

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawai'i

December 11, 2015

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: Request for Approval of a Proposed Settlement with the United States Environmental Protection Agency for Safe Drinking Water Act Violations, Large Capacity Cesspools at Waianapanapa State Park, Hana, Maui (TMK: 2-1-3-005:009); and
Request for Delegation of Authority to the Chairperson to Approve and Execute the Final Settlement.

In its letter dated February 17, 2015, the United States Environmental Protection Agency ("EPA"), notified the Department of Land and Natural Resources ("DLNR" or "Department") that it identified six (6) large capacity cesspools ("LCC") at Waianapanapa State Park ("Waianapanapa") in violation of the Drinking Water Act. 42 U.S.C. § 300h; 40 C.F.R. § 144.88. The LCCs had serviced the park's 12 rental cabins, owned and managed by the Division of State Parks, DLNR ("State Parks"), where one (1) LCC received the wastewater from two (2) adjacent cabins. Pursuant to 40 C.F.R. Section 144.81(2), an LCC is defined as a cesspool servicing 20 or more persons a day and/or multiple dwellings. EPA noted that it considers the violation existing from May 2011.

EPA, through its Enforcement Division ("EPA-ENF"), informed DLNR that EPA may issue an administrative penalty of up to \$16,000 a day for each day of violation up to a maximum of \$187,500. EPA-ENF intended to file an administrative complaint on the matter, but did not preclude entering settlement negotiations with DLNR in the form of a Consent Agreement and a Finding of Fact ("CAFO"). Further, EPA-ENF noted that if no agreement could be reached, an administration complaint will be filed and DLNR will file its response, followed by the hearing process of an administrative trial.

In February 2015, the DLNR requested assistance from the Department of the Attorney General (“AG”), to discuss and negotiate a potential settlement, and after several meetings, EPA-ENF agreed to a reduced penalty of \$50,000 and the Department’s proposal to implement supplemental environmental program (“SEP”) projects. In July 2015, DLNR closed the six (6) LCCs and received confirmation from the Department of Health (“DOH”) that the LCCs have been converted into registered seepage pits, thus a form of LCC closure. EPA-ENF acknowledged DLNR’s closure of the LCCs.

In addition to the Waianapanapa compliance settlement in the CAFO, EPA requested to include the closure compliance for two (2) LCCs that serviced the comfort station at Iao Valley State Monument, Maui. The following section will provide more detail.

This request is to approve the proposed settlement and authorize the Chairperson to finalize the agreement and enter into a CAFO with EPA.

Background

In May 2005, EPA and DLNR entered into a Consent Agreement and Finding of Fact pursuant to Docket No. UIC-AO-2005-0003 (“2005 CAFO”). Refer to Exhibit 1. The 2005 CAFO defined the scheduled closure of 60 LCCs servicing 24 State Park facilities and two (2) small boat harbors that are managed by the Division of Boating and Ocean Recreation, DLNR (“DOBOR”). Closure methods proposed in the 2005 CAFO included the installation of an individual wastewater treatment system (“IWS”) comprising of a system using a septic tank for treatment and a leach field or a seepage pit to dispose the treated wastewater. After the IWSs were installed, the closure of the LCCs can follow one of two methods – backfilling the cesspool with aggregate fill and sealing or converting the cesspool into a seepage pit/injection well which is approved and registered with the Underground Injection Control Program, DOH (“UIC”).

One (1) LCC servicing the comfort station at Waianapanapa was included in the 2005 CAFO, whereas, the cesspools servicing the rental cabins were not considered to be LCCs at that time. One of the LCC criterion, multiple dwellings being serviced by one (1) cesspool, was not clearly defined when the 2005 CAFO was negotiated and executed. EPA’s Groundwater Office (“EPA-GW”) was the environmental agency that took the lead in executing the 2005 CAFO and did not raise this issue. During 2005 through 2012, State Parks staff worked with the EPA-GW LCC Coordinator on compliance requirements of the 2005 CAFO.

In April 2011, EPA-ENF staff in assisting EPA-GW, noticed the rental cabin LCCs during a compliance inspection of the LCC servicing the park’s comfort station. EPA-GW staff informed State Parks and available CIP funds were deployed to design and construct compliance actions. During 2012 through 2013, design completion and County and State permitting reviews and

approvals were obtained, including the SMA permit requirements. The LCC closure project was put to bid for construction and a contractor was awarded in April 2014.

The project did not start till April 2015 due to the timing of scheduled occupancy of the cabins. Due to the heavy demand from residents and out-of-state visitors, Waianapanapa allows a one-year advance reservation for the rental cabins. State Parks decided to close all 12 cabins to combine the IWS/LCC closure project with another project that included the complete renovation of the cabins. This complete closure ensured public safety from construction activities, minimized disruptions from cabin closure periods, and optimized construction funding by truncating the construction period. The LCC portion of the project has been completed and all LCCs were formally closed in July 2015, and all other work is expected to be completed in December 2015, unless delays from unanticipated weather and construction issues.

