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Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 14-CA-EO-11
STATE OF HAWAII,	)	
	)	41 MW Geothermal Power Plant,
Complainant,	)	Wellfield, and Geothermal
	)	Exploratory/Developmental
vs.	)	Wells, Pahoehoe, Hawaii
	)	
PUNA GEOTHERMAL VENTURE,	)	
	)	
Respondent	)	
	)	

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CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and PUNA GEOTHERMAL VENTURE, ("Respondent") agree to comply with the public notice and comment provisions of Section 342B-55, Hawaii Revised Statutes ("H.R.S.").

The DOH and Respondent agree to sign the proposed Consent Order as written if no comments are submitted during the public comment period or, if after the DOH's review of the comments submitted, the DOH still concludes that the proposed Consent Order is appropriate. If DOH does not so conclude, the DOH and

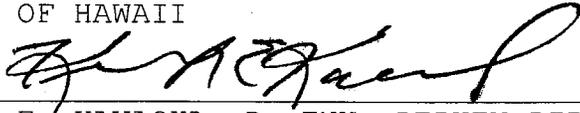
Respondent will use their best efforts to agree on changes to be made. If, after a reasonable time, the DOH determines that such efforts will not result in agreement, the DOH shall set a date and time for a hearing on the issues raised by the Notice of Violation and Order in this matter and shall notify the Respondent of such hearing, pursuant to Chapter 91, H.R.S.

DATED: Honolulu, Hawaii, \_\_\_\_\_

**SEP 17 2015**

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: \_\_\_\_\_

  
KEITH E. KAWAOKA, D. ENV. DEPUTY DIRECTOR  
Environmental Health Administration

DATED: Honolulu, Hawaii, \_\_\_\_\_

PUNA GEOTHERMAL VENTURE

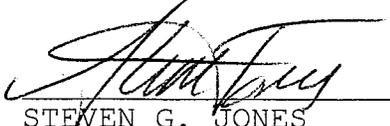
By: \_\_\_\_\_

  
MICHAEL MCVEY  
Plant Manager

APPROVED AS TO FORM:

  
WILLIAM F. COOPER  
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

  
STEVEN G. JONES  
Attorney for Puna Geothermal Venture

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PUNA GEOTHERMAL VENTURE,	)	
	)	
Respondent	)	
	)	

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CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and PUNA GEOTHERMAL VENTURE, ("Respondent") enter into this Consent Order pursuant to Chapter 342B, Hawaii Revised Statutes ("H.R.S."), and Air Pollution Control rules, Chapter 11-60.1, Hawaii Administrative Rules ("H.A.R.").

## 1. STIPULATED FACTS AND FINDINGS

Respondent is a corporation organized and existing under the laws of the State of Hawaii. Respondent owns, operates, manages and controls the Geothermal Facility located at 14-3860 Kapoho-Pahoa Road, Pahoa, Hawaii.

On January 7, 2015, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 14-CA-EO-11, alleging that Respondent violated Noncovered Source Permit ("NSP") No. 0008-02-N, Section 11-60.1-2, H.A.R.; and Section 342B-11, H.R.S.; by violating the following standard and special conditions of NSP No. 0008-02-N:

1. Attachment I, Standard Condition 5 and Attachment IIB, Section C, Special Condition 6: On August 7, 2014, from approximately 7:25 p.m. to 9:18 p.m., a failure of the Pressure Release Valve (PRV) servicing the KS-9 well resulted in accumulated wellhead gas or geothermal fluid being released into the atmosphere without first passing through a hydrogen sulfide abatement system. This unabated release resulted in 39 pounds of H<sub>2</sub>S being released into the atmosphere.
2. Attachment I, Standard Condition 16: Failed to submit a written report for the unabated H<sub>2</sub>S release from the PRV servicing the KS-9 well within five (5) working days of the initial notification. The written report was submitted late on August 28, 2014, nine (9) days after the August 14, 2014, due date.
3. Attachment IIA, Section C, Special Condition 4 and Attachment IIB, Section D, Special Condition D.1: Failed to operate and maintain three (3) meteorological monitoring stations and three (3) ambient air quality monitoring stations for H<sub>2</sub>S from August 7, 2014, to August 14, 2014.

