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Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,)	DOCKET NO. 14-CA-EO-12
STATE OF HAWAII,)	
)	Aggregate Processing Facility
Complainant,)	Two Concrete Batch Plants,
)	Specialty Products Plant, and
vs.)	Portable Soil Screener
)	
HAWAIIAN CEMENT,)	
)	
Respondent)	
_____)	

CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER


Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and HAWAIIAN CEMENT ("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.

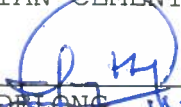
DATED: Honolulu, Hawaii, OCT - 4 2018

DEPARTMENT OF HEALTH
STATE OF HAWAII

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

DATED: Honolulu, Hawaii, OCT - 4 2018

HAWAIIAN CEMENT

By: 
~~JOHN DELONG~~ JASON MACY
President

APPROVED AS TO FORM:


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CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and HAWAIIAN CEMENT ("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 the Aggregate Processing Facility, two (2) Concrete Batch Plants, Specialty Products Plant and Portable Soil Screener located at 99-1100 Halawa Valley Street, Aiea, Oahu ("Facility").

On July 18, 2016, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 14-CA-EO-12, alleging that Respondent violated Section 11-60.1-2, H.A.R.; Section 342B-11, H.R.S.; and the following conditions of Covered Source Permit ("CSP") No. 0311-03-C:

1. Attachment I, Standard Condition 17: Failed to immediately notify and submit a written report to DOH regarding the November 24, 2014, discharge of cement dust from Batch Plant No. 1 within five (5) days of initial notification. The report was submitted late on December 12, 2014, ten (10) days after the due date of December 2, 2014;
2. Attachment IIA, Section C, Special Condition 3(c): Discharge of particulate matter (PM) emissions in excess of the 15% opacity limit for the following equipment:
 - a) 653 tph Portable Jaw Crusher:
 - i. On January 23, 2014, the PM was 17% opacity; and
 - ii. On March 27, 2014, the PM was 16% opacity.
 - b) 625 tph Roller Cone Crusher:
 - i. On April 10, 2014, the PM was 18% opacity; and
 - ii. On July 16, 2014, the PM was 16% opacity.
3. Attachment IIB, Section B. Special Condition 5: Caused or permitted visible emissions of fugitive dust to become airborne beyond the lot line of the property on November 24, 2014; and

4. Attachment IIA, Section F, Special Condition 6: Failed to submit the 2014 annual test report within sixty (60) days after the completion of the test on March 12, 2015. The report was submitted late on May 27, 2015, sixteen (16) days after the due date of May 11, 2015.

The DOH assessed an initial penalty of TWELVE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$12,400.00) for the alleged violations of CSP No. 0311-03-C found under the NOVO Docket No. 14-CA-EO-12.

Subsequent to the issuance of the NOVO under Docket No. 14-CA-EO-12, pursuant to a records review report on July 27, 2016, DOH found that Respondent violated the following requirements of CSP No. 0311-03-C:

Attachment IIA, Section E, Special Condition 4: Failed to submit the 2014 and 2015 annual emissions reports for the Stone Quarrying and Processing.

On August 12, 2016, the DOH and Respondent met to discuss the NOVO. During the meeting, Respondent presented additional information regarding the violations cited in the NOVO found under docket No. 14-CA-EO-12 asking for a mitigation of the penalty and DOH agreed to reduce the penalty from TWELVE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$12,400.00) to NINE THOUSAND ONE HUNDRED DOLLARS AND NO CENTS (\$9,100.00). DOH also presented new violations found on July 27, 2016, and their incurred penalty of SIX THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$6,900.00).

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.

