

MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

RICHELLE M. THOMSON
First Deputy

LYDIA A. TODA
Risk Management Officer



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OFFICE OF THE
COUNTY CLERK



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV

September 7, 2022

Via email only at county.clerk@mauicounty.us

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: DEPARTMENT OF HEALTH, STATE OF HAWAII VS.
DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI
Docket No.: 2022-CW-EO-11

Dear Chair Lee and Council Members:

Please find attached separately a proposed resolution entitled "AUTHORIZING SETTLEMENT OF DEPARTMENT OF HEALTH, STATE OF HAWAII VS. DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI, DOCKET NO.: 2022-CW-EO-11". The purpose of the proposed resolution is for settlement.

May I request that the proposed resolution be scheduled for discussion and action, or referral to the appropriate standing committee as soon as possible. As the County is still operating under an expired permit, I would ask that this matter be heard as quickly as possible. Also attached herewith is the Notice of Violation and Order filed by the Department of Health, State of Hawaii in this matter.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and/or the Committee.

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
September 7, 2022
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Should you have any questions or concerns, please do not hesitate to contact us. Thank you for your anticipated assistance in this matter

Sincerely,

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', written over a large, stylized, circular flourish.

CALEB P. ROWE
Deputy Corporation Counsel

cc: Helene Lau, Director, Department of Water Supply, County of Maui

Attachments

220022

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
EMDCWB

03012EGGR.22

March 18, 2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7020 0640 0001 6285 5758

Mr. David Taylor
Director
County of Maui
Department of Water Supply
200 South High Street, 5th Floor
Wailuku, Hawaii 96793

Attention: Mr. Tony Linder
Water Treatment Facilities Division Chief

Dear Mr. Taylor:

Subject: Notice of Violation and Order
Docket No. 2022-CW-EO-11
Hawaii Water Pollution Rules and Regulations
lao Surface Water Treatment Plant
On the side of West Alu Road, Wailuku, Hawaii 96793
Permit No. HI0021885

The Department of Health (DOH), Clean Water Branch (CWB), is serving you with the enclosed Notice of Violation and Order (NOVO) for a violation of Hawaii Water Pollution Rules and Regulations. The violation is for discharging pollutants such as lab testing water, strainer wastewater, clean in place wastewater, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water into State waters from the lao Surface Water Treatment Plant (Facility) without a National Pollutant Discharge Elimination System (NPDES) permit in effect. As you know, the Maui County allowed the lao Surface Water Treatment Plant's NPDES permit, Permit No. HI0021885, to expire on November 30, 2021. From December 1, 2021, to February 28, 2022, the facility continued to discharge pollutants without an in effect NPDES Permit.

Under the Hawaii Revised Statutes (HRS) Chapter 342D-9, the DOH is ordering corrective actions and assessing a monetary penalty of \$45,000.00. Corrective actions

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Mr. David Taylor
March 18, 2022
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03012EGGR.22

being ordered include continuing to comply with formerly in effect NPDES Permit No. HI0021885 requirements except for DMR submission, which shall be submitted to DOH via the e-Permitting Portal or otherwise directed per DOH and submitting a new NPDES permit application to the DOH-CWB within 45 calendar days of service.

In developing this NOVO, the DOH considered the good faith actions that you have taken to promptly return to compliance, including the correspondence between your department and the Clean Water Branch. However, it is the County of Maui's responsibility to prevent violations of this nature from occurring.

The enclosed Order shall become final twenty (20) calendar days after this NOVO is served, unless you request a hearing in writing no later than twenty calendar days after service. The request for hearing must be made in accordance with the requirements listed in the NOVO. Furthermore, if the penalty is not paid to the DOH within 30 calendar days after it becomes due and payable, the Director may initiate a civil lawsuit to recover the penalty.

Please be aware, that the NOVO only addresses the specific violations cited. The DOH-CWB reserves its right to seek full penalties for any other violations of the HRS Chapter 342D, found pursuant to this notice or failures to meet the included Order.

Should you have any questions, please contact Mr. Matthew Kurano of the Enforcement Section, CWB, at (808) 586-4309.

Sincerely,

Kathleen Ho

KATHLEEN S. HO
Deputy Director for Environmental Health

GGR

Enclosures: 1. Notice of Violation, Docket No. 2022-CW-EO-11
2. Exhibit A
3. Exhibit B
4. Certificate of Service
5. Certification

c: Mr. Dale Sakata, Deputy Attorney General, Department of the Attorney General (w/encl.)

STATE OF HAWAII

DEPARTMENT OF HEALTH
NOTICE OF VIOLATION AND ORDER

<p>TO: Mr. David Taylor Director County of Maui Department of Water Supply 200 South High Street, 5th Floor Wailuku, Hawaii 96793</p> <p>Respondent</p> <p>Attn: Mr. Tony Linder</p>	<p>NOVO No. 2022-CW-EO-11 <i>Please write this NOVO number on all correspondence</i></p> <p>Re: Expired National Pollution Discharge Elimination System (NPDES) Permit Permit No. HI0021885</p> <p>Property/Facility: Iao Surface Water Treatment Plant On the side of West Alu Road Wailuku, Maui, Hawaii 96793 TMK: (2) 3-5-001:067 (portion) and 091 (portion)</p>
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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 and Hawaii Administrative Rules (HAR) Chapter 11-55, based on the findings of the DOH Clean Water Branch (CWB) personnel during the January Discharge Monitoring Reports (DMR) review. From December 1, 2021, to February 28, 2022, Iao Surface Water Treatment Plant discharged lab testing water, strainer wastewater, clean in place wastewater, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water to State waters for 90 days since the expiration date of their NPDES Permit No. HI0021885 (Permit).

