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18-204C&E CAB

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Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 16-CA-EO-08
STATE OF HAWAII,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	
MAUNA LOA MACADAMIA NUT	)	
CORPORATION,	)	
	)	
Respondent	)	
_____	)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

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


The DOH and Respondent MAUNA LOA MAC 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

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the comments submitted, the DOH still concludes that the proposed Consent Order is appropriate. If DOH does not so conclude, the DOH and Respondent MAUNA LOA MAC 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 MAUNA LOA MAC of such hearing, pursuant to Chapter 91, H.R.S.


DATED: Honolulu, Hawaii, SEP 20 2018

DEPARTMENT OF HEALTH  
STATE OF HAWAII

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

DATED: Honolulu, Hawaii, SEP 20 2018

MAUNA LOA MACADAMIA NUT CORPORATION

By:   
MELVIN H. DEEGAN, JR.  
Maintenance and Engineering Manager

APPROVED AS TO FORM:

  
WILLIAM F. COOPER  
Deputy Attorney General

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vs.	)	
	)	
MAUNA LOA MACADAMIA NUT	)	
CORPORATION,	)	
	)	
Respondent	)	
_____	)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and MAUNA LOA MACADAMIA NUT CORPORATION ("Respondent MAUNA LOA MAC") 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

On June 20, 2017, DOH issued Respondent MAUNA LOA MAC a Notice and Finding of Violation and Order ("NOVO") under Docket No. 16-CA-EO-08, alleging that Respondent MAUNA LOA MAC violated Section 342B-11, H.R.S., Section 11-60.1-2, H.A.R., and Covered Source Permit (CSP) No. 0317-02-C by exceeding the maximum emissions limit for particulate matter of 0.4 pounds of particulate matter per 100 pounds of biomass burned (lbs/100 lbs) while the boiler is fired on biomass or biomass in combination with used oil. The average test results showed that the particulate matter emissions were 1.65 lbs/100 lbs. The DOH assessed an initial penalty of \$7,500.00. During a prehearing meeting on July 27, 2017, Respondent MAUNA LOA MAC presented additional information to the DOH and the penalty has been recalculated to \$6,000.00.

The parties desire to settle their disputes without the risks and costs of a contested case hearing, 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 MAUNA LOA MAC. This Consent Order settles and resolves all civil liability of Respondent MAUNA LOA MAC to the

DOH for any and all violations contained in the NOVO under Docket No. 16-CA-EO-08. Nothing in this Consent Order shall affect, and the DOH reserves, the right to bring an enforcement action against Respondent MAUNA LOA MAC for any other violation not covered by this Consent Order, if any, of the Hawaii Revised Statutes, or of any Hawaii Administrative Rules.

3. SETTLEMENT AMOUNT

Within thirty (30) days of the effective date of this Consent Order, Respondent MAUNA LOA MAC shall pay a total penalty of SIX THOUSAND DOLLARS AND NO CENTS (\$6,000.00). The payment shall be made 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 5 of this Consent Order. Failure to pay the full SIX THOUSAND DOLLARS AND NO CENTS (\$6,000.00) within thirty (30) days of the execution of this Consent Order shall be deemed a default and a violation of this Consent Order.

4. NO TAX BENEFITS

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

## 5. 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:

Ms. Marianne Rossio, 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. Melvin H. Deegan  
Maintenance and Engineering Manager  
Mauna Loa Macadamia Nut Corporation  
16-701 Macadamia Nut Road  
Keaau, Hawaii 96749-8020  
Telephone: (808) 982-6562  
Fax: (808) 966-8410

## 6. ACTIONS AGAINST OTHER PARTIES

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

7. 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.

8. 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 Section 12 below. Respondent MAUNA LOA MAC shall give notice of this Consent Order to any and all 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.

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 both parties.