Proposed Settlement

In its letter dated May 2, 2014, EPA-ENF requested information from DLNR to determine compliance with the SDWA and the UIC regulations regarding the LCC violations at Waianapanapa. The request included information on all subsurface wastewater disposal structures, copies of engineering reports and design plans, description of the dwellings being serviced by subsurface disposal systems, and ownership confirmation. Refer to Exhibit 2. In May 23, 2015, DLNR provided its response and submittals per EPA-ENF. Refer to Exhibit 3 (without attachments). In its response, DLNR noted that it was planning to start construction of compliance improvements in January 2015 and complete the LCC closures in October 2015.

EPA-ENF informed DLNR in its letter dated February 17, 2015, that it was planning to start enforcement action on DLNR for its LCC violations at Waianapanapa. Refer to Exhibit 4. DLNR inquired if EPA-ENF received the requested information, explanations and submittals dated May 23, 2015, that clarified compliance action and timeframes. EPA-ENF informed DLNR that it received the info and was not obligated to provide any confirmation response, as their position was that DLNR has been in violation since 2011 and no corrective action was been completed as of February 2015. They offered to discuss settlement options with DLNR's compliance including an administrative penalty of \$187,500 and LCC closures. Through the course of settlement discussions started in February 2015, EPA was willing to reduce the administrative penalty to \$135,000 and consider SEP projects that may further reduce the penalty.

SEP projects are those that a violator voluntarily implements that have environmental beneficial value in relation to the violation. In this case, EPA-ENF was interested in non-LCC cesspool closure projects statewide – these are domestic cesspools servicing our caretaker residences, single dwelling units, and staff facilities such as park baseyards. EPA-ENF clarified that the proposed SEP projects cannot apply to any new LCC closures and that the proposed project costs will not be considered as a 1:1 dollar reduction of the administrative penalty. DLNR proposed six (6) SEP projects to close and replace cesspools in State Park facilities in the Oahu, Maui and Hawaii Districts, which EPA-ENF accepted. Refer to Exhibit 5. EPA has determined that the inclusion of the SEP projects will reduce the administrative penalty to \$50,000.

In negotiating the compliance timeframe for the CAFO, AG staff clarified to EPA-ENF that any State funds used to pay the penalty amount will require approval and appropriation from the 2016 State Legislature, the legal authority to appropriate State funds. Further clarification was provided, that after the Legislature appropriates the funding, the State Administration will determine if the funds will be allotted for this purpose, the legal authority to expend the appropriated funds. Due to the respective appropriation and allotment processes, the funds for payment of the administrative penalty may not be available till June 2016. It appears that upon this understanding and acknowledgement, EPA-ENF will execute final settlement upon the appropriation and allotment of the penalty funding.

In addition to the Waianapapa compliance, EPA-ENF wanted to include the closure schedule for two (2) LCCs that was servicing the comfort station at Iao Valley State Monument, Maui (“Iao”). Iao was included in the 2005 CAFO and compliance measures were to have started in 2007 and completed in May 2009. EPA-GW in its letter dated May 11, 2009, required the closure of the LCCs by May 31, 2009, and if this was not possible, then the comfort station will be required to be closed, thus no sewage should be discharged into the cesspools. Refer to Exhibit 6. DLNR complied and the comfort stations have been closed since 2009. The IWS/LCC project has not been started due to opposition and concerns from community members representing cultural practitioner interests. The issue of contention was that the comfort station at Iao was desecrating the sacred cultural significance of Iao and the IWS/LCC project was seen as further desecrating activities. State Parks staff tried to negotiate a settlement to allow the use of the comfort station but mutual agreement could not be reached. Sanitary needs will be serviced by portable toilets and mobile restrooms. The LCCs are scheduled to close by February 2016, or sooner.

Settlement documents will be drafted and executed including a CAFO for the Waianapanapa LCC violations and Iao closures. Since the Waianapanapa LCCs were closed and confirmed in July 2015 and the Iao LCCs will be closed by March 2016. State Parks confirms it has available funding to implement the respective projects and activities.

RECOMMENDATION:

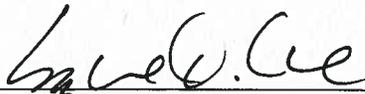
1. Staff recommends the approval of the proposed settlement with EPA comprising of a reduced administrative penalty of \$50,000, implementation of SEP projects, and Iao closure schedule through a CAFO. This would allow the AG to submit an appropriation request to 2016 State Legislature, that may be filed in November 2015.
2. Staff recommends the approval of authorizing the Chairperson to execute the settlement with EPA including any documents that are required including the CAFO. As the final settlement documents may be executed in June 2016, the authorization will allow the Chairperson to act on the DLNR's behalf to complete this compliance agreement.