Attached as exhibits are:

- NPDES Permit, Permit No. HI0021885 (Exhibit A);
- Email from Mr. Tony Linder sent on February 28, 2022 (Exhibit B).

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.

Statutes/Rules	Nature of the Violation
<p>HRS §342D-1, HRS §342D-9, HRS §342D-30, HRS §342D-31, HRS §342D-50(a)</p>	<p>lao Surface Water Treatment Plant, County of Maui, Department of Water Supply</p> <p>The County of Maui, Department of Water Supply, (Respondent) owns and operates the lao Surface Water Treatment Plant located on the side of West Alu Road, Wailuku, Maui, Hawaii 96793, TMK: (2) 3-5-001:067 (portion) and 091 (portion) (Facility). The Facility previously discharged lab testing water, strainer wastewater, clean in place wastewater, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water from the Facility to Waihee Ditch, a Class 2 Inland State water, under the Permit.</p> <p>On February 28, 2022, Respondent disclosed that the Facility continued to discharge after the Permit had expired (Exhibit B). The email stated that Respondent could not cease Facility operations, which would compromise Respondent's ability to provide drinking water to the Maui community. Respondent continues to discharge without an NPDES permit on a daily basis since February 28, 2022.</p> <p>HRS §342D-9 states that the Director shall serve written notice on the alleged violator if the Director determines that any person has violated or is violating HRS Chapter 342D.</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 or variance issued by the [D]irector."</p> <p>HRS §342D-1 defines a "person" in relevant part as "the State or any of its political subdivisions."</p> <p>HRS §342D-30 states that violators shall be fined not more than \$25,000 per day for each separate offense and that each day of each violation constitutes a separate offense.</p> <p>HRS §342D-31 states that the Director is authorized to impose by administrative order the penalties specified in HRS §342D-30.</p> <p>1. <u>Discharge of Pollutants to State Waters Without an NPDES Permit</u></p> <p>Respondent is an agency of the County of Maui, which is a political subdivision of the State. Respondent, therefore, is a "person" for the purposes of HRS §342D-50(a).</p>

	<p>Respondent in the normal course of Facility operations continuously processes approximately three (3) million gallons of water per day, and discharged water pollutants on a daily basis to State waters under the Permit.</p> <p>Since the expiration of the Permit, Respondent continued to operate the Facility in the normal course without an NPDES permit, and unlawfully discharged water pollutants in the form of liquid waste such as lab testing water, strainer wastewater, clean in place wastewater, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water from the Facility to Waihee Ditch for 90 days from December 1, 2021, through February 28, 2022.</p> <p>Based on the details above, the DOH finds that Respondent violated HRS §342D-50(a) on 90 counts by discharging liquid waste from the Facility to State waters without an NPDES permit issued by the DOH from December 1, 2021, through February 28, 2022.</p>
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The facts of this case and the law justify the following order.

ORDER

Respondent is ordered to:

1. Immediately comply with the conditions and requirements set forth in the expired Permit. Respondent shall submit monthly DMRs, in accordance with conditions set forth in the expired Permit, to the DOH via the e-Permitting Portal or as otherwise directed in writing by the DOH. Respondent shall comply with the conditions of the expired Permit until a new NPDES permit is issued or this Order is terminated.
2. Within 45 calendar days of service, submit a new and complete NPDES permit application via e-Permitting Portal CWB Individual NPDES Form or Electronic Signature CWB Individual NPDES Form. Pursuant to HAR §11-55-04(c), the new application shall include the:
 - (a) Historic Effluent Limitations and Monitoring Data Spreadsheet with the results from the past five (5) years;
 - (b) Effluent Violation Spreadsheet with the results from the past five (5) years;
 - (c) required \$1000 filing fee; and
 - (d) certification from the Director of the Department of Water Supply, County of Maui.

The DOH may request additional information during the processing of the application. Please, contact the DOH-CWB for specific electronic documents and information needed to be provided to comply with this Order.

3. Pay an administrative penalty of \$45,000.00 within 20 calendar days of the service of this NOVO. Send a certified check for \$45,000.00 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, 2022-CW-EO-11.

All submittals made pursuant to this NOVO shall be certified and signed by a person legally authorized to sign on behalf of Respondent. All documents submitted pursuant to 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."

These Orders shall become final unless, within 20 calendar days after this NOVO is served, Respondent submits a **written** request for a hearing, along with a copy of this 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 HAR Chapter 11-1. At the hearing, the parties may seek to avoid any penalty, and the DOH may seek the maximum penalty of \$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.

All inquiries regarding this matter, besides the request for hearing, shall be directed to: Mr. Matthew Kurano, Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

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 (711), at least 10 working days before the hearing or pre-hearing conference date.