11. MODIFICATIONS

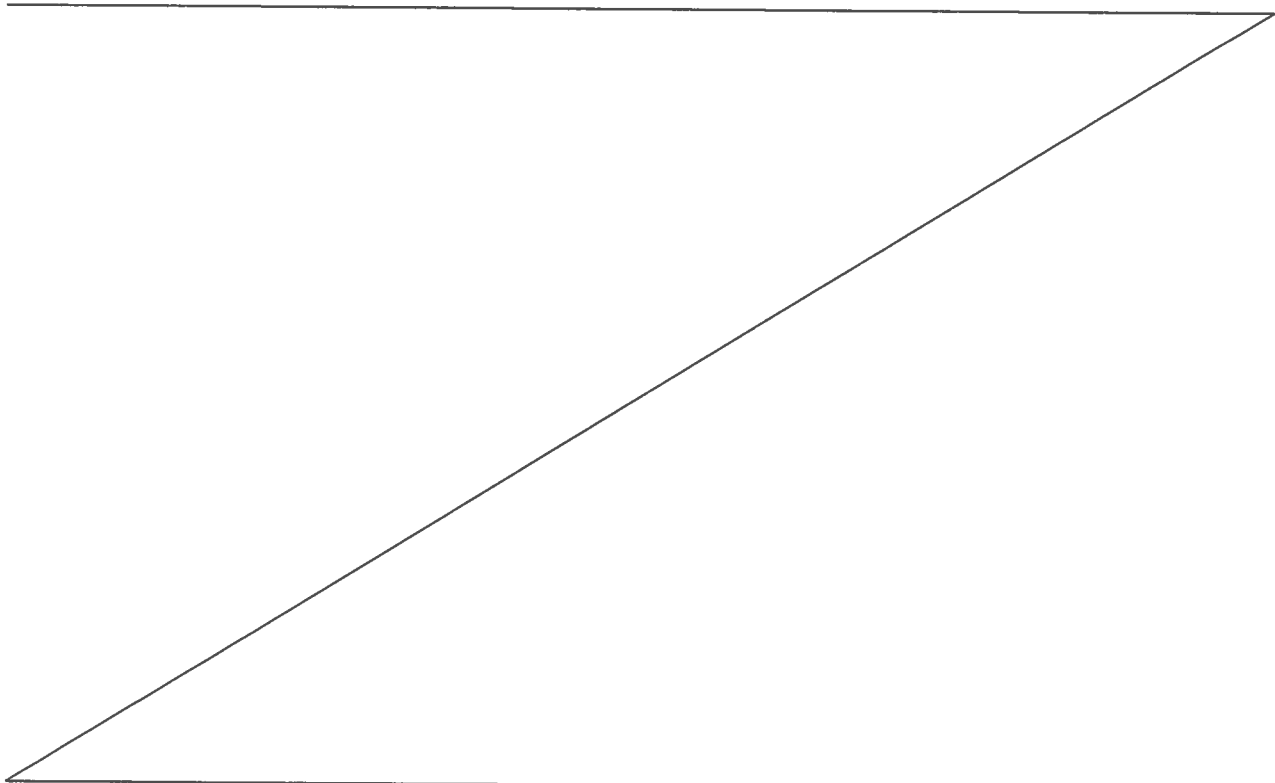
This Consent Order shall not be modified except in writing, signed by both parties.

12. TERMINATION

Upon receipt of the payment required by Section 3 of this Consent Order, DOH shall issue a letter to Respondent acknowledging the receipt of the payment of the settlement amount, which shall terminate this Consent Order.

13. EFFECT

This Consent Order constitutes the final agreement between the parties and the settlement of Docket No. 16-CA-EO-08, dated June 20, 2017.





14. 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 for Environmental Health

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

MAUNA LOA MACADAMIA NUT CORPORATION

By: Melvin H. Deegan, Jr.  
MELVIN H. DEEGAN, JR.  
Maintenance and Engineering Manager

APPROVED AS TO FORM:

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