The DOH assessed an initial penalty of \$23,700.00 for the alleged violations of NSP No. 0008-02-N found under the NOVO Docket No. 14-CA-EO-11.

On March 12, 2015, Respondent filed a Response to the NOVO ("Response"), whereby Respondent disputed all of these allegations, supporting its position with the Declaration of Cliff Townsend, the PGV Plant Manager at the time of the alleged violations, and the Declaration of George (Keoki) Wells, PGV's Environmental Health & Safety Coordinator.

On May 1, 2015, the DOH and Respondent met to discuss the violations found under the NOVO, Docket No. 14-CA-EO-11, and the facts and positions brought up by Respondent in its Response. During the meeting, the Respondent presented additional information regarding the violations cited in the NOVO found under Docket No. 14-CA-EO-11.

The DOH and Respondent have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.

Respondent does so without any admission of liability and without admitting the truth of the allegations made in the NOVO.

## 2. EFFECT OF SETTLEMENT

This Consent Order and any actions taken to comply with its terms are not admissions of violation, fault, or liability by

Respondent. This Consent Order settles and resolves all civil liability of Respondent to the DOH for allegedly violating Section 11-60.1-2, H.A.R., Section 342B-11, H.R.S., and all alleged violations of NSP No. 0008-02-N set forth in the NOVO found in Docket No. 14-CA-EO-11.

The effect of this Settlement, and the definitions, obligations, terms, conditions, and/or any and all other aspect(s) of the agreement contained in each and every paragraph of this Consent Order, shall end and shall no longer be binding on either party, once the Consent Order is terminated pursuant to Section 12 of this Consent Order.

### 3. PENALTY

Within sixty (60) days of the effective date of this Consent Order, Respondent shall pay TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00) by cashier's check, made payable to the State of Hawaii, and sent to the manager of the Clean Air Branch at the address set forth in Section 4 of this Consent Order.

### 4. NOTIFICATION

Whenever, under the terms of this Consent Order, notice or payment is required to be given by one party to another, such notice or payment shall be directed to the individuals specified below, at the address given, unless a party gives notice in

writing to the other party that another individual has been designated to receive such communications:

Mr. Nolan S. Hirai, P.E.  
Manager, Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801  
Telephone: (808) 586-4200  
Fax: (808) 586-4359

Mr. Michael McVey  
Plant Manager  
Puna Geothermal Venture  
P.O Box 30  
Pahoa, Hawaii 96778  
Telephone: (808) 965-2847  
Fax: (808) 965-7254

#### 5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent or the DOH against any third parties.

#### 6. AUTHORITY OF SIGNATORIES

Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into the terms of this Consent Order and legally to bind the party which he or she represents.

#### 7. BINDING EFFECT

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, assignees, and

attorneys, until terminated pursuant to Section 12 below. Respondent shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and shall submit a copy of each such notice to the DOH, until the Consent Order is terminated pursuant to Section 12 below.

8. ENTIRE AGREEMENT

This Consent Order sets forth the entire agreement between the parties with respect to this matter.

9. EFFECTIVE DATE

This Consent Order shall become effective as soon as it has been signed by both parties.