Kathleen Ho

KATHLEEN S. HO
Deputy Director for Environmental Health

Date: ^{Mar 15, 2022}_____

Dale K. Sakata

Approved as To Form By:
Dale Sakata
Deputy Attorney General

Exhibit A

PERMIT NO. HI 0021885

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. §1251 *et seq.*; the "Act") and Hawaii Revised Statutes (HRS), Chapter 342D, and Hawaii Administrative Rules (HAR) Chapters 11-54 and 11-55, Department of Health (DOH), State of Hawaii,

COUNTY OF MAUI DEPARTMENT OF WATER SUPPLY

(hereinafter PERMITTEE).

is authorized to discharge lab testing water, strainer waste water, clean in place waste water, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water from its 135,000 gallon Sludge Lagoons through Outfall No. 001, located at discharge point coordinates: Latitude 20.88282°N and Longitude 156.51200°W, to the receiving water named Waihee Ditch,

from the Iao Surface Water Treatment Plant (hereinafter FACILITY), located in Wailuku, Island of Maui, Hawaii, TMK: (2) 3-5-001:067 (portion) and 091 (portion),

in accordance with the effluent limitations, monitoring requirements and other conditions set forth herein, and in the attached DOH "Standard NPDES Permit Conditions" that is available on the DOH, Clean Water Branch (CWB) website at <http://health.hawaii.gov/cwb/site-map/home/standard-npdes-permit-conditions/>.

All reference to Title 40 of the Code of Federal Regulations (CFR) are to regulations that are in effect on July 1, 2016, except as otherwise specified. Unless otherwise specified herein, all terms are defined as provided in the applicable regulations in Title 40 of the CFR.

Failure to comply with any condition, requirement, and/or limitation in this permit is an enforceable violation and your NPDES permit may be terminated. Examples of enforceable violations include, but are not limited to: Unauthorized discharges where a pollutant was not disclosed in the NPDES application, but was detected by monitoring only requirements in the NPDES permit or by other means determined by the DOH; failure to sample, analyze, or submit water quality results as required in the NPDES permit; and discharging pollutants in locations that were not authorized in the NPDES permit. If you violate Hawaii Revised Statutes (HRS), Chapter 342D, you may be subject to penalties of up to \$25,000 per violation per day and up to two (2) years in jail. Falsification of information, including providing information in the NPDES application that does not match what is actually occurring at the project site/facility, may result in criminal penalties for the Permittee and their authorized representative as provided in Clean Water Act, Section 309 and HRS, Section 342D-35.

FINAL PERMIT
October 14, 2016

This permit will become effective on **December 1, 2016**.

This permit and the authorization to discharge will expire at midnight,
November 30, 2021.

Signed this 14th day of October, 2016.



(For) Director of Health

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**ATTACHMENT:
STANDARD NPDES PERMIT CONDITIONS (Version 15)**

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning with the effective date of this permit and lasting through the expiration date of this permit, the Permittee is authorized to discharge lab testing water, strainer waste water, clean in place (CIP) waste water, maintenance wash water, filter backwash water, chlorine contact tank overflow water, and reject water from its Sludge Lagoons through Outfall No. 001 in accordance with the effluent limitations and monitoring requirements specified below.

1. Numerical Limitations:

- a. The discharge via Outfall No. 001 shall be limited and monitored by the Permittee as specified below:

PARAMETER	DISCHARGE LIMITATION		UNIT	MINIMUM FREQUENCY	SAMPLE TYPE
	Single Sample Maximum	Geometric Mean ⁹			
Flow	Report	--	gal	Once/Month ¹	Estimated or Calculated
Total Suspended Solids	50.0 ³ 30.0 ⁴	20.0 ³ 10.0 ⁴	mg/l	Once/Month ¹	Grab ²
Turbidity	15.0 ³ 5.5 ⁴	5.0 ³ 2.0 ⁴	NTU	Once/Month ¹	Grab ²
Nitrate + Nitrite Nitrogen	Report	Report	µg/l	Once/Month ¹	Grab ²
Total Recoverable Copper	Report	--	µg/l	Once/Month ¹	Grab ²
Chloroform	Report	--	µg/l	Once/Month ¹	Grab ²
Total Residual Chlorine	19	--	µg/l	Once/Month ¹	Grab ^{2,6}
pH Range	5.5 – 8.0	--	Standard Units	Once/Discharge	Grab ^{2,6}
Temperature	Shall not vary more than 1°C from ambient conditions ⁷	-	°C	Once/Month ^{1,8}	Grab ² or Recorder
Whole Effluent Toxicity	Pass ¹⁰	--	---	Once/Quarter ¹¹	Grab ²

gal Gallons
 mg/l Milligrams per liter
 NTU Nephelometric turbidity units
 µg/l Micrograms per liter

