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Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 18-CA-EO-03
STATE OF HAWAII,	)	
	)	
Complainant,	)	
	)	H-Power Refuse Derived Fuel and
vs.	)	Mass Burn Facility
	)	
COVANTA HONOLULU RESOURCE	)	
RECOVERY VENTURE, LLC,	)	
	)	
Respondent	)	
	)	

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CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER

Prior to signing the attached proposed Consent Order, the Department of Health (DOH) and Covanta Honolulu Resource Recovery Venture, LLC (Respondent), agree to comply with the public notice and comment provisions of Hawaii Revised Statutes (HRS) Section 342B-55.

The DOH and Respondent agree to sign the proposed Consent Order in the form attached if no comments are submitted during the public comment period or, if after DOH's review of the comments submitted, 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, DOH determines that such efforts will not result in agreement, DOH shall request that the Hearings Officer 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 in accordance with HRS Chapter 91.

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

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: *Kathleen Ho*  
KATHLEEN S. HO  
Deputy Director for Environmental Health

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

COVANTA HONOLULU RESOURCE RECOVERY  
VENTURE, LLC

By: \_\_\_\_\_  
TONY WALDO  
Facility Manager

APPROVED AS TO FORM:

*Dale K. Sakata*  
DALE K. SAKATA  
Deputy Attorney General

\_\_\_\_\_  
LISA A. BAIL  
Attorney for Covanta Honolulu Resource  
Recovery Venture, LLC

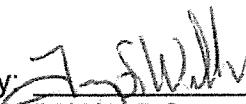
DATED: Honolulu, Hawaii, \_\_\_\_\_

DEPARTMENT OF HEALTH, STATE OF HAWAII

By: \_\_\_\_\_  
KATHLEEN HO, DEPUTY DIRECTOR  
Environmental Health Administration

DATED: Honolulu, Hawaii, 7/21/2021

COVANTA HONOLULU RESOURCE RECOVERY  
VENTURE, LLC

By:  \_\_\_\_\_  
TONY WALDO  
Facility Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
DALE K. SAKATA  
Deputy Attorney General

\_\_\_\_\_  
LISA A. BAIL  
Attorney for Covanta Honolulu  
Resource Recovery Venture, LLC

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	)	H-Power Refuse Derived Fuel and
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	)	
COVANTA HONOLULU RESOURCE	)	
RECOVERY VENTURE, LLC,	)	
	)	
Respondent	)	
	)	

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CONSENT ORDER

The Department of Health (DOH), State of Hawaii, and COVANTA HONOLULU RESOURCE RECOVERY VENTURE, LLC (Respondent) enter into this Consent Order pursuant to Hawaii Revised Statutes (HRS) Chapter 342B and Hawaii Administrative Rules (HAR) Chapter 11-60.1.

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.

1. ALLEGED FACTS AND DOH FINDINGS. Respondent is a waste-to-energy domestic limited liability company organized and existing under the laws of the State of Hawaii. Respondent is member-owned and operates, manages, and controls the H-POWER Refuse Derived Fuel and Mass-Burn Facility located at 91-174 Hanua Street, Kapolei, Oahu (HPOWER).

- 1.1 On December 30, 2019, DOH issued Respondent a Notice and Finding of Violation and Order, Docket No. 18-CA-EO-03 (NOVO), alleging that Respondent violated HAR §11-60.1-2, HRS §342B-11, and the following conditions of Covered Source Permit No. 0255-01-C, dated April 24, 2012 (CSP-1) and Covered Source Permit No. 0255-02-C, dated July 24, 2013 (CSP-2):
  - 1.1.1 CSP-1. Attachment II, Section C, Special Condition 10: Respondent exceeded the 85,000 ppm permit limit of the total dissolved solids (TDS) content of the recirculation water from the five-cell cooling towers (CT-1) as follows:
    - a) On July 19, 2018 at 9:30 a.m., exceedance was 104,000 ppm;
    - b) On August 2, 2018 at 10:00 a.m., exceedance was 112,000 ppm; and
    - c) On August 13, 2018 at 12:15 p.m., exceedance was 95,400 ppm.
  - 1.1.2 CSP-2. Attachment II, Section C, Special Condition 4.b: Respondent failed to keep all air pollution controls (i.e., internal gas recirculation fan, carbon feeder) fully functional and operational at all times for combusting municipal solid waste on the following dates for the indicated duration:
    - a) December 5, 2017 to December 8, 2017 for 78.7 hours;
    - b) March 16, 2018 to March 17, 2018 for 35.1 hours; and
    - c) July 31, 2018 to August 1, 2018 for 13.5 hours.
  - 1.1.3 CSP-2. Attachment II, Section C, Special Condition 11.a: Respondent exceeded the 85,000 ppm permit limit of the TDS content of the recirculation water from the two-cell cooling tower as follows:
    - a) On May 10, 2018 at 11:30 a.m., exceedance was 93,600 ppm;
    - b) On May 15, 2018 at 11:30 a.m., exceedance was 92,100 ppm;
    - c) On May 29, 2018 at 11:30 a.m., exceedance was 86,400 ppm; and
    - d) On July 19, 2018 at 9:30 a.m., exceedance was 87,700 ppm.
- 1.2 DOH assessed a penalty of NINETEEN THOUSAND SEVEN HUNDRED DOLLARS (\$19,700) for alleged violations of CSP-1 and CSP-2 charged under the NOVO. On January 24, 2020, Respondent requested, in writing, a contested case.
- 1.3 Respondent, via Notice Letters sent on October 28, 2018, March 4, 2019, and August 15, 2019, self-reported the following regarding CSP-2:

Attachment II, Section C, Special Condition 4.a.i: On October 16 to 17, 2018, Respondent failed to operate the Very Low NO<sub>x</sub> (VLN)a or VLNg system for a period of 27.8 hours when combusting municipal solid waste.<sup>1</sup>

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<sup>1</sup> DOH finds that this is not a violation under CSP-2 as modified on October 16, 2018.

Attachment II, Section C, Special Condition 4.e: On February 22 to 25, 2019, Respondent failed to operate the odor control and bio-tower abatement system for a period of 61.5 hours when operating the sludge receiving station.<sup>2</sup>

Attachment II, Section C, Special Condition 11.a: On July 18, 2019, Respondent exceeded the 85,000 ppm permit limit of the TDS content of the recirculation water from the two-cell cooling tower with TDS results of 88,700 ppm.<sup>3</sup>

1.4 In August 2020, Respondent filed a formal permit modification application to amend CSP-1 and CSP-2, seeking to increase the limits of the TDS from 85,000 ppm to 121,000 ppm (Amendment Application). The Amendment Application remains pending before DOH. In November 2020, DOH and Respondent agreed that CSP-1 and CSP-2 should be consolidated.

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 HAR §11-60.1-2, HRS §342B-11, all alleged violations of CSP-1 and CSP-2 set forth in the NOVO, and all self-reported violations of CSP-2 set forth in Section 1.3 that have occurred up to and including the Effective Date (as defined in Section 13 below). Respondent neither admits nor denies the specific factual allegations set forth in Section 1 of this Consent Order. From the Effective Date, Respondent shall continue to use its best efforts to minimize emissions and reporting violations at HPOWER.
3. PENALTY. For all alleged violations of CSP-1 and CSP-2 set forth in Section 1 of this Consent Order that occurred before the NOVO, DOH and Respondent stipulate to a penalty of NINETEEN THOUSAND SEVEN HUNDRED DOLLARS (\$19,700). For the additional alleged violations of CSP-2 set forth in Section 1.3 of this Consent Order, DOH and Respondent stipulate to a penalty of TWO THOUSAND TWO HUNDRED DOLLARS (\$2,200). Within thirty (30) calendar days of the Effective Date, Respondent shall pay TWENTY-ONE THOUSAND NINE HUNDRED DOLLARS (\$21,900) 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.
4. STIPULATED PENALTIES. Other than those alleged violations described in Section 1 of this Consent Order, for violations occurring from the Effective Date until the date two (2) years after the Effective Date, unless sooner terminated in accordance with Section 16 of this Consent Order, Respondent agrees to pay the following stipulated penalties for violations at HPOWER of CSP-1 and CSP-2; provided, however, that if both CSP-1 and CSP-2 are replaced by a single new permit, the tables below will be deemed consolidated into a single table relating to the permit limit of TDS content of recirculation water from either of the five-cell or two-cell cooling towers.

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<sup>2</sup> DOH finds that this is not a violation under CSP-2 as modified on October 16, 2018.

<sup>3</sup> As reported based on laboratory results of August 8, 2019.

**CSP-1.** In reference to Attachment II, Section C, Special Condition 10.

TDS exceedance up to 40% of the permit limit*	\$700
TDS exceedance at 41 to 100% of the permit limit*	\$3,000

\* The highest quarterly measured concentration shall be used to determine the stipulated penalty amount due.

**CSP-2.** In reference to Attachment II, Section C, Special Condition 11.a.

TDS exceedance up to 40% of the permit limit*	\$700
TDS exceedance at 41 to 100% of the permit limit*	\$3,000

\* The highest quarterly measured concentration shall be used to determine the stipulated penalty amount due.

