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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. UIC-09-2018-_____
Kamehameha Schools	)	
Respondent.	)	**CONSENT AGREEMENT AND FINAL ORDER**
Proceedings under Sections 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §§ 300h-2(c).	)	

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. The United States Environmental Protection Agency ("EPA"), Region IX and Trustees of the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools, ("Respondent") (collectively the "Parties") agree to settle this matter and consent to the filing of this Consent Agreement and Final Order ("CA/FO"). The CA/FO commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b).

2. This is a civil administrative action brought by EPA Region IX against Respondent pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §

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300h-2(c), for violations of the SDWA and the Underground Injection Control ("UIC") requirements set forth at 40 C.F.R. Part 144.

3. Complainant is the Director of the Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring and settle this action under the SDWA. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement Division.

4. Respondent is a charitable trust headquartered at 567 South King Street, Honolulu, Hawai'i, 96813.

II. APPLICABLE STATUTES AND REGULATIONS

5. Pursuant to SDWA Sections 1421 to 1429, 42 U.S.C. §§ 300h to 300h-8, EPA has promulgated regulations at 40 C.F.R. Part 144 establishing minimum requirements for UIC programs to prevent underground injection that endangers drinking water sources.

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

7. "Well injection" means the subsurface emplacement of fluids through a well. 40 C.F.R. § 144.3.

8. "Well" means, in relevant part, a dug hole whose depth is greater than the largest surface dimension. 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" ("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

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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 the owner's and operator's State or EPA Regional Office UIC Program 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 those LCCs 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. § 147.601, EPA administers the UIC program in the State of Hawai'i. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart M), and 148.

17. 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 administrative order either assessing a civil penalty of not more than $21,916 per day per violation up to a maximum of $273,945, or requiring compliance, or both, against any person who violates the SDWA or any requirement of an applicable UIC program.

III. ALLEGATIONS

18. Respondent is an association and thus qualifies as 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.

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19. Respondent owns or leases at least 3,000 properties in the state of Hawai'i, at least some of which contain LCCs.

20. Between at least November 2012 and July 26, 2017, Respondent owned at least one LCC as that term is defined at 40 C.F.R. § 144.81(2).

21. The LCC referenced in Paragraph 20 was located at 99-1622 Piimauna Drive, Volcano, HI 96785.

22. Hawaiian International Sporting Club Inc., which leases the Property from Respondent and operates the Property, closed the LCC referenced in Paragraph 20 and replaced it with a septic system that was approved for use by the State of Hawai'i Department of Health ("HDOH") on July 26, 2017.

23. The LCC referenced in Paragraph 20 was not closed by April 5, 2005.

24. Respondent's failure to close the LCC referenced in Paragraph 20 by April 5, 2005 constitutes a violation of 40 C.F.R. §§ 144.84(b)(2) and 144.88.

IV. SETTLEMENT TERMS

A. General Provisions

25. For the purposes of this proceeding, Respondent (1) admits the jurisdictional allegations contained in this CA/FO; (2) neither admits nor denies the specific factual allegations contained in this CA/FO; (3) consents to the assessment of the penalty specified and to the specified compliance obligations contained in this CA/FO; and (4) and waives any right to contest the allegations or to the right to appeal the proposed final order accompanying the consent agreement. 40 C.F.R. § 22.18(b)(2).

26. This CA/FO shall be the entire agreement between the Parties to resolve EPA's civil claims and causes of action alleged under 40 C.F.R. §§ 144.84(b)(2) and 144.88. Full compliance with this CA/FO shall constitute settlement of Respondent's liability for federal civil claims for the SDWA violations identified in Section III of this CA/FO.

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27. 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.

28. Issuance of this CA/FO does not in any manner affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, except with respect to those claims against Respondent described in Paragraph 24 that have been specifically resolved by this CA/FO.

29. 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, except as specifically set forth herein.

30. 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.

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

32. This CA/FO 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 CA/FO is determined to be unenforceable by a competent court or tribunal, the Parties agree that the remaining portions shall remain in full force and effect.

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33. The undersigned representative of each party certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO.

B. Penalty

34. Respondent agrees to the assessment of a civil penalty in the amount of ninety-nine thousand five hundred and thirty-one dollars ($99,531) for the violation of the SDWA at 99-1622 Piimauna Drive, Volcano, HI 96785, alleged in Section III of this CA/FO.