- ¹ "Once/Month" shall mean once per calendar month.
- ² A grab sample means an individual sample collected at a randomly-selected time over a period not exceeding 15 minutes.
- ³ This limitation shall be in effect during the wet season (November 1 to April 30).
- ⁴ This limitation shall be in effect during the dry season (May 1 to October 31).
- ⁵ The Permittee shall measure pH within 15 minutes from the time the sample was taken.
- ⁶ The Permittee shall test for chlorine immediately after obtaining the sample.
- ⁷ Applied as a net increase in temperature between ambient conditions (specified in Part A.2) and the effluent. This value shall be calculated by subtracting the results of the receiving water monitoring from the effluent monitoring. The Permittee shall report the effluent, ambient (per Part A.2 of this permit), and delta temperature values per sampling event.
- ⁸ Temperature measurement(s) shall be taken such that the maximum effluent temperature at the sampling location is identified for the discharge.
- ⁹ The Permittee shall take a geomean of all individual samples taken over the calendar year and report that value in the last DMR of the year.
- ¹⁰ "Pass," as described in Part B.3 of this permit.
- ¹¹ The Permittee shall conduct Whole Effluent Toxicity testing during the first month of discharge and every calendar quarter thereafter.

2. Receiving Water Monitoring Requirements

- a. The discharge from the facility through Outfall No. 001 shall not vary more than 1°C from ambient conditions of the receiving water. The Permittee shall monitor the receiving water (Waihee Ditch) as specified below:

PARAMETER	RECEIVING WATER NEAR OUTFALL	DISCHARGE LIMITATION	UNIT	MINIMUM FREQUENCY ²	SAMPLE TYPE
Temperature	No. 001	Report	°C	Once/Month	Grab ¹

- ¹ A grab sample means an individual sample collected at a randomly-selected time over a period not exceeding 15 minutes.
- ² If after one (1) year the Permittee can provide test data, engineering analysis, etc. showing that the effluent, under worst case conditions, does not vary more than one (1) degree Celsius from ambient conditions of the receiving water, the Permittee may request to decrease the monitoring frequency of the receiving water temperature to once a year for the remainder of the permit term. The Permittee must identify and account for all inputs to the discharge and demonstrate that the temperature limit will be met with every discharge. Any request must be approved by the Director of Health in writing, and shall be at the Director of Health's sole discretion. The Department may revoke the approval at any time upon notification of the Permittee.
- b. The receiving water sampling shall be conducted within 60 minutes from the effluent sampling (specified in Part A.1) for the outfall.
- c. Receiving water sampling shall be taken between 20 feet to 60 feet upstream of the discharge location, where there is no influence from the outfall.

3. Representative Sampling

- a. Representative samples of the effluent discharges taken in compliance with the monitoring requirements shall be taken following appropriate treatment and prior to mixing with the receiving waters.
- b. Samples and measurements taken for the purposes of monitoring shall be representative of the nature of the monitored activity.

4. Sampling Locations

The Permittee shall not change sampling locations set in the Effluent and Receiving Water Monitoring Plan without the notification to and the approval from the Director of Health (Director).

5. Iao Surface Water Treatment Plant Best Management Practices (BMP) Plan

The Permittee shall develop and implement a Site-Specific BMP Plan to reduce and/or minimize the discharge of pollutants from the facility to achieve and maintain compliance with the conditions of this permit and toward the protection and maintenance of the State receiving waters. The BMP Plan shall include, but not be limited to include a list of all potential sources of spills or leaks and the applicable pollutants, proper storage of chemicals to prevent spills/leakages that may result in the discharge to State receiving waters, operation and maintenance procedures to ensure proper operation, procedures for properly containing, cleaning, and disposing of any spilled material, employee training on proper operations, controls, inspections, and response actions in order to ensure compliance with applicable WQS and permit conditions, etc. The Permittee shall implement the BMP Plan upon its submittal to the Director. The Permittee shall revise and update the BMP Plan as often as needed or as requested by the Director.

6. Other Requirements

- a. The Permittee shall only use water from the Iao-Waikapu Ditch for the source water unless granted a written authorization by the Director to use alternative source water(s).
- b. The Permittee shall periodically evaluate the treatment system in order to ensure compliance with the discharge limitations specified above and the basic water quality criteria as specified in Section 1 of the attached Standard NPDES Permit Conditions.

- c. The Permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in Section 1 of the "Standard NPDES Permit Conditions."
 - d. The discharge shall not exhibit the following characteristics:
 - (1) Floating solids or visible foam
 - (2) Visible oil sheen
 - (3) Odor
 - e. There shall be no discharge of materials that will settle to form objectionable sludge or bottom deposits.
 - f. The Permittee shall ensure that water is discharged in a manner that the discharge shall not cause or contribute to a violation of the basic water quality criteria as specified in HAR, Chapter 11-54, Section 11-54-4.
7. Reopener Clause

In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharge may cause unreasonable degradation of the aquatic environment.

B. WHOLE EFFLUENT TOXICITY (WET) LIMITATIONS AND MONITORING REQUIREMENTS

1. Monitoring Frequency

The Permittee shall conduct quarterly static or flow-through acute bioassays on composite effluent samples, in accordance with the procedures outlined below.

Acute toxicity test samples shall be collected for each point of discharge at the designated NPDES sampling station for the effluent (i.e., downstream from the last treatment process and any in-plant return flows where a representative effluent sample can be obtained).