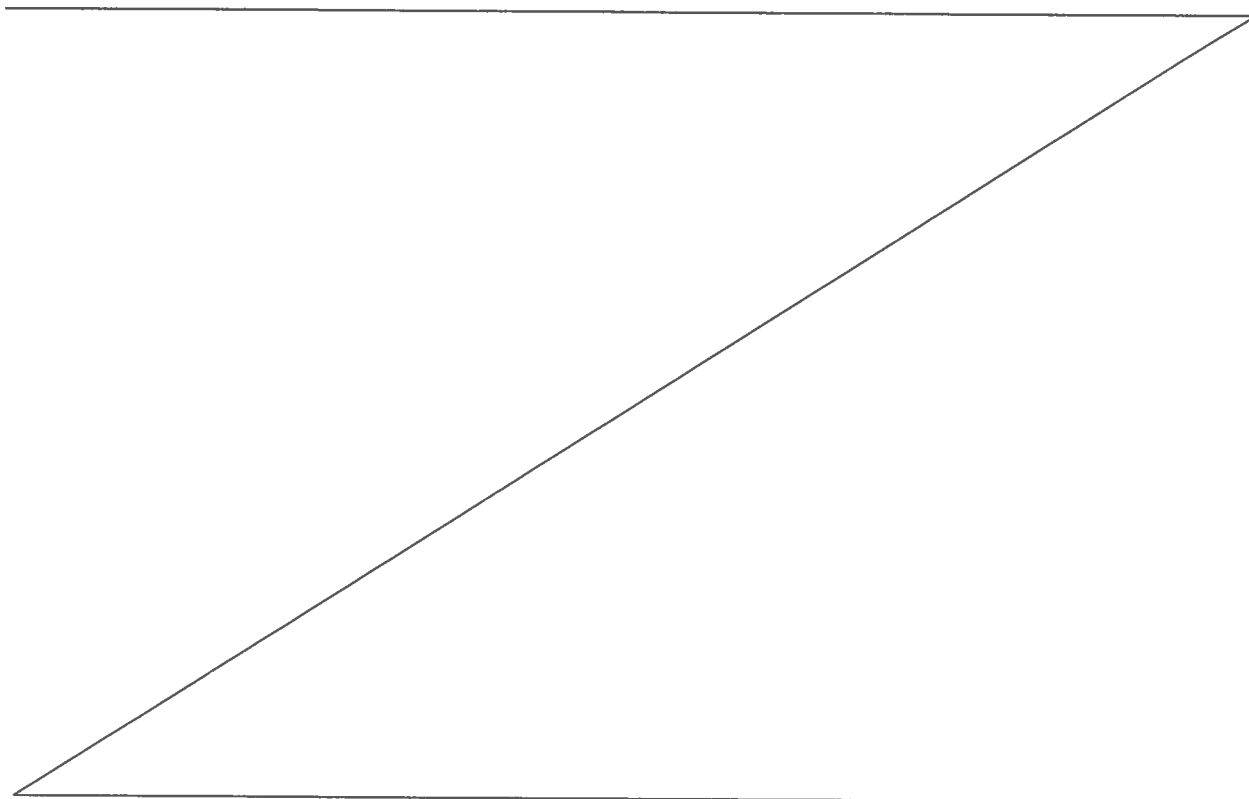
2. EFFECT OF SETTLEMENT

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. 0311-03-C, set forth in NOVO Docket No. 14-CA-EO-12 dated July 18, 2016, as well as the violations of CSP No. 0311-03-C found on July 27, 2016. Under this Consent Order, any and all violations and claims alleged or which could have been alleged by the DOH in the NOVO and record review report dated July 27, 2016, shall be discharged, dismissed, waived, and released as against Respondent.

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 13 of this Consent Order.

3. SETTLEMENT AMOUNT


Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay a total penalty of SIXTEEN THOUSAND DOLLARS AND NO CENTS (\$16,000.00). 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 4. Failure to pay the full SIXTEEN THOUSAND DOLLARS AND NO CENTS (\$16,000.00) within thirty (30) days of the execution of this Consent Order shall be deemed a default and a violation of this Consent Order.



4. 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. ~~John DeLong~~ JASON MACY
President (JOHN DELONG RETIRED) 
Hawaiian Cement
99-1300 Halawa Street
Aiea, Hawaii 96701
Telephone: (808) 532-3400
Fax: (808) 532-3499

5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent 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 Section 13 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 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 NOVO 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 both parties.

11. MODIFICATIONS

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

12. 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.

13. 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.

14. EFFECT

This Consent Order constitutes the final agreement between the parties and the settlement of Docket No. 14-CA-EO-12, dated July 18, 2016, and violations found by DOH on July 27, 2016.

15. 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, _____

HAWAIIAN CEMENT

By: _____
~~JOHN DELONG~~ ~~President~~ JASON MACY
PRESIDENT

APPROVED AS TO FORM:



WILLIAM F. COOPER
Deputy Attorney General