Respectfully submitted,



CURT A. COTTRELL
State Parks Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson



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

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DEPT. OF LAND & NATURAL RESOURCES STATE

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Peter T. Young
Chairperson
Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Subject: Consent Agreement and Final Order, Docket No. UIC AO-2005-0003

Dear Mr. Young:

Enclosed is a copy of the signed Consent Agreement and Final Order, which addresses the closure of the large capacity cesspools owned and or operated by the State of Hawaii Department of Land and Natural Resources.

I appreciate the efforts you and your staff have devoted to establishing this agreement and developing a plan to achieve compliance with EPA's regulations. Please direct any technical questions to Shannon FitzGerald at (415) 972-3525 and legal questions to Elizabeth LaBlanc, EPA Office of Regional Counsel, at (415) 972-3915.

Sincerely yours,

Alexis Strauss
Alexis Strauss 31 May 2015
Director, Water Division

Enclosures

cc: Jeffrey Kato, Department of the Attorney General

05 JUN 07 PM 11:05 ENGINEERING

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF

**Hawaii Department of Land and
Natural Resources,
Honolulu, HI**

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

DOCKET NO. UIC-AO-2005-0003

CONSENT AGREEMENT

AND 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, the Director of the Water Division, EPA Region IX, hereby issues, and the State of Hawaii, Department of Land and Natural Resources ("Respondent") hereby agrees to the issuance of, this Consent Agreement and Final Order.

II. STIPULATIONS AND FINDINGS

Respondent, through Peter T. Young, Chairperson, Board of Land and Natural Resources, 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 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. Pursuant to 40 C.F.R. § 144.88, existing large capacity cesspools are 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 a 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.

4. 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 Underground Injection Control 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.
5. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), EPA may assess an administrative compliance order to any person who violates any requirement of an applicable Underground Injection Control ("UIC") program. 42 U.S.C. § 300h-2(c)(1).
6. 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).
7. Respondent, State of Hawaii, Department of Land and Natural Resources, is a state agency. 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.
8. Respondent owns and operates 60 large capacity cesspools. The list of large capacity cesspools owned and operated by Respondent appears in Schedule 1, attached hereto and incorporated by reference.
9. Respondent did not close the large capacity cesspools referred to in paragraph 8 by April 5, 2005 as required by 40 C.F.R. § 144.88.
10. Respondent intends to undertake the measures outlined in Schedule 1, attached hereto and incorporated by reference, by the dates specified in order to close the large capacity cesspools referred to in paragraph 8.
11. 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.

III. PROPOSED ORDER

Respondent, State of Hawaii, Department of Land and Natural Resources, and EPA agree to issuance of the following, which, upon issuance of the Final Order, shall become effective:

A. Compliance Requirements

12. Respondent shall close the large capacity cesspools referred to in paragraph 8 in accordance with 40 C.F.R. § 144.89(a) no later than May 31, 2009 and submit an Engineer's Report for those large capacity cesspools by June 30, 2009.
13. Respondent shall submit semi-annual reports, in accordance with paragraph 14 below, beginning January 1, 2006, confirming that the milestones set forth in Schedule 1, attached hereto and incorporated by reference, have been met. The semi-annual reports shall be sent to EPA within thirty (30) days of January 1 and July 1 of each year until all large capacity cesspools listed in Schedule 1 have been closed and the Engineer's Report submitted.
14. Such submittals shall be in writing and shall be sent to:

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

and shall include the following certification signed by a duly authorized representative:

"I certify under penalty of law that this document and all attachments were prepared by direct supervision or 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, I certify that 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."

B. General Provisions

15. 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.

- 16. 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.**
- 17. 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 cesspool referred to in paragraph 8. Such transfer, however, shall have no effect on Respondent's obligation to comply with 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 cesspool referred to in paragraph 8.**
- 18. 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.**
- 19. Respondent consents to the issuance of this CA/FO and the conditions specified herein.**
- 20. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. §300h-2(c)(3) for the violations alleged in the Consent Agreement, to otherwise contest the allegations contained in the Consent Agreement, or to appeal the CA/FO.**
- 21. 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.**
- 22. Issuance of this CA/FO does not in any case affect the right of EPA to pursue civil or criminal remedies and/or sanctions including appropriate injunctive or other equitable relief and/or penalties, for any violations of law.**
- 23. 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.**

24. **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.**
25. **Except as stated in paragraph 24, each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.**
26. **If any event occurs which causes or may cause delays in either: 1) submission of milestone reports or 2) reaching the deadline for closure of the large capacity cesspool[s], as set forth in Part IIIA. 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.**
27. **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.**
28. **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.**
29. **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.

