

STATE OF HAWAII

DEPARTMENT OF HEALTH  
NOTICE OF VIOLATION AND ORDER

<b>TO:</b> Maui Asphalt X-IV, LLC P.O. Box 1425 Wailuku, Hawaii 96793  Attention: Dyvette Fong, Manager  Respondent	<b>NOVO No. 2024-CW-EO-24</b> <i>Please write this NOVO number on all correspondence</i>  Re: Violation of National Pollutant Discharge Elimination System (NPDES) Permit, Permit No. HIR70G979  Facility: Maui Asphalt Portable Hot-Mix Asphalt Plant
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The Department of Health (**DOH**) issues this Notice of Violation and Order (**NOVO**) under Hawaii Revised Statutes (**HRS**) Chapters 91 and 342D based on findings from the July 15, 2024, inspection and subsequent file reviews performed by the DOH, Clean Water Branch (**CWB**) for Maui Asphalt X-IV, LLC Portable Hot-Mix Asphalt Plant located on County of Kauai Waimea Property, Waimea, Hawaii 96796 (**Facility**).

Attached as exhibits are:

- The NPDES Notice of General Permit Coverage HIR70G979 issued to Maui Asphalt X-IV, LLC, Portable Hot-Mix Asphalt Plant (Exhibit A).
- NOVO issued in October 2022, Docket No. 2021-CW-EO-26 (Exhibit B).
- NPDES Inspection Report, Report No. PA2157 conducted on July 15, 2024 (Exhibit C).
- Maui Asphalt X-IV, LLC, Portable Hot-Mix Asphalt Plant's Storm Water Pollution Prevention Plan (**SWPPP**) (Exhibit D); and
- Information Request and Response for Penalty Consideration dated October 4, 2024 (Exhibit E).

This case deals only with violations alleged below. The DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

<p>HRS §342D-9, HRS §342D-31, HRS §342D-50(a), HRS §342D-50(d), HAR §11-55, Appendix A HAR §11-55, Appendix B</p>	<p><b>Maui Asphalt X-IV, LLC Portable Hot-Mix Asphalt Plant</b></p> <p>Maui Asphalt X-IV, LLC (<b>Respondent</b>) operates the Facility on a parcel owned by the County of Kauai, located on the western side of the island of Kauai. Respondent was issued Notice of General Permit Coverage (<b>NGPC</b>) File No. HIR70G979 for the Facility which authorizes the discharge of storm water associated with industrial activities into State waters. The NGPC became effective on October 14, 2022, and expires on January 14, 2027, or when HAR Chapter 11-55, Appendix B, is amended, whichever occurs first (Exhibit A).</p> <p>Respondent identifies Kikiaola Harbor as the designated Receiving State Water on their Notice of Intent (<b>NOI</b>), dated October 9, 2022. However, storm water from the Facility discharges to the Mana Plain Canal System, a Class 2 inland State water prior to entering Kikiaola Harbor.</p> <p>Industrial activities performed at the Facility include the manufacturing and processing of asphalt cement mix materials and the storage of asphalt liquid, aggregate materials, and recycled asphalt.</p> <p>On August 12, 2021, the DOH-Clean Water Branch (<b>CWB</b>) conducted a complaint inspection of the Facility and determined that industrial activities regulated under the NPDES program were occurring at the Facility without NPDES permit coverage. As a result, NOVO No. 2021-CW-EO-26 (<b>Previous NOVO</b>) was issued to Respondent on February 3, 2022. The Previous NOVO required Respondent to implement pollution control strategies, monitor and sample storm water discharges, apply for NPDES permit coverage, and pay an administrative penalty of \$107,500.00 (Exhibit B).</p> <p>On September 1, 2021, Respondent submitted an NOI for general permit coverage under Hawaii Administrative Rules Chapter 11-55 (<b>HAR 11-55</b>), Appendices A and B. On April 19, 2022, the full penalty payment was received. At the time of the July 15, 2024, inspection, the Previous NOVO remained open as Respondent did not submit a request for termination despite multiple attempts by DOH to ascertain the status of the issued enforcement action.</p> <p>On July 15, 2024, the DOH-CWB conducted a compliance inspection (<b>Inspection</b>) of the Facility following the issuance of the NGPC. The Inspection was conducted to evaluate</p>
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	<p>Respondent’s compliance with the NGPC – which requires compliance with applicable parts of HAR 11-55, Appendix B – and the Previous NOVO. Violations were identified and are detailed in Inspection Report No. PA2157 (Exhibit C). Respondent was given an opportunity to respond to the inspection findings and provide information for the DOH to consider in determining the amount of monetary penalties to assess (Exhibit E).</p> <p>HRS §342D-9 authorizes the Director of Health to order measures to be taken to correct violations and impose penalties for violations of HRS Chapter 342D.</p> <p>HRS §342D-31 states that “the [D]irector is authorized to impose by order the penalties specified in [HRS §]342D-30.”</p> <p>HRS §342D-30 states that violators shall be fined not more than \$60,000 per day for each separate offense and that each day of each violation constitutes a separate offense.</p> <p>HRS §342D-50(a) states that “[n]o 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 in compliance with this chapter, rules adopted pursuant to this chapter, or a permit, water quality certification, or variance issued by the [D]irector.”</p> <p>HRS §342D-50(d), states that “[n]o person, including any public body, shall violate any rule adopted pursuant to this chapter or any permit, water quality certification, or variance issued or modified pursuant to this chapter.”</p> <p>1. <u>Failure to Implement and Maintain Best Management Practices (BMPs)</u></p> <p>Part 2.1 of HAR 11-55, Appendix B, requires the selection, design, installation, and implementation of control measures, including BMPs, to minimize pollutant discharges.</p> <p>Part 2.1.2.4 of HAR 11-55, Appendix B, requires the permittee to minimize the potential for leaks, spills and other releases and develop plans for effective response to spills to prevent pollutant discharges.</p> <p>During the Inspection, DOH-CWB inspectors observed sediment control measures installed throughout the Facility requiring maintenance, as silt fences were observed to be collapsed or torn</p>
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and filter socks were flattened. Locations of the deficient areas are identified in the inspection report (Exhibit C).

