in its role as the lessor, is in the process of working with Hana Health, and the Hawaii State Department of Health ("HDOH"), to close all large capacity cesspools on the property in compliance with the EPA's Underground Injection Control regulations.

On June 5, 2013, DLNR issued a Notice of Default to Hana Health, demanding that, pursuant to the terms of the lease, they cure the breach within sixty (60) days. We have enclosed a copy of the June 5, 2013 letter for your information. With respect to the information that you have requested, Hana Health maintains that they are not in possession of any materials that are responsive to the request. DLNR does not have any materials that are responsive to your request either. We also checked with HDOH whether they have materials responsive to your request, since the Hana Health Clinic was administered and managed by HDOH until 1998, and will supplement our response should HDOH have any materials responsive to your request. In order to provide the information, Hana Health has indicated to DLNR that it will contract for the necessary planning and design studies that will identify all large capacity cesspools that may be on the property, and provide for their closure.

Hana Health has received a grant-in-aid award from HDOH, which grant-in-aid funds may be utilized for the purpose of constructing a septic system to replace any large capacity

cesspool(s). Hana Health has indicated to DLNR that it will seek bids for the preparation of plans to construct a septic system and will make every effort to find monies in its current budget to pay for the preparation of plans. As we believe Hana Health likely has the financial means to resolve this issue, DLNR expects Hana Health to take all appropriate action in a timely manner. In the event that Hana Health does not have sufficient funds in its current budget to pay for the plans, it is our understanding that Hana Health will request a grant-in-aid from the State Legislature for consideration during its 2014 session, which convenes in January 2014. Any grant in aid funding approved by the 2014 State Legislature would likely not be available until after July 1, 2014. Therefore, DLNR respectfully requests that the EPA suspend any enforcement action in this matter, including the assessment of any fines or other penalties, until such reasonable time is necessary to resolve this matter. In addition, please consider that any assessment of fines or penalties against the State of Hawaii may result in the Board of Land and Natural Resources terminating General Lease S-5548.

Please call Russell Tsuji, Land Division Administrator, at (808) 587-0420, to discuss the matter further. Thank you for your consideration in this matter.

Sincerely,

William J. Aila, Jr.
Chairperson

Enclosure

cc: David Goode, Board Member-At-Large
James A. Gomes, Maui Board Member
Cindy Young, Attorney General Land Transportation Division
Gary Gill, Deputy Director, HDOH Environmental Health Administration
David Sakamoto, Deputy Director, HDOH Health Resources Administration
Cheryl Vasconcellos, Hana Health
House Speaker Joseph Souki
Representative Mele Carroll
Representative Della Au Belatti
Senator J. Kalani English
Karey Oura-Kapoi, Constituent Services Representative, Office of U.S. Congresswoman Tulsi Gabbard
Kehau Yap, Field Representative and Constituent Services Manager, Office of U.S. Senator Mazie K. Hirono

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 5, 2013

CMRRR, and Regular Mail

Ms. Cheryl Vasconcellos
Hana Health
P.O. Box 807
Hana HI 96713

Dear Ms. Vasconcellos,

NOTICE OF DEFAULT

This notice serves to inform you of a breach paragraph 7, related to compliance with all laws, rules and regulations of the federal, state and county authorities contained in General Lease S-5548. Accordingly, Hana Health is hereby served a Notice of Default on said lease for failure to comply with rules and regulations of the federal government, specifically related to the continued operation of a Large Capacity Cesspool in violation of United States Environmental Protection Agency's (EPA) Underground Injection Control regulations, 40 CFR 144.88, promulgated pursuant to section 1421(a)(1) of the Safe Drinking Water Act, 42 U.S.C. 300h(a)(1). Enclosed herewith is a Notice from the EPA to the State of Hawaii, dated May 29, 2013.

Additionally, in accordance with paragraphs 15 and 16, we hereby demand Hana Health pay for all of the State's attorneys' fees and costs in connection with this matter, and indemnify, defend and hold harmless the State as to the actions of the EPA.

You are hereby given sixty (60) days from the date of receipt of this letter to cure the above-described breach. Your failure to act on the above matter may result in the following:

1. Cancellation of General Lease S-5548.
2. Retention of all sums heretofore paid under General Lease S-5548 as liquidated damages.
3. Termination of all your rights and obligations under General Lease No. S-5548.
4. Initiation of legal action to collect the delinquent lease rental owing the State of Hawaii under General Lease S-5548.
5. Forfeiture of your lease performance bond.

June 5, 2013

We therefore urge your fullest cooperation. Should you have any questions, please contact Daniel Ornellas, District Land Agent at our Maui District Land Office at (808) 984-8103.

Sincerely,

William J. Aila, Jr.
Chairperson

c: Land Board Member
Central Office
Fiscal Office
Donna Kalama, Esq.

