

MEMORANDUM OF AGREEMENT
REGARDING PERMIT AND ENFORCEMENT PROGRAMS
BETWEEN THE
DIRECTOR, STATE OF HAWAII DEPARTMENT OF HEALTH
AND THE
REGIONAL ADMINISTRATOR, REGION IX, ENVIRONMENTAL PROTECTION AGENCY

The Director, State of Hawaii Department of Health (hereinafter the "Director" and "Department", respectively) and the Regional Administrator, Region IX, Environmental Protection Agency (hereinafter the "Regional Administrator" and "Agency", respectively), in order to ensure a unified and coordinated program of water quality control in Hawaii, believe it highly desirable to develop understandings in various program areas. The Regional Administrator and the Director have entered into this Memorandum of Agreement to delineate the respective responsibilities of the Department and the Agency for operation of cooperative state-federal waste discharge permit and enforcement programs. This agreement establishes policies and procedures and provides broad guidance for issuance of National Pollutant Discharge Elimination System (hereinafter "NPDES") permits in the State of Hawaii in accordance with the 1972 Amendments to the Federal Water Pollution Control Act (P.L. 92-500, 33 U.S.C. 1251 et seq., hereinafter the "Act"). With respect to the NPDES permit program and resulting enforcement programs they do hereby agree as follows:

I. General Understandings and Policies

- A. It shall be the policy of Region IX of the Agency and the Department to fully coordinate and cooperate in the issuance of waste discharge permits under the NPDES. Furthermore, the Department and Agency shall mutually assist each other in all appropriate ways necessary to promote and conduct an enforcement program capable of providing maximum effectiveness in achieving federal and state objectives for the regulation of water quality. Periodically, the Director and the Regional Administrator, or their authorized representatives, shall meet to review the state permit and enforcement activities and procedures under this agreement, and to revise such procedures as necessary to achieve compliance with federal and state objectives.

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- B. In accordance with national policy as expressed in Section 101(b) of the Act, it is recognized that the issuance of NPDES permits and enforcement actions necessary for the protection and enhancement of waters in Hawaii are the primary responsibilities of the Department. The Agency has a primary role in providing policy guidance and, where feasible and appropriate, in providing financial and technical assistance. Furthermore, the Agency has a substantial interest in the issuance of permits and related enforcement matters.
- C. Following approval of the State's program pursuant to Section 402 of the Act, the Department, under state statutes and regulations, shall process and issue NPDES permits which are consistent and compatible with the Act and with the regulations and guidelines adopted thereunder. The Agency may provide written comments or recommendations on, or objections to, any NPDES permit to be issued. As used in this agreement, any "objections" transmitted to the Department by the Agency shall only be those which specifically identify a lack of compliance with the Act or regulations and guidelines adopted thereunder. Whenever the Agency "objects" to the issuance of an NPDES permit pursuant to the procedures contained in this agreement, the Department shall not issue that permit until all "objections" of the Agency have been eliminated. "Comments" or "recommendations" may relate to any matters not covered by "objections", as defined above. The Department shall take any comments or recommendations made by the Agency under consideration. If any comment or recommendation is not accepted for inclusion in the permit, the Department shall notify the Agency in writing of its disposition of such comment or recommendation, together with its reasons for not including it in the permit.
- D. The Department, with technical assistance from and review by Region IX of the Agency, shall have responsibility for issuance of all NPDES permits in the State of Hawaii, except for point source discharges from federal facilities. Region IX of the Agency, with technical assistance from and review by the Department, shall have responsibility for issuance of NPDES permits for point source discharges from federal facilities and discharges to

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the contiguous zone and beyond. The Agency shall take any comments or recommendations made by the Department under consideration. If any comment or recommendation is not accepted for inclusion in the permit, the Agency shall notify the Department in writing of its disposition of such comment or recommendation, together with its reasons for not including it in the permit.

II. Definitions

All terms and phrases used in this agreement shall have the same meaning as in the Act and Chapter 342, Hawaii Revised Statutes and amendments thereto or regulations promulgated thereunder.

III. Permit Program

A. Transmittal of Data from Agency

1. All relevant data collected by the Agency prior to final approval of the state permit program shall be transmitted to the Department. Such data shall include:
 - (a) Copies of all complete and pending Refuse Act and NPDES applications received by the Agency for facilities in the State of Hawaii, including copies of all pertinent correspondence between applicants and the Agency regarding such applications.
 - (b) Copies of any fact sheets, public notices and proposed permits drafted by the Agency for facilities in the State of Hawaii.
 - (c) Any other documents, reports, or other pertinent data on facilities in the State of Hawaii which have applied for NPDES permits.
2. Within sixty (60) days after final approval of the state permit program, the Agency shall transmit such material to the Department, except that if the Agency identifies any application which it considers to be incomplete, it shall transmit the application to the Department together with (i) a statement by the Agency that it considers the application to be incomplete, and (ii) a list of the information that the Agency believes is necessary to complete such application.

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3. For each application identified by the Agency as incomplete and transmitted to the Department, the Department shall obtain the necessary information from the discharger and complete the application. Once the Department has determined that the application is complete, it shall transmit to the Agency two (2) copies of the completed application and cover letter indicating that the application has been determined to be complete. The Agency shall then, if it considers the application to be complete, so certify in writing to the Department.

B. Transmittal of Data to Agency

1. The Department shall ensure that copies of all NPDES forms, including, but not limited to, NPDES applications, NPDES reporting forms, and other uniform national forms which have not been reviewed for completeness by the Agency, shall be promptly transmitted to the Agency upon receipt by the Department.
2. The Department shall also ensure that the Agency shall receive copies of the notices submitted to the Department from publicly owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

C. Processing of NPDES Applications

1. All applications received by the Department from the Agency or directly from applicants shall be reviewed initially by the Department for completeness. Applications which are obviously incomplete shall not be accepted by the Department for filing and shall be returned to the applicants for completion.
2. The Department shall transmit to the Agency two (2) copies of each application determined by the Department to be complete. The Agency shall then notify the Department in writing of any deficiencies in such applications. The Agency shall specify the nature of its objections to the applications and the information required as a condition to elimination of the objections. The Department shall contact the applicant to obtain the necessary information to complete the application and shall send such information to the Agency.

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3. If within twenty (20) days after receipt of an application by the Agency, the Department receives no notification from the Agency that such application is incomplete, the Department may deem the application to be complete. As to any application which the Agency notifies the Department is incomplete, the Department shall issue no NPDES permit or public notice, whether in draft or final form, pursuant to that application, until it has received written notice from the Agency that the application is complete.
 4. As to any completed NPDES short form application received from the Department, the Agency shall notify the Department of any discharge for which an NPDES standard form application shall be submitted.

D. Effluent Limitations Guidelines

In processing NPDES permit applications and drafting NPDES permits the Department shall apply effluent limitations which are at least as stringent as those required by effluent guidelines and standards promulgated from time to time in the Code of Federal Regulations. It is possible, however, that data which could affect the effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available have not been available to the Agency in development of such guidelines and, as a result, these limitations should be adjusted for certain plants in an industry or industrial subcategory, pursuant to the procedures provided in the effluent guidelines for making such adjustment, as follows.

1. An individual discharger or other interested person may submit evidence to the Department that factors relating to the equipment or facilities involved, the process applied, or such other technical factors related to such discharge, are fundamentally different from the factors considered in the establishment of the guidelines.
2. On the basis of such evidence or other available information, the Department shall make a written finding that such factors are or are not fundamentally different for that

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facility compared to those specified in the Development Document for the effluent guidelines. If such fundamentally different factors are found to exist, the Department shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established in the applicable effluent guidelines to the extent dictated by such fundamentally different factors.

3. Such limitations must be approved by the Administrator of the Agency. The Department shall forward such modified limitations, together with its written finding and justification therefor, to the Agency pursuant to the procedures in paragraphs 2 and 4 of section H below. The Administrator may approve or disapprove such limitations or specify other limitations. The permit shall not take effect until that determination has been made.
4. Any public notice of a permit application or public hearing, if it regards a permit containing effluent limitations dictated by fundamentally different factors, shall state such and shall briefly describe the reasons for such limitations. The notice shall also state that such limitations are subject to review and approval by the Administrator.

E. Thermal Discharges

Upon promulgation by the Agency of regulations under Section 316 of the Act, the Department shall provide the Agency with written guidance on how the Department shall comply with the intent of such regulations and the Department shall utilize such regulations and guidance in the administration of its permit program.

F. Public Access to Information

1. All information received by the Department relating to the NPDES permit program must be released to the public unless such information is afforded confidential treatment.

2. If the information being considered for confidential treatment is contained in an NPDES form, the Department shall transmit a copy of such information to the Agency and request that the Agency concur in such determination of confidentiality. The Department shall make such information available to the public if the Agency, upon the advice of its General Counsel, informs the Department in writing that the Agency does not concur in the withholding of such information.
3. Any information accorded confidential status by the Department, whether or not contained in an NPDES form, shall be disclosed by the Department, upon written request therefor, to the Agency, or its authorized representative, who shall maintain the disclosed information as confidential.