Respondent failed to minimize the potential for leaks, spills and other releases as DOH-CWB inspectors observed two (2) 5-gallon buckets containing unknown liquids, stored without cover and secondary containment. Additionally, a tote filled with biodegradable asphalt solvent was stored near the northern drainage ditch without secondary containment and was actively leaking on to the ground (Exhibit C).

Based on the details above, DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on two (2) counts by failing to implement and maintain BMPs at the Facility.

## 2. Failure to Modify SWPPP to Reflect Current Conditions

Part 5 of HAR 11-55, Appendix B, requires the development of a SWPPP to document the selection, design and installation of control measures. Parts 5.2 and 5.3 include requirements for SWPPP contents and modifications, and Part 5.4 requires the SWPPP availability.

Following the Inspection, the DOH-CWB requested that Respondent provide a copy of the Facility's current SWPPP. On July 16, 2024, Respondent emailed the SWPPP to the DOH-CWB (Exhibit D).

Upon review of the SWPPP, the DOH-CWB determined that the SWPPP does not accurately reflect conditions at the Facility. The outdoor storage area and portable pump locations were not identified on the site map. Further, locations where sediment control measures were installed at the Facility, were not consistent with what was described in the SWPPP.

Based on the details above, DOH finds that Respondent violated HRS §342D-50(d) and HAR §11-55, Appendix B on one (1) count by failing to modify the SWPPP to reflect current Facility conditions.

## 3. Failure to Sign and Certify the SWPPP

Part 5.2.7 of HAR 11-55, Appendix B requires the SWPPP to be signed and dated by the appropriate person.

The SWPPP submitted by Respondent was not signed or certified as required. Ms. Dyvette Fong is the Certifying Person for the NGPC and no authorized representative was designated.

Based on the details above, DOH finds that Respondent violated HRS §342D-50(d) and HAR §11-55, Appendix B on one (1) count by not signing and certifying the SWPPP as required. A monetary penalty is not assessed for this violation.

4. Failure to Conduct Employee Training for Required Personnel

Part 2.1.2.8 of HAR 11-55, Appendix B, requires Respondent to train all employees who work in areas where industrial materials or activities are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of the permit (e.g., inspectors, maintenance personnel), including all members of your storm water pollution prevention team.

Following the Inspection, DOH-CWB requested that Respondent provide a copy of the Facility's training materials and sign-in sheet. On July 16, 2024, Respondent emailed the requested documents to the DOH-CWB.

The DOH-CWB reviewed the documents and noted that the Plant Operator, Mr. Keoni Gomes, who is listed as a Stormwater Pollution Prevention Team Member in the SWPPP, as well as Mr. Steven Frank, who is responsible for conducting routine facility inspections, had not received the required annual employee training for calendar year 2023.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on one (1) count by failing to conduct employee training of all required personnel responsible for the execution of the SWPPP.

5. Failure to Develop an Adequate Routine Facility Inspection Report

Part 3.1.1 of HAR 11-55, Appendix B requires documentation of all findings, including but not limited to, inspection date and time, names and signature(s) of inspector(s), weather information, observations, incidents of non-compliance, and signature and certification by appropriate person.

