STATE OF HAWAII
DEPARTMENT OF HEALTH

COPY

SETTLEMENT AGREEMENT

NFVO Docket No. 2012-CW-EO-03
DOH vs. Hawaiian Cement

The Department of Health (DOH) issued the attached Notice and Finding of Violation and Order (NFVO). The DOH seeks compliance with Hawaii Revised Statutes (HRS) chapter 342D, and Hawaii Administrative Rules (HAR) chapters 11-54 (Water Quality Standards) and 11-55 (Water Pollution Control), and the DOH and the Respondent signing below desire to settle their dispute without the risks and costs of a contested case hearing, adverse findings and conclusions, or a final order or judgment after litigation. DOH and the Respondent agree that:

1. Each undersigned representative of a party to this Settlement Agreement (Agreement) certifies that he or she has full authority to enter into the terms of this Agreement and legally bind the party that he or she represents.
2. Respondent does not admit but does not contest the violations alleged in the NFVO.
3. DOH shall specify a notice of public comment period and the Respondent shall pay for its publication.
4 Respondent shall sign this Settlement Agreement and return it to DOH's counsel before the end of the public comment period.
5. The DOH has the right, in its sole discretion, to withdraw from this Settlement Agreement if comments received during the public comment period persuade the DOH that this Settlement Agreement is inappropriate, improper or inadequate. Within 10 days after the public comment period, the DOH shall notify Respondent if DOH withdraws from this Settlement Agreement.
6. This Settlement Agreement is effective when all parties have signed it. By signing, Respondent agrees to withdraw its appeal with prejudice.
7. If DOH does not withdraw from this Settlement Agreement, Respondent shall pay a penalty of $100,000 within 20 days after the end of the public comment period.
8. Respondent shall send checks to 919 Ala Moana Blvd., Room 301, Honolulu, HI 96814. Checks should be made payable to "State of Hawaii" and include the NFVO number, above.
9. No later than January 4, 2013, Respondent must submit for comment a Corrective Action Plan (CAP) to the DOH-CWB. The CAP must include all behavioral or structural changes made at the Hawaii Cement Halawa Facility (Facility) which will be implemented to bring the Facility into compliance with the issued National Pollutant Discharge Elimination System (NPDES) permit, Permit No. HI 0000558. The CAP is to include a Schedule of Compliance with definitive performance milestones and a final compliance date. Upon final approval by the DOH-CWB, Respondent is to begin implementation the CAP within 30 calendar days.
10. While this Settlement is in effect, the following interim effluent limits are in effect:

Parameter	Discharge Limitation	Units	Monitoring Frequency	Sample Type
Total Suspended Solids	96	mg/l	Once/ Discharge	Grab[1]
pH	6.0-9.0	Standard Units	Once/ Discharge	Grab[1]

[1] A grab sample means an individual sample collected at a ramdomly-selected time over a period not exceeding 15 minutes.

11. With the exception of the interim Discharge Limits above, all conditions, effluent limits and/or provisions of NPDES permit, Permit No. HI 0000558 are in full effect. Exceedance of the above listed interim effluent limits or any other effluent limit and non-compliance with any other provision of the issued NPDES permit is prohibited.
12. Except as provided in Paragraph 10, none of the requirements of this Settlement Agreement are intended to relieve Respondent from its obligation to comply with all applicable State, Federal, and local statutes, rules, ordinances orders and permit conditions.
13. This Settlement Agreement terminates upon determination by the DOH and written notification to Respondent that it has fully complied with its requirements of this Settlement Agreement or on January 1, 2014, whichever is sooner. When this Settlement Agreement terminates, NPDES permit, HI 0000558 will be in full effect including all permit effluent limits, provisions and requirements. No interim limits listed in Paragraph 10 of this Settlement Agreement will be in effect upon termination.
14. This Settlement Agreement may be signed in one or more separate counterparts, each of which shall be deemed an original, but all of which when taken together constitute but one and the same Settlement Agreement. The counterparts may be made into one document by omitting duplicate pages. Fax signatures shall be treated as originals.
15. This Settlement Agreement does not limit or affect the rights of Respondent or DOH against any third parties.
16. The parties to this Settlement Agreement release each other from any and all claims, actions and civil and administrative proceedings (collectively referred to as "Claims") of any nature, known or unknown, arising from and/or relating to the NFVO including the allegations therein and agree that this Settlement Agreement bars any and all such Claims.

RESPONDENT
HAWAIIAN CEMENT

By:_____
(print name & title)

Date: _____.

DEPARTMENT OF HEALTH
STATE OF HAWAII

APPROVED AS TO FORM:

Deputy Attorney General

_____
GARY GILL
Deputy Director for Environmental Health
Date: _____