30. All milestone 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
Ground Water Office, WTR-9
Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Such submittals may be faxed to the LCC Project Coordinator at (415) 947-3549. The original must follow by mail, to the address above, within 24 hours of fax transmission.

31. Respondent's closure of the large capacity cesspools listed in Schedule 1 and submission of the Engineer's Report, by the dates set forth in Schedule 1, shall constitute full and complete satisfaction of this CA/FO.

C. Dispute Resolution

32. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this CA/FO.
33. If Respondent disagrees, in whole or in part, with any decision by EPA under this CA/FO, Respondent's Project Coordinator or equivalent shall orally notify EPA's LCC Coordinator of the dispute ("Project Coordinators"). The Project Coordinators shall use their best efforts to informally and in good faith resolve all disputes or difference of opinion relating to this CA/FO. The period for informal negotiations shall not exceed ten (10) business days from the time the dispute arises, unless it is modified by written agreement of the parties.
34. In the event that the Project Coordinators cannot resolve a dispute by informal negotiations under the preceding paragraph, Respondent may pursue the matter by submitting its objection to EPA in writing. Respondent must send its written objections to EPA within seven (7) business days of Respondent's receipt of the EPA's decision referred to in the previous paragraph. Respondent's written objections must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination. If Respondent does not invoke formal dispute resolution within seven (7) business days, EPA's decision shall be binding on

Respondent.

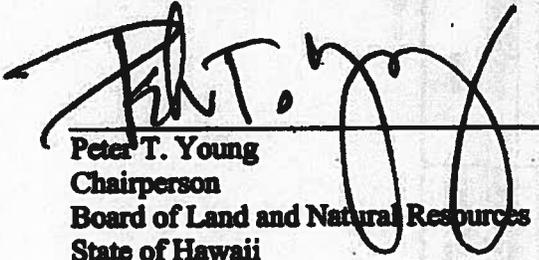
35. **EPA and Respondent shall have ten (10) business days from receipt of Respondent's written objections to attempt to resolve the dispute through formal discussions. During such time, if Respondent so requests, the Associate Director, Water Division, will meet with Respondent in person to discuss the dispute either by telephone or at EPA's offices in San Francisco unless another location is mutually agreed upon.**
36. **Within twenty (20) business days of EPA's receipt of Respondent's written objections, EPA, through its Associate Director, Water Division, will provide to Respondent in writing EPA's decision on the pending dispute.**
37. **If the Respondent disagrees with the written decision, the Respondent may, within ten (10) business days of receipt of the written decision, appeal to the Director, Water Division. Respondent's appeal must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination. Within thirty (30) business days of receipt of the appeal, the Director, Water Division will issue a written decision which shall be the final decision and which EPA and Respondent agree to be bound by and to follow.**
38. **The Parties may, by mutual written agreement, extend any of the time periods provided for in the dispute resolution process.**
39. **EPA and Respondent have agreed to the foregoing dispute resolution procedures solely for the purposes, and based on the unique circumstances, of this CA/FO.**

D. Effective Date

40. The effective date of the CA/FO shall be the date that the Final Order is signed.

FOR THE CONSENTING PARTIES:

For State of Hawaii, Department of Land and Natural Resources



Peter T. Young
Chairperson
Board of Land and Natural Resources
State of Hawaii
P.O Box 621
Honolulu, HI 96809

Date: MAR 21 2005

For the United States Environmental Protection Agency:



Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 6 April 2005

FINAL ORDER

The United States Environmental Protection Agency Region IX ("EPA"), and State of Hawaii, Department of Land and Natural Resources, having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and Proposed Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

- 1. The foregoing Consent Agreement and this Final Order (Docket No.UIC-AO-2005-0003) be entered; and**
- 2. Respondent, State of Hawaii, Department of Land and Natural Resources, shall comply with the requirements set forth in the Consent Agreement and Proposed Order, which shall become final and effective on the date it is signed below.**



Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 31 May 2005



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

Sent via Certified Mail: 7002 3156 0004 3517 3579
Return Receipt Requested

Mr. William J. Aila, Jr., Chairperson
State of Hawaii
Department of Land and Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

MAY 02 2014

Re: Possible Large Capacity Cesspools at Waianapanapa State Park

Dear Mr. Aila:

This letter follows a February 11, 2014, inspection by Aaron Setran of the U.S. Environmental Protection Agency (EPA) Region 9, under the authority of Section 1445(b) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300j-4(b), for possible "Large Capacity Cesspools" (LCCs) at Waianapanapa State Park ("the subject property"). The UIC regulations define LCCs to include residential cesspools serving multiple dwellings, and non-residential cesspools that have the capacity to serve 20 or more persons per day. 40 C.F.R. § 144.81(2). The UIC regulations require that all existing LCCs be closed by April 5, 2005. 40 C.F.R. § 144.88. 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/hicesspools>.