Following the Inspection, DOH-CWB requested quarterly facility inspection reports for calendar year 2023 to June 2024. On

July 16, 2024, Respondent provided records of inspections that were conducted in December 2022, January 2023, March 2023, and May 2023.

Upon review of the inspection reports, the DOH-CWB finds that the components of the inspection reports do not include inspecting the Facility for residue or trash, leaks or spills, control measures that require maintenance and repair, or inspection of the discharge point. Furthermore, the DOH-CWB finds that the inspection reports lack the assessment of installed BMPs, identification of all drainage ditches, and weather information. The inspection reports include the evaluation of a detention pond and AC Berm, neither of which is identified in the Facility's SWPPP or in the NOI.

Lastly, the DOH-CWB finds that the inspection reports do not include a certifying statement and had not been signed by the Certifying Person, indicated in the NOI.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on one (1) count by failing to develop an adequate inspection report that includes all required components.

6. Failure to Conduct Quarterly Routine Facility Inspections

Part 3.1 of HAR 11-55, Appendix B states that inspections must be conducted at least quarterly (i.e., once each calendar quarter), or in some instances more frequently (e.g., monthly).

Upon review of the routine facility inspection reports provided by Respondent, the DOH-CWB finds that quarterly inspections were not conducted for monitoring periods ending on September 30, 2023, December 31, 2023, March 31, 2024, and June 30, 2024.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on four (4) counts by failing to conduct the required routine facility inspections for monitoring periods ending on September 30, 2023, December 31, 2023, March 31, 2024, and June 30, 2024.

7. Failure to Develop an Adequate Quarterly Visual Assessments of Storm Water Discharges Documentation

Part 3.2.2 of HAR 11-55, Appendix B requires documentation of the visual assessment to include, but not limited to: sample location(s), sample collection date and time, signature of personnel collecting the sample and performing assessment, nature of discharge, results of observations, probable sources of any storm water contamination, signature and certification statement.

Following the Inspection, the DOH-CWB requested that Respondent submit copies of quarterly visual assessments for calendar year 2023 to June 2024.

On July 16, 2024, Respondent submitted a copy of one (1) visual assessment that was completed on March 29, 2024, by a contractor from Bowers + Kubota Consulting, Inc. (**B+K**), in which B+K utilized the Stormwater Monitoring Discharge Observation form, that was included in the Facility's SWPPP.

Upon review of the Stormwater Monitoring Discharge Observation form, the DOH-CWB finds that the form failed to include observations of water quality characteristics, time of the assessment, and nature of the discharge, as required by Part 3.2.2 of HAR 11-55, Appendix B. Additionally, the DOH-CWB finds that the Stormwater Monitoring Discharge Observation form does not include a certifying statement and had not been signed by the Certifying Person, indicated in the NOI.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on one (1) count by failing develop a quarterly visual assessments form with all required components.

8. Failure to Conduct Quarterly Visual Assessments of Storm Water Discharges

Part 3.2.1 of HAR 11-55, Appendix B requires the Facility to collect a storm water sample from each outfall and conduct a visual assessment of each sample. Further, these samples "must be collected in such a manner that the samples are representative of the storm water discharge." Part 3.1 of HAR 11-55, Appendix B, defines a Discharge Point to be the location(s) where storm water leaves the Facility either directly or through a separate storm sewer system to a State water.

Respondent provided a copy of a single visual assessment that was completed on March 29, 2024, by B+K. Per the NOI, the visual assessment was conducted at the discharge point located

at Kikiaola Harbor. However, the Facility's SWPPP identifies the storm water sampling location to be located at the Facility, where discharges enter into the Mana Plain Canal. The DOH-CWB considers the Mana Plain Canal to be the Receiving State Water, therefore, quarterly visual assessments are expected to be conducted at the point where discharges exit the Facility and enters the canal.

The DOH-CWB finds that Respondent failed to conduct quarterly visual assessments for monitoring periods ending on March 31, 2023, June 30, 2023, September 30, 2023, December 31, 2023, and March 31, 2024.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on five (5) counts by failing to conduct quarterly visual assessments of storm water discharges for monitoring periods ending on March 31, 2023, June 30, 2023, September 30, 2023, December 31, 2023, and March 31, 2024.

#### 9. Failure to Submit an Annual Report

Part 7.5 of HAR 11-55, Appendix B requires the permittee to submit an Annual Report by January 30th for each year of general permit coverage containing information generated from the past calendar year.

