

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
EMD / CWB

0xxxxEMK.09

August X, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
XXXXXXXXXXXX

Mr. Ima Polluter
President
At-Large Construction, Inc.
1320 Pilau Way
Honolulu, HI 96822

Dear Mr. Polluter:

**Subject: NOTICE OF APPARENT VIOLATION (NAV)
National Pollutant Discharge Elimination System (NPDES)
New Development Construction Site
Kapolei, Hawaii
File No. HI R10D1070**

You are hereby notified of apparent violations of the Hawaii Revised Statutes (HRS), §342D-50(a), which states that “no person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except as in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.”

The HRS, §342D-1, defines “Water pollutant” to include “dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.”

The HRS, §342D-1, defines “State waters” to include “all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground water, and lakes.”

The Hawaii Administrative Rules (HAR), §11-54-4(a)(3), provides in part that “[a]ll waters shall be free of substances attributable to domestic, industrial, or other controllable sources of

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pollutants, including [s]ubstances in amounts sufficient to produce...objectionable color, turbidity or other conditions in the receiving waters.”

VIOLATION:

On January 7, 2010, the Department of Health (DOH), Clean Water Branch (CWB), conducted an inspection of the New Development construction site (Site) located at Kapolei, Hawaii. Based on observations from the inspection, it appears the Site is in non-compliance with the issued Notice of General Permit Coverage (NGPC), File No. HI R10D1070. Details regarding the areas of non-compliance with the issued NPDES permit are included in the enclosed Investigation Report, Report ID# PA1234.

Non-compliance with issued NPDES permit, including discharging polluted storm water, failing to implement Best Management Practices (BMPs) detailed in the Site's Storm Water Pollution Control Plan, or failing to maintain an adequate Site Specific Storm Water Pollution Control Plan are violations of Hawaii Water Pollution rules and regulations. Individuals responsible for violations, as well as the company responsible for violations, may both be held responsible. Please be aware that violations of Hawaii Water Pollution rules and regulations may elicit administrative, civil, and/or criminal penalties against any/all responsible persons.

At this time, the DOH-CWB requires that At-Large Construction, Inc., or a contractor under its direction, make corrective actions such that the Site comes into full compliance with the issued NGPC. Corrective actions are to include implementing and maintaining BMPs to prevent the discharge of polluted storm water from the Site to State waters. Further, corrective actions are to include conducting employee storm water NGPC compliance training, maintaining all required submittals at the Site as required by the issued NGPC and revising the Site's Site Specific Storm Water Pollution Control Plan to adequately address all potential polluted discharges from the Site.

Within 20 calendar days of the date of this letter, please submit a report detailing all corrective actions taken or planned as a result of this NAV. The report must include the specific corrective actions implemented or planned as well as any necessary updates to the Site's storm water BMP plan. In your report, please include the reference number located on the upper right hand corner of the first page of this notice.

The HRS, §342D-30, provides for penalties of up to \$25,000 per day for each violation. The DOH-CWB reserves its right to seek penalties for all violations, including those described above or failure to respond adequately to this notice.

Please submit all requested information within 20 calendar days of this notice to:

Clean Water Branch
Department of Health
919 Ala Moana Boulevard, Room 301

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Honolulu, HI 96814-4920
Telephone: 808-586-4309
Fax: 808-586-4352

Should you have any questions, please contact Mr. Matthew Kurano, Enforcement Section, CWB, at 808-586-4309.