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

1. The total number, location, and types (e.g., cesspool, septic tank, seepage pit) of subsurface wastewater disposal structures (and/or practices) receiving sanitary wastes, containing human excreta, from all buildings, and/or facilities associated with the entire subject property, including, but not limited to, disposal structures connected to the cabin facilities on the subject property;
2. A copy of any engineering or architectural reports, including blueprints, that address any subsurface wastewater disposal structures (and/or practices) on the subject property;
3. A copy of any planning or design documents, including schedules, developed by or for DLNR to close and/or convert subsurface wastewater disposal structures on the subject property. If DLNR has entered into a contract or other agreement with another entity to perform project design or closure work for any subsurface wastewater disposal structures,

or to improve wastewater disposal practices, on the subject property, please provide the contact information for such entity and a copy of such contract or agreement;

4. A complete description (e.g., site plan, as-built drawings) for each dwelling, building, and/or facility which discharges or contributes sanitary waste to each subsurface wastewater disposal structure identified in response to Item 1 (above). Please clearly identify which dwellings, buildings, and/or facilities discharge to which subsurface wastewater disposal structures; and
5. A complete description of the ownership and operation of the subject property. Provide contact information for all owners and operators of the subject property and copies of any and all documents (such as lease or sub-lease agreements, user agreements, licenses, deeds, etc.) which relate to the ownership or operation of the subject property.

If you currently do not possess any or all of the requested information, e.g., the specific type of subsurface wastewater disposal structures used at the property, you are required to obtain this information pursuant to EPA's authority under Section 1445 of the SDWA, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.17.

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 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."

Your response to this information request must be submitted by **May30, 2014** 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 requested information may subject you to enforcement action by EPA and may result in significant monetary penalties, including a civil penalty of up to \$37,500 pursuant to Section 1445(c) of the SDWA, 42 U.S.C. § 300j-4(C). The information provided in response to this letter may be used by EPA in administrative, civil or criminal proceedings.

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. You may not withhold any information from EPA on the grounds 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 Mr. Setran at (415) 972-3457 or setran.aaron@epa.gov with any questions and/or concerns.

Sincerely,



Roberto Rodriguez, Manager
SDWA/FIFRA Enforcement Office

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 23, 2014

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

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

Sent via Certified Mail
Return Receipt Requested

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

Attn: Roberto Rodriguez

Dear Mr. Setran:

Subject: Waianapanapa State Park, Hana, Maui, Hawaii

This is to acknowledge receipt of your letter dated May 2, 2014, informing us of possible large capacity cesspools ("LCCs") at the subject property, and requiring the submittal of various information pursuant to Section 1445 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-4(b), and 40 C.F.R. § 144.17 ("Letter"). The subject park is operated and managed by the Division of State Parks, Department of Land and Natural Resources ("State Parks" and "DLNR" respectively), and the property is owned by the State of Hawaii.

The LCCs at Waianapanapa State Park have been issues that DLNR have discussed with staff from the Groundwater Office, USEPA, Region 9, and with staff from the Wastewater Branch, State Department of Health ("DOH") during 2011-2012. Six (6) LCCs were identified which services the park's 12 rental cabins, where one (1) LCC services two (2) cabins. In December 2011, staff from DLNR and USEPA met to discuss the LCCs that were not included in the Consent Agreement and Final Order, Docket No. UIC AO-2005-003 entered by DLNR with USEPA in May 2005. In January 2012, USEPA provided their response to the issues discussed at the December 2011 meeting, which included concerns of expediting the compliance and closure actions at Waianapanapa State Park, refer to Attachment A1. DLNR, to the best of its knowledge at that time, reiterated its commitment to address the compliance issues to expedite the compliance actions regarding the subject park, refer to Attachments A2 and A3.

For insights as to where we are now with the compliance action, we provide the following updates:

- LCC closure compliance will comprise of the construction of individual water systems ("IWS") to replace the current LCCs; one IWS will serve two (cabins). The IWS will comprise of a 1,500 gallon septic tank treatment unit and a seepage pit disposal unit; the existing cesspool will be converted into a seepage pit. LCC closure compliance will be through the seepage pit conversion. There will be six (6) IWS constructed to serve the 12 rental cabins. DOH approved these designs in 2013.
- All applicable State and County permitting and approvals were received in 2013, including the County of Maui Special Management Area permit for shoreline and coastal projects and DOH approvals of the IWS that will service the cabins. DOH approved these designs on March 11, 2013, refer to Attachment B.