G. Public Notice

All public notices shall provide a thirty (30) day period for submission of written comments and opportunity for request for a public hearing on the activity. All nonconfidential records and information, including fact sheets, proposed NPDES permit provisions, applications, and other supporting documents will be available for public inspection and copying at the Department headquarters and at such other locations as the Department shall designate.

H. Transmittal to Agency of Proposed Permits

1. It is in the best interest of the Agency and the Department to reach agreement on all terms and conditions to be contained in NPDES permits prior to issuance of a public notice. Accordingly, the Department will forward to the Agency for review each draft permit it proposes to issue at least thirty (30) days prior to the proposed date of the public notice.
2. At the time a public notice required by 40 CFR 124.32 is issued, the Department shall transmit to the Agency one copy of the NPDES public notice, fact sheets, and proposed NPDES permit. The information transmitted with the proposed permit shall include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit.

3. After a public notice period has expired, the Department shall consider ~~all~~ comments received as a result of the public notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings shall be held when and as provided for in 40 CFR 124.36.
4. If a proposed NPDES permit is modified as a result of the public notice or public hearing, or if significant adverse comment is received at the hearing, a copy of the proposed NPDES permit or revision thereof shall be transmitted to the Agency for review prior to issuance.

I. EPA Review and Draft Permit Objections

1. The Department shall provide the Agency thirty (30) days from the time the proposed permit specified in either paragraph 2 or 4 of section H above is received by the Agency in which the Agency, pursuant to any right to object provided in Section 402(d)(2) of the Act, may comment upon, object to, or make recommendations with respect to the proposed NPDES permit. If the Department does not incorporate into the final NPDES permit modifications recommended by the Agency, it shall state in writing to the Agency its reasons for not so doing.
2. The Department shall not issue a proposed NPDES permit if the Agency objects to its issuance. If no objection is received by the Department within thirty (30) days as provided above, the Department may issue the permit.

J. Transmittal of Data by Permittee to Agency

The Department shall ensure that all NPDES permits issued by the Department require the permittee to transmit directly to the Agency one copy of all forms and data required to be submitted by the permittee to the Department.

K. Transmittal to Agency of Issued Permits

The Department shall transmit to the Agency two (2) copies of every issued NPDES permit, together with any and all terms, conditions, requirements, or documents which are part of the NPDES permit or which affect the authorization by the NPDES permit

of the discharge of pollutants. The Department shall transmit the above information at the same time the NPDES permit is issued by the Department to the applicant.

L. Transmittal of Data to National Data Bank

1. The Department shall exert its best efforts to install a computer time share terminal. After such terminal is installed, the Department shall transmit to the National Data Bank by direct input to the General Point Source File (GPSF) all NPDES application information, permit processing information, permit conditions - including compliance schedules and self-monitoring requirements, compliance reporting and self-monitoring report data, as appropriate.
2. Until such time as the Department shall install a terminal, and for a period after installation, the Agency, after coding by the Department, shall transmit the NPDES information specified in paragraph 1 above to the National Data Bank. During the period after installation, the Department, with assistance from the Agency, shall develop a capability for direct input to the GPSF. When the Agency determines that the Department has sufficient capability for direct input to the GPSF, the Agency shall cease direct transmission to the National Data Bank and the Department shall commence this task.

M. Modification, Variation, Suspension or Revocation of NPDES Permits

After public notice and opportunity for public hearing, the Department shall notify the Agency whenever it finds it necessary or advisable to grant a variance from, or to modify, suspend or revoke an NPDES permit in whole or in part for cause or for any other reason. The Agency shall have up to thirty (30) days to review and comment on proposed modifications. If no written objection is received from the Agency within thirty (30) days after the date the Agency receives notification of the modification, the Department may deem the proposed modification approved. No modification of an NPDES permit to which the Agency objects shall be made.

IV. Compliance Monitoring and Inspection

A. General

It is recognized that an efficient and well-organized monitoring and inspection program is necessary to ensure the success of the NPDES. Such success will be ensured only if the resources of the Agency and Department are coordinated so as to avoid duplication of effort. Primary responsibility for ensuring compliance through monitoring results rests with the Department for all NPDES permits which they issue. The Department shall when requested assist the Agency in monitoring compliance with permits issued by the Agency to federal facilities in Hawaii and shall report the results of such monitoring to the Agency for evaluation.

B. Inspection and Sampling

1. On the first days of January, April, July, and October, the Department shall submit to the Agency a list of all compliance monitoring inspections, and specification of which inspections will include 24-hour sampling, which the Department intends to conduct during the following quarter. This list shall be subject to review and approval by the Agency.
2. The Department shall develop an inspection program which ensures that as a minimum each major discharger will be inspected no less than once annually, and each minor discharger no less than once every two years. The state inspection program shall be consistent with the principles described in "Program Guidance for Environmental Protection Agency Water Compliance Monitoring" (Office of Water Enforcement, EPA, March 1974).
3. All results of field monitoring by the Department shall be furnished in writing to the Agency. The Agency shall notify the Department prior to the Agency's conducting any field monitoring activities, and shall provide the Department with results of field monitoring activities.

C. Monitoring and Review

The Department shall, in consultation with the Agency, establish procedures for monitoring compliance with the terms and conditions in NPDES permits to be submitted to the Agency for review which will include, as a minimum, the following activities.

1. The Department shall ensure that:

- (a) All NPDES permits, except for certain specified minor discharges to be agreed upon by the Department and the Agency, contain self-monitoring programs which will enable the Department and the Agency to determine whether the discharger complies with all requirements and prohibitions, including effluent limitations, national standards of performance, and pretreatment and toxic effluent standards.
- (b) All NPDES dischargers maintain records of all information resulting from monitoring activities for a period of at least three years, or during the course of any unresolved litigation regarding the discharge, or such period as is required by the Department or the Agency, whichever shall be the longer period.
- (c) Monitoring information shall include for all samples (i) the date, exact place, and time of sampling; (ii) the dates analyses were performed; (iii) who performed the analyses; (iv) the analytical techniques/methods used; (v) the analytical quality control program applicable to the particular samples, the calibration and maintenance of instruments used, the replicate analyses and standard additions; and (vi) the results of any such analyses.
- (d) Monitoring reports are submitted by each NPDES discharger to the Department and directly to the Agency at appropriate intervals, as specified in the permit.
- (e) Monitoring results are reported on the proper NPDES reporting form as specified and supplied by the Agency and are reviewed on a periodic basis sufficient to determine that NPDES permit requirements are being met.
- (f) Accuracy of effluent data in monitoring reports submitted by permittees is periodically verified.

2. The Agency may specify, in accordance with 40 CFR 124.61, additional monitoring conditions to be included in such permits. The Department shall establish such additional monitoring requirements in any NPDES permit as the Agency may require in writing.
3. The Department shall review and evaluate, for possible permit violations, all notices received from publicly owned treatment works for introduction of pollutants into such treatment works from new sources, any substantial change in volume or character of pollutants being introduced into the treatment works at the time the permit is issued, and progress towards compliance with pretreatment standards by each subject industrial user.
4. The Department shall review and evaluate NPDES monitoring data, as received, for possible violations of terms and conditions of the permit.

V. Enforcement Action

A. General

It is recognized that an effective and aggressive enforcement program is necessary to stimulate compliance with NPDES permit requirements and that the State shall have primary responsibility for taking appropriate enforcement action against persons in violation of NPDES permits issued by the State.

B. Notification of Violations by State

The Department shall develop and implement administrative procedures for enforcement, to include, as a minimum, the following activities.

1. The Department shall ensure that the Agency is notified forthwith of any violation by any discharger of any effluent limitation, water quality related effluent limitation, national standard of performance, pretreatment and toxic effluent standard, NPDES filing requirement, compliance schedule, or of any failure to permit or carry out inspection, entry, or monitoring

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activities. Normally, the monitoring reports and reports of noncompliance as required by federal regulations to be transmitted from the permittee to the Agency will suffice to meet the above requirements; however, in the event the Department determines that violations have occurred which are not included in the monitoring report or any other required report, the Department shall promptly notify the Agency of such violations, and shall identify the effluent limits exceeded, describe briefly any action or proposed action by the NPDES permittee or the Department to comply or enforce compliance with the limits, and describe any details which tend to explain or mitigate an instance of noncompliance.

2. The Department shall submit quarterly reports of noncompliance as required by 40 CFR 124.44(d).

C. Proposed Enforcement Action

1. The Department will immediately initiate follow-up action, including enforcement, on those specific conditions in NPDES permits which have not been accomplished or where permit violations have occurred.
2. The Agency shall be advised of enforcement action undertaken by the Department, whether such enforcement action is administrative, criminal, or civil in nature, or a combination thereof. The Agency shall advise the Department of any enforcement procedures it may believe necessary other than those taken by the Department.
3. The Department shall ensure that enforcement action is pursued vigorously, and that the Agency is advised of the progress of enforcement proceedings and of any hearing related to enforcement, whether administrative or judicial. The Agency may participate in any administrative enforcement hearing and shall, within the resources available to it, provide staff assistance upon request by the Department in any public hearing relating to enforcement.

