Compliance with Notice of General Permit Coverage
Clean Water - Compliance

1. Legal Duty: Don’t put anything in State waters without permission

Hawaii Revised Statutes (HRS) § 342D-50(a):

“No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters, except as in compliance with the provisions of this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the Director.”
Clean Water - Compliance

1. Legal Duty (continued)

Definitions

Person – includes everyone.
(e.g., human, partnership, corp., trust, government agencies [incl. counties, U.S.])

Water Pollutant – means anything except pure water
(e.g., silt, oil, litter);

HRS § 342D-1 defines “Water Pollutant” as:

“Dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.”
Clean Water - Compliance

1. Legal Duty (continued)

Definitions (continued)

**State Waters** – means all waters, fresh, brackish, or salt, around and within the State, including but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded.
2. **Legal Duty: Don’t violate DOH rules or permits.**

**HRS § 342D-50(d):**

No person, including any public body, shall violate any rule adopted pursuant to this chapter or any permit or variance issued or modified pursuant to this chapter.
3. Legal Duty: Don’t harm water quality


- Includes narrative (subjective) and numerical (objective) standards.
- Both types are enforceable.
- Subjective standards can be enforced without water samples in many cases.
Clean Water - Compliance

3. Legal Duty (continued)

Basic water quality criteria is applicable to all waters.

**Narrative standards** include some of the following:

**HAR §11-54-04(a):**

*All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:*

1. **Materials that will settle to form objectionable sludge or bottom deposits**
(2) Floating debris, oil, grease, scum or other floating materials;

(3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity, or other conditions in the receiving waters.

(4) High or low temperatures; biocides; pathogenic organisms; toxic, radio active, corrosive or other deleterious substances at levels or in
Clean Water - Compliance

3. Legal Duty (continued)

(4) (continued…)

combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

(5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life;
Clean Water - Compliance

3. Legal Duty (continued)

(6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways, subdivisions, recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands. [emphasis added]
Clean Water - Compliance

4. Legal Duty. No “illicit discharges” to storm water systems

Definition of “illicit discharge” - 40 Code of Federal Regulations (CFR) §122.26(b)(2)

There should be no non-storm water discharges into State waters except for NPDES permitted discharges and certain non-storm water discharges provided that the discharges are not a source of pollutants [40 Code of Federal Regulations (CFR) 122.26(d)(2)(iv)(B)(1)].

(e.g. fire hydrant testing water, air condition condensation; spring water; residential car washing; lawn watering; street wash water...)
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

1. Obtain Permit Coverage Before Starting Construction
2. Submit Site Specific SWPPP 30 Days Prior to the Start of Construction
3. Notify the DOH-CWB of the start of construction
4. Implement SWPPP
5. Maintain BMPs as needed
6. Update SWPPP
7. Submit Notice of Cessation upon completion of the project
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Obtain Permit Coverage Before Starting Construction
1. Delegate authority to submit documents to the DOH-CWB to an appropriate individual or position.
2. Allow time for correspondence with the DOH-CWB which is now primarily conducted through e-mail.
3. Carefully read the issued NGPC as each has specific requirements.
4. Maintain all documents. Documents will be checked during future inspections.
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Submit Site Specific SWPPP 30 Days Prior to the Start of Construction

- Site-Specific SWPPPs, aka SS-BMP Plans or SWPCPs are reviewed by DOH-CWB staff.
- Any comments made by CWB staff must be answered in full.
- There are many BMP options and substitutions. Language used in SWPPP should have enough specificity to enable productive implementation of the plan.
- SWPPPs are management plans which should account for all activities which may cause polluted storm water discharges.

The SWPPP should include all elements of the NOI
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Notify the DOH-CWB of the start of construction
• Other notable notifications include:
  • Notifying of possible polluted discharges from the Site
  • Any deviations from plan BMP use
  • Changes of any personnel responsible for the submission of documents to the DOH-CWB
  • Notification of the completion of the project (NOC)
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Implement SWPPP
• BMPs need to be implemented as detailed in the Site-Specific BMP plan
  • All documents maintained as required
  • All training conducted as detailed
  • All designated BMPs installed as specified
  • All site inspections conducted as detailed

Maintain BMPs
BMPs should be evaluated for efficacy and relevance.
• If it doesn’t work change it
• If it is causing a problem, there may be a better way to do it
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Update SWPPP
• Site-Specific SWPPPs can be changed
  • Don’t want to use silt fence? Want to use something cheaper and more effective? Go right ahead, but UPDATE YOUR SWPPP.
• Grass completely establish, want to pull your sediment control BMPs? Go right ahead, but UPDATE YOUR SWPPP.

Inspections check for applicability and adherence to your sites Site-Specific BMP Plan.