Sincerely,

ALEC WONG, P.E., CHIEF
Clean Water Branch

Enclosure: Investigation report, ID# PA1234

MK:

c: Mr. Edward G. Bohlen, Deputy Attorney General, Department of the
Attorney General (w/o enclosure)

**STATE OF HAWAII
DEPARTMENT OF HEALTH
NOTICE AND FINDING OF VIOLATION**

<p>TO: NPDES Permit Holder, LLC 1234 Honolulu Way Honolulu, Hawaii 96822</p> <p>Respondent</p> <p>Attn: Mr./Ms. President</p>	<p>NFVO No. 2010-CW-EO-X <i>Please write this NFVO number on all correspondence</i></p> <p>Re: Violation of Hawaii Water Pollution Rules and Regulations</p> <p>Property/Facility: Construction Site Commercial Building Honolulu, Hawaii</p>
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The Department of Health (DOH) issues this Notice and Finding of Violation Order (NFVO) under Hawaii Revised Statutes (HRS), Chapters 91 and 342D, and Hawaii Administrative Rules (HAR), Chapter 11-55, based on an inspection conducted on March 24, 2009, and the report attached as Exhibit A. This case deals only with violations alleged below, and DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

Statutes/Rules	Nature of the Violation
HRS, §342D-50(a)	On January 1, 2010, NPDES Permit Holder, LLC violated Hawaii Water Pollution laws by discharging polluted storm water from a commercial building to a State water on Downda Street. The quantity of polluted storm water discharged is estimated at less than 10,000 gallons. The discharge was allowed to continue without the implementation of Best Management Practices.

The facts of this case and the law justify the following order.

ORDER

You are ordered to:

1. Report in detail within 20 calendar days after the receipt of this NFVO the steps that were taken to stop and prevent future polluted discharges from entering into State Waters.
2. Pay an administrative penalty of \$10,000.00 for the violation. Within 20 calendar days after the receipt of this NFVO, send a certified check to: Clean Water Branch, Department of Health, 919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii, 96814. The check should be made payable to "State of Hawaii" and include the NFVO reference number above.

The provisions of this Notice and Finding of Violation and Order (NFVO) shall become final unless, within 20 calendar days after receipt, you submit a **written** request for a hearing, along with a copy of the NFVO, without exhibit(s), to:

Hearing Officer
c/o Director of Health
1250 Punchbowl St., Third Floor
Honolulu, Hawaii 96813

You may file the hearing request in person at the Director's office listed above, during regular business hours, or may mail the same to the above address within the allotted time. **Failure to timely file the hearing request and related documents may result in a denial of your hearing request.**

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and you will be notified of the date, time and place of the pre-hearing conference.

The hearing will be conducted in accordance with Chapter 91 of the Hawaii Revised Statutes and Title 11, Chapter 1 of the Hawaii Administrative Rules.

At the hearing, the parties may present relevant evidence and argument on the issues raised by this case. The parties may also examine and cross-examine witnesses and present exhibits. The parties may seek to avoid any penalty, and DOH may seek the maximum penalty of Twenty-five Thousand Dollars (\$25,000) per day, per violation, although the actual penalty amount may be lower, or none.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/her own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, or trust, or association may represent the corporation, trust or association.

After such hearing, the Order shall be affirmed, modified or rescinded by the Director or Hearings Officer.

All inquires regarding this matter, besides the request for hearing, shall be directed to: Mr. Michael Tsuji, Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

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.

_____ Date: _____
LAURENCE K. LAU Approved As To Form By:
Deputy Director for Mr. Edward G. Bohlen
Environmental Heath Deputy Attorney General

**STATE OF HAWAII
DEPARTMENT OF HEALTH
CLEAN WATER BRANCH**

TO: Mr./Ms. John or Jane Polluter President <p style="text-align: center;">Respondent(s)</p>	DOCKET NO.: 2010-CW-EO-Sample Date: November 19, 2009
ADDRESS: Notnokaoui LLC 55-555 Clean Water Drive Honolulu, Hawaii 96719	FIELD CITATION; NOTICE AND FINDING OF VIOLATION; ORDER; EXPEDITED SETTLEMENT

FIELD CITATION

A. NOTICE AND FINDING OF VIOLATION

The State of Hawaii, Department of Health (DOH), finds that the Respondent(s) violated Hawaii Revised Statutes (HRS) chapter 342D, Water Pollution, and the following sections of Hawaii Administrative Rules (HAR) chapter 11-55, Water Pollution Control,

on (date): December 25, 2009

at (address): Big Bucks Subdivision

41-550 Downda Street

Honolulu, Hawaii 96724

as follows:

- 1. Caused or allowed a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under a National Pollutant Discharge Elimination System (NPDES) Individual permit or Notice of General Permit Coverage (NGPC) or conditional "no exposure" exclusion. HAR 11-55-40(1)(A)(i).
 FACTS: Discharged polluted storm water from construction activities.
- 2a. Began construction activity which involves the disturbance of one acre or more of total land area and has not obtained coverage under an NPDES Individual permit or NGPC. HAR 11-55-40(1)(A)(ii).
 FACTS:
- 2b. Began construction activity which involves the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale where the larger common plan will ultimately disturb one acre or more of total land area, and has not obtained coverage under an NPDES Individual permit or NGPC. HAR 11-55-40(1)(A)(ii).
 FACTS:
- 3. Failed to correctly install, implement, maintain, or repair site best management practices as called for in the applicable storm water pollution control plan or best management practices plan or other plan. HAR 11-55-40(1)(A)(iii).
 FACTS: Respondent failed to maintain Best Management Practices such as silt fence and concrete washout containment as detailed in the applicable storm water pollution control plan.

4. On-site or at a nearby office or field office, failed to retain a copy of the NPDES permit application or notice of intent or "no exposure" certification; storm water pollution control plan or best management practices plan or other plan, and all subsequent revisions; Individual permit or NGPC or conditional "no exposure" exclusion .
FACTS: No storm water pollution control plan was available onsite at the time of inspection.
5. ADDED FACTS:
6. A copy of the Investigation Report for this case is enclosed. If there are any questions regarding the enclosed Investigation Report or Field Citation, contact Mr. Michael Tsuji, Supervisor of the Enforcement Section, Clean Water Branch, Department of Health, at (808) 586-4309.

B. ORDER

Under HAR chapter 342D and HAR chapter 11-55, you are ordered to:

1. Cease the Discharge(s) immediately or within ___ days; and
2. Pay the following penalty(ies) for the violation(s):
 - a. For violation of HAR 11-55-40(1)(A)(i) (Box 1 above):
 \$500.00 for a first violation, \$1,000.00 for a second violation.
 - b. For violation of HAR 11-55-40(1)(A)(ii) (Box 2a or 2b above):
 \$500.00 for a first violation, \$1,000.00 for a second violation.
 - c. For violation of HAR 11-55-40(1)(A)(iii) (Box 3 above):
 \$500.00 for a first violation, \$1,000.00 for a second violation.
 - d. For violation of HAR 11-55-40(1)(A)(iv) (Box 4 above):
 \$100.00 for a first violation, \$200.00 for a second violation.

C. EXPEDITED SETTLEMENT

This field citation, including the Notice and Finding of Violation and Order, is not a court proceeding or an administrative contested case hearing under HRS Chapter 91, but it is an offer to settle this administrative case quickly. You may settle this case quickly by accepting this field citation as follows:

1. Signing and dating this citation on the lines below;
2. Correcting the violation within 20 calendar days of receipt.
3. Paying the full amount assessed by this citation. Payment shall be by cashier's check or money order made payable to the "State of Hawaii" within 20 calendar days; and
4. Mailing or delivering the signed citation and full payment to the Clean Water Branch, 919 Ala Moana Blvd., Room 301, Honolulu, Hawaii,

96814. The DOH must receive this signed citation and full payment within 20 days after you receive this citation.

D. By signing this field citation, you agree to:

1. Give up your right to contest the finding of violation, order, or penalty in a contested case administrative hearing under HRS chapters 342D and 91, or in court;
2. Correct the Violation(s) [] immediately or [] within 20 days of receipt;
3. Comply with all Water Pollution rules and regulations;
4. Pay the \$1100.00 penalty assessed above; and
5. By January 20, 2009 submit to the DOH a letter explaining what has been done to comply with the above order.