Aaron Setran
Enforcement Division, USEPA
Page 2 of 4

- DLNR will combine the IWS improvements with pre-planned cabin repair/renovations and energy efficiency improvements to minimize the impacts to park and cabin users. The cabin repairs are needed to address significant deterioration of the interior sections of the cabin structures; and recent funding from the State finally allows State Parks to pursue these badly needed improvements. The consolidated project will enable full closure of groups of cabins to allow the contractor to expedite construction activities and ensure public safety by eliminating numerous closures that would generate repetitive traffic and construction impacts in the same area on numerous occasions. Also, full closure of groups of cabins will allow State Parks to accommodate the demand of the rental cabins and allow continuous implementation of improvement activities through the rotation of cabin groups.
- DLNR acknowledges that the proposed timeframes in Attachment A3 have been delayed through permitting, design and funding issues. All permitting and funding issues have been resolved to allow the implementation of LCC closure requirements.
- The solicitation of bids for this project will occur in June 2014. The bid award and execution of the construction is expected to take 4 – 6 months.
- We anticipate construction to start in January 2015 and completed by October 2015.

To address the required information specified in the Letter, we provide the following attachments:

- Attachment A1: copy of USEPA's January 5, 2012 response to DLNR's compliance proposal.
- Attachment A2: copy of USEPA's March 29, 2012 response to DLNR's revised compliance proposal.
- Attachment A3: copy of DLNR's 2011 CA/FO report reiterating efforts to comply with LCC closure compliance
- Attachment B: copy of DOH's approval of the IWS plans for the LCC closures.
- Attachment C: copy of the DOH applications for the six (6) IWS for the LCC closures.
- Attachment D: copy of the design plans for the six (6) IWS servicing the 12 rental cabins, as approved by DOH.
- Attachment E1: aerial layout of the 12 cabins.
- Attachment E2: pictures of Cabin Nos. 1, 2, 3, 4, 8, 9, 10 and 11.
- Attachment F1: copy of Executive Order ("EO") 4183 confirming 105.3 acres of the park area and its set aside for park use.
- Attachment F2: copy of EO 3579 adding 5.0 acres to the park area.

We provide the following responses to the information specified in the Letter:

1. The total number, location, and types (e.g., cesspool, septic tank, seepage pit) of subsurface wastewater disposal structures (and/or practices) receiving sanitary wastes, containing human excreta, from all buildings, and/or facilities associated with the entire subject property, including, but not limited to, disposal structures connected to the cabin facilities of the subject property;

Attachments C and D provide details on the six (6) existing LCCs, their location and the six (6) IWS that will replace and close the LCCs through septic tank treatment and seepage pit conversion of the LCCs.

Attachments E1 and E2 provide a visual orientation and photo reference of location of the cabins that are being serviced by the LCCs and will be serviced by the IWSs.

2. A copy of any engineering or architectural reports, including blueprints, that may address any subsurface wastewater disposal structures (and/or practices) on the subject property;

Attachments C and D provide the profile detail and the design plans of the IWS and the LCC locations respectively.

Attachment C provides the profile information of the existing cesspool and the proposed replacement IWS pursuant to DOH requirements and regulations.

Attachment D provides the design layout of the existing cesspools and the location of the septic tank treatment units and infrastructure.

Aaron Setran
Enforcement Division, USEPA
Page 3 of 4

3. A copy of any planning or design documents, including schedules, developed by or for DLNR to close and/or convert subsurface wastewater disposal structures on the subject property. If DLNR has entered into a contract or other agreement with another entity to perform project design or closure work for any subsurface wastewater disposal structures, or to improve wastewater disposal practices, on the subject property, please provide the contact information for such entity and a copy of such contract or agreement;

Attachment D provides details on the design of the IWS that will replace the existing sewer system comprised of the LCCs. The current project schedule:

- **The solicitation of construction bids and awarding of the construction bid: June 2014.**
 - **The negotiating, processing and execution of the construction contract: by December 2014 (or sooner as circumstance allows).**
 - **The start of construction: January 2015 (or sooner as circumstance allows).**
 - **The completion of construction: October 2015 (or sooner as circumstance allows).**
4. A complete description (e.g., site plan, as-built drawing for each dwelling, building, and/or facility which discharges or contributes sanitary waste to each subsurface wastewater disposal structure identified in response to Item 1, (above). Please clearly identify dwellings, buildings, and/or facilities discharge to which subsurface wastewater disposal structures; and

Attachments D, E1 and E2 provide the plan details, cabin layouts and pictures of the cabin areas.

5. A complete description of the ownership and operation of the subject property. Provide contact information for all owners and operators of the subject property and copies of any and all documents (such as lease or sub-lease agreements, user agreements, licenses, deeds, etc.) which relate to the ownership or operation of the subject property.

The subject property is owned by the State of Hawaii, and is managed by State Parks as a public park area and facility. Waiānapanapa State Park was established in 1968 through the acquisition of land from Hana Ranch by the State of Hawaii. The park was named after Waiānapanapa cave, one of the park's attractions.