Submit your updated SWPPP to the DOH-CWB as required.
Keys to Maintaining Compliance with Water Pollution Rules and Regulations

Upon Completion of the Project

Submit the Notice of Cessation form to the DOH-CWB as required.
Inspection Procedures and Resultant Enforcement Actions
**Enforcement Policy**

**General Regulatory Practices**

1. **General Inspection Schedule**
2. **Complaint**
3. **Inspection**
   - **Bad Result**
   - **Good Result**
     - **Enforcement Action** (Fines, CDs, Corrective Actions)
     - **Follow-up Inspections**
     - **Case Closure**
NPDES Program– Inspection

So What’s an Inspection Like?

CWB Representative will show up
• Will ask for representative
• Will ask for all documentation
• Will ask lots of questions about:
  the Site/project/ company/management
• Will ask to inspect the Site
• Will point all issues and take photos
• Will have an exit interview whereupon findings will be discussed.
• May offer suggestions which should be taken seriously
NPDES Program– After the Inspection

What Happens Between Inspection and Enforcement

CWB Enforcement Section Tasks:
• Give a verbal briefing to our boss(es)
• Review the file
• Draft Inspection Report and Enforcement Action
  • Could be NAV or NFVO
• Calculate penalty if applicable
• Issue Enforcement Action

• Process May Take 1 week to 6 months depending on situation
NPDES Program—How to Pass an Inspection

What Can you Do?

Be Prepared, it’s not IF but WHEN
• Have all required documentation consolidated and in USE
• Make time for the inspectors, be forthcoming
• Document what we document
• Be able to describe HOW YOU COMPLY
• Make compliance a daily activity so you don’t have to worry about us showing up

Prevent Polluted Discharges
NPDES Program—If You Fail the Inspection

What Can you Do?

Correct the problems ASAP
- Update the CWB of any changes you’ve made
- Communicate with us any changes that you’ve planned

Good Faith Actions are Considered During an Enforcement Proceedings
Enforcement Actions

Consequences of Non-Compliance

- **Warning Letter - Notice of Apparent Violation (NAV) letter**
- **Field Citations - Penalties from $200-$3200.**
- **Administrative / Civil Penalties - Notice and Finding of Violation and Order (NFVO) - monetary penalties up to $25,000 per day per violation.**
- **Criminal Enforcement - monetary penalties up to $50,000 per day per violation and jail time possible**
Notice of Apparent Violations

Compliance

State of Hawaii
Department of Health

August 3, 2009

Certified Mail
Return Receipt Requested

To: Joe Nishino
President
All-Aire Construction, Inc.

This is to inform you that your company has been found in violation of the Hawaii Revised Statutes (HRS) Sections 24-1201 and 24-1203, which states that "no person, including any public body, shall discharge any waste or other refuse, including solids, liquids, gaseous, or other hazardous substances or materials, into any public water course, water system, or sewer unless they have a permit to do so." These violations occurred at 140-540 Ichimura Street, APO P.O. Box 22042, Island of Oahu, Hawaii.

Your company has been found in violation of the Clean Water Act (CWA) as evidenced by the following violations:

1. Discharge of pollutants into a water system without a permit.

2. Failure to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES).

You are hereby notified that you have 30 days from the date of this notice to correct the violations and provide evidence of compliance. Failure to do so may result in further enforcement action, including but not limited to fines, penalties, and legal action.

If you have any questions, please contact Mr. Michael Jasinski, Regulatory Section, CNP at 808-587-3900. Thank you for your cooperation.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 2

If you have any questions, please contact Mr. Michael Jasinski, Compliance Section, CNP at 808-587-4304.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 4

If you have any questions, please contact Mr. Michael Jasinski, Compliance Section, CNP at 808-587-4304.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 3

If you have any questions, please contact Mr. Michael Jasinski, Compliance Section, CNP at 808-587-4304.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 6

If you have any questions, please contact Mr. Michael Jasinski, Compliance Section, CNP at 808-587-4304.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 8

If you have any questions, please contact Mr. Michael Jasinski, Compliance Section, CNP at 808-587-4304.