D. Notification by State of Violation of Enforcement Orders

The Agency shall receive a copy of any correspondence, finding, order or directive related to compliance, whether administrative or judicial, including any notifications or reports required by such order, and shall be forthwith advised of any violation of any such order or directive and of the proposed enforcement action to be undertaken by reason of violation, of any hearings related thereto, of the progress thereof, and of the results of enforcement proceedings.

E. Danger to Health or Welfare of Persons

1. The Department shall ensure that any pollution source or combination of sources which by the discharge of pollutants substantially endangers the health or welfare of persons is immediately subjected to appropriate enforcement proceedings, including, but not limited to, a request for injunctive relief.
2. The Department shall also ensure that the Agency receives immediate notice by telephone, or otherwise, of any actual or threatened endangerment to the health or welfare resulting from the actual or threatened discharge of pollutants into the waters of the State. The Department shall utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Agency.

F. Notification by Agency of Violations

Whenever the Regional Administrator under his authority in Section 309(a)(1) of the Act makes a finding of a violation and notifies the Director and the person in alleged violation of such finding, the Director shall immediately respond to such notification by advising the Regional Administrator of the action proposed with respect to such violation. Nothing in this agreement shall be construed to limit the authority of the Regional Administrator to take action pursuant to Section 309 of the Act. However, generally the Regional Administrator will undertake direct enforcement action under Section 309 only when the Department is unable or unwilling to take appropriate enforcement action or when enforcement proceedings are unduly delayed.

VI. Well Disposal

1. The Agency shall transmit to the Department any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act, or in directives issued to Region IX of the Agency, concerning the disposal of pollutants into wells.
2. In accordance with the requirements of 40 CFR 124.80, the Department shall establish a permit program to control the disposal of pollutants into wells. Any such disposal shall be prohibited unless the Director finds that such disposal is sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources.

VII. Agency Waiver

The Regional Administrator may expressly waive any and all of his rights to:

- (a) receive, review, object to, or comment on copies of NPDES forms, NPDES applications, or proposed NPDES permits,
- (b) receive issued NPDES permits and orders, and
- (c) receive notice of, review, object to, or comment on intended revisions or modifications of particular NPDES permits or orders,

with respect to any class, type or size of discharge within any category of point sources and with respect to discharges to particular navigable waters or parts thereof. Such written waiver must be issued by the Regional Administrator before the Department may cease to transmit such forms, permits and relevant information to the Agency.

VIII. Changes in State Statutes, Regulations, Directives, Forms or Standard Test Methods

1. Prior to taking any action to propose or effect any substantial amendment, rescission or repeal of any statute, regulation, directive or form which has been submitted to the Agency in connection with approval of the State's NPDES program, and prior to the adoption of any new form not so submitted,

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the Department shall notify the Agency and shall, upon request, transmit the text of any such change or such new form to the Agency. The Agency shall have twenty (20) days after receipt of such notification in which to assess such proposed change or such proposed new form as to its effect upon the State's qualification to conduct the NPDES program and to notify the State whether or not the proposed change or use of such proposed new form would disqualify the State from participation in the NPDES.

2. If an amendment, rescission or repeal of any statute, regulation, directive or form described in paragraph 1 above shall occur for any reason, including action by the Hawaii legislature or a court, the Department shall, within ten (10) days of such event, notify the Agency and shall, upon request, transmit a copy of the text of such revision to the Agency.

IX. State Performance

1. The Department shall reissue by December 31, 1975 all federally-issued NPDES permits (except for federal facilities), and by December 31, 1974, issue NPDES permits for all other dischargers covered by such program within the State of Hawaii.
2. The permittees referred to in paragraph 1 above are identified in Appendices A and B.

X. Term

This Memorandum of Agreement shall take effect upon program approval by the Administrator of the Agency pursuant to Section 402(b) of the Act. This Memorandum shall remain in effect for the duration of such approved program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods contained herein.

STATE OF HAWAII
DEPARTMENT OF HEALTH

Dated October 11, 1974

by Walter B. Quisenberry
Walter B. Quisenberry, M.D.
Director of Health

ENVIRONMENTAL PROTECTION AGENCY

Dated October 30, 1974

by L. Russell Freeman, Deputy
Acting Paul De Falco, Jr.
Regional Administrator

Dated NOV 09 1974

Approved by [Signature]

Administrator
Environmental Protection Agency

APPENDIX A

List of NPDES permits issued in Hawaii
 (* = Majors)

<u>NAME</u>	<u>PERMIT NUMBER</u>
* Hawaii Dept. of Land & Natural Resources Anvenue Fisheries Research Center	HI0000370
Bumble Bee Sea Foods DBA (Hawaiian Tuna Packers)	HI0000469
* C&C Honolulu, Kaulua	HI0020141
C&C Honolulu, Kukanono	HI0020044
C&C Honolulu, Maunawili EST	HI0020036
C&C Honolulu, Maunawili PK	HI0020028
* C&C Honolulu, Pohakapu	HI0020010
C&C Honolulu, Waianae	HI0020109
Carnation	HI0000531
City of Kauai, Wailua STP	HI0020257
* Dole Co., Div. of Castle & Cooke	HI0000043
* Gasco, Incorp.	HI0000035
Gaspro, Inc.	HI0000299
Hawaii Dept. of Health, Samuel Mahelone Hospital	HI0000621
* Hawaii Electric, Kahe	2SN-OY3-2-000001
* Hawaii Kai Community Services	HI0020303
Hawaii Tug & Barge	HI0000701
Hawaii Welding Company, LTD	HI0000710
H C & D, Limited	HI0000132

* Hilo Coast - Hakalao	HI0000205
* Hilo Coast - Papaikou	HI0000248
* Hilo Coast - Wainuku	HI0000221
* Honokaa Sugar Co.	HI0000256
Kaiser, Honolulu	HI0000540
Kekaha	HI0000086
Kohala	HI0000167
* Laupahoehoe Sugar Co.	HI0000159
* Lihue	HI0000124
Lihue Planatation, Kealia	HI0000736
Lone Star, Haiawa Batch Plant #151	HI0000558
Maui County, Pia	HI0020192
* Maui Land & Pineapple	2SN-0Y3-2-000079
McBryde	HI0000361
Olokele	HI0000116
Phillips, Honolulu (Sales Terminal)	HI0000663
* Pioneer Mill Co., LTD	HI0000078
Shell, Honolulu (District Plant)	HI0000582
Texaco, Barbers Point	HI0000671
University of Hawaii, Kewalo Marine Lab	HI0000345
Waiakea Village Resort	HI0020231
* Waialua	HI0000230
* Wailuku	HI0000108

Young Brothers
(Livestock Barge)

HI0000060

Young Brothers
(Vehicle Washrack)

HI0000698

APPENDIX B

Applications received from Hawaii
(No permit issued)

(* = Majors)

<u>NAME</u>	<u>APPLICATION NUMBER</u>
Amfac Communities	2SN-0Y3-2-000071
C&C Honolulu, Ahuimanu	HI0020001
C&C Honolulu, C&C Jail	HI0020087
* C&C Honolulu, Kaneohe	HI0020150
C&C Honolulu, Mililani	HI0020061
C&C Honolulu, Pac Palisades	HI0020079
* C&C Honolulu, Pearl City	HI0020133
* C&C Honolulu, Sand Island	HI0020117
C&C Honolulu, Waipahu	HI0020168
C&C Honolulu, Waipio	HI0020052
* C&C Sugar	2SN-0Y3-2-000039
* Del Monte Corp.	2SN-0Y3-2-000005
Foremost Farms, Waimana	2SN-0Y3-2-000045
* Hawaii Biogenics, Ltd.	HI0020460
* Hawaii Co., Hilo WPC Plant	HI0020176
Hawaii D of H, Waimano 2	2SN-0Y3-2-000091
* Hawaiian Electric, Honolulu	2SN-0Y3-2-000002
* Hawaiian Electric, Waiiau	-2SN-0Y3-2-000089
* Hilo Electric, Puno	2SN-0Y3-2-000146

* Hilo Electric, Waiakea	2SN-0Y3-2-000035
Honolulu Wood Treating Company	HI0020338
Kauai, Electric	2SN-0Y3-2-000051
Kauai, Port Allen	HI0020265
Maui County, Kahului	HI0020214
Maui County, Lahina	HI0020184
Maui County, Wailuku	HI0020206
Maui Electric	2SN-0Y3-2-000009
Mauna Kea Sugar Co., Inc., Anderton Village	HI0020389
Mauna Kea Sugar Co., Inc., Hakalau Lower Village	HI0020435
Mauna Kea Sugar Co., Inc., Hakalau Upper Village	HI0020427
Mauna Kea Sugar Co., Inc., Moirton Village	HI0020397
Mauna Kea Sugar Co., Inc., Ninole Village	HI0020443
Mauna Kea Sugar Co., Inc., Onomea Village	HI0020401
Mauna Kea Sugar Co., Inc., Paukaa Village	HI0020362
Mauna Kea Sugar Co., Inc. Pepeekeo Mill Village	HI0020419
Shell Oil Co., Lockheed Air Terminal	HI0020354

State of Hawaii, Dept. of Transp.,
Airport Div., Ahua Point Pump House

HI0020451

Yacht Harbor Towers

HI0020346

REVISION TO MEMORANDUM OF AGREEMENT
REGARDING PERMIT AND ENFORCEMENT PROGRAMS
(NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM)

Whenever the term "permittee" is used, it is understood to include Federal Agencies. Any provision of EPA's approval of the State program or of this agreement exempting Federal facilities from State authority is hereby null and void.