<p>Failure to keep all air pollution controls (i.e., internal gas recirculation (IGR) fan, carbon feeder) fully functional and operational at all times for combusting municipal solid waste in reference to Attachment II, Section C, Special Condition 4, except as follows:</p> <p>The VLN (VLNa and VLNg) system may be out of operation only for maintenance of the VLN system's IGR fan. The maximum duration of each out of operation event shall not exceed eighty (80) hours total. The total combined duration of all downtime events shall not exceed one-hundred-sixty (160) hours per calendar year.</p>	\$2,000
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Except as otherwise provided herein, the Stipulated Penalties incurred by Respondent shall be due within thirty (30) days of Respondent's knowledge of the violation 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.

Respondent may dispute its liability for such stipulated penalty pursuant to the dispute resolution provisions of Section 5 by, within thirty (30) calendar days of Respondent's knowledge of the violation, giving written notice to DOH and to the Hearings Officer to the address set forth in Section 7. If written notice is not received by both DOH and the Hearings Officer within thirty (30) days of Respondent's knowledge of the violation, Respondent shall be deemed to have waived its right to dispute such stipulated penalty under this Consent Order.

Pending resolution of any such dispute, stipulated penalties shall be deemed to have continued to accrue, as appropriate, if the violation alleged (i) is acknowledged by Respondent or upheld by the Hearings Officer and (ii) has not been corrected, or if corrected, up to the date corrected. Upon completion of the dispute resolution, any stipulated penalties that are ultimately determined to be due shall be paid within twenty (20) calendar days of the date of the Hearings Officer's written decision or, if acknowledged by Respondent, the date of Respondent's acknowledgement.

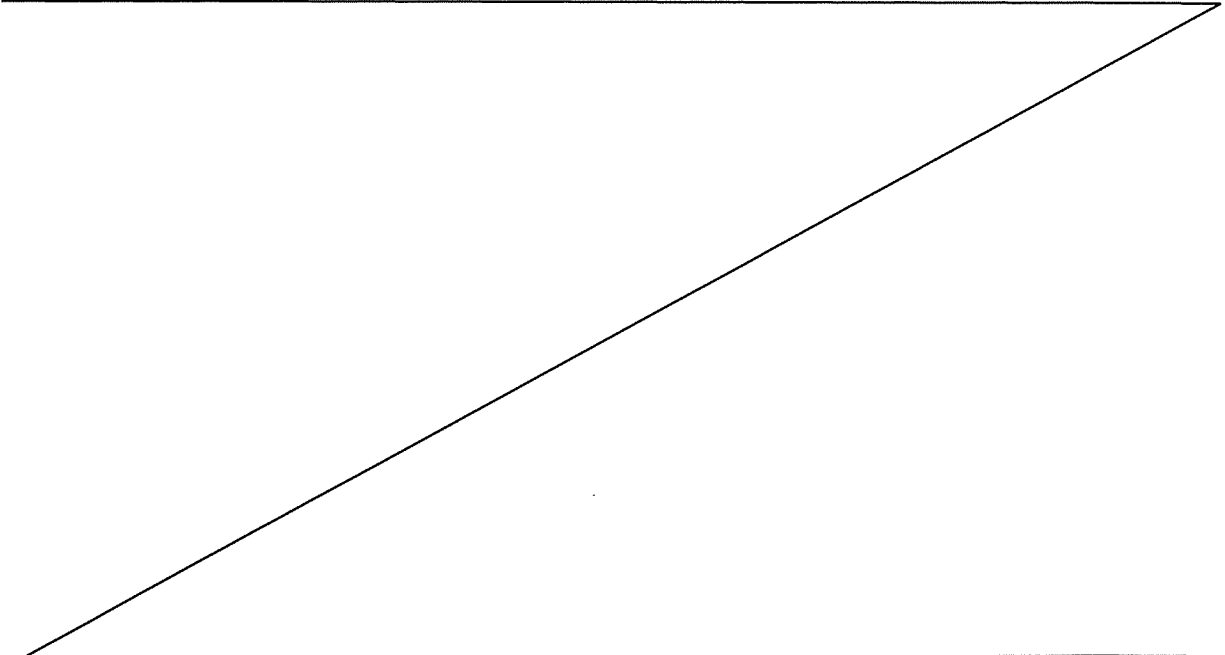
5. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION. The Hearings Officer shall retain jurisdiction of this matter for purpose of adjudicating and resolving any and all of Respondent's disputes arising out of a stipulated penalty assessed under Section 4.