2. Freshwater Species and Test Methods

Species and short-term test methods for estimating the acute toxicity of NPDES effluents are found in the fifth edition of *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA/821/R-02/012, 2002; Table IA, 40 CFR Part 136).

During the first three (3) quarters of the permit term, the Permittee shall conduct 96-hour static renewal toxicity test with two (2) test species: the vertebrate species, the fathead minnow, *Pimephales promelas* (Acute Toxicity Test Method 2000.0); and the following invertebrate species: the daphnid, *Ceriodaphnia dubia* (Acute Toxicity Test Method 2002.0). After the first three (3) quarters, the Permittee may reduce monitoring to the single most sensitive species or as otherwise directed by the Director.

3. Acute WET Permit Limit

There is an acute toxicity effluent limit for this discharge because there is reasonable potential for the discharge to exceed the water quality standard for acute toxicity. For this discharge, the determination of "Pass" or "Fail" from a single-effluent concentration acute toxicity test at the IWC of 100 percent effluent is determined using the Test of Significant Toxicity (TST) approach described in *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* (EPA 833-R-10-003, 2010). For any one acute toxicity test, the acute WET permit limit that must be met is rejection of the null hypothesis (H_0):

$$\text{IWC (100 percent effluent) Mean Response} \leq 0.80 \times \text{Control Mean Response}$$

A test result that rejects this null hypothesis is reported as "Pass" on the DMR form. A test result that does not reject this null hypothesis is reported as "Fail" on the DMR form. To calculate either "Pass" or "Fail", the Permittee shall follow the instructions in *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document*, Appendix A. If a test result is reported as "Fail", then the Permittee shall follow Part B.6 (Accelerated Toxicity Testing and TRE/TIE Process) of this permit.

4. Quality Assurance

- a. Quality assurance measures, instructions, and other recommendations and requirements are found in the acute test methods manual previously referenced. Additional requirements are specified below.
- b. This discharge is subject to a determination of "Pass" or "Fail" from a single-effluent concentration acute toxicity test at the IWC (for statistical flowchart and procedures, see *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document*, Appendix A, Figure A-1). The acute IWC for this discharge is 100 percent effluent.
- c. Effluent dilution water and control water should be prepared and used as specified in the test methods manual *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms* (EPA/821/R-02/012, 2002). If the dilution water is different from test organism culture water, then a second control using culture water shall also be used.
- d. If organisms are not cultured in-house, then concurrent testing with a reference toxicant shall be conducted. If organisms are cultured in-house, then monthly reference toxicant testing is sufficient. Reference toxicant tests and effluent toxicity tests shall be conducted using the same test conditions (e.g., same test duration, etc.).
- e. All multi-concentration reference toxicant test results must be reviewed and reported according to EPA guidance on the evaluation of concentration-response relationships found in *Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing* (40 CFR 136) (EPA 821-B-00-004, 2000).
- f. If either the reference toxicant or effluent toxicity tests do not meet all test acceptability criteria in the test methods manual, then the Permittee shall resample and retest within 14 calendar days.

- g. If the discharged effluent is chlorinated, then chlorine shall not be removed from the effluent sample prior to toxicity testing without written approval by the Director.
- h. pH drift during the toxicity test may contribute to artificial toxicity when ammonia or other pH-dependent toxicants (e.g., metals) are present. This problem is minimized by conducting toxicity tests in a static-renewal or flow-through mode, as recommended in Paragraph 9.5.9 of the test methods manual.

5. Initial Investigation TRE Work Plan

Within 90 calendar days of the permit effective date, the Permittee shall prepare and submit to the Director a copy of its Initial Investigation Toxicity Reduction Evaluation (TRE) Work Plan (1-2 pages) for review. This plan shall include steps the Permittee intends to follow if toxicity is measured above the acute WET permit limit and should include the following, at minimum:

- a. A description of the investigation and evaluation techniques that would be used to identify potential causes and sources of toxicity, effluent variability, and treatment system efficiency.
- b. A description of methods for maximizing in-house treatment system efficiency, good housekeeping practices, and a list of all chemicals used in operations at the facility.
- c. An indication of who would conduct the Toxicity Identification Evaluation (TIE), if a TIE is necessary, (i.e., an in-house expert or outside contractor).

6. Accelerated Toxicity Testing and TRE/TIE Process

- a. If the acute WET permit limit is exceeded and the source of toxicity is known (e.g., a temporary plant upset), then the Permittee shall conduct one (1) additional toxicity test using the same species and test method. This toxicity test shall begin within 14 calendar days of receipt of a test result exceeding the acute WET permit limit. If the additional toxicity test does not exceed the acute WET permit limit, then the Permittee may return to the regular testing frequency.
- b. If the acute WET permit limit is exceeded and the source of toxicity is not known, then the Permittee shall conduct six (6) additional toxicity tests using the same species and test method, approximately every two (2) weeks, over a

12-week period. This testing shall begin within 14 calendar days of receipt of a test result exceeding the acute WET permit limit. If none of the additional toxicity tests exceed the acute WET permit limit, then the Permittee may return to the regular testing frequency.

