

DAVID M. LOUIE 2162
Attorney General of Hawaii

HERBERT B.K. LAU 2591
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

Attorneys for Complainant Director
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2010-26
	) (Inspection No. 313079949)
DIRECTOR, DEPARTMENT OF LABOR	)
AND INDUSTRIAL RELATIONS,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,	) AND ORDER
	)
vs.	)
	)
C & C - KAILUA WASTEWATER	)
TREATMENT PLANT DES,	)
	)
Respondent.	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent C & C - KAILUA WASTEWATER TREATMENT PLANT DES ("Respondent")
having reached a full and complete settlement of the above-captioned contested case presently
pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about June 7, 2010, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), initiated an inspection of Respondent's

workplace located at 95 Kaneohe Bay Drive, Kailua, Hawaii, 96734.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on August 25, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$140,000.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 95 Kaneohe Bay Drive, Kailua, Hawaii, 96734.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation, as amended below in paragraph 5, in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Solely for the purpose of paragraph 8, this condition shall be materially fulfilled if Respondent makes a good faith effort to abate and submit an appropriate abatement certification.
5. The Citation is amended as follows:
 - a. Citation 1, item 1, alleging a willful violation of section 12-60-2(a)(3)

of the Hawaii Administrative Rules ("HAR"), with an associated penalty of \$70,000.00, is amended to a serious violation of 29 CFR 1910.146(c)(2) [chapter 12-67.2, HAR], with a reduced penalty of \$7,000.00; and

b. Citation 1, item 2, alleging a willful violation of 29 CFR 1910.146(g)(1), with an associated penalty of \$70,000.00, is amended to a serious violation of 29 CFR 1910.146(g)(2)(iv), with a reduced penalty of \$2,000.00.

6. The Director reduces the aggregate penalty from \$140,000.00 to \$9,000.00, which shall be paid in full the Director of Budget and Finance within sixty (60) days after the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. If Respondent materially fails to fulfill sections 4 or 6 of this Agreement, the original characterization and monetary penalties of Citation 1, items 1 and 2, shall automatically and without further notice be reinstated to willful violations, and their original penalty amounts shall automatically and without further notice be reinstated to \$140,000.00 in the aggregate, and shall be final and conclusive and shall be treated as such with regard to any future citations the Director may issue against Respondent including, but not limited to, any "repeat" violations. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. This Agreement and any actions taken to comply with its terms are not to be construed as admissions of violation, fault, or liability by Respondent.

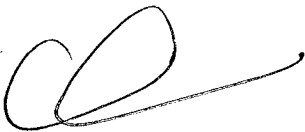
11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

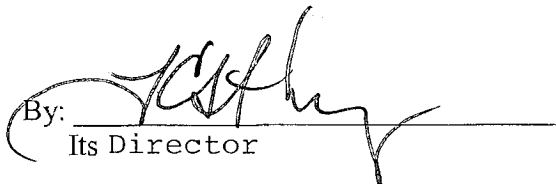
DATED: Honolulu, Hawaii, January 4, 2012.

APPROVED AS TO FORM:

CITY & COUNTY OF HONOLULU, KAILUA
WASTEWATER TREATMENT PLANT DES



DANIEL W.S. LAWRENCE
Attorney for Respondent

By: 
Its Director

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DWIGHT TAKAMINE

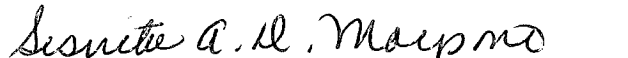
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 458

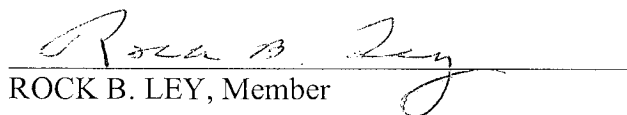
DATED: January 4, 2012



JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 0100 0002 8176 2484

Citation and Notification of Penalty

To:
C&C-Kailua Wastewater Treatment Plant DES
and its successors
95-Kaneohe Bay Dr
Kailua, HI 96734

Inspection Number: 313079949
Inspection Date(s): 06/07/2010- 06/10/2010
Issuance Date: 08/25/2010
OSHC ID: L8401
Optional Report No.: 0110
Inspection Type: Complaint
Scope of Inspection: Partial Inspection

Inspection Site:
95-Kaneohe Bay Dr
Kailua, HI 96734

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

PEARL IMADA IBOSHI, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

C&C-Kailua Wastewater Treatment Plant DES
95-Kaneohe Bay Dr
Kailua, HI 96734

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 08/25/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313079949

Inspection Dates: 06/07/2010-06/10/2010

Issuance Date: 08/25/2010



Citation and Notification of Penalty

Company Name: C&C-Kailua Wastewater Treatment Plant DES
Inspection Site: 95-Kaneohe Bay Dr, Kailua, HI 96734

Citation 1 Item 1 Type of Violation: **Willful**

HAR §12-60-2(a)(3) was violated because:

A hazard assessment document (dated 2005) provided by Kailua Wastewater Treatment Plant management identifies the Kaneohe Bay #1 Pump Station Preaeration Basin to have Oxygen deficiency hazard; Explosive gases hazard; Hydrogen Sulfide hazard. Two employees were sent into this space that is designated as permit required confined space but did not follow the permit required confined space entry procedures. A "Danger confined space entry by permit only" sign was posted by the access entry. The permit required confined space has not been declassified. Knowingly sending employees into a permit space that has not been classified without following proper permit space entry procedures could potentially expose employees to hazards that could result in serious injury or death.

§12-60-2(a)(3) states "Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used."

Location: Kaneohe bay #1 pump station

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 70,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313079949

Inspection Dates: 06/07/2010 - 06/10/2010

Issuance Date: 08/25/2010



Citation and Notification of Penalty

Company Name: C&C-Kailua Wastewater Treatment Plant DES

Inspection Site: 95-Kaneohe Bay Dr, Kailua, HI 96734

Citation 1 Item 2 Type of Violation: **Willful**

29 CFR 1910.146(g)(1) [Refer to chapter 12-67.2-2, HAR] was violated because:

A "Danger confined space entry by permit only" sign was posted by the access entry. Two employees were sent into a permit space without following proper permit space entry procedures, such action demonstrated an inadequate understanding, knowledge, and skills necessary for the safe performance of the duties under the permit required space standard.

29 CFR 1910.146(g)(1) states "The employer shall provide training so that all employees whose work is regulated by this section acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this section."

C&C-DES, Kailua Regional Wastewater Treatment Plant was previous cited for a violation of this occupational safety and health standard (29 CFR 1910.146(g)(1), which was contained in HIOSH inspection number 313078396, citation 1 item 1a, issued on February 16, 2010 for the site of 95 Kaneohe Bay Drive, Kailua, HI 96734 and become final order on March 18, 2010.

Location: Kaneohe bay #1 pump station

Date By Which Violation Must be Abated:

09/07/2010

Penalty:

\$ 70,000.00

PEARL IMADA IBOSHI
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.