Following the Inspection, the DOH-CWB requested that Respondent submit a copy of the 2023 Annual Report. On July 16, 2024, Respondent provided all available documents, and a 2023 Annual Report was not included. A review of DOH records indicate that Respondent failed to submit an Annual Report for 2023.

Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on one (1) count by failing to submit an Annual Report for calendar year 2023 by the due date, as required by the NGPC.

#### 10. Failure to Submit Discharge Monitoring Reports

Part 7.4 of HAR 11-55, Appendix B, requires the permittee to submit quarterly Discharge Monitoring Reports (**DMRs**) to the DOH-CWB via the e-Permitting Portal. If there are no discharges during the monitoring period, the DMR shall state so. Part 6.2.1 of HAR 11-55, Appendix B, requires the permittee to monitor for any benchmark parameters specified for the industrial sector(s), both



	<p>primary industrial activity and any co-located industrial activities, applicable to your discharge. Part 6.2.1.2 of HAR 11-55, Appendix B, requires benchmark monitoring to be conducted on a quarterly basis.</p> <p>A review of DOH records indicate that Respondent failed to submit DMRs for monitoring periods ending on March 31, 2023, June 30, 2023, September 30, 2023, December 31, 2023, and March 31, 2024.</p> <p>Based on the details above, the DOH finds that Respondent violated HRS §342D-50(d) and HAR 11-55, Appendix B on five (5) counts by failing to submit DMRs for monitoring periods ending on March 31, 2023, June 30, 2023, September 30, 2023, December 31, 2023, and March 31, 2024, as required by the NGPC.</p>
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The facts of this case and the law justify the following order.

**ORDER**

Respondent is ordered to:

- 1) Immediately begin implementing erosion and sediment control measures and BMPs at the Facility to prevent polluted discharges. It is the Facility’s responsibility to ensure that BMPs selected are appropriate and effective for its unique needs.
- 2) Within 30 calendar days from the date this NOVO becomes final (**Effective Date**), submit a new NOI to the DOH-CWB through the e-Permitting Portal, identifying the correct Receiving State Waters as the Mana Plain Canal.
- 3) Within 30 calendar days from the Effective Date, revise your Routine Facility Inspection Report and Quarterly Visual Assessment Form to include all required components outlined in HAR 11-55, Appendix B, and submit to the DOH for review and approval. Any comments provided by the DOH must be addressed within 14 calendar days and resubmitted for approval. Upon acceptance from the DOH, you must immediately utilize the approved forms.
- 4) Within 30 calendar days from the Effective Date, submit a corrective action report providing evidence (e.g., photographs, statements, plans, etc.) demonstrating that all violations identified in Inspection Report No. PA2157 have been corrected. The response should also include a detailed outline of the specific measures Respondent will implement to restore the Facility to compliance and ensure ongoing adherence to the terms of the NGPC.
- 5) Pay an administrative penalty of \$33,000.00 within 20 calendar days of the Effective Date. Send a certified check for \$33,000.00 to: Clean Water Branch, Department of Health, 2827 Waimano Home Road #225, Pearl City, Hawaii 96782.

The payment should be made payable to “State of Hawaii” and include the NOVO reference number, 2024-CW-EO-24.

All submittals made pursuant to any Order in this NOVO shall be certified and signed by a person legally authorized to sign on behalf of Respondent. All documents submitted pursuant to any Order in this NOVO must include the following Certification Statement:

“I certify under penalty of law that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that to the best of my knowledge and belief the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.”

The provisions of this NOVO shall become final unless, within 20 calendar days after receipt, Respondent files a **written** request for a hearing, along with a copy of the NOVO, without exhibit(s), to:

Hearings Officer  
c/o Director of Health  
1250 Punchbowl Street, Third Floor  
Honolulu, Hawaii 96813

Respondent may file the hearing request in person at the Director’s office listed above during regular business hours or mail the same to the above address within the prescribed time. As indicated in Hawaii Administrative Rules (**HAR**) §11-1-4(d), the filing date of the written request for hearing is the date when the document is received by the Director’s office. **Failure to timely file the hearing request and related documents may result in a denial of the hearing request.**

The hearing will be conducted in accordance with HRS Chapter 91 and HAR Chapter 11-1. At the hearing, DOH may seek the maximum penalty of \$60,000 per day, per violation.

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.

All inquiries regarding this matter, other than the request for hearing, shall be directed to the Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

If due to a disability you have special needs 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 (711), at least 10 working days before the hearing or pre-hearing conference date.

Approved as to Form:

*Kathleen Ho*

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KATHLEEN S. HO  
Deputy Director for Environmental Health

*Dale K. Sakata*

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Dale Sakata  
Deputy Attorney General

Date: Dec 11, 2024