STATE OF HAWAII

DEPARTMENT OF HEALTH
NOTICE OF VIOLATION AND ORDER

TO:	**NOVO No. 2024-CW-EO-25**
S-4 Installation and Logistics United States Marine Corps Marine Corps Base Hawaii P.O. Box 63062 Kaneohe Bay, Hawaii 96863-3002 Attention: Mr. Lance Lee Director Respondent	*Please write this NOVO number on all correspondence* Re: Violation of National Pollutant Discharge Elimination System (NPDES) Permit, Permit No. HI0110078 Facility: Kaneohe Bay Water Reclamation Facility

The Department of Health (**DOH**) issues this Notice of Violation and Order (**NOVO**) under Hawaii Revised Statutes (**HRS**) Chapters 91 and 342D based on self-disclosures by Respondent of discharge limitation exceedances, findings made from the June 17, 2024 inspection, and subsequent file reviews performed by the DOH, Clean Water Branch (**CWB)** for the Kaneohe Bay Water Reclamation facility located at Building 0829, Marine Corps Base Hawaii 96863 (**Facility**).

Attached as exhibits are:

- The NPDES Permit issued to U.S. Marine Corps for the Facility (Exhibit A);
- Administrative Extension (Exhibit B);
- Discharge Monitoring Report (DMR) for May 2024 (Exhibit C);
- Letter of non-compliance (Exhibit D); and
- Inspection Report from June 17, 2024 (Exhibit E).

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

Statutes/Rules	Nature of the Violation
HRS §342D-9, HRS §342D-30, HRS §342D-31, HRS §342D-35, HRS §342D-50(a), HRS §342D-50(d) HAR §11-55-01 HAR §11-55-04(a) HAR §11-55-04(b)	**Kaneohe Bay Water Reclamation Facility** Respondent owns and operates the Facility. Respondent was issued NPDES Permit No. HI0110078 (**Permit**) for the Facility. The Permit authorizes the discharge of treated wastewater to the Pacific Ocean subject to final effluent limits and reporting requirements. The Permit became effective on February 1, 2020, and expired on January 30, 2024 (Exhibit A). Respondent submitted a Permit renewal application form on April 10, 2023, and DOH issued an administrative extension to the Permit on January 19, 2024 (Exhibit B). Respondent revised the renewal application form on May 31, 2024 (Exhibit E). Respondent self-reported a NPDES Whole Effluent Toxicity (**WET**) test failure on a sample taken on May 22, 2024 (Exhibit C). Laboratory analysis performed by Bio-Aquatic Testing, Inc. detected the presence of total residual chlorine (**TRC**) in the WET test sample. Respondent attributed the presence of TRC and the cause of the WET test failure to construction contractors washing down near the effluent pump station wet well using chlorinated in-plant reuse water, in preparation for planned construction repairs to the clarifier. On June 17, 2024, CWB conducted an inspection of the Facility in response to the WET test failure. That inspection determined that another disruption to the treatment system, occurring on June 12, 2024, was also related to the construction contractors. Additionally, CWB inspectors discovered that sodium hypochlorite (commonly referred to as bleach or chlorine bleach) was being utilized in the effluent treatment process, and were informed that such use has been a long-standing practice at the Facility (Exhibit E). DOH records indicate that the addition of sodium hypochlorite to the treatment process was not disclosed to the CWB. Respondent's Permit applications dated October 15, 2018, and April 10, 2023, and later revised on May 31, 2024 failed to disclose the use of chlorine as part of the treatment process, or as a potential pollutant present in the effluent (Exhibit E, Attachments 1 and 2). Accordingly, effluent limitations and monitoring requirements for TRC were not prescribed in Respondent's Permit. 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.

	HRS §342D-31 states that "the [D]irector is authorized to impose by order penalties specified in [HRS §]342D-30." 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." 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." <u>1. Whole-Effluent Toxicity (WET) Failure</u> Part B of the Permit requires monthly WET testing using the sea urchin *Tripnuestes gratilla.* The Permit requires the effluent to "Pass" the WET chronic toxicity test. A DMR submitted by Respondent reported a WET Test failure for the May 2024 monitoring period (Exhibit C). Based on the details above, the DOH finds that Respondent violated HRS §342D-50(a) on one count by failing fertilization WET testing for discharged effluent. <u>2. Failure to Disclose Potential Pollutant</u> Hawaii Administrative Rules (**HAR**) §11-55-04(a)(2) states that a person shall submit a complete NPDES permit application prior to substantially altering the quality of discharge. HAR §11-55-04(b)(2) states that an NPDES application shall be submitted in sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with applicable water quality and effluent standards and limitations. HAR §11-55-01 defines NPDES permit application as a form used to apply for an individual permit. The Certification Statement on form 2A, the NPDES permit application, states "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (Exhibit E).

	The NPDES permit applications submitted by Respondent in October 2018 and April 2023, later revised in May 2024, did not disclose the addition of sodium hypochlorite to the treatment process. The failure to fully disclose all chemical additions to the treatment process has resulted in the Respondent not being required to sample and report TRC for the entirety of the last NPDES permit cycle (February 1, 2020 - January 30, 2024), a total of 1460 days. Furthermore, Facility operators stated that the use of sodium hypochlorite has been a long-standing practice at the Facility (Exhibit E). Based on the details above, the DOH finds that Respondent violated HRS §§342D-50(a), -50(d), and HAR §11-55-04 for two counts by discharging chlorine and failing to disclose the use of chlorine to treat effluent in the permit application.

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

ORDER

Respondent is ordered to:

1) Within thirty (30) calendar days from the Effective Date, provide to the DOH for review and comment, a report describing Respondent's procedures to ensure oversight and communication between construction contractors and facility operators for ongoing and future planned construction projects at the Facility. The communication procedures shall be implemented to prevent negative impacts to the Facility's treatment system while construction projects are underway. The report shall, at a minimum, include the following information: 1) contact information for construction contractors and operators; 2) description of the means and frequency of communication between construction contractors and operators; and 3) procedures to document communication activities between construction contractors and operators.

2) Pay an administrative penalty of $95,000.00 within twenty (20) calendar days of either the service of this NOVO or the Effective Date, whichever is later. Send a certified check for $95,000.00 to:

   Clean Water Branch, Department of Health
   2827 Waimano Home Road #225
   Pearl City, Hawaii 96782

   Attention: Enforcement Section Supervisor

   The payment should be made payable to "State of Hawaii" and include the NOVO reference number, 2024-CW-EO-25.

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 twenty (20) calendar days after receipt, Respondent submits 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 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 the hearing request.**

The hearing will be conducted in accordance with HRS Chapter 91 and Hawaii Administrative Rules Chapter 11-1. At the hearing, the parties may seek to avoid any penalty, and the DOH may seek the maximum penalty of $60,000 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.

All inquiries regarding this matter, other than the request for hearing, shall be directed to: Ms. Bobbie Teixeira, 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 By:

Kathleen Ho

KATHLEEN S. HO
Deputy Director for Environmental Health

Date: Feb 12, 2025

Dale K. Sakata

Dale Sakata
Deputy Attorney General