- c. If one (1) of the additional toxicity tests (in Paragraphs 6.a or 6.b) exceeds the acute WET permit limit, then, within 14 calendar days of receipt of this test result, the Permittee shall initiate a TRE using, according to the type of treatment facility, EPA manual Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants (EPA/833/B-99/002, 1999) or EPA manual Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (EPA/600/2-88/070, 1989). In conjunction, the Permittee shall develop and implement a Detailed TRE Work Plan which shall include the following: further actions undertaken by the Permittee to investigate, identify, and correct the causes of toxicity; actions the Permittee will take to mitigate the effects of the discharge and prevent the recurrence of toxicity; and a schedule for these actions.
- d. The Permittee may initiate a TIE as part of a TRE to identify the causes of toxicity using the same species and test method and, as guidance, EPA manuals: Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures (EPA/600/6-91/003, 1991); Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity (EPA/600/R-92/080, 1993); Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity (EPA/600/R-92/081, 1993); and Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document (EPA/600/R-96-054, 1996).

7. Reporting of Acute Toxicity Monitoring Results

- a. The Permittee shall report on the DMR for the month in which the toxicity test was conducted: "Pass" or "Fail" (based on the Welch's t-test result) and the calculated "percent mean response at IWC", where:

$$\text{percent mean response at IWC} = ((\text{Control Mean Response} - \text{IWC Mean Response}) \div \text{Control Mean Response}) \times 100,$$

and to assist in evaluation of the test result, the standard deviations for the IWC mean response and the Control mean response.

- b. The Permittee shall submit a full laboratory report for all toxicity testing as an attachment to the DMR for the month in which the toxicity test was conducted. The laboratory report shall contain: the toxicity test results; the dates of sample collection and initiation of each toxicity test; all results for effluent parameters monitored concurrently with the toxicity test(s); and progress reports on TRE/TIE investigations.
- c. The Permittee shall notify the Director in writing within 14 calendar days of exceedance of the acute WET permit limit. This notification shall describe actions the Permittee has taken or will take to investigate, identify, and correct the causes of toxicity; the status of actions required by this permit; and schedule for actions not yet completed; or reason(s) that no action has been taken.

8. Permit Reopener for Acute Toxicity

In accordance with 40 CFR Parts 122 and 124, this permit may be modified to include new effluent limitations or permit conditions to address acute toxicity in the effluent or receiving waterbody, as a result of the discharge; or to implement new, revised, or newly interpreted water quality standards applicable to acute toxicity.

Nothing in Part B waives any remedy or penalty applicable under Hawaii Revised Statutes, Chapter 342D.

C. WATER QUALITY CRITERIA

1. Basic Water Quality Criteria Applicable to All Waters:
 - a. The discharge shall comply with applicable water quality standards for receiving waters adopted by the DOH under HAR, Chapter 11-54, Water Quality Standards, effective November 15, 2014.
 - b. The discharge shall not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife and allows recreational activities in and on the water.
 - c. The discharge of effluent and storm water through *Outfall Serial No. 001* shall not cause the following water quality criteria to be violated:
 - (1) All State waters shall be free from pollutants in concentrations which exceed the acute standards listed in HAR 11-54-4(b)(3). All State waters shall also be free from acute toxicity as measured using the toxicity tests listed in HAR 11-54-11, or other methods specified by the Director.
 - (2) All State waters shall be free from pollutants in concentrations which on average during any 24 hour period exceed the chronic standards listed in HAR 11-54(b)(3). All State waters shall also be free from chronic toxicity as measured using the toxicity tests listed in HAR 11-54-10, or other methods specified by the Director.
 - (3) All State waters shall be free from pollutants in concentrations which, on average during any 30-day period, exceed the "fish consumption" standards for non-carcinogens in HAR 11-54-4(b)(3). All State waters shall also be free from pollutants in concentrations, which on average during any 12-month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in HAR 11-54-4-(b)(3).
 - (4) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, include:
 - i. Material that will settle to form objectionable sludge or bottom deposits;
 - ii. Floating debris, oil, grease, scum, or other floating materials;

- iii. 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;
- iv. High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in 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;
- v. Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- vi. 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.

D. REPORTING REQUIREMENTS

1. Monitoring Results

- a. The Permittee shall summarize and report monitoring results on a DMR Form (EPA No. 3320-1) in a format that allows direct comparison with the limitations and requirements of this permit.
- b. The Permittee shall submit DMRs for the effluent processes to the Director by the 28th day of the month following the completed reporting period (i.e., the DMR for the month of January shall be due on February 28th).
- c. Should there be no discharges during the monitoring period, the DMR form shall so state.
- d. For the purposes of reporting, the Permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL). As such, the Permittee must conduct influent and effluent analyses in accordance with the method specified in Appendix 1 of this permit and must utilize a standard calibration where the lowest standard point is equal to or less than the concentration of the minimum level (ML).
 - (1) The MDL is defined as the minimum concentration of an analyte that can be detected with 99% confidence.
 - (2) The ML is defined as the concentration in a sample equivalent to the concentration of the lowest calibration standard analyzed in a specific analytical procedure, assuming that all the method-specific sample weights, volumes, and processing steps have been followed. Where a promulgated ML is not available, an interim ML is calculated using a factor of 3.18 times the MDL.