John Steery 4/22/79 *Frank W. Covington* 4-22-79
Director, Hawaii State Department of Health date *acting* Regional Administrator, EPA, Region IX date

Approved: *Marvin B. Dennis* 6-1-79
Assistant Administrator for Enforcement, Environmental Protection Agency date

FY-1986

MEMORANDUM OF AGREEMENT

REGARDING THE CLEAN WATER ACT COMPLIANCE PROGRAM

BETWEEN THE

DEPUTY DIRECTOR OF ENVIRONMENTAL HEALTH, STATE OF HAWAII

DEPARTMENT OF HEALTH

AND THE

CHIEF, ARIZONA, HAWAII, NEVADA BRANCH

WATER MANAGEMENT DIVISION

REGION 9, ENVIRONMENTAL PROTECTION AGENCY

I. Purpose

The Deputy Director of Environmental Health, State of Hawaii Department of Health (hereinafter the "Director and Department", respectively) and the Branch Chief, Arizona, Hawaii, Nevada Branch, Water Management Division, Region 9, Environmental Protection Agency (hereinafter, the "Branch Chief" and "Agency", respectively), in order to ensure a unified and coordinated program of water quality control in Hawaii, believe it desirable to develop understandings in various program areas. The Branch Chief and the Deputy Director have entered into this Memorandum of Agreement to clearly delineate respective responsibilities of the Department and the Agency for the operation of a cooperative State-Federal enforcement program and to employ available Federal and State enforcement resources in a cost-effective manner. This agreement establishes policies and procedures and provides broad guidance for the enforcement programs resulting from the issuance of National Pollutant Discharge Elimination System (hereinafter "NPDES") permits, the operation and maintenance of Federally funded treatment works, and the pretreatment of industrial waste in the State of Hawaii in accordance with the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Clean Water Act of 1977 (P.L. 95-217), hereinafter "the Act."

II. Statement of Policy

- A. It shall be the policy of Region 9 of the Agency and the Department to fully coordinate and cooperate to promote and conduct an enforcement program capable of providing maximum effectiveness in achieving Federal and State objectives for the regulation of water quality as follows: to reduce the number of non-complying municipal and non-municipal permittees, to ensure that publicly owned treatment plants which have been constructed with Federal funds are properly operated and maintained, to ensure that industrial pretreatment programs are in place and properly operated, to protect wetlands from unauthorized development or degradation, to maintain the current low level of impairment of water uses resulting from unauthorized discharges, to prevent endangerment and serious health risks to the public which may result from contamination of ground water basins or surface water supplies, to ensure that approved ocean disposal sites are properly utilized, and to prevent unauthorized ocean dumping of waste material.
- B. In accordance with national policy as expressed in Section 101(b) of the Act, it is recognized that enforcement actions necessary for the protection and enhancement of waters in Hawaii are the primary responsibility of the Department. However, it is additionally recognized that the Agency has ultimate

responsibility in enforcement matters and an obligation to initiate Federal enforcement actions against violators if the Department requests it to do so or if the Department indicates that it cannot or will not enforce in an expeditious manner.

- C. All terms and phrases in this agreement shall have the same meaning as in the Act and Chapter 342, Hawaii Revised Statutes and amendments thereto or regulations promulgated thereunder.

III. Compliance Monitoring and Inspection, Municipal Compliance Strategy and Pretreatment Program

A. General

It is recognized that an efficient and well-organized monitoring and inspection program is necessary to ensure the success of the NPDES and related regulatory programs. Such success will be ensured only if the resources of the Agency and Department are coordinated so as to avoid duplication of effort. Primary responsibility for ensuring compliance through monitoring results rests with the Department for all NPDES permits which they or EPA may issue.

Additionally, it is recognized that the Department will monitor applicable effluent limits and enforceable compliance schedules for all Publicly Owned Treatment Works (POTWs) with Municipal Compliance Orders. These compliance schedules require that POTWs be in compliance with applicable effluent limits no later than July 1988, wherever possible.

B. Inspection and Sampling

1. By the first day of September each year the Department shall submit to the Agency a complete inventory of permittees, a list of all compliance monitoring inspections, and specification as to which inspections will include 24-hour sampling, that which the Department intends to conduct during the following year. Inspections will be planned taking into consideration NPDES and operation and maintenance compliance records, permit expiration dates and construction grants or pretreatment program trigger dates. This list shall be subject to review and approval by the Agency. Any revisions to this list will be submitted on the first day of each quarter of the rest of the year for Agency approval. This list should be sent to the Agency Enforcement/Inspections Team leader.

The Agency shall provide the Department a list of all its compliance monitoring and operation and maintenance inspections for the year to be conducted in Hawaii by October 1 of each year. These lists will be tailored to complement the Department's schedule and to optimize State and Federal resources. This list will be updated quarterly as needed.

2. The Department shall develop an inspection program which ensures that as a minimum each major discharger will be inspected no less than once annually, unless approved in advance by the Agency, and that each minor discharger will be inspected no less than once every three years. The Department's inspection program shall be consistent with the principles described in "NPDES Inspection Strategy and Guidance for Preparing Annual State/EPA Compliance Inspection Plans," (Office of Water Enforcement and Permits, EPA, April 1985). Nothing in this MOA shall limit the Agency's authority to maintain its own inspection program.
3. All results of field monitoring by the Department shall be furnished in writing to the Agency. This includes operation and maintenance (O&M) inspections conducted by the construction grants program unit and NPDES inspection reports. The Agency shall notify the Department prior to the Agency's conducting any field monitoring activities in the State, and shall provide the Department with results of field monitoring activities. This communication shall be between the State Pollution Investigation and Enforcement Branch Chief in the case of NPDES inspections and the Waste Water Treatment Works Construction Grants Branch Chief in the case of O&M inspections, and the Compliance and Construction Grants Team leaders at the Agency.

C. Monitoring and Compliance Verification Review

With respect to correspondence, notification, and certifications received from sources which in response to regulatory, legal or permit requirements are routinely received by both the Agency and the Department of Health, each agency will review such documents on receipt with respect to their utility to the other agency in compliance determinations. Each agency will endeavor to keep the other apprised of any documentation received which may be of interest and to furnish copies, if requested, of specific documents. Specific procedures are detailed in Appendix 1.

D. Municipal Compliance Strategy

The Agency and the Department will cooperate to maintain the long-range strategy that describes how efforts will be coordinated to carry out the Agency's National

Municipal Policy. This strategy which entails the implementation of Municipal Compliance Plans (MCP) and Composite Correction Plans (CCP) for municipal POTWs in noncompliance will be negotiated yearly in the 106 and 205(g) workplans. The Department will monitor the compliance schedules and report to EPA any infraction of the schedule.

E. Pretreatment Program

The Department shall maintain a pretreatment program to ensure approval of newly identified pretreatment needs. The Department will update its strategy yearly in the 106 workplan negotiations.

V. Enforcement Action

A. General

It is recognized that an effective and aggressive enforcement program is necessary to stimulate compliance with NPDES permit requirements and that the State shall have primary responsibility for taking appropriate enforcement action against persons in violation of NPDES permits issued by the Department, as well as against persons discharging without authorization. The Department's enforcement program shall be consistent with the compliance and enforcement procedures described in the "Enforcement Management System" (EMS) and its supporting documents the "Technical Review Criteria" (TRC) and the "Enforcement Response Guide" (ERG).

B. Notification of Violations by State

The Department shall implement its administrative procedures for enforcement (see Appendices 2-4), to include, as a minimum, the following activities.

1. The Department shall ensure that the Agency is notified forthwith of any violation by any person of any unauthorized discharge, effluent limitation, national standard of performance, pretreatment and toxic effluent standard, NPDES filing requirement, pretreatment program or compliance standard, or of any failure to permit or carry out inspection, entry, operation and maintenance, or monitoring activities of municipal, non-municipal, or federal facilities. Normally, the monitoring reports and reports of noncompliance as required by Federal regulations to be transmitted from the permittee to the Agency will suffice to meet the above requirements; however, in the event that the Department determines that a violation has occurred

which is not included in the monitoring report or any other required report, the Department shall promptly notify the Agency of such violation, and shall identify any effluent limit exceeded, describe briefly any action or proposed action by the NPDES permittee or the Department to comply or enforce compliance with the limits, and describe any details which may explain or mitigate an instance of noncompliance. This communication shall be from the Compliance Monitoring and Enforcement Section Supervisor to the EPA Enforcement/Inspection Team Leader.