In 1978, 105.3 acres were set aside to State Parks under EO 2900 and in 1993, 5.0 acres were added through EO 3579. In 2006, EO 4183 was issued to replace EO 2900 to clarify the park boundaries and acreage and establish this park for public use for perpetuity.

Refer to Attachment F1 which is a copy of EO 4183 signed by Governor Lingle in 2006 and refer to Attachment F2 which is a copy of EO 3579 adding 5.0 acres to Waiānapanapa State Park.

**Contact information for the owner/representative of Waiānapanapa State Parks:
Daniel Quinn, Administrator, Division of State Parks, DLNR
1151 Punchbowl Street, Room 310
Honolulu, Hawaii 96813**

We believe the responses provided above and the attached information provided in this transmittal would be suffice to address the inquires made in the Letter pursuant to Section 1445 of the SDWA, 42 U.S.C. § 300j-4, and 40 C.F.R. § 144.17. Should you have any questions, please contact Russell Kumabe, AICP, at (808) 587-0305.

Aaron Setran
Enforcement Division, USEPA
Page 4 of 4

Pursuant to 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 upon 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 my best 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.

Sincerely yours,



William J. Aila Jr.
Chairperson

Attachments

c: Groundwater Office, USEPA
Wastewater Branch, DOH
State Parks
Engineering





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901VIA CERTIFIED MAIL (7005 2570 0001 6437 1895)

FEB 17 2015

Mr. Carty S. Chang, Chairperson
State of Hawaii
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Re: Safe Drinking Water Act Violation: Large Capacity Cesspools at Waianapanapa State Park
(TMK: 2-1-3-005-009)

Dear Mr. Chang:

The U.S. Environmental Protection Agency (EPA) has identified six (6) large capacity cesspools (LCCs) at Waianapanapa State Park (the Park) in Hana that have not been closed in accordance with the Underground Injection Control (UIC) Program regulations at 40 C.F.R. Part 144 promulgated pursuant to the Safe Drinking Water Act (Act) 42 U.S.C. § 300f *et seq.* The regulations required owners and/or operators of LCCs to close them by April 5, 2005. 40 C.F.R. § 144.88. EPA has determined that the State of Hawaii, Department of Land and Natural Resources (DNLN), as the current owner and/or operator of the six LCCs at the Park, is liable under the SDWA for failing to have closed these LCCs since at least May 2011, when EPA first learned that the Park cabin facilities were serviced by LCCs.

The Act provides that a violator is subject to civil penalties of up to \$37,500 for each violation. 42 U.S.C. § 300h-2(b); 40 C.F.R. § 19.4. Alternatively, pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order requiring compliance and assessing an administrative civil penalty for violations of up to \$16,000 for each day of each violation, up to a maximum penalty of \$187,500, against any person who violates the SDWA or any requirement of an applicable UIC program. Pursuant to its authority under Section 1423(c) of the Act, 42 U.S.C. § 300h-2, EPA Region 9's Enforcement Division is preparing to issue an administrative complaint to Respondents that will seek compliance with the LCC closure requirements for all 6 LCCs and an administrative penalty of up to \$187,500.

Although EPA intends to file an administrative complaint in this matter, that filing does not preclude the Agency from entering into settlement negotiations and thus we extend to you the opportunity to settle this matter. If agreement can be reached, the settlement would be in the form of a consent agreement and final order filed in a proceeding under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c); and our Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. §§ 22.13(b) and 22.18.

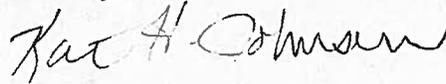
Exhibit 4

State of Hawaii, DNLR
Waianapanapa State Park
Page 2 of 2

If you would like to discuss settlement, please contact Aaron Setran in the Enforcement Division at 415-972-3457 or by email at setran.aaron@epa.gov, or have your legal counsel contact Michael Knapp in our Office of Regional Counsel at (415) 947-4570 or by email at knapp.michael@epa.gov. Settlement provides an opportunity for efficient and expedited resolution of this matter; therefore you or your representatives must contact Mr. Knapp by **March 16, 2015** if you are interested in pursuing settlement. Should you fail to contact EPA by this date or should you not agree to discuss a proposed settlement, EPA Region 9's Enforcement Division will proceed with filing the administrative complaint in this matter.

We appreciate your cooperation and prompt attention to this matter.