35. Respondent shall pay the assessed penalty no later than thirty (30) days from the Effective Date of this CA/FO.

36. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer, automated clearing house, or online payment. Payment instructions are available at: [HYPERLINK "http://www2.epa.gov/financial/makepayment"]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:

Field Code Changed

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

37. Concurrent with making the payment pursuant to Paragraphs 34 through 36, Respondent must provide a letter with evidence of the payment and the title and docket number of this action, to the EPA Region IX Regional Hearing Clerk, via United States mail, at:

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

Respondent shall also send copies of the letter to the EPA Region IX Enforcement Division Enforcement Officer and the EPA Region IX Office of Regional Counsel attorney pursuant to

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Paragraph 66.

38. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 35.

39. Interest on delinquent penalties will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).

40. A penalty charge will be assessed on all debts more than 90 days delinquent. The penalty charge will be at a rate of 6% per annum and will be assessed monthly. 40 C.F.R. § 13.11(c).

41. In addition, administrative costs for handling and collecting Respondent's overdue debt will be assessed based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b).

42. Failure to pay any civil administrative penalty by the deadline may also lead to any or all of the following actions:

a. The debt being referred to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CA/FO shall not be subject to review.

b. The department or agency to which this matter is referred (e.g., the Department of Justice, the Internal Revenue Service) may assess administrative costs for handling and collecting Respondent's overdue debt in

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addition to EPA's administrative costs.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

43. Respondent shall tender any interest, handling charges, late penalty payments, and stipulated penalties in the same manner as described in Paragraphs 36 and 37.

C. Compliance

44. Respondent shall perform a compliance audit ("Audit") of its properties in the state of Hawai'i to identify and close all identified LCCs.

45. EPA and Respondent agree that violations reported or otherwise disclosed to EPA and corrected under, and in accordance with, this CA/FO and the applicable provisions of EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations ("Audit Policy"), 65 Fed. Reg. 19,618 (Apr. 11, 2000), shall be eligible for 100% mitigation of gravity-based penalties. The parties further agree that this CA/FO is intended to serve the objectives of, and be interpreted in harmony with, the Audit Policy. In the event of an actual or perceived conflict between the terms of this CA/FO and of the Audit Policy, the parties agree that the terms of this CA/FO shall prevail in regard to whether or not the criteria set forth in the Audit Policy have been met.

46. The Audit shall comply with the following requirements:

a. Scope: All Target Properties must be inspected pursuant to Subparagraph d of this Paragraph and an inspection report that addresses each Target Property must be prepared pursuant to Paragraph 47. All LCCs identified shall be closed pursuant to Paragraph 48. The following definitions apply:

i. Target Properties: This includes all properties owned or leased by Respondent in Hawai'i that contain or potentially contain an LCC and are

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not otherwise excluded as Non-Target Properties. All Properties owned and/or operated by Respondent in the state of Hawai'i shall be treated as Target Properties for purposes of this Audit unless Respondent finds sufficient documentation that the property is properly classified as a Non-Target Properties pursuant to Subparagraph a.ii of this Paragraph.

ii. Non-Target Properties: Non-Target Properties include those that (A) are connected to a sewer system; (B) contain an on-site wastewater treatment facility permitted by HDOH; (C) contain an HDOH-permitted Individual Wastewater System ("IWS") that is not a cesspool; (D) are vacant; or (E) are residential properties that contain one or fewer single-family residences or are non-residential properties that have the capacity to serve not more than than 19 persons per day.

iii. Sufficient Documentation: Respondent shall rely on Sufficient Documentation that a particular property is a Non-Target Property and does not otherwise contain an LCC. Sufficient documentation means:

A. For Properties connected to a sewer: written confirmation of the connection from the county or private sewer operator; building plans documenting the connection to a county or private sewer system; or a sewer bill from the past year.

B. For properties that contain an on-site wastewater treatment system: an HDOH permit or written documentation from HDOH of approval to operate the wastewater treatment system.

C. For properties that contain a non-cesspool IWS: an IWS permit from HDOH or written documentation from HDOH showing that the IWS is permitted.

D. For vacant properties: a "Building Value" of zero according to government tax records as of the Effective Date of this CA/FO.