Sincerely,

[Signature]

Mr. Joe Nishino
Date: January 25, 2010

Page 10
Compliance

Field Citations

STATE OF HAWAII
DEPARTMENT OF HEALTH
CLEAN WATER BRANCH

TO: MB/RU, State of Jane Felder
President

Docket NO: 2016-CN-03-Sample
Date: November 19, 2018

ADDRESS: Kauai Water Branch
117090 Main Street
Lihue, Hawaii 96766

FIELD CITATION
NOTICE AND FINDINGS OF VIOLATION
ORDER
EXPEDITED SETTLEMENT

FIELD CITATION

A. NOTICE AND FINDINGS OF VIOLATION

The Board of Health, Department of Health (DOH), finds that the Respondent(s)
(Doing Business As) Waiakane Mill, West Maui Mill, and the following
companies of Maui Administrative Rules (MAR) chapter 15-15, Water
Pollution Control,
and, on or about December 30, 2018
at locations: Waiakane, West Maui,
41-1090 Kamehameha Highway
Honokaa, Hawaii 96726

B. COVERS Under MAR chapter 342D and MAR chapter 11-55, you are ordered to:
1. Cease the Discharge(s) [I] immediately or [L] within ___ days; and
2. Pay the following penalty(a(s) for the violation(s):
   a. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000
   b. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000
   c. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000
   d. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000
   e. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000
   f. For violation(s) of MAR 11-05-40(14)(a)) (a) 0.00000 for a first violation,
       [ ] 0.00000 for a second violation, [ ] 0.00000 for a third violation见到 the MAR 11-05-40(14)(a) at: 0.00000

FACTS: Discharge of pollutants into the waters of the State in violation of MAR 11-05-40(14)(a).

C. EXPEDITED SETTLEMENT

This field citation, including the Notice and Finding of Violation and Order, is not a citation providing an administrative contested case hearing under HRS chapter 342D. The DOH, in its discretion, may settle this case quickly by accepting this field citation as follows:

1. Signing and dating this citation on the lines below;
2. Correcting the violation within ___ calendar days of receipt;
3. Paying the full amount assessed by this citation. Payment shall be made by cashier’s check or money order payable to the “State of Hawaii” within 30 calendar days; and
4. Mailing or delivering the signed citation and full payment to the Clean Water Branch, State of Hawaii, Hilo, Hawaii, 96720.

95514. The DOH must receive this signed citation and full payment within 25 days after you receive this citation.

D. By signing this field citation, you agree to:
1. Give up your right to contest the finding of violation, order, or penalty in a contested case administrative hearing under HRS chapters 342D and 882, or in court;
2. Correct the violation(s) immediately or [L] within ___ days of receipt;
3. Comply with all Water Pollution rules and regulations;
4. Pay the $2,000.00 penalty assessed above; and
5. By January 30, 2019, submit to the DOH a letter explaining what has been done to comply with the above order.

This citation offers to settle for a specific penalty at a specific place on a specific day. If you do not accept this citation in compliance with part C, then:

1. This field citation is withdrawn;
2. The DOH has the right to bring the another case against the violation(s) and to proceed against other violations, and to seek higher fine and administrative penalties brought to $25,000.00 per day; and
3. You will have a right to contest any case the DOH brings instead of this citation, showing reasonableness is an any penalties and the administrative hearing under HRS chapters 342D and 882, or in court.

Date: ____________________________

ALCROWNS, P.R., CHIEF
Clean Water Branch

I ACCEPT THIS SETTLEMENT IN THIS FIELD CITATION

Date: ____________________________

Signature
Print Name: ____________________________

CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED

a. Mr. Edward Baldwin, Deputy Attorney General
Notice of Findings of Violation and Order

TO: 
NPDES Permit Holder, LLC
1354 Honolulu Way
Honolulu, Hawaii 96822

Respondent: 
Attn: Mr./Ms. President

NPVO No. 2010-CW-EGX
Please write the NPVO number on all correspondence

Re: Violation of Hawaii Water Pollution Rules and Regulations

Property/Facility: Commercial Building

Honolulu, Hawaii

The Department of Health (DOH) issues this Notice and Finding of Violation Order (NFVO), under Hawaii Revised Statutes (HRS), Chapter 91 and 342D, and Hawaii Administrative Rules (HAR), Chapter 13-55, based on an imposition conducted on March 24, 2009, and the report attached as Exhibit A. This case deals only with violations alleged below, and DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

The facts of this case and the law justify the following order.

ORDER

You are ordered to:
1. Report in detail within 20 calendar days after the receipt of this NFVO the steps that were taken to stop and prevent future polluted discharges from entering into State Waters.
2. Pay an administrative penalty of $10,000.00 for the violation. Within 20 calendar days after the receipt of this NFVO send a certified check to: Clean Water Branch, Department of Health, 919 Ala Moana Boulevard, Room 310, Honolulu, Hawaii 96814. The check should be made payable to “State of Hawaii” and include the NFVO reference number above.

The provisions of this Notice and Finding of Violation and Order (NFVO) shall become final unless, within 20 calendar days after receipt, you submit a written request for a hearing, along with a copy of the NFVO, without exhibits, to:

Hearing Officer
P.O. Box 2169
Honolulu, Hawaii 96801

You may file the hearing request in person at the Director’s office listed above, during regular business hours, or may mail the same to the above address within the allotted time. Failure to timely file the hearing request and related documents may result in a denial of your hearing request.