Analytical results at or above the laboratory's ML shall be reported on DMRs as the measured concentration. For analytical results between the MDL and the ML, the Permittee shall report in the comment section on the DMR the sigma (σ) value (determined by the laboratory during the MDL study). Analytical results below the laboratory's MDL shall be reported as less than the MDL (i.e., "<10").

e. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant at location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified in 40 CFR 136, the results of such monitoring shall be included in the calculation and reporting of the values required in the DMR form. The increase frequency shall also be indicated.

f. Submittal of Monitoring Results Using NetDMR

The Permittee shall submit DMRs required under this permit electronically using NetDMR. NetDMR is accessed from: <http://www.epa.gov/netdmr>.

DMRs shall be submitted electronically no later than the 28th day of the month following the completed reporting period. Once a Permittee begins submitting DMRs using NetDMR, it will no longer be required to submit hard copies of DMRs to the Director, unless otherwise requested by the Director.

g. Submittal of Reports, Notifications, and Updates

All reports, including DMRs, notifications, and updates to information on file, except those described in Part D.1.f of this permit, shall be submitted to the Director through the CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs. This form is accessible through the e-Permitting Portal website at: <https://eha-cloud.doh.hawaii.gov/epermit>. If not already registered, you will be asked to do a one-time registration to obtain your login and password. After you register, click on the Application Finder tool to locate the form. Follow the instructions to complete and submit this form. All submissions shall include a CD or DVD containing the downloaded e-Permitting submission and a completed Transmittal Requirements and Certification Statement for e-Permitting NPDES/NGPC Compliance Submissions Form, with original signature and date.

2. Non-compliance

a. Oral Reports

The Permittee shall orally notify the Clean Water Branch (CWB) at (808) 586-4309 within 24 hours when the following occurs:

- (1) Any exceedance of a pollutant limitation;

- (2) Any non-compliance which may endanger human health or the environment; and
- (3) Any bypass or upset resulting in or contributing to a discharge to State waters.

b. Written Reports

- (1) For those non-compliances requiring immediate oral reporting, the Permittee shall submit a written non-compliance report within five (5) calendar days of the time the Permittee becomes aware of the non-compliance. The report shall be submitted to the CWB in accordance with Part D.1.g.
- (2) The report shall contain a description of the non-compliance and its cause; the period of non-compliance, including exact dates and times, and if the non-compliance has not been corrected, the amount of time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the non-compliance.
- (3) The Director may waive the written report or the five-day deadline on a case-by-case basis if the oral report has been received within 24 hours of the non-compliance.

3. Additional Reporting Requirements

The Permittee shall submit a site-specific BMP Plan in accordance with Part D.1.g at least 30 calendar days of the effective date of this permit for the Lao Surface Water Treatment Plant activities.

All questions/concerns that the DOH may have must be answered to the satisfaction of the CWB.

E. OTHER REQUIREMENTS

1. Schedule of Submission

a. Effluent and Receiving Water Monitoring Programs

(1) Effluent and Receiving Water Monitoring Programs

Within 30 calendar days after the effective date of this permit, the Permittee shall submit an Effluent and Receiving Water Monitoring Program which complies with Part A of this permit.

(2) The Program(s) shall include at a minimum, but not be limited to the following:

- (a) Sampling location map;
- (b) Sample holding time;
- (c) Preservation techniques;
- (d) Test method and method detection level; and
- (e) Quality control measures.

The Permittee shall continue to implement the current plans until the revised programs are submitted to the Director. The revised programs should be implemented beginning the month they are submitted. The Permittee shall address all comment regarding the plans to the Director's satisfaction.

The DOH reserves the right to require the Permittee to revise the approved program, as appropriate, pursuant toward compliance with the terms and conditions of this permit.

Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136 with detection limits low enough to measure the compliance with Part A of this permit. For cases where the discharge limitation is below the lowest detection limit of the appropriate test procedure, the compliance shall be based upon the lowest detection limit of the method.

If a test method has not been promulgated for a particular constituent, the Permittee may use any suitable method for measuring the level of the constituent in the discharge provided the Permittee submit a description of the method or a reference to a published method.

(3) The Permittee shall submit an initial investigation TRE workplan in accordance with Part B.5 to the Director within 90 calendar days after the effective date of this permit.

2. Schedule of Maintenance

The Permittee shall submit a schedule to the Director at least 14 calendar days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall contain a description of the maintenance and its purpose; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of non-compliance.

3. Reopener Provisions

The draft permit may be modified in accordance with the requirements set forth at 40 CFR 122 and 124, to include appropriate conditions or limitations based on newly available information, or to implement any new state water quality criteria that are approved by the EPA.