E. For properties that contain one or fewer single-family residences and non-residential properties that have the capacity to serve not more than 19 persons per day: a Tax Map Key code showing that the property contains one or fewer single-family residences, or a certified statement from a representative of Respondent.

iv. Respondent shall submit for EPA's approval a list of Target and Non-Target Properties. Each list must be certified pursuant to Paragraph 68. Target Properties shall be identified by address, Tax Map Key, and land use classification. Non-Target Properties shall be separated into the five categories listed in Paragraph 49.a.ii. EPA will respond within 14 days to notify Respondent if it disapproves of the non-target determination for any property. If EPA disapproves a non-target determination, the property is a Target Property and must be inspected pursuant to Subparagraph d of this Paragraph. Respondent claims all information submitted pursuant to this Subparagraph and Paragraph 49 (except for government-generated documents) as Confidential Business Information (CBI) in accordance with 40 C.F.R. § 2.204 and Section I.I.3 of the Audit Policy, 65 Fed. Reg. 19,624, and EPA agrees to not publicly release such information until such time as a final CBI determination is made in accordance with the procedures set forth at 40 C.F.R. Part 2. At that point, EPA will treat the information consistent with the requirements of 40 C.F.R Part 2. EPA will also treat this information consistent with the protections identified in the Memorandum

from Assistant Administrator Steven A. Herman entitled ''Confidentiality of Information Received Under Agency's Self-Disclosure Policy."

v. Respondent shall, at EPA's request, make available the documentation relied upon. With the exception of information obtained through databases maintained by a government entity, Respondent shall maintain the documentation relied upon until the Audit is complete and at least 3 years after any violations identified have been resolved by formal settlement in accordance with the Audit Policy, 65 Fed. Reg. 19,624 and 19,626. Where Respondent obtains information through databases maintained by a government entity, Respondent shall provide EPA with the name of the database and a certified statement from a representative of Respondent documenting when the information was obtained.

b. Independent Third-Party Auditor

i. Inspection of all Target Properties pursuant to Subparagraph d of this Paragraph shall be conducted by an independent third-party auditor (the "Auditor") who has experience with LCCs. Respondent shall have the Auditor: supervise the preparation of and sign the Inspection Phase Completion Reports as required by Paragraph 47 of this CA/FO; and prepare and sign the Final LCC Closure Reports as required under Paragraph 49 of this CA/FO.

ii. Recordkeeping: Respondent shall include in its written agreement with the Auditor a provision requiring the Auditor to prepare and maintain contemporaneous records when supervising or assisting in the conduct of the Audit. The Auditor's records of the Audit shall be made available to EPA upon request.

iii. Approval of Auditor: No later than thirty (30) calendar days following the Effective Date of this CA/FO, Respondent shall notify EPA in writing of Respondent's choice of the Auditor, and provide a curriculum vitae and list of past cesspool projects performed by the proposed Auditor. At its sole discretion, EPA may approve or disapprove Respondent's choice of the Auditor, but such approval shall not be unreasonably withheld. Within fifteen (15) calendar days of EPA's receipt of Respondent's notice of its choice of an Auditor, EPA will respond in writing to Respondent's nomination. If EPA notifies Respondent that Respondent's choice of an Auditor is unacceptable, Respondent shall have additional thirty (30) calendar days in which to nominate a different Auditor, and to provide the information required by this Paragraph.

c. Inspection Schedule:

i. Inspections will be conducted in three phases: (I) Oahu; (II) Kauai/Maui/Molokai ("KMM"); and (III) the Island of Hawai'i ("Big Island"). The term "Audit" as used herein refers collectively to all three phases. All Target Properties will be subject to the Audit.

ii. For Phase I (Oahu):

A. Within thirty (30) calendar days of the effective date for this CA/FO, Respondent shall submit to EPA a list of Target and Non-Target Properties in Oahu, pursuant to Paragraph 46.a.iv.

B. The Phase I Inspection completion date shall be seventy-four (74) calendar days from submission to EPA of the Target and Non-Target Properties list for Oahu. However, if the number of Target Properties in Oahu is greater than 100, then Respondent may submit

a proposed project schedule for EPA's approval. The proposed project schedule shall be submitted with the list of Target and Non-Target Properties for Oahu.

iii. For Phase II (KMM):

A. Within sixty (60) calendar days of the effective date for this CA/FO, Respondent shall submit to EPA for approval a list of Target and Non-Target Properties for KMM, pursuant to Paragraph 46.a.iv.

B. The Phase II Inspection Completion Date shall be seventy-four calendar (74) days from submission to EPA of the Target and Non-Target Properties list for KMM.

iv. For Phase III (Big Island):

A. Within one hundred and eighty (180) calendar days of the effective date for this CA/FO Respondent shall submit to EPA for approval a list of Target and Non-Target Properties for the Big Island, pursuant to Paragraph 46.a.iv.