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and you will be notified of the date, time, and place of the pre-hearing conference.

The hearing will be conducted in accordance with Chapter 91 of the Hawaii Revised Statutes and Title 11, Chapter 1 of the Hawaii Administrative Rules.

At the hearing, the parties may present relevant evidence and argument on the issues raised by this case. The parties may examine and cross-examine witnesses and present exhibits. The parties may seek to avoid any penalty, and DOH may seek the maximum penalty of Twenty-Five Thousand Dollars ($25,000) per day, per violation, although the actual penalty amount may be lower, or none.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/her own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, or trust, or association may represent the corporation, trust or association.

After such hearing, the Order shall be affirmed, modified, or rescinded by the Director or Hearings Officer.

All inquiries regarding this matter, besides the request for hearing, shall be directed to Mr. Michael Tong, Supervisor of the Enforcement Section, CW/3, at (808) 586-4409.

If you have special needs due to a disability that will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (T1), at least ten (10) working days before the hearing or pre-hearing conference date.

LAURENCE K. LUI
Deputy Director for Environmental Health

Date

Approved As To Form By:

Mr. Edward G. Bohlin
Deputy Attorney General

NPVO No. 2009-CW-EGX
NPDES Program—Who’s Responsible

Storm Water Associated With Construction Activities

Who gets the bill?

- The Permit holder for NPDES permitted projects
- The general contractor for not maintaining Best Management Practices or for having prior violations of a similar nature
- The individual responsible for discharge

It is the prerogative of the Clean Water Branch to assign responsibility for the enforcement action. However, the Attorney General may also assign responsibility for enforcement actions.
Wal-Mart has agreed to pay $3.1 million civil penalty and reduce storm water runoff at its sites by instituting better control measures.

Runoff from construction sites is a primary contributor to the impairment of water quality in the nation. EPA is vigorously enforcing federal regulations...
Storm Events
What’s Expected of You
NPDES Program – Compliance

Storm Water Associated With Construction Activities

What’s Expected of You

- Maintain copies of all permits and plans onsite
- Upkeep the designed pollution prevention measures
- Keep records of maintenance and any corrective actions made to prevent polluted discharges
- Make pollution prevention part of your daily routine – Just like Safety!

You are expected to protect the environment’s health to the best of your ability!
NPDES Program– BMPs

Storm Water Associated With Construction Activities

Can they be overrun? Of Course!

What are we supposed to do then?

- Report to the CWB
- Implement measures to reduce polluted discharge
- Account for the previously unaccounted for upon repair
NPDES Program – Minimum BMPs

Storm Water Associated With Construction Activities

**Enough BMPs To Address All Potential Pollutant Sources**

- Subjective
- Should be variable depending on job
- SITE SPECIFIC

- Is Perimeter Control Enough? Hydromulching?
- Fiber Roll Matting
  - Dependent on Job
  - Site Specific, Site Specific, Site Specific
NPDES Program– If You Fail the Inspection

What Can you Do?

Correct the problems ASAP
- Update the CWB of any changes you’ve made
- Communicate with us any changes that you’ve planned

Good Faith Actions Are Considered During Enforcement Proceedings
Free Storm Water Materials

Helpful EPA Website Links

• **Developing Your Stormwater Pollution Prevention Plan: A guide for construction sites** (05/01/2007)
  http://www.epa.gov/npdes/swpppguide

• **National Menu of Best Management Practices (BMPs) for NPDES Stormwater Phase II** (10/27/2000)
  http://cfpub.epa.gov/npdes/stormwater/menuofbmtps/index.cfm

• **Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices**
  (01/08/2008) http://www.epa.gov/owow/nps/lid/costs07/

• **EPA NPDES Website** http://cfpub.epa.gov/npdes/index.cfm
More Free Storm Water Materials

Helpful EPA Website Links

- **NPDES Compliance and Enforcement Manual**
The Clean Water Branch Goal

Keeping Hawaii’s water clean for “Beneficial uses” which include recreation and the protection and propagation of fish and aquatic life.
For More Information, Contact:

Clean Water Branch
919 Ala Moana Blvd., Rm. 301
Honolulu, Hawaii 96814-4920
Phone: 808-586-4309
Fax: 808-586-4352
Email: cleanwaterbranch@doh.hawaii.gov

NPDES Q and A Agenda

• Consistency of Enforcement
• Enforcement of Discharge Quantities
• Storm Events-What’s Expected of You
  • Record keeping & Documentation
• Self-Policing Issues
• Does the NOI have to be kept in the field?
• BMP Contractor Review Process
• Tracks leaving Project Site and Road Washing
• Field Citations
• Questions?