2. The Department shall submit quarterly reports of noncompliance (Q.N.C.R.) for majors as required by 40 CFR 122.23 and QNCRs for minors. The reporting requirements are those established in the 9/82 Draft Memorandum "Definition of Significant Noncompliance for the NPDES Program." (Appendix 5) In addition, the QNCRs will track the progress of all permittees out of compliance through major milestones up to achieving full compliance.

The QNCR, furnished by the Department in accordance with Federal regulations, will serve as one of the basic mechanisms for coordinating and overseeing activities involving major and minor permittees.

At least once each quarter, the Agency and the Department will discuss the status of all permittees that appear on the QNCR including violations by POTWs of pretreatment requirements.

Agency staff will review the State QNCR, which must be prepared and submitted in accordance with Federal Regulations and written policy guidance from EPA Headquarters.

It is understood that no permittee should remain in noncompliance for the same violation on two consecutive QNCRs without: 1) being returned to compliance; or 2) being subject to formal enforcement action directed at obtaining sustained compliance. The State will also identify all facilities which fall into noncompliance for two or more consecutive QNCRs.

Additionally, the Department will identify in the QNCR all facilities that have achieved final compliance with the requirements of any enforcement action.

C. Proposed Administrative, Civil, and Criminal Enforcement Action

1. Federal enforcement authority derives from §308 and §309 of the Clean Water Act which define the actions to be followed by the Agency upon receipt of information concerning a violation. The Agency recognizes, however, that unilateral Federal enforcement action may not be appropriate in many instances and may be constrained by a lack of resources in others. Accordingly, the Agency will consult with the Department prior to issuance of a written Finding of Violation or Order to any Hawaii source and will solicit the Department's views on the most appropriate enforcement response. While the Agency must base its final decision on the circumstances of each case, it will endeavor to support the Department as the primary authority on water enforcement. In most cases, the Agency will defer to the Department when the latter indicates its intent to initiate remedial action to return a violator to compliance and such action will be expeditious. Nothing in this Memorandum, however, shall be construed to limit the authority of the Administrator of the Agency to take action pursuant to §308 or §309 of the Clean Water Act.

The Agency may in addition, take direct enforcement action for recovery of additional penalties in instances in which the Agency determines that the Department's penalty assessment is deficient.

2. The Department has employed enforcement actions other than direct enforcement in order to bring violating sources into compliance. Pursuant to authority under Chapter 342 of the Hawaii Revised Statutes, the Department can issue abatement orders or deny operating permits to sources found in violation. Working with the Hearing Officers, the Department may also develop conditional permits which contain schedules of compliance which comply with 40 CFR §122.

Copies of such documents will be sent to the Agency on request.

3. The Department will, on finding a major source in violation, including a Federal facility, expeditiously advise the Agency of the remedial action it intends to pursue. Where the Department determines that the issuance of a §309 Notice of Violation by EPA may stimulate a recalcitrant violator into cooperation

with the Department, the State Pollution Investigation and Enforcement Branch Chief will advise (telephone call) the Compliance Officer, AZ/HI/NV Branch, of the relevant facts and the State will then determine the most appropriate course of action.

4. The Agency will, on finding a major source in violation, including a Federal facility, consult with the Department to determine what actions the Agency will initiate to bring the violator into compliance. When appropriate, the Agency and the Department shall use procedures of the EPA Federal Facilities Compliance Program to return non-complying Federal Facilities to compliance status. The Agency may defer to the Department's enforcement action if the Department has initiated or plans to initiate within 10 days an appropriate action. If the violator is determined to be a "significant noncomplier" (in accordance with Appendix 5, EPA policy guidelines), the Agency may initiate the enforcement process if the Department requests it to do so or if the Department indicates it cannot or will not enforce. If the Department fails to respond to an Agency request for information regarding proposed enforcement action, the Agency may take such failure as an indication that the Department is unwilling or unable to take appropriate action. Generally, the Agency will undertake direct enforcement action under Section 309 only when the Department is unable or unwilling to take appropriate enforcement action or when actual implementation of enforcement proceedings are delayed beyond 45 days after appearing on the QNCR or 45 days after a hearing without a formal State Action. In case of such a delay, the Agency AZ/HI/NV Branch Chief will confer with State Department Deputy Director before proceeding with direct enforcement action.

5. The Department shall ensure that enforcement action is pursued vigorously, and that the Agency is advised of the progress of enforcement proceedings and of any hearing related to enforcement, whether administrative or judicial. The Agency may participate in any administrative enforcement hearing and shall, within the resources available to it, provide staff assistance upon request by the Department in any public hearing relating to enforcement.

Penalties shall be assessed when deemed essential to the effective working of the enforcement program. The Department shall provide to the Agency on a quarterly basis a list of the number and amount of penalties both issued and collected.

These communications shall be between the State

Compliance Monitoring and Enforcement Section
Chief and the Agency AZ/HI/NV Branch Compliance
Officer.

D. Citizen Complaints

1. The Agency, on receipt of written or telephone complaints from citizens which involve sources in Hawaii will forward such complaints to the Department for investigation and will notify the complainant of such disposition.
2. On receipt of the results of complaint investigation from the Department, the Agency will transmit such information to the complainant unless the State has already done so.
3. The Department, will, as resources permit, thoroughly investigate all citizen complaints forwarded to it by the Agency. A report describing the results of such investigation will normally be provided to the Agency within 30 days following receipt of a copy of the complaint. At its discretion, the Department may respond directly to the complainant (copy to the Agency).

E. Notification by State of Violation of Enforcement Orders

The Agency shall receive a copy of any correspondence, findings, orders or directives related to compliance, whether administrative or judicial, including any notifications or reports required by any enforcement orders. The Agency shall be forthwith advised of any violation of any such orders or directives and of the proposed enforcement actions to be undertaken, of the progress thereof, and of the results of the enforcement actions.

These communications shall be between the State Compliance Monitoring and enforcement Section Chief and the Agency AZ/HI/NV Branch Compliance Officer.

F. Danger to Health or Welfare of Persons

1. The Department shall ensure that any pollution source or combination of sources which by the discharge of pollutants substantially endangers the health or welfare of persons is immediately subjected to appropriate enforcement proceedings, including, but not limited to, a request for injunctive relief unless the circumstances of the discharge or spill clearly dictate other appropriate actions (natural disaster, etc.).
2. The Department shall also ensure that the Agency receives immediate notice by telephone, or otherwise, of any actual or threatened endangerment to the health or welfare resulting from the actual or

threatened discharge of pollutants into the waters of the State. The Department shall utilize the telephone numbers identified in the current Regional Oil and Hazardous Material Contingency Plan ((714) 974-7460) to notify the Agency if the spill is Oil or Hazardous Material. All other discharges or spills should be reported by the Department's Compliance Monitoring and Enforcement Section Chief to the Agency's AZ/HI/NV Branch Compliance Officer.

VI. Training

1. The Agency will, as resources permit, assist the Department in providing training support to the Department enforcement programs. Such assistance will be provided for program elements mutually agreed upon as necessary to strengthen the Department's enforcement effort.
2. The form of assistance provided will be determined both by the nature and extent of the proposed training as well as by the resources available to the Agency to support it. As envisioned, support may take the form of:
 - a. Direct financial assistance through the \$106 grant program (annual or supplemental grant) to support a defined grant objective.
 - b. Agency contractor support to conduct training in a variety of enforcement subjects.
 - c. Training provided by the Agency.
 - d. Training provided by the Agency under the 104(g) and 109(b) grants.
3. The Department may, at any time, request enforcement training support from the Agency, and will, in writing, accompany such request with an outline of the type of training desired, the number of personnel to be trained, and a suggested time period during which the desired training will be conducted. The Agency will advise the Department on the availability of support for the desired training as well as viable options. If support is available, an Agency staff person will be designated to work with a Department counterpart to set up a suitable program.

VII. Agency Oversight Procedures

- A. The Agency will evaluate the Department's compliance and enforcement program through mid-year, and end-of-year reviews and annual audits of compliance files. The

Agency will provide an exit interview at each evaluation to discuss findings and to jointly identify corrective steps. Additionally, the Department will have the opportunity to comment on a draft of the Agency evaluation report. The Agency will notify the Department at least two weeks in advance of a pending evaluation.

VIII. Source Inspection by Agency Contractors

- A. Diagnostic inspections by Agency contractors have, on past occasions, resulted in concern on the part of State staff, local agency staff, and the sources inspected. The principal reason for such concern appears to have been a failure by the contractor to properly coordinate their activities with agencies involved as well as with the sources. In recognition of this problem, the Agency will ensure that all contractors under their control receive explicit instructions on their mission as well as on appropriate coordination.

The use of contractors for diagnostic inspections in Hawaii, moreover, will be discussed by the Deputy Director of the Department and the AZ/HI/NV Branch Chief in advance. Contractors may be used for diagnostic test observations at facilities where there is overriding Federal concern about operation, maintenance or design limitations. Their activities will be coordinated with the Department.