B. The Phase III Inspection completion date shall be seventy-four (74) calendar days from submission to EPA of the Target and Non-Target Properties list for the Big Island. However, if the number of Target Properties on the Big Island is greater than 60, then Respondent may submit a proposed project schedule for EPA's approval. The proposed project schedule shall be submitted with the list of Target and Non-Target Properties for the Big Island.

d. Inspection Procedures:

i. In each phase, the Auditor shall inspect supervise the inspection of each of the Target Properties for the presence of an LCC. Each inspection shall

include an on-site visual inspection of the Target Property. Additionally, inspections may include, but are not limited to, a review of property records, permits, water use records, and/or other documentation, and interviews with employees of Respondent, occupants, tenants and/or lessees, as needed to confirm the presence (or absence) and location of an LCC.

ii. All work will be in accordance with accepted standards of professional engineering procedures as practiced by members of the local engineering profession currently practicing in Hawai'i under similar conditions.

47. Inspection Phase Completion Reports:

a. For each phase of inspections, the Auditor shall prepare a separate Inspection Phase Completion Report documenting the findings of the inspections of the Target Properties in that phase. The Inspection Phase Completion Report shall include:

i. A description of how the Audit Procedures were followed in completing that phase of the Audit.

ii. The number of LCCs located on Target Properties as a result of that phase of the Audit, a description of each LCC, and a description of how the LCC was identified and/or confirmed.

iii. For those Target Properties that were determined not to contain an LCC, a description of how it was determined that the property did not contain an LCC and what, if any, other wastewater treatment system is being used.

b. The Phase I Inspection Completion Report shall be submitted within sixty (60) days of the Oahu Inspection completion date.

c. The Phase II Inspection Completion Report shall be submitted within sixty (60) days of the KMM Inspection completion date.

d. The Phase III Inspection Completion Report shall be submitted within sixty (60) days of the Big Island Inspection completion date.

48. LCC Closures and Schedule:

a. With the Inspection Phase Completion Report for each phase, Respondent shall also submit for EPA's approval a plan and schedule for closure of any LCCs identified.

b. LCCs shall be closed as soon as possible considering availability of local contractors and availability of materials. Construction plans for an IWS shall be prepared and submitted to HDOH for approval or Respondent must apply for a sewer connection within thirty (30) days of submission of the Inspection Phase Completion Report for the phase in which the LCC was identified.

c. LCCs shall be closed in accordance with 40 C.F.R. §§ 144.84(b)(2), 144.88(a) and 144.89(a), and all applicable federal, state, and local closure requirements.

49. Final LCC Closure Reports: Within ten (10) days of obtaining HDOH approval of the Backfill Closure Report for each identified LCC, the Auditor shall submit a Final LCC Closure Report briefly describing and documenting completion of the LCC closure steps to EPA that includes, at a minimum, the following:

a. HDOH permit to operate an IWS or approval to connect to sewer;

b. A copy of the approved LCC backfill closure report; and

c. ~~Final receipt of completion of work by contractor performing such work~~Documentation of expenditures to close the LCC.

50. The Audit shall not affect EPA's right to bring a claim or cause of action other than those specified in Section III and Paragraph 26 of this CA/FO, including a claim or cause of

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action for an LCC violation that could have been, but was not, reported and closed as part of the Audit.

51. Respondent shall bear all costs associated with the Audit.

D. Third-Party Landowners and Lessees

52. Any owner or operator of a Class V well, including an LCC, is liable for violation of the SDWA pursuant to 40 CFR 144.81. The Parties anticipate that at least some properties within the scope of the Audit are owned or operated by third parties, including, *e.g.*, lessees.

53. This CA/FO does not alter the rights, obligations, or liabilities of any party other than EPA or Respondent.

E. Transfer of Ownership or Operation of Properties

54. In the event Respondent transfers ownership, title, or control of any real property that it owns or leases as of the Effective Date of this CA/FO prior to the completion of the Audit, Respondent shall determine whether the property is a Target Property as defined in Paragraph 46.a.i.

55. Prior to transfer of ownership, title, or control of any Target Property owned or leased by Respondent, the Auditor must conduct an inspection of the property in accordance with Paragraph 46.d to determine whether the property contains an LCC and must prepare and submit to EPA an inspection report in accordance with Paragraph 47.a.

56. Respondent shall close any LCC on such property in accordance with Paragraph 48 prior to transfer, except where Respondent has provided EPA with a plan and schedule and has obtained written approval from EPA to close the LCC in accordance with Paragraph 48 after the transfer of ownership, title, or control.

F. Stipulated Penalties

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57. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 37 by the deadline specified in Paragraph 38, Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of $250 per day for each day the payment is late.

58. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in Paragraphs 36 and 37, and agrees to pay interest, handling charges and penalties that accrue for late payment of the stipulated penalty in the same manner as set forth in Paragraphs 38 through 43.

59. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent of its obligation to comply with any requirement of this CA/FO or modifies or waives any deadlines set forth in this CA/FO.

60. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties and/or reduce or waive stipulated penalties due under this CA/FO.

G. Force Majeure

61. For purposes of this CA/FO, *force majeure* is defined as any event arising from causes that are beyond the control of Respondent, any entity controlled by Respondent, or Respondent's contractors, which delays or prevents the performance of any obligation under this CA/FO despite Respondent's reasonable best efforts to fulfill the obligation. The requirement that Respondent exercise "reasonable best efforts to fulfill the obligation" includes using reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of *force*

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majeure events include unforeseen environmental, geological, or archaeological conditions; delays caused by necessary government approvals, labor or equipment shortage, and delays caused by third-party tenants or landowners. Examples of events that are not *force majeure* include, but are not limited to, increased costs or expenses of any work to be performed under this CA/FO and normal inclement weather.

62. If any event occurs that causes or is likely to cause delay in the achievement of any requirement or time frame specified in this CA/FO, Respondent shall notify EPA in writing, within ten (10) business days after learning of such event, of the anticipated length and cause of the delay, whether Respondent believes the delay or anticipated delay constitutes a *force majeure* event, as defined in Paragraph 61, the measures Respondent has taken and/or will take to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures and achieve the requirement or meet the time frame. Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not by itself extend the deadline or timeframe for any requirement specified in this CA/FO.

63. If, upon receiving the notice required under Paragraph 62, EPA agrees that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances that constitute a *force majeure* event as defined in Paragraph 61, EPA may grant an extension of time for compliance for a period of time no longer than any delay resulting from the circumstances causing the delay or anticipated delay.

64. Respondent has the burden of demonstrating 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 exercised or is using its best efforts to avoid and mitigate the effects of the delay or anticipated delay, and that Respondent complied with the requirements of this CA/FO.

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65. In the event that EPA does not agree that a delay or anticipated delay in achieving compliance with the requirements of this CA/FO have been or will be caused by a force majeure event, EPA will notify Respondent in writing of EPA's decision and the delay or anticipated delay will not be excused.

G. Notices

66. Unless otherwise specified elsewhere in this CA/FO, all written communications required by this CA/FO shall be addressed as follows:

For EPA:

Jelani Shareem, Enforcement Officer
U.S. Environmental Protection Agency
Region IX - Enforcement Division
75 Hawthorne Street (ENF-3-3)
San Francisco, CA 94105

Kimberly Wells, Attorney Advisor
U.S. Environmental Protection Agency
Region IX – Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)
San Francisco, CA 94105

For Respondent:

Sheryl Nicholson, Assistant General Counsel
Office of the Vice President, Legal Group
Kamehameha Schools
567 South King Street, Suite 310
Honolulu, HI 96813

For each written communication and/or submittal, Respondent shall identify the case name, the case Docket Number, and the paragraph and/or requirement of this CA/FO under which the submission is being made.

67. Respondent shall submit to EPA such additional documents and information as EPA may reasonably request to determine Respondent's compliance with this CA/FO.

68. Respondent shall include the following signed certification made in accordance with 40 C.F.R. § 144.32(b) and (d) with all written communications required by this CA/FO:

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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.

V. EFFECTIVE DATE

69. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to public notice and comment at least 40 days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

70. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the final order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

FOR THE CONSENTING PARTIES:

KAMEHAMEHA SCHOOLS:

_____ Date: _____

Eric Sonnenberg, General Counsel
Office of the Vice President, Legal Group
Kamehameha Schools
567 South King Street, Suite 310
Honolulu, HI 96813

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ Date: _____

Kathleen H. Johnson

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF: Kamehameha Schools Respondent. Proceedings under Sections 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §§ 300h-2(c).	))))))))	DOCKET NO. UIC-09-2018-_____ **CONSENT AGREEMENT AND FINAL ORDER**

FINAL ORDER

The United States Environmental Protection Agency Region IX ("EPA"), and Trustees of the Estate of Bernice Pauahi Bishop, doing business as Kamehameha Schools, ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2018-_____) be entered;

2. Respondent pay an administrative civil penalty of **$99,531** dollars to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement;

3. Respondent comply with all other requirements of the Consent Agreement.

This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of the allegations in the Consent Agreement entered into by the Parties in this proceeding.

_____ Date: _____
[Insert RJO's name]
Regional Judicial Officer, Region IX
U.S. Environmental Protection Agency

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