DOUGLAS S. CHIN 6465
Attorney General of Hawaii

HEIDI M. RIAN 3473
WILLIAM F. COOPER 4501
Deputy Attorneys General
465 South King Street, Room 200
Honolulu, Hawaii 96813
Telephone: 587-3050

Attorneys for Complainant

16-154C&E CAB

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF HAWAII,	)	DOCKET NO. 14-CA-EO-16
Complainant,	)	IN-VESSEL BIOCONVERSION FACILITY, SAND ISLAND WASTEWATER TREATMENT PLANT
vs.	)	
CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENVIRONMENTAL SERVICES	)	
Respondent	)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and the CITY AND COUNTY OF HONOLULU ("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 and Finding 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, 3-28-10

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: _____
KEITH E. KAWAOKA, D. ENV.
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, _____

CITY AND COUNTY OF HONOLULU

By: _____
LORI M.K. KAHIKINA, P.E.
Director, Department of Environmental Services

DATED: Honolulu, Hawaii, _____

SYNAGRO-WWT, INC.

By: _____
ALAN SLEPIAN
General Counsel

APPROVED AS TO FORM:

_____
WILLIAM F. COOPER
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

_____
JEFF A. LAU
Department of Corporation Counsel
City and County of Honolulu

_____
TIMOTHY H. IRONS
Attorney for Synagro-WWT, Inc.

DOUGLAS S. CHIN 6465
Attorney General of Hawaii

HEIDI M. RIAN 3473
WILLIAM F. COOPER 4501
Deputy Attorneys General
465 South King Street, Room 200
Honolulu, Hawaii 96813
Telephone: 587-3050

Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF HAWAII,	)	DOCKET NO. 14-CA-EO-16
Complainant,	)	IN-VESSEL BIOCONVERSION FACILITY, SAND ISLAND WASTEWATER TREATMENT PLANT
vs.	)	
CITY AND COUNTY OF HONOLULU, DEPARTMENT OF ENVIRONMENTAL SERVICES	)	
Respondent	)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and the CITY AND COUNTY OF HONOLULU, ("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 government agency organized and existing under the laws of the State of Hawaii. Respondent owns the In-

Vessel Bioconversion Facility located at the Sand Island Wastewater Treatment Plant, 1350 Sand Island Parkway, Honolulu, Hawaii, 96819 ("Facility"). Synagro—WWT, Inc. ("Synagro") is contracted by the Respondent to manage and operate the Facility.

On October 6, 2015, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 14-CA-EO-16, alleging that Respondent violated the following requirements of Covered Source Permit ("CSP") No. 0216-06-C, Section 11-60.1-2, H.A.R., Section 11-60.1-52, H.A.R.; and Section 342B-11, H.R.S.:

1. CSP No. 0216-06-C, Attachment I, Standard Condition 6 and Attachment II, Section C, Special Condition 2: Failed to operate the waste gas burners as required on December 11, 2013, August 19, 2014, and August 21, 2014.

2. CSP No. 0216-06-C, Attachment I, Standard Condition 6 and Attachment II, Section C, Special Condition 3: Failed to operate the pilot light servicing the waste gas burners as required on October 31, 2013.

3. CSP No. 0216-06-C, Attachment II, Section D, Special Condition 4: Failed to conduct monthly visible emissions observations for each equipment subject to opacity limitations by a certified reader in accordance with U.S. Environmental Protection Agency (EPA) Method 9 or EPA approved equivalent methods for eleven (11) months, from September 2013 to July 2014.

4. HAR §11-60.1-52: Caused, permitted or maintained the open burning of processed waste material being collected in a roll-off container on December 23, 2013.

The DOH assessed an initial penalty of $17,400.00 for the alleged violations of CSP No. 0216-06-C and Section 11-60.1-52, H.A.R., found under the NOVO Docket No. 14-CA-EO-16.

On October 15, 2015, the DOH, Respondent, and Synagro met to discuss the NOVO. During the meeting, Respondent and Synagro

presented additional information regarding the violations cited in the NOVO found under Docket No. 14-CA-EO-16.

DOH, Respondent, and Synagro have agreed to make Synagro a party to this Consent Order. All parties have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.

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 or Synagro. This Consent Order settles and resolves all civil liability of Respondent and Synagro to the DOH for allegedly violating Section 11-60.1-2, H.A.R., Section 11-60.1-52, H.A.R., Section 342B-11, H.R.S., and all alleged violations of CSP No. 0216-06-C, set forth in NOVO Docket No. 14-CA-EO-16 dated October 6, 2015. Under this Consent Order, any and all violations and claims alleged or which could have been alleged by the DOH in the NOVO shall be discharged, dismissed, waived and released as against Respondent and Synagro.

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 any party, once the Consent Order is terminated pursuant to Paragraph 13 of this Consent Order.

3. SETTLEMENT AMOUNT

Within thirty (30) days of the effective date of this Consent Order, Synagro shall pay FOURTEEN THOUSAND DOLLARS AND NO CENTS ($14,000.00) 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 paragraph 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
Telefax: (808) 586-4359

Ms. Lori M.K. Kahikina, P.E.
Director, Department of Environmental Services
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96707
Telephone: (808) 768-3486
Telefax: (808) 768-3487

Mr. Timothy H. Irons, ESQ.
Attorney for Synagro-WWT, Inc.
Alson Hunt Floyd & Ing, Lawyers
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813
Telephone: (808) 524-1800
Telefax: (808) 524-4591

5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent, Synagro, 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 all parties to this action, their officers, agents, trustees, servants, employees, successors, assignees and attorneys, until terminated pursuant to paragraph 13 below. Respondent and Synagro shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to the DOH, until the Consent Order is terminated pursuant to paragraph 13 below.

8. NO ADMISSION OF LIABILITY

The parties acknowledge that neither this Consent Order, nor the fact of settlement, nor the settlement amount, nor the settlement payment, may be construed as, may be deemed evidence

of, or may be used at any time as an admission, concession, presumption, or inference of fault, wrongdoing or liability of any party. This Consent Order is to be construed strictly as a compromise and settlement of all the alleged violations in the NFVO for the purpose of ending past and present controversies, litigation of the contested case, and expenses.

9. ENTIRE AGREEMENT

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

10. EFFECTIVE DATE

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

11. MODIFICATIONS

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

12. NO TAX BENEFITS

Neither Respondent nor Synagro shall deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondent or Synagro claim any tax credits for said penalty amount.

13. TERMINATION

Upon receipt of the payment required by Paragraph 3 of this Consent Order, the DOH shall issue a letter to Respondent and Synagro acknowledging the receipt of the payment of the Settlement Amount, which shall terminate this Consent Order.

14. EFFECT

This Consent Order constitutes the final agreement between the parties and the settlement of Docket No. 14-CA-EO-16, dated October 6, 2015.

15. COSTS

Each party shall bear its own costs and attorneys' fees.

DATED: Honolulu, Hawaii, _____

DEPARTMENT OF HEALTH
STATE OF HAWAII

By: _____
KEITH E. KAWAOKA, D. ENV.
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, _____

CITY AND COUNTY OF HONOLULU

By: _____
LORI M.K. KAHIKINA, P.E.
Director, Department of Environmental Services

DATED: Honolulu, Hawaii, _____

SYNAGRO-WWT, INC.

By: _____
ALAN SLEPIAN
General Counsel

APPROVED AS TO FORM:

_____
WILLIAM F. COOPER
Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

_____
JEFF A. LAU
Department of Corporation Counsel
City and County of Honolulu

_____
TIMOTHY H. IRONS
Attorney for Synagro-WWT, Inc.