- B. Copies of inspection reports prepared by the Agency contractors on inspections conducted at facilities under the Department's jurisdiction will be made available for the Department's review for accuracy prior to finalization. The Department, if its review indicates serious discrepancies or inaccuracies, will advise the Agency AZ/HI/NV Branch Enforcement/Inspections Team Leader not later than 15 working days following receipt.

IX. NPDES Permit Compliance and Enforcement Action Tracking System

- A. The Agency will:
1. Provide pre-printed Discharge Monitoring Reports (DMRs) for all NPDES major dischargers.
 2. Enter DMR data received by Regional Office into the Permit Compliance System (PCS), maintained on the IBM at the National Computer Center.
 3. Enter/update compliance schedule data received in the Regional Office into PCS, for all NPDES major dischargers.

4. Run, upon request, reports for the Department from PCS that can show effluent, monitoring and compliance schedule violations and significant non-compliance. (currently under development)
5. Enter the Department's enforcement actions and NPDES inspections into PCS along with Agency actions and/or inspections.
6. Run regularly scheduled enforcement action tracking or inspection record reports for the Department.
7. Provide ad-hoc reports requested by the Department from the PCS data base or from the regional tracking systems used for tracking 301(h) and pretreatment programs.

B. The Department will:

1. Provide coordination for NPDES major dischargers to effectively implement and use pre-printed DRMs.
2. Provide information to the Agency regarding compliance schedules administered by the Department, overall compliance rate (for both limits and schedules) enforcement actions, judicial referrals and filed court cases, and NPDES inspections, on a quarterly basis.
3. Track progress in reducing the QNCR list by measuring progress against beginning-of-year violators and maintaining a balance sheet which adds new violators to the QNCR list; maintain a record of timeliness and appropriateness of response to CWA violations. These reports should be submitted to the Agency by September 30 of each year.
4. Provide information to the Agency regarding needed pollution abatement plans for Federal Facilities as required by OMB Circular A-106.

X. Overall Program Authority and Management

The Department shall review its statutory and regulatory authority to administer the Federal NPDES program. The Department's programs shall be revised as necessary to reflect changes to Federal statutory and regulatory requirements. The Department will submit to the Agency its analysis of the Department's legal authorities for review and approval. The process is to be completed by September 1986 and regular assessments will be conducted thereafter as needed. These reviews will be negotiated yearly in the 106 workplan.

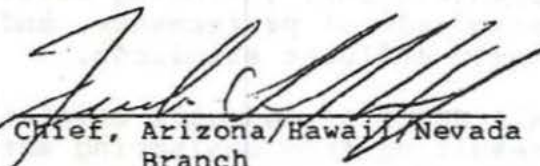
XI. Term

This Memorandum of Agreement shall take effect upon program approval by the Branch Chief of the Arizona/Hawaii/Nevada Branch, Water Management Division, Environmental Protection Agency, Region 9, and by the Deputy Director of Environmental Health, Hawaii State Department of Health. This Memorandum shall remain in effect for the duration of such approved program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods contained herein, or on the basis of practicalities not recognized in the first Agreement, or changes over time in national or State statutes, regulations, or policies, and of changes in fiscal and staff resources.

Accordingly, both signators or their duly authorized representatives will meet at least twice a year for the purposes of amending this document, as conditions may warrant, and to discuss and amicably resolve problem areas. The first such meeting shall take place in Honolulu, Hawaii on or about May 1, 1986.

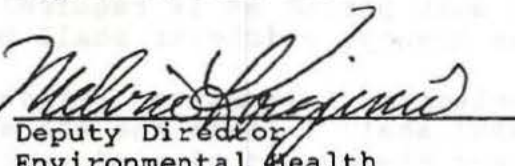
Dated 4 SEP 1985

by


Chief, Arizona/Hawaii/Nevada
Branch
Water Management Division
Region 9, U.S. EPA

Dated SEP 10 1985

by


Deputy Director
Environmental Health
State of Hawaii
Department of Health

Appendix 1

PROCEDURE FOR MONITORING AND COMPLIANCE
VERIFICATION REVIEWS

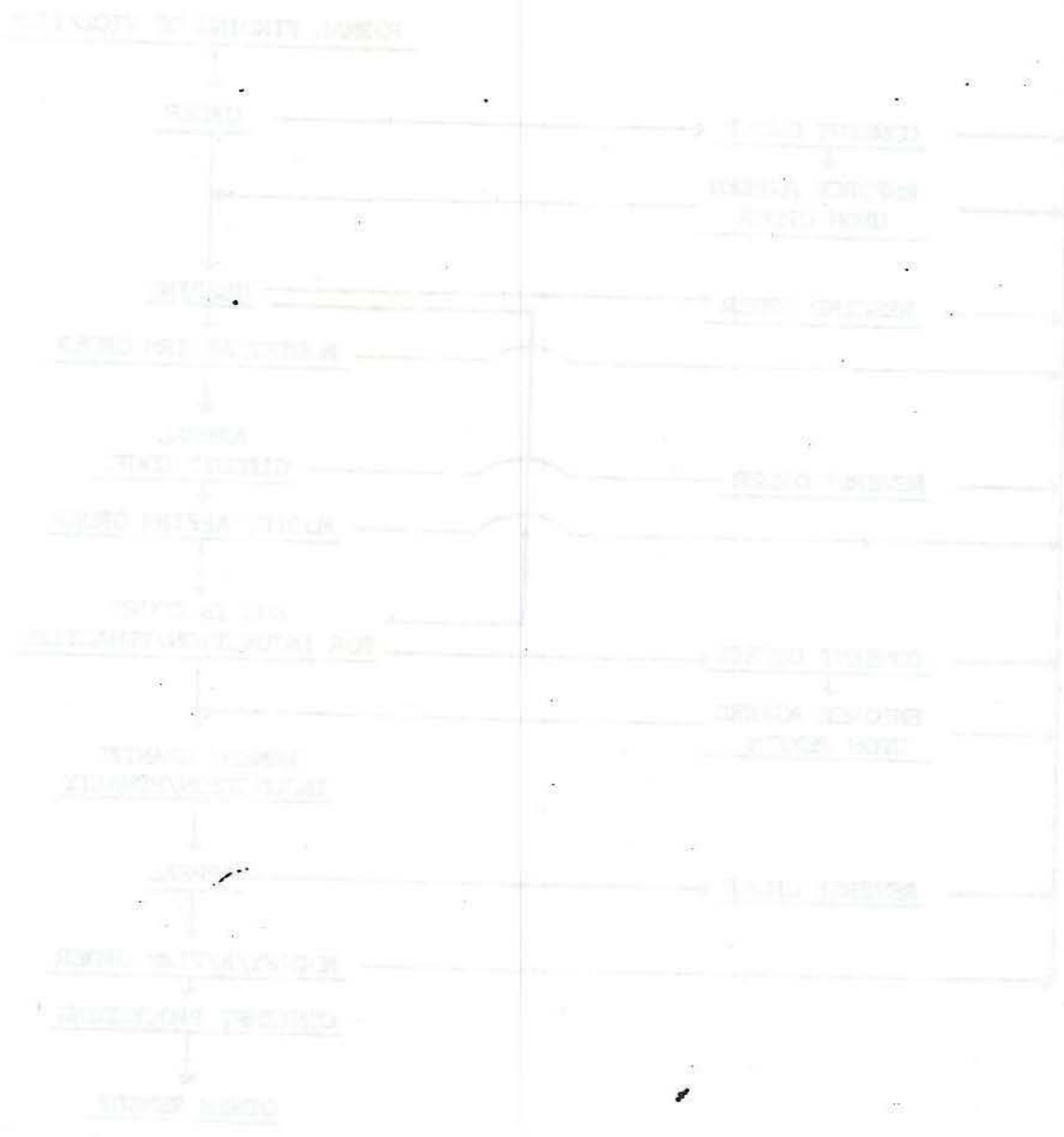
The Department, in consultation with the Agency, has established the following procedures for monitoring compliance with the terms and conditions in NPDES permits to be submitted to the Agency for review. The following communications shall be between the Department Compliance Monitoring and Enforcement Section Supervisor and the Agency AZ/HI/NV Branch Compliance Officer (EPA, Attn: W-4-1).

1. The Department shall ensure that:
 - (a) All NPDES permits, except any specified minor discharges to be agreed upon by the Department and the Agency, contain self-monitoring programs which will enable the Department and the Agency to determine whether the discharger complies with all requirements and prohibitions, including effluent limitations, national standards of performance, and pretreatment and toxic effluent standards.
 - (b) All NPDES dischargers maintain records of all information resulting from monitoring activities for a period of at least three years, or during the course of any unresolved litigation regarding the discharge, or such period as is required by the Department or the Agency, whichever shall be the longer period.
 - (c) Monitoring information (Discharge Monitoring Reports, DMRs) shall include for all samples (i) the date, exact place, and time of sampling; (ii) the dates analyses were performed; (iii) who performed the analyses; and (iv) the results of any analyses.
 - (d) Monitoring reports (DMRs) are submitted by each NPDES discharger to the Department and directly to the Agency (major dischargers only) at appropriate intervals, as specified in the permit.
 - (e) Monitoring results are reported on the proper NPDES reporting form as specified and supplied by the Agency and are reviewed on a periodic basis sufficient to determine that NPDES permit requirements are being met.
 - (f) Accuracy of effluent data in monitoring reports submitted by permittees is periodically verified.