F. MAPS – Figures 1 and 2

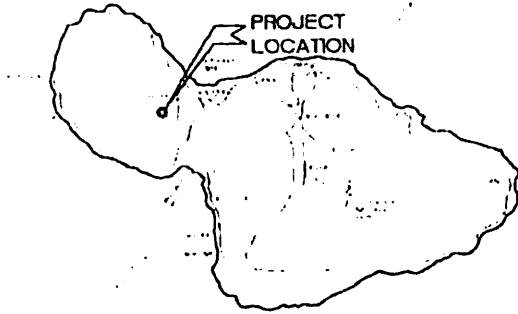


Figure 1 – Location Map



Figure 2 – Vicinity and Discharge Point

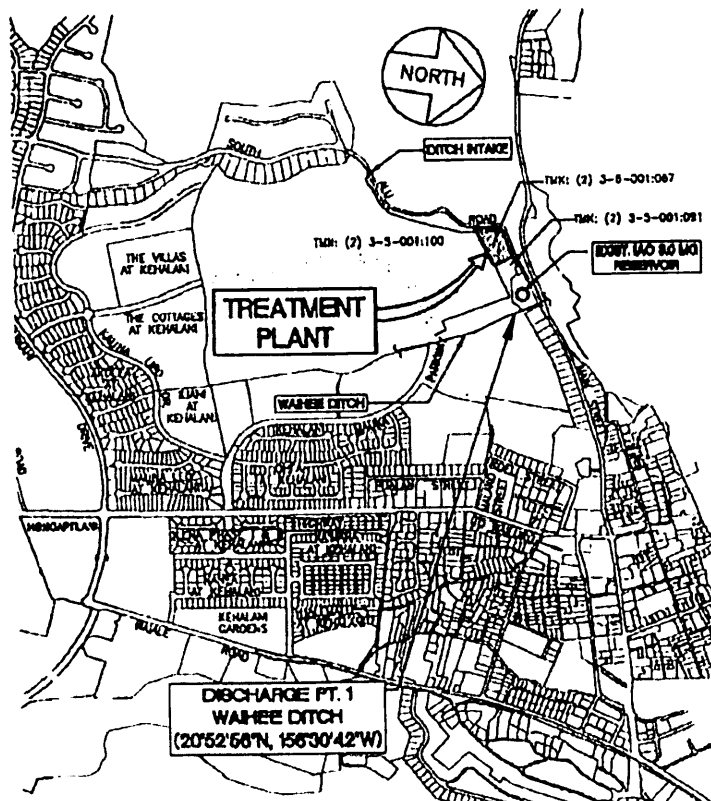


Exhibit B

From: Tony Linder <Tony.Linder@co.maui.hi.us>
Sent: Monday, February 28, 2022 3:56 PM
To: Kurano, Matthew <matthew.kurano@doh.hawaii.gov>
Cc: Helene Kau <Helene.Kau@co.maui.hi.us>; Jeff Pearson <Jeff.Pearson@co.maui.hi.us>
Subject: [EXTERNAL] Iao WTP NPDES Permit

Mr. Kurano,

As per our recent phone conversation I am writing this e-mail to you to share current status and system demand for the Iao WTP in Wailuku, Maui, HI.

I have the permit here in my office and now see that it does not run in perpetuity. It was originally issued in October 2016 as a 5 year permit.

The 180 day renewal request period had lapsed due to my being unaware of the impending expiration.

We are hopeful that we may still be able to renew the permit as we have met all conditions, regulations and water quality parameters as well as monthly submittal times up until this lapse on renewal.

The plant is currently and continuously processing approximately 3.0 mgd. System demand is such that we have a definitive need to continue production at this facility.

If the facility were to cease production as of this writing we feel strongly that upper portions of Wailuku may fall short in potable water supply and in meeting fire flow demand, if needed.

I would ask that the Clean Water Branch please consider the position our mistake in not renewing has put us in and in meeting demand in our Wailuku system.

We would respectfully adhere to any guidance you may be able to render in allowing this facility to continue to process drinking water for the community and appreciate any assistance you may provide in assisting us with renewing our permit and continuing to meet terms of the NPDES permit. # H10021885.

Respectfully submitted,

Tony Linder
County of Maui, D.W.S.
W.T.P. Division Chief
Tony.Linder@co.maui.hi.us
c-808-870-5356
office-808-270-7380

CERTIFICATION

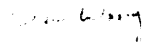
I hereby certify that the attached copy is an accurate and correct copy of the following documents in the Department of Health, Docket No. 2022-CW-EO-11

1. Notice of Violation;
2. Order;
3. Exhibit A;
4. Exhibit B;
5. Certificate of Service.

and that with respect to the above described documents, I am authorized to make this certification.

DATED: Pearl City, Hawaii, Mar 15, 2022

ATTEST:



ALEC WONG, P.E., CHIEF
Clean Water Branch

GGR

c: Mr. Dale Sakata, Deputy Attorney General, Department of the Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served the documents listed herein by mailing, via certified mail, return receipt requested No. 7020 0640 0001 6285 5758, on ~~_____ MAR 16 2022 _____~~, a copy of those documents to the person named herein at the address indicated.

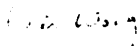
DOCUMENTS:

1. Notice of Violation;
2. Order;
3. Exhibit A;
4. Exhibit B;
5. Certification.

PERSONS SERVED AND ADDRESS:

Mr. David Taylor
Director
County of Maui
Department of Water Supply
200 South High Street, 5th Floor
Wailuku, Hawaii 96793

DATED: Pearl City, Hawaii, Mar 15, 2022



ALEC WONG, P.E., CHIEF
Clean Water Branch

GGR

c: Mr. Dale Sakata, Deputy Attorney General, Department of the Attorney General