E. This citation offers to settle a case for (a) specific violation(s) at a specific place on a specific day. If you do not accept this citation in compliance with part C, then:

1. This field citation is withdrawn;
2. The DOH has the right to file another case against the violation(s), and to proceed against other violations, and to order higher civil or administrative penalties of up to \$25,000 for each day of each violation, and seek other remedies;
3. You will have a right to contest any case the DOH files instead of this citation, including contesting the violation(s) and any penalties and other remedies, in a contested case administrative hearing under HRS chapters 342D and 91, or in court.

ALEC WONG, P.E., CHIEF
Clean Water Branch

Date: _____

I ACCEPT the SETTLEMENT IN THIS FIELD CITATION:

Signature

Date: _____

Print Name: _____

MK/

**CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED**

c: Mr. Edward Bohlen, Deputy Attorney General


State of Hawaii, Department of Health, Clean Water Branch
CWB-NOC FORM
**Notice of Cessation for Hawaii Administrative Rules, Chapter 11-55,
National Pollutant Discharge Elimination System (NPDES)
Individual Permit and Notice of General Permit Coverage (NGPC)**

Before completing this form, read the *Guidelines for CWB-NOC Form* on the back of this form. Alteration of the text in this form may delay the process of this submittal.

Submission of this Notice of Cessation constitutes that the party in Item 2 of this form is no longer authorized to discharge from the facility or site listed in Item 3 of this form under the NPDES program. ALL INFORMATION MUST BE PROVIDED ON THIS FORM.

1. NPDES Individual Permit or NGPC Information

 Permit/File Number: HI R10Z999 Date Discharge and/or Activity ceased: Aug 1, 2012

This portion is for a multi-phase permit/NGPC. See Item I.C. on the back of this form.
 Terminate Phase? Yes No Terminate NGPC? Yes No

2. Permittee Information

 Legal Name: State of Hawaii, DOH, EMD, Clean Water Branch

 Mailing Address: P.O. Box 3378

 City, State and Zip Code+4: Honolulu, Hawaii 96801-3378

 Street Address: 919 Ala Moana Blvd., Room 301

 City, State and Zip Code+4: Honolulu, Hawaii 96814-4920

 Contact Person & Title: Apoha O`opu, Fish Chief

3. Facility/Site Information

 Legal Name: Apoha Aquarium

 Phase description, as applicable: Phase 1 - Excavation for Aquarium

4. Certification

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.

 Signature: _____ Date: Aug 6, 2012

 Printed Name & Title: Chiyome Leinaala Fukino, Director of Health

 Phone No.: (808) 586-4410

 Fax No.: (808) 586-4444

Guidelines for CWB-NOC Form

I. NPDES Individual Permit or NGPC Information

- A. Enter the existing NPDES Individual Permit Number or NGPC File Number assigned to the facility or site identified in Item 3. If you do not know the NPDES Individual Permit Number or NGPC number, contact the CWB.
- B. Fill in the date that the discharge and/or activity ceased.
- C. For a phased project - If construction activity or discharges on a phase of the project has ceased and other phases are on-going, indicate that this NOC is submitted to terminate a phase of the NGPC so that the other on-going phases are not affected by this NOC. If this is the last phase of a project, please indicate that this NOC is submitted to terminate the NGPC.

II. Permittee Information

The Permittee is the person, facility, or organization to whom the NPDES Individual Permit or NGPC was addressed. The CWB may send an acknowledgment of receipt of the NOC to the mailing address provided in this item. Include the contact person information.

III. Facility/Site Location Information

Enter the facility's or site's official or legal name as provided in the Notice of Intent or Individual Permit application. Include the phase description (i.e., Kapiolani Boulevard Improvements - Phase 1a, Kapakahi Subdivision - Phase B2, or Kolohe Development - Infrastructure Phase) of the completed portion of the construction activity.

IV. Certification

Only the Permittee listed in Item 2 shall submit and sign this CWB-NOC Form. This person must also meet one of the following descriptions. The contractor, consultant, and/or duly authorized representative is not authorized to submit or sign this form.

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or proprietor, respectively;

For a municipal, State, Federal, or other public agency: by either a principal executive officer or ranking elected official;

For a trust: by a trustee