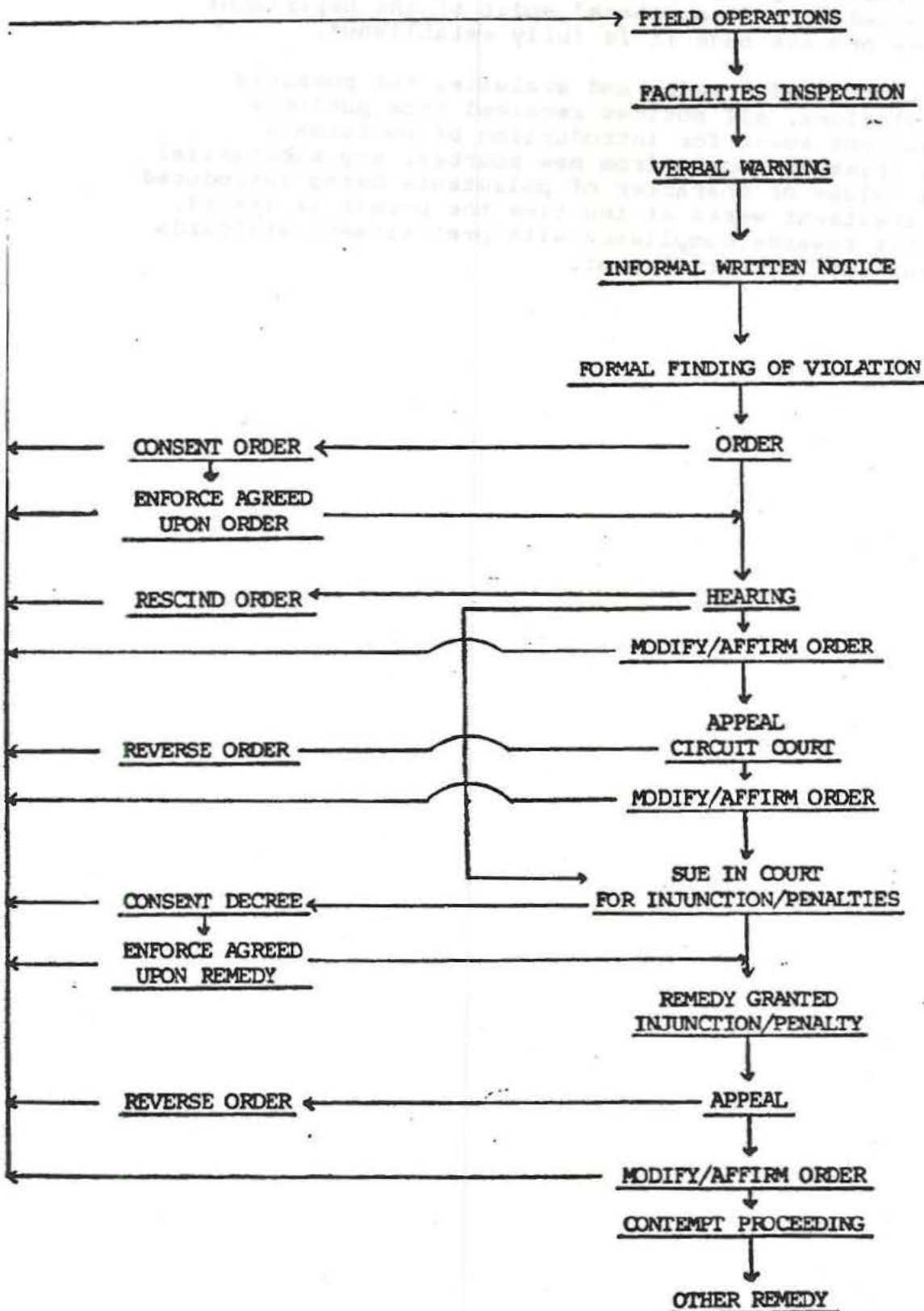
Appendix 1 (continued)

(g) Independent Agency review of DMRs will only be conducted as a "spot check" audit of the Department review process once it is fully established.

2. The Department shall review and evaluate, for possible permit violations, all notices received from publicly owned treatment works for introduction of pollutants into such treatment works from new sources, any substantial change in volume or character of pollutants being introduced into the treatment works at the time the permit is issued, and progress towards compliance with pretreatment standards by each subject industrial user.



HAWAII STATE ENFORCEMENT ACTION



HAWAII STATE ENFORCEMENT RESPONSEReporting

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Responses</u>
Failure to report (routine reports, (DMR's))	Isolated or infrequent	*Phone calls or "warning" letter. Reports to be submitted immediately.
Failure to report (one-time reports)	Isolated or infrequent	"Warning" letter. Reports to be submitted immediately.
Failure to notify (compliance or noncompliance with non consent decree schedule requirement)	Isolated or infrequent	*Phone call or "warning" letter. Reports to be submitted immediately.
Failure to report or notify, especially in case of negotiated consent decree	Permittee does not respond to letters, or does not follow-through on verbal or written agreement, or frequent violation.	Administrative Order or judicial action if non-response continues
Failure to notify of effluent limit violation	Known environmental damage results or is imminently threatened.	Administrative Order or judicial action
Failure to notify of effluent limit violation	Isolated or infrequent. No known effects.	"Warning" letter
Failure to notify of effluent limit violation	Continuation	Second "warning" letter or Administrative Order
Minor reporting deficiencies	Isolated or infrequent	"Warning" letter- corrections to be made on next submittal.
Minor reporting deficiencies	Continuation	Administrative Order if continued.

*Phone calls should be followed up with "warning" letters if reports are not received within agreed upon time frame.

HAWAII STATE ENFORCEMENT RESPONSE

Reporting

Noncompliance

Circumstances

Responses

Major or gross reporting deficiencies (no known health effects)

Isolated or infrequent

"Warning" letter-corrections to be made on next submittal

Major or gross reporting deficiencies

Continuation

Administrative Order.

HAWAII STATE ENFORCEMENT RESPONSE

Compliance Schedules* (Construction Phases or Planning)

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Responses</u>
Missed Interim Date	Will not cause late final date or other interim dates	"Warning" letter.
Missed Interim Date	Will result in other missed interim dates and/or late final date. Violation for good or valid cause.	"No Action" letter or "warning" letter (require documentation), or Administrative Order.
Missed Interim Date	Will result in other missed dates. No good or valid cause.	"Warning" letter (first time only), Administrative Order, or judicial action.
Missed Final Date	Compliance likely within 90 days	"Warning" letter, follow-up to verify status.
Missed Final Date	Violation for good or valid cause (strike, act of God, etc.)	Contact permittee, require documentation of good or valid cause. Administrative Order if begin construction date was missed or other delays in construction occurred without good or valid cause.
Missed Final Date	Ninety days or more outstanding. Failure or refusal to comply without good or valid cause.	Administrative Order or judicial action.

*Except in the case of negotiated consent decrees which will be determined case by case.

Appendix 4 (continued)

HAWAII STATE ENFORCEMENT RESPONSE

Compliance Schedules (Construction Phases or Planning)

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Responses</u>
Major or gross deficiencies	Continuation	Administrative Order or judicial action
Failure to install monitoring	Continuation	Administrative Order to begin monitoring (using outside contracts, if necessary) <u>and</u> install equipment
Reporting false information		Judicial action

HAWAII STATE ENFORCEMENT RESPONSE

Effluent Limits

<u>Noncompliance</u>	<u>Circumstances</u>	<u>Responses</u>
Exceeding Final Limits	Infrequent or isolated minor violation	"Warning" letter
Exceeding Final Limits	Infrequent or isolated major violations of single effluent limit	"Warning" letter Administrative Order, or judicial action
Exceeding Final Limits	Frequent violations of effluent limits, i.e., significant noncompliance (see Appendix 5)	Administrative Order or judicial action within 45 days of QNCR or hearing date.
Exceeding Final Limits	Within Technical Review Criteria (see Appendix 5) and time frame for its use	"Warning" letter or request explanation
Exceeding Final Limits	Varied frequency or continuation see Appendix 5 for mandatory order	"Warning" letter or Administrative Order (if in significant noncompliance or in case of imminent threat of environmental damage)
Exceeding Interim Limits (for discharge under permittee's control)	Results in known environmental damage or imminent threat of same	Administrative Order or judicial action
Exceeding Interim Limits (for discharge under permittee's control)	Without known damage	"Warning" letter, Administrative Order or judicial action
Exceeding Interim Limits (uncontrolled)	No harmful effects known	"No action" letter
Exceeding Interim Limits (uncontrolled)	With substantial environmental damage or imminent threat thereof	Administrative Order or judicial action

Appendix 5

DEFINITION OF SIGNIFICANT NONCOMPLIANCE

Over the past few years, the compliance personnel of various Regions and States have expressed concern about the Agency's emphasis on reporting and resolving instances of noncompliance which are of minor importance. "Minor" violations of NPDES requirements, although important in one sense, do not always reflect the real gains of the NPDES program. It is important, given the large number of NPDES permittees and the limited enforcement/compliance resources, that we focus our efforts to resolve truly serious problems. Therefore, in cooperation with EPA Regions and NPDES States, we (EPA Office of Water) have developed the definition of significant noncompliance as an administrative tool for providing this focus. The Office of Legal and Enforcement Counsel has also cooperated in and concurred with the development of this guidance.

