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DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	DOCKET NO. 15-CA-EO-06
STATE OF HAWAII,)	
)	460 TPH Mobile Crushing Plant
Complainant,)	with 310 HP Diesel Engine
)	
vs.)	
)	
LANAI RESORTS, LLC,)	
dba PULAMA LANAI,)	
)	
Respondent)	
)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

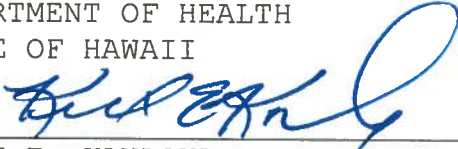
Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and LANAI RESORTS, LLC, dba PULAMA LANAI ("Respondent"), agree to comply with the public notice and comment provisions of Section 342B-55, Hawaii Revised Statutes ("H.R.S").

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, OCT - 3 2018

DEPARTMENT OF HEALTH
STATE OF HAWAII

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

DATED: Honolulu, Hawaii, OCT - 3 2018

LANAI RESORTS, LLC, dba PULAMA LANAI

By: 
~~WES SARME~~ Harrilynn K. Kameenui
~~Rock and Concrete Supervisor~~
Senior Vice President - Administration
and General Counsel

APPROVED AS TO FORM:


WILLIAM F. COOPER
Deputy Attorney General

RUSSELL A. SUZUKI 2084
Attorney General of Hawaii

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LANAI RESORTS, LLC,)	
dba PULAMA LANAI,)	
)	
Respondent)	
_____)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and LANAI RESORTS, LLC, dba PULAMA LANAI ("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 460 TPH Mobile Crushing Plant with 310 HP Diesel Engine located at Manele Bay Quarry, Lanai.

On June 17, 2016, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 15-CA-EO-06, alleging that Respondent violated Section 11-60.1-2, H.A.R.; Section 342B-11, H.R.S.; and the following conditions of Temporary Covered Source Permit ("CSP") No. 0512-02-CT:

- 1) Attachment II, Section C, Special Condition 5.a: Failed to have at least one (1) location change of the mobile crushing plant during the five (5) year term of the permit, from October 9, 2009, to October 8, 2014.
- 2) Attachment II, Section D, Special Condition 7.c: Failed to conduct the 2014 annual visible emissions observations for the diesel engine by a certified reader in accordance with 40 CFR Part 60, Appendix A, Method 9.
- 3) Attachment II, Section F, Special Condition 1: Failed to conduct the 2014 annual source performance test.

The DOH assessed an initial penalty of \$8,200.00 for the alleged violations of Temporary CSP No. 0512-02-CT found under NOVO Docket No. 15-CA-EO-06.

Subsequent to the issuance of the NOVO under Docket No. 15-CA-EO-06, pursuant to a records review conducted by the DOH on May 26, 2016, the DOH alleges that Respondent violated the following conditions of Temporary CSP 0512-02-CT:

- 4) Attachment II, Section E, Special Condition 3.a: Failed to submit the annual emissions report for 2015 calendar year within sixty (60) days after the end of the calendar year. The report was submitted late on April 19, 2016, forty-nine (49) days after the due date of February 29, 2016.
- 5) Attachment II, Section E, Special Condition 4: Failed to submit the monitoring reports for July to December 2015 reporting period within sixty (60) days after the end of the reporting period. The report was submitted late on April 19, 2016, forty-nine (49) days after the due date of February 29, 2016.

In addition, pursuant to in-depth inspections conducted by the DOH on May 28, 2015, November 29, 2016, and March 2, 2017, the DOH alleges that Respondent violated the following conditions of CSP No. 0300-01-C:

- 6) Attachment I, Standard Condition 6: Failed to operate the facility in accordance with the application by:
 - a. Operating a 500 kW Caterpillar Diesel Engine Generator, Model Number PMC15, Serial Number CATPMC15LX5M00353, in May 2015.
 - b. Operating a 200 kW Caterpillar Diesel Engine Generator, Model Number C7.1, Serial Number CAT00C71TMRP00230, in June 2014.
- 7) Attachment IIA, Section E, Special Condition 4.b: Failed to conduct the 2014 visible emissions observations for the 310 tph secondary cone crusher by a certified reader in accordance with Method 9.
- 8) Attachment IIA, Section G, Special Condition 1: Failed to conduct the 2014 and 2015 source performance tests on the 350 tph El-Jay vertical shaft impactor crusher and transfer points.
- 9) Attachment IIB, Section D, Special Condition 1: Respondent exceeded the permitted particulate matter emissions limit of 90 mg/dscm (0.04 gr/dscf) by discharging into the atmosphere in excess of 0.12 gr/dscf from the exhaust stack of the venturi wet scrubber on December 14, 2016.