GL 5548

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

RECEIVED
LAND DIVISION
2013 JUN -3 PM 2:22
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Certified Mail No.: 7008 1140 0004 5421 1682
Return Receipt Requested

MAY 29 2013

Administrator: Russell Y. Tsuji
State of Hawaii, Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, HI 96813

Re: Notice of Violation/Request For Information: Large Capacity Cesspool at Hana Health Clinic, Hana, Hawaii (TMK: 2-1-4-003-022 and -024)

Dear Mr. Tsuji:

The Environmental Protection Agency, Region IX ("EPA" or the "Agency"), has information that the State of Hawaii, Department of Land and Natural Resources ("DNLR"), owns property in Hana (Kauai) on which a medical facility, the Hana Health Clinic, operates (TMKs: 2-1-4-003-022 and : 2-1-4-003-024), hereafter referred to as "the subject property." EPA also has information that domestic wastewater from the subject property is discharged to one or more Large Capacity Cesspools ("LCCs"). Operation of LCCs at the subject property is in violation of EPA's Underground Injection Control ("UIC") regulations, 40 CFR § 144.88, promulgated pursuant to section 1421(a)(1) of the Safe Drinking Water Act ("SDWA" or "the Act"), 42 U.S.C. § 300h(a)(1).

The UIC regulations require that all existing LCCs be closed by April 5, 2005. The UIC regulations define LCCs as residential cesspools, which serve multiple dwellings, or non-residential cesspools that have the capacity to serve 20 or more persons per day. 40 CFR § 144.81(2). Cesspools allow raw sewage to be discharged into the ground and are a public health and environmental concern. Additional information on the impact of large capacity cesspools and EPA's efforts to address this issue can be found at EPA's website: ***http://www.epa.gov/region09/licesspools***.

EPA is authorized to require the submission of information under Section 1445 of the SDWA, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.17. EPA hereby requires you, as the owner of the subject facility, for purposes of determining compliance with the SDWA and the UIC regulations, to provide the following information:

1. The total number, location, and types (e.g., cesspool, septic tank, seepage pit) of subsurface wastewater disposal structures receiving sewage from all buildings, and/or facilities associated with the subject property;

6.3.13 cy: HDLO

Printed on Recycled Paper

2. A complete description (e.g., site plan, as-built drawings) for each dwelling, building, and/or facility which discharges or contributes sewage to subsurface wastewater disposal structures identified in response to Item 1 (above);

3. Copies of any and all plans for replacement wastewater treatment and disposal system(s) which may have been submitted to State of Hawaii, Department of Health ("DOH"), for **all** dwellings, buildings, and/or facilities identified in response to Item 1 (above);

4. Copies of all correspondence with DOH concerning the plans identified in response to item 3 above, including any DOH approvals of such plans; and

5. Copies of any and all correspondence with any engineers, contractors or other entities regarding conversion of LCCs on the subject property, as identified in Item 1 (above).

All submittals made in response to this letter must be accompanied by the following certification, which is to be signed by you or a duly authorized representative appointed by you, in accordance with 40 CFR §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."

Your response to this information request must be submitted by **July, 15, 2013** to the following address:

Mr. Aaron Setran
USEPA, Region 9
Enforcement Division
Water and Pesticides Branch
75 Hawthorne Street
San Francisco, CA 94105

In lieu of submitting the requested response by mail, you may submit your response as portable document files ("pdf"), including the signed certification, via electronic mail, to Mr. Setran at setran.aaron@epa.gov.

Failure to submit the information requested pursuant to Section 1445(a) of the SDWA, 42 U.S.C. § 300j-4(a), and 40 CFR §144.17, may subject you to enforcement action by EPA and may result in significant monetary penalties. Penalties imposed in civil judicial actions under Section 1423(b) of the SDWA, 42 U.S.C. 300h-2(b), as modified by the 2008 Civil Monetary Penalty Inflation Adjustment Rule, can be as much as $37,500 per day per violation. In addition, pursuant to Section 1423(c) of the SDWA, EPA may issue an administrative order assessing a civil penalty of not more than $16,000 for each day of violation, up to a maximum penalty of $177,500. EPA reserves its rights to pursue enforcement action for any past, present, or future violation, including injection without authorization by rule or permit. This letter addresses only federal UIC laws and states no position regarding compliance with other applicable laws.

EPA has promulgated regulations to protect the confidentiality of business information it receives. These regulations are set forth in 40 CFR Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified in 40 CFR § 2.203(b) for part or all of the information requested in this letter. EPA will disclose business information covered by such a claim only to the extent authorized by 40 CFR 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. You may not withhold any information from EPA on the grounds that it is confidential business information.

If you have any questions regarding this letter, please contact Mr. Aaron Setran at (415) 972-3457, or by email at setran.aaron@epa.gov.

Sincerely,

Roberto Rodrigue , Manager
SDWA/FIFRA Enforcement Office
Enforcement Division

cc: Sina Pruder, HDOH, Wastewater Branch, 919 Ala Moana Blvd., Honolulu, HI 96814

Chauncey Hew, HDOH, Safe Drinking Water Branch, 919 Ala Moana Blvd., Honolulu, HI 96814