10. MODIFICATIONS

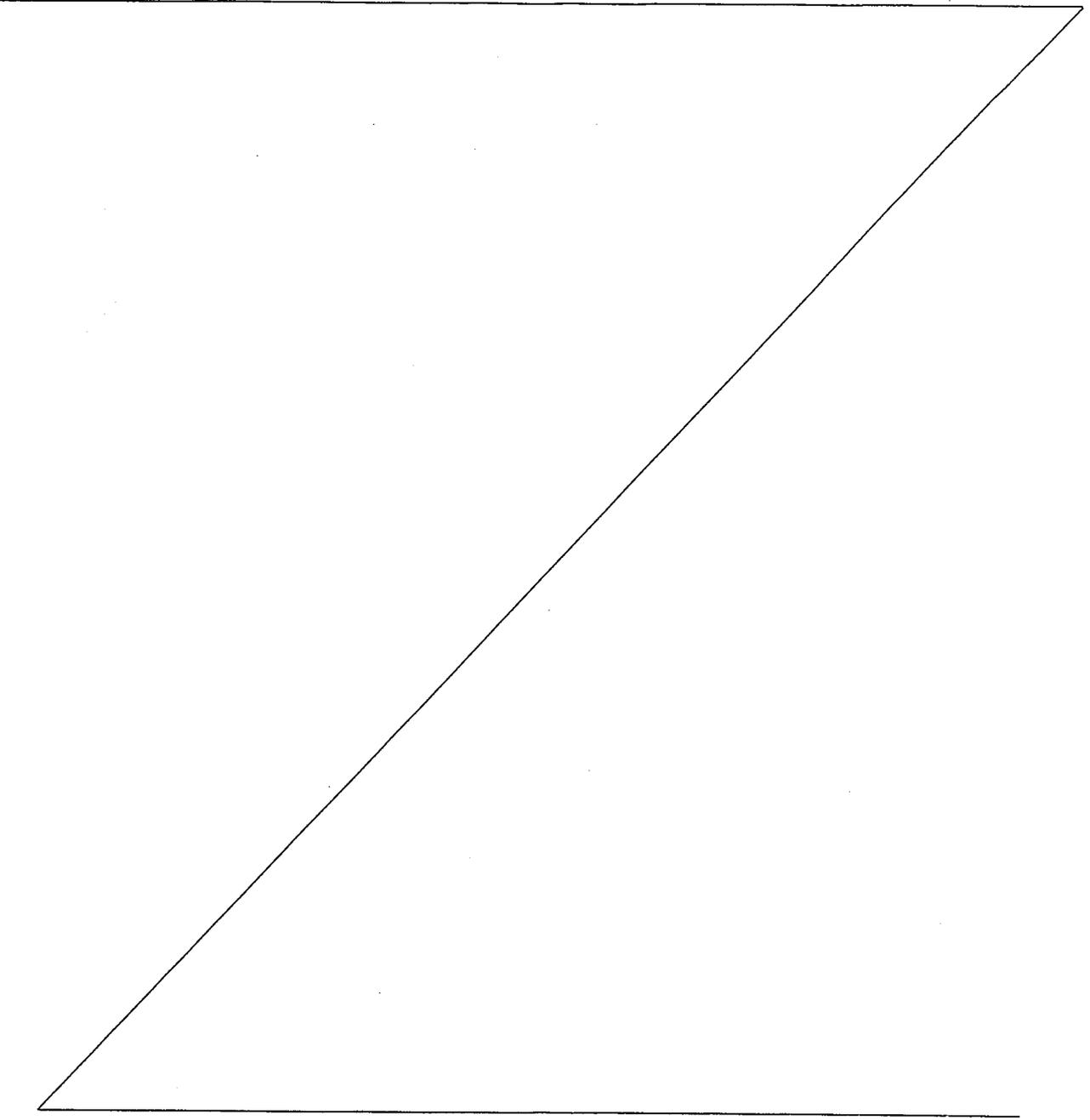
This Consent Order shall not be modified except in writing, signed by both parties.

11. NO TAX BENEFITS

Respondent shall not deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondents claim any tax credits for said penalty amount.

12. TERMINATION

Within thirty (30) days after DOH determines that Section 3 of this Consent Order are satisfied, DOH shall issue a letter to Respondent certifying satisfactory compliance, which shall terminate this Consent Order.



13. COSTS

Each party shall bear its own costs and attorney's fees.

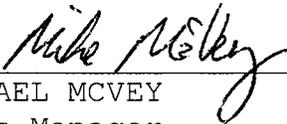
DATED: Honolulu, Hawaii, \_\_\_\_\_

DEPARTMENT OF HEALTH  
STATE OF HAWAII

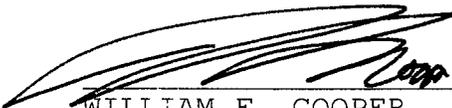
By: \_\_\_\_\_  
KEITH E. KAWAOKA, D. ENV. DEPUTY DIRECTOR  
Environmental Health Administration

DATED: Honolulu, Hawaii, \_\_\_\_\_

PUNA GEOTHERMAL VENTURE

By:  \_\_\_\_\_  
MICHAEL MCVEY  
Plant Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
WILLIAM F. COOPER  
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
STEVEN G. JONES  
Attorney for Puna Geothermal Venture