- 10) Attachment IIB, Section E, Special Condition 6.b: Failed to conduct the 2014 visible emissions observations for the hot oil heater by a certified reader in accordance with Method 9.
- 11) Attachment IIB, Section G, Special Condition 1: Failed to conduct the 2014 and 2015 source performance tests on the exhaust stack of the venturi wet scrubber for the asphalt concrete plant.
- 12) Attachment IIB, Section G, Special Condition 10: Failed to submit conducted source performance tests on the exhaust stack of the venturi wet scrubber within sixty (60) days after achieving the maximum production rate at which the AC plant operated. The tests report was submitted two (2) days late on February 14, 2017.
- 13) Attachment IID, Section D, Special Condition 4.b: Failed to conduct the 2014 annual visible emissions observations for the 1000 kW and 225 kW diesel engine generators by a certified reader in accordance with Method 9.

The DOH has assessed an additional penalty of THREE THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$3,300.00) for these newly alleged violations found in Temporary CSP No. 0512-02-CT and CSP No. 0300-01-C.

On July 6, 2016, July 7, 2016, February 3, 2017, and March 30, 2017, the DOH and Respondent discussed the NOVO found under Docket No. 15-CA-EO-06 and the subsequent alleged violations.

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.

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 CSP No. 0300-01-C and Temporary CSP No. 0512-02-CT, set forth in NOVO Docket No. 15-CA-EO-06 dated June 17, 2016, and set forth in this instant Consent Order in Section 1.

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 15 of this Consent Order.

3. PENALTY

Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay a total penalty of ELEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$11,500.00). 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 7 of this Consent Order.

4. STIPULATED PENALTIES

From July 7, 2016, to December 31, 2017, Respondent agrees to pay penalties for future violations of notification and reporting requirements found under CSP No. 0300-01-C and Temporary CSP No. 0512-02-CT, at the Lanai Resorts, LLC, dba Pulama Lanai according to the following table:

Consent Order Violation	Penalty Per Violation
<p>Failure of notification and reporting requirements as described in CSP No. 0300-01-C:</p> <ol style="list-style-type: none"> 1) Attachment IIB, Section F, Special Condition 3; 2) Attachment IIB, Section F, Special Condition 4; and 3) Attachment IIB, Section F, Special Condition 5. 	<p>Number of days late:</p> <p>Days 1 to 7: \$500 Days 8 to 14: \$1,000 Days 15 to 21: \$1,500 Days 22 to 28: \$2,000 Greater than 29 days: \$2,500</p>
<p>Failure of notification and reporting requirements as described in CSP 0300-01-C:</p> <ol style="list-style-type: none"> 1) Attachment IIC, Section D, Special Condition 3; and 2) Attachment IIC, Section D, Special Condition 4. 	<p>Number of days late:</p> <p>Days 1 to 7: \$500 Days 8 to 14: \$1,000 Days 15 to 21: \$1,500 Days 22 to 28: \$2,000 Greater than 29 days: \$2,500</p>
<p>Failure of notification and reporting requirements as described in CSP 0300-01-C:</p> <ol style="list-style-type: none"> 1) Attachment IID, Section E, Special Condition 3; 2) Attachment IID, Section E, Special Condition 4; and 3) Attachment IID, Section F, Special Condition 5. 	<p>Number of days late:</p> <p>Days 1 to 7: \$500 Days 8 to 14: \$1,000 Days 15 to 21: \$1,500 Days 22 to 28: \$2,000 Greater than 29 days: \$2,500</p>

Consent Order Violation	Penalty Per Violation
Failure of notification and reporting requirements as described in CSP 0512-02-CT: 1) Attachment II, Section E, Special Condition 3; and 2) Attachment II, Section E, Special Condition 4.	Number of days late: Days 1 to 7: \$500 Days 8 to 14: \$1,000 Days 15 to 21: \$1,500 Days 22 to 28: \$2,000 Greater than 29 days: \$2,500

Any stipulated penalties incurred by the Respondent between July 7, 2016, to December 31, 2017, shall be due within sixty (60) days of the effective date of this Consent Order. Payment shall be made by cashier's check, payable to the State of Hawaii, and sent to the Manager of the Clean Air Branch at the address set forth in Section 7 of this Consent Order.

Failure to pay any stipulated penalty incurred by the Respondent by the deadlines provided herein is cause for default and termination of this Consent Order.

The Respondent may dispute its liability for such stipulated penalty pursuant to the dispute resolution provisions of Sections 5 and/or 6 of this Consent Order, if within sixty (60) days of the violation, the Respondent gives a written notice, in the form as required by Sections 5 and/or 6 and 7, sent via U.S. Mail to the Clean Air Branch and to the Hearings Officer, as required by Section 7, advising them of the dispute. Pending resolution of any such dispute, stipulated penalties continue to accrue if the obligation at issue has not been met,

provided, however, that the Respondent may argue to the Hearings Officer that stipulated penalties should not run after the giving of written notice by Respondent to the DOH and to the Hearings Officer, advising them of a dispute, and that the DOH can argue to the contrary. Upon completion of the dispute resolution, any stipulated penalties that are ultimately determined to be due, shall be paid within twenty (20) days of the date of the Hearings Officer's written decision.

5. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION

The Hearings Officer shall retain jurisdiction of this matter for purpose of adjudicating and resolving any and all of Respondent's disputes arising out of a stipulated penalty assessed under Section 4 or a Force Majeure event claimed under Section 6 of this Consent Order. The dispute resolution procedure shall be invoked upon the giving of written notice by Respondent to the DOH and to the Hearings Officer, advising them of a dispute. The written notice shall describe the nature of the dispute, and shall state the Respondent's position with regard to such dispute. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Respondent and the DOH. Such period of informal negotiations shall not extend beyond ninety (90) calendar days of the receipt of the written notice by the DOH. In the event that the Respondent and the DOH are unable to

reach agreement during the informal negotiations, the DOH shall provide Respondent with a written summary of its position regarding the dispute.

The position of the DOH shall be considered binding unless, within forty-five (45) calendar days of Respondent's receipt of the DOH written summary, Respondent files with the Hearings Officer a petition which describes the nature of the dispute. The Respondent shall serve a filed copy of the petition on the DOH within five (5) calendar days of its filing date. The DOH shall file with the Hearings Officer a response to the petition within forty-five (45) calendar days of the DOH'S receipt of the filed copy of the petition. In resolving the dispute between the Respondent and the DOH, the position of the DOH shall be upheld if supported by substantial evidence in the administrative record.

6. FORCE MAJEURE

A "Force Majeure event" is any event beyond the control of Respondent, or any entity controlled by Respondent that causes visible emissions which exceed and thus violate the visible emissions limits listed in Section 4 of this Consent Order. Respondent shall provide written notice, as provided in Section 7 of this Consent Order, within thirty (30) days of the time Respondent first knew of, or by the exercise of due diligence, should have known of, a claimed Force Majeure event. The notice shall state the anticipated duration of any violation listed in

Section 4 of this Consent Order, its cause(s), Respondent's past and proposed actions to prevent or minimize any violation, and Respondent's rationale for attributing any violation to a Force Majeure event. Failure to provide written notice as required by this paragraph shall preclude Respondent from asserting any claim of Force Majeure.

If the DOH agrees that a Force Majeure event has occurred, there shall be no violation(s) or stipulated penalties due for purposes of Section 4, Stipulated Penalties.

If the DOH does not agree that a Force Majeure event has occurred, the DOH shall consider the event(s) as violation(s) and there shall be stipulated penalties due pursuant to Section 4, Stipulated Penalties. The DOH's position shall be binding, unless Respondent invokes the dispute resolution provisions under Section 5 of this Consent Order. In any such dispute, Respondent bears the burden of proving that each claimed Force Majeure event is in fact a Force Majeure event, that Respondent gave the notice required by this paragraph, that the Force Majeure event caused any violation Respondent claims was attributable to that event, in Section 4 caused by the event. In resolving the dispute between the Respondent and the DOH, the position of the DOH shall be upheld if supported by substantial evidence in the administrative record.

If the Hearings Officer agrees that the event was a Force Majeure event, there shall be no violation(s) or stipulated penalties due for purposes of Section 4, Stipulated Penalties.

7. 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. Wes Sarme
Rock and Concrete Supervisor
Lanai Resorts, LLC
dba Pulama Lanai
P.O. Box 630310
Lanai City, Hawaii 96763
Telephone: (808) 565-3214

As required by Section 5 of this Consent Order, the following individual shall also be notified:

Hearings Officer
Department of Health
1250 Punchbowl Street
Third Floor
Honolulu, Hawaii 96813
Telephone: (808) 586-4424

8. ACTIONS AGAINST OTHER PARTIES

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

9. 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.

10. 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 15 below. Respondent 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 Section 15 below.

11. ENTIRE AGREEMENT

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

12. EFFECTIVE DATE

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

13. MODIFICATIONS

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

14. 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.

15. TERMINATION

Within thirty (30) days after DOH determines that Sections 3 and 4 of this Consent Order are satisfied, DOH shall issue a letter to Respondent certifying satisfactory compliance, which shall terminate this Consent Order.

16. EFFECT

This Consent Order constitutes the final order in this case, replacing the NOVO under Docket No. 15-CA-EO-06, dated June 17, 2016.

17. 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, _____

LANAI RESORTS, LLC, dba PULAMA LANAI

By:  _____
~~WES SARME~~ **Harylynn K. Kameenui**
~~Rock and Concrete Supervisor~~
**Senior Vice President - Administration
and General Counsel**

APPROVED AS TO FORM:

 _____
WILLIAM F. COOPER
Deputy Attorney General