The dispute resolution procedure shall be invoked by giving written notice to DOH and to the Hearings Officer advising them of a dispute. The written notice shall describe the nature of the dispute and shall state Respondent's position with regard to such dispute.

Disputes submitted to dispute resolution shall, in the first instance, be the subject of up to ninety (90) calendar days of informal negotiations between Respondent and DOH.

In the event that DOH determines, in its sole discretion, that Respondent and DOH are unable to reach agreement during the informal negotiations, DOH shall provide Respondent with a written summary of its position regarding the dispute. The position of DOH shall be considered binding unless, within forty-five (45) calendar days of Respondent's receipt of DOH's written summary, Respondent files with the Hearings Officer a reply which disputes DOH's summary, with a filed copy to DOH. DOH may file with the Hearings Officer a response to Respondent's reply within forty-five (45) calendar days of the DOH'S receipt of the filed copy of the reply. In resolving the dispute between the Respondent and DOH, the Hearings Officer may uphold DOH's position if supported by a preponderance of the evidence in the administrative record.

6. DILIGENT PROCESSING OF PERMIT. DOH agrees to use reasonable best efforts to promptly process the Amendment Application.





7. NOTIFICATION. Notice or payment required under this Consent Order shall be directed to the individual 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. Tony Waldo  
Facility Manager  
Covanta Honolulu Resource Recovery Venture, LLC  
91-174 Hanua Street  
Kapolei, Hawaii 96707-1735  
Telephone: (808) 682-0206  
Telefax: (808) 682-5203

Hearings Officer  
Hawaii State Department of Health  
1250 Punchbowl Street, Third floor  
Honolulu, Hawaii 96813

8. ACTIONS AGAINST OTHER PARTIES. This Consent Order does not limit or affect the rights of the Respondent or 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 bind the party which he or she represents.
10. BINDING EFFECT. This Consent Order shall apply to and be binding upon the parties, and their agents, employees, successors, and assignees. 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.
11. CONTINUING APPLICATION OF LAW. This Consent Order is not intended to nor shall it be construed as a permit. Compliance with this Consent Order shall not relieve Respondent of its obligations to comply with the Hawaii Air Pollution Control Act or any other applicable State, Federal, or local statutes, rules, ordinances, orders, or permits.

Except as set forth in this Consent Order, DOH retains all rights to take, direct, or order any and all actions necessary to protect public health and the environment, including the right to bring enforcement actions under applicable statutes or

regulations. In relation to any action arising under or in connection with this Consent Order, unless required on an emergency basis, DOH will first undertake good faith efforts to address such matter through a modification of this Consent Order.

Except as specifically provided for in this Consent Order, DOH reserves all of its statutory and regulatory powers, authorities, rights, defenses, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any requirements of this Consent Order, including without limitation the assessment of penalties under HRS §§342B-42, -47, and -48 and injunctive relief under HRS §342B-44.

12. ENTIRE AGREEMENT. This Consent Order sets forth the entire agreement between the parties with respect to this matter.
13. EFFECTIVE DATE. This Consent Order shall become effective as soon as it has been signed by both parties (Effective Date).
14. MODIFICATIONS. This Consent Order shall not be modified except in writing, signed by both parties.
15. 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 Respondent claim any tax credits for said penalty amount.
16. TERMINATION. Within thirty (30) days after DOH: (i) has determined that Section 3 of this Consent Order is satisfied; and upon issuance by DOH of the renewed CSP Permit Nos. 0255-01-C and 0255-02-C to replace and supersede CSP-1 and CSP-2; DOH shall issue a letter to Respondent certifying satisfactory compliance with this Consent Order, which shall terminate this Consent Order.
17. EFFECT. This Consent Order constitutes the final order in this case, replacing the NOVO under Docket No. 18-CA-EO-03, dated December 30, 2019.
18. COUNTERPARTS AND FACSIMILE SIGNATURES. This Consent Order may be executed in counterparts, and any set of counterparts which are collectively executed by all the parties shall be sufficient proof of the parties' agreement. Signatures transmitted by facsimile shall be deemed an original and satisfactory for the purpose of this Consent Order with the original signature to be provided as soon thereafter as reasonably practicable.
19. COSTS. Each party shall bear its own costs and attorney's fees.

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

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: \_\_\_\_\_  
KATHLEEN S. HO  
Deputy Director for Environmental Health

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

COVANTA HONOLULU RESOURCE RECOVERY  
VENTURE, LLC

By: \_\_\_\_\_  
TONY WALDO  
Facility Manager

APPROVED AS TO FORM:

*Dale K. Sakata*

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