Sincerely,



Kathleen H. Johnson, Director
Enforcement Division

cc: Sina Pruder, Hawaii Department of Health, WWB
Norris Uehara, Hawaii Department of Health, SDWB

Exhibit 5

EPA – SEP Proposal – Waiapanapa settlement

Small capacity cesspool closures and replacements for the following State Parks' areas:

Island/District	Park	Facility	IWS needs	Estimated costs
Maui	Waiapanapa SP	Caretaker's residence	Office; 3 bdr; 2 baths; kitchen; outdoor sink Septic tank/leachfield	\$23,000
	Polipoli Springs SRA	Rental cabin	2 bdr; 1 bath; kitchen; outdoor sink Septic tank/leachfield	\$23,000
Oahu	Keaiwa Heiau SRA	Caretaker's residence	3 bdr; 1 bath; kitchen; outdoor sink Septic tank/leachfield	\$23,000
Hawaii	Hapuna Beach SRA	Caretaker's residence – Wailea section	3 bdr; 1 bath; kitchen; Septic tank/leachfield	\$20,700
	Hapuna Beach SRA	Concession building	Commercial kitchen and 1 bath Septic tank/leachfield	\$10,350
	Hapuna Beach SRA	Baseyard building	1 bath; 1 sink Septic tank/leachfield	\$10,350
	Kalopa SRA	Caretaker's residence	3 bdr; 1 bath; kitchen; outdoor sink Septic tank/leachfield	\$20,700
			TOTAL	\$131,100

Estimated cost assumptions: 2 -3 bdr; 1 -2 bath; 1 -2 lavatories; kitchen; 1 -2 sinks = 400 – 600 gallon septic tank with leachfield

Septic tank and leech field (installed) = \$15,000

Remote location logistics = \$2,500

Subtotal = \$17,500

Planning and design (20%) = \$3,500

Remote location site visits and consultation = \$2,500

Total = \$23,500

Adjusted cost assumptions

Baseyard and concession = ½ capacity and ½ estimated costs

10% reduction if project in same park as bidded out – economies of scale

Cost are estimated construction costs and may change when the projects are bidded.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

May 11, 2009

Laura H. Thielen, Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

**Subject: Consent Agreement and Final Order, Docket No. UIC-AO-2005-0003;
Iao Valley State Monument**

Dear Ms. Thielen:

The letter pertains to the two (2) large capacity cesspools (LCCs) at the Iao Valley State Monument which are included in the above referenced Consent Agreement and Final Order (CA/FO). The CA/FO requires the Department of Land and Natural Resources (DLNR) to close/convert 60 LCCs by May 31, 2009 (see enclosure; CA/FO paragraph 12).

EPA Region 9 Underground Injection Control staff inspected the wastewater system at Iao Valley State Monument in Maui on April 24, 2009. One large capacity cesspool (LCC) was observed next to the restroom facility which is about 30 to 40 feet from the Iao Stream. The site was very busy during the inspection and EPA estimates that Iao Valley State Monument could receive as many as 100,000 visitors annually. There is one restroom facility within the site which is served by two LCCs (the one observed next to the restroom, and one reportedly (but not observed) near the park entry/exit road).

In a letter dated August 10, 2007, DLNR requested an extension to the closure deadline for the two (2) LCCs at Iao Valley State Monument citing community objections to the LCC conversion project and concerns about the appropriateness of the Monument's restroom facility in an area that is believed to be a burial site for Maui chiefs. The request noted that a meeting with the concerned community members needed to be scheduled prior to submitting a revised closure schedule. EPA approved the request with the provision that a revised closure schedule be sent via a quarterly report by January 2008. To date, no revised closure schedule has been submitted as required. Therefore, no formal extension has been given to the above-referenced deadline.

EPA recognizes that the two (2) LCCs at this site will not be properly closed and abandoned by the CA/FO closure deadline of May 31, 2009. However, since a revised closure schedule has not been submitted and approved, and the schedule for closure/conversion remains unresolved, EPA is requiring that the restroom facility at Iao

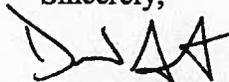
Exhibit 6

Valley State Monument be closed by **May 31, 2009**. This will probably require DLNR to install temporary restroom facilities to accommodate visitors to the Monument, or to direct visitors to the nearby County facility, until a permanent solution is in place. DLNR can decide how to best address this temporary need, as long as the two (2) LCCs at Iao Valley State Monument are taken out of service by May 31, 2009. EPA also requires that DLNR submit a revised closure schedule for permanently closing/converting the LCCs by May 31, 2009. This closure schedule should also identify the steps taken since August 2007.

DLNR will remain out of compliance with the CA/FO requirements and the LCC ban until the two (2) LCCs at Iao Valley State Monument are properly closed. However, if DLNR reduces the threat of groundwater contamination by closing the existing restroom facility, and provides a reasonable schedule for closing/converting the LCCs, EPA will be able to reevaluate DLNR's initial request for an extension.

If you have any questions, please contact me at 415-972-3971 or via email at albright.david@epa.gov, or Ms. Kate Rao, LCC Program Coordinator, at 415-972-3533 or via email at rao.kate@epa.gov.

Sincerely,



David Albright
Manager, Ground Water Office

cc: Russell Kumabe, DLNR

Enclosure