COPY

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
CLEAN AIR BRANCH  
NOTICE AND FINDING OF VIOLATION

<b>TO:</b>  Puna Geothermal Venture P.O. Box 30 Pahoa, Hawaii 96778  <b>RESPONDENT</b>	<b>NFVO No. 14-CA-EO-11</b> <i>(Please write this NFVO number on all correspondence)</i>  Re: Noncovered Source Permit (NSP) No. 0008-02-N  Property/Facility: 14-3860 Kapoho-Pahoa Road Pahoa, Hawaii
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Under Hawaii Revised Statutes ("HRS"), §342B-11, Hawaii Administrative Rules ("HAR"), and NSP No. 0008-02-N, the Department of Health, Clean Air Branch ("DOH"), issues this Notice and Finding of Violation and Order ("NOVO"). Based on records reviews of excess emissions reports submitted to the DOH by the RESPONDENT, as well as DOH inspections of the facility, the DOH finds the following violations alleged below and the DOH may bring other cases for other violations. This case deals only with the violations alleged below, and the DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

Statutes/Rules	HRS, §342B-11, HAR, §11-60.1-2, and NSP No. 0008-02-N
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Nature of the Violation	1) Attachment I, Standard Condition 5, and Attachment IIB, Section C, Special Condition 6: On August 7, 2014, from approximately 7:25 p.m. to 9:18 p.m., a failure of the Pressure Release Valve (PRV) servicing the KS-9 well resulted in accumulated wellhead gas or geothermal fluid being released into the atmosphere without first passing through a hydrogen sulfide abatement system. This unabated release resulted in 39 pounds of H <sub>2</sub> S being released into the atmosphere. 2) Attachment I, Standard Condition 16: Failed to submit a written report for the unabated H <sub>2</sub> S release from the PRV servicing the KS-9 well within five (5) working days of the initial notification. The written report was submitted late on August 28, 2014, nine (9) days after the August 14, 2014, due date. 3) Attachment IIA, Section C, Special Condition 4 and Attachment IIB, Section D, Special Condition D.1: Failed to operate and maintain three (3) meteorological monitoring stations and three (3) ambient air quality monitoring stations for H <sub>2</sub> S from August 7, 2014, to August 14, 2014.
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The facts of this case and the law justify the following order.

**ORDER**

You are ordered to:

1. Take corrective action within twenty (20) days after the receipt of this Order, to prevent further violations, if RESPONDENT has not already done so.
2. Within twenty (20) days after the receipt of this Order, notify the DOH of the corrective actions taken.
3. Pay an administrative penalty of **TWENTY-THREE THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$23,700.00)** for the above violations. **Within 20 days after the receipt of the NoVO, send a certified check to: Clean Air Branch, State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801. The check should be made payable to the "State of Hawaii" and include the NFVO reference number stated above.**

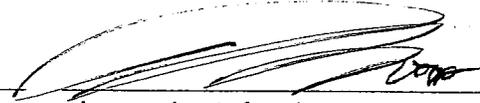
This NOVO becomes final and enforceable, and the penalty becomes due and payable 20 days after your receipt of this NOVO unless before the 20 days expire, you submit a **written** request for a hearing to the Hearings Officer, Department of Health, 1250 Punchbowl Street, Third Floor, Honolulu, Hawaii 96813 and to the Clean Air Branch, State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801. In the request, include a copy of the NOVO. At a hearing, you may seek to avoid any penalty, and the DOH may seek the maximum penalty of Ten Thousand Dollars (\$10,000) per day, per violation of open burning control rules and Twenty-Five Thousand Dollars (\$25,000) per day, per violation of rules other than vehicular smoke emission control and open burning control rules. Parties may present evidence and witnesses on their behalf, and may examine and cross-examine all witnesses and evidence presented by the DOH. Parties may be represented by lawyers at their own expense, or they may represent themselves. Any hearing will follow HRS, Chapters 91 and 342B, and the DOH Rules of Practice and Procedure. After a hearing, the Director of Health or her appointee will decide the actual administrative penalty, which may be more or less than the penalty in this Order, or no penalty at all. If you have questions, please call Ms. Jill Stensrud, Supervisor of the Compliance and Enforcement Section, Clean Air Branch, at (808) 586-4200.

If you have special needs due to a disability that will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference date.



GARY GILL  
Deputy Director  
for Environmental Health

JAN - 7 2015  
Date



Approved as to form by:  
William F. Cooper  
Deputy Attorney General