Attached is the definition of significant noncompliance. This definition will be used to identify those permit violations which are of sufficient magnitude and/or duration to be considered of major concern to the regulatory agency, to report national levels of compliance in the NPDES program, and to evaluate the progress of the NPDES program.

Previously, separate definitions were used to prepare the Quarterly Noncompliance Report (QNCR), to report national noncompliance levels and to review the progress of the NPDES program. Unfortunately, these separate definitions produced different levels of compliance and frequently included violations of less magnitude. The definition of significant noncompliance should resolve these previous problems because: 1) the definition will be used for all reporting of noncompliance in the NPDES program; and, 2) the definition allows the regulatory agency to list all instances of noncompliance which are considered to be of major concern. The definition represents a consensus for the comments received from NPDES States and EPA Regional offices.

DEFINITION OF SIGNIFICANT NONCOMPLIANCE IN THE NPDES PROGRAM

A definition of significant noncompliance is needed for the NPDES program to provide consistent information on the compliance status of permitted facilities and to evaluate changes in compliance status. This definition will be used as part of the administrative procedure for screening NPDES self-monitoring data and reporting instances of noncompliance which are of major concern to the regulatory agency.

It is important to note that any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is strictly liable. The designation of "significant noncompliance" indicates a violation is of sufficient magnitude and/or duration to be considered among the regulatory agency's priorities for regulatory review and/or response. An agency's decision as to what enforcement action, if any, should be taken in such cases must be based on an analysis of all of the facts and relevant legal provisions involved in any particular case.

The categories of significant noncompliance are: 1) violations of requirements resulting from previous enforcement action, 2) violations of permit effluent limits, and violations of permit compliance schedules. Any unauthorized discharge or bypass considered significant by the NPDES Program Director (or Designee) will also be reported as significant noncompliance. Additionally, the Director of an NPDES program may designate any instance of noncompliance which he/she considers to be significant.

The regulatory agency reserves the right to take any action against NPDES permit violations as prescribed by the CWA regardless of whether it is or can be defined as significant noncompliance. This right also applies to any procedures or policies developed to implement the definition of significant noncompliance.

I. Violations of Previous Enforcement Actions

Violations of a requirement imposed in an enforcement action such as a consent decree or administrative order, except as noted below, is considered to be significant noncompliance.

II. Violations of Compliance Schedules

Schedule violations, including portions of 309(a)(5)(A) orders which pertain to compliance schedules, can be classified as "significant" for both POTWS and non-POTWS. Assessing the status of compliance on non-POTWS is a

relatively straightforward matter because there are fewer variables involved in their construction programs than for POTWs. For those POTWs which rely upon the Federal construction grants process to assist in funding, the entire grant process (including planning, design, and construction) must be reviewed to determine if the municipal facility is making acceptable or unacceptable progress. If a POTW facility is making unacceptable progress, its noncompliance is considered significant. For POTWs not in the Federal grants process and non-POTWs, schedule violations which have not been resolved (returned to compliance with schedule requirements) within 90 days are considered to be significant noncompliance.

III. Violations of Permit Effluent Limits

Cases of significant noncompliance for permit effluent limits are defined according to the magnitude and/or duration of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. Three subcategories have been created for effluent violations, as follows:

a. Effluent Criteria for Single Events and Short-Term Limits

Single event violations (i.e., of daily maximum limits) and short term violations (i.e., of seven-day averages) are discretionary with respect to their designation as significant noncompliance. Generally, however, any permit violation is significant which has the potential to cause or has actually caused adverse environmental effects, (e.g., fish kills, oil sheens) or poses a human health hazard (e.g., spills of carcinogenic, radioactive or mutagenic substances). The Director also may consider the significance of violations detected during compliance inspection by using a single event criterion.

b. Effluent Criteria for the Magnitude and Duration of Monthly Average Permit Limits

Significant noncompliance for monthly average limitations is based on exceeding Technical Review Criteria (TRC) (magnitude) for a specified time period (duration). The TRC's are for two groups:

- | | | | |
|----------|---|--|---------|
| Group I | - | Inorganic and Oxygen Demanding Pollutants (such as BOD, COD, TSS, nutrients) | TRC=1.4 |
| Group II | - | Toxic Pollutants (such as heavy metals, cyanide, and organics) | TRC=1.2 |

The duration is evaluated for any consecutive six months. For all permittees, significant noncompliance is exceedance of the TRC for the monthly average for any two months in a six-month period.

c. Effluent Criteria for Chronic Violations

In some cases, a permittee will constantly violate the monthly average permit limit but not exceed the TRC. These chronic violations would be considered significant noncompliance if the monthly average permit limit were exceeded any four months in a six-month period.

GROUP I - Inorganic and Oxygen Demanding Pollutants

TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrient

Phosphorus Compounds
Nitrogen Compounds
Other

Metals

Aluminum
Cobalt
Iron
Vanadium

Detergents and Oil

MBAS
NTA
Oil and Grease
Other detergents or algicides

Group II - Toxic Pollutants TRC=1.2

Heavy Metals (all forms)

Antimony
Arsenic
Beryllium
Cadmium
Chromium
Copper
Lead
Nickel
Mercury
Selenium
Silver
Thallium
Zinc

Inorganic (nonconventional)

Cyanide
Total Residual Chlorine

All Organics except those specifically listed in Group I.
The criteria for fecal coliform violations are discretionary.

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**AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
STATE OF HAWAII DEPARTMENT OF HEALTH
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9**

The Memorandum of Agreement between the United States Environmental Protection Agency, Region 9 (hereinafter EPA) and the State of Hawaii, Department of Health (hereinafter DOH) is hereby amended to include DOH and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereinafter NPDES) general permits as follows:

The DOH has the responsibility for developing and issuing NPDES general permits. After identifying dischargers appropriately regulated by a general permit, the DOH will develop effluent limitations and prepare the draft general permit. Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development and will be transmitted to the following EPA offices:

Water Management Division Director
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Director, Office of Wastewater Enforcement and Compliance
U.S. EPA (WH-546)
401 M Street, SW
Washington, D.C. 20460

General permits for discharges from separate storm sewers need not be sent to EPA Headquarters for review.

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the DOH. In the event EPA does object to a general permit it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The State has the right to a public hearing on the objection in accordance with 40 CFR 123.44 and Part III of the MOA. Upon receipt of EPA's objection, the State may request a public hearing. If EPA's concerns are not satisfied and the State has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

If EPA raises no objections to a general permit it will be public noticed in accordance with Hawaii Administrative Procedures Act, Chapters 91 and 92 of Hawaii Revised Statutes (HRS) and 40 CFR 124.10, including publication in a newspaper published at least twice a week in the county affected by the permit. The DOH will issue and administer NPDES general permits in accordance with Chapters 91, 92 and 342D of HRS and will include in those rules provisions which satisfy the requirements of 40 CFR §§ 122.28(a), 122.28(b)(1) and (b)(2)(i), (b)(2)(iii), (b)(2)(iv) and (b)(2)(v) which are described as bellow:

40 CFR 122.28(b)

- (1) General permits may be issued, modified, revoked and reissued, or terminated in accordance with the applicable requirements of 40 CFR Part 124 or corresponding State regulations.
- (2) Requiring an individual permit.

- (i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required including following:
- (A) The discharger is not in compliance with the conditions of general NPDES permit;
 - (B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
 - (C) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
 - (D) A Water Quality Management plan containing requirements applicable to such point sources is approved;
 - (E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or
 - (F) The discharge(s) is a significant contributor of pollutants. In making this decision, the Director may consider the following factors:

- (1) The location of the discharge with respect to waters of the United States;
 - (2) The size of the discharge;
 - (3) The quantity and nature of the pollutants discharged to waters of the United States; and
 - (4) Other relevant factors;
- (iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying an individual permit. The owner or operator shall submit an application under section 11-55-04 of the Hawaii Administrative Rules, with reasons supporting the request, to the Director no later than 90 days after the publication by Director in accordance with Chapters 91, 92 and 342D of the Hawaii Revised Statutes. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.
- (iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to the general permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effected date of the individual permit.
- (v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the

individual permit, the general permit shall apply to the source.

General Permits will be issued for a term no longer than five (5) years.

The DOH also has the responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

All specific State commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 work plan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the DOH general permit program application by the Regional Administrator of EPA Region 9.

FOR STATE OF HAWAII, DEPARTMENT OF HEALTH

James A. Anderson

FOR Director

SEP - 5 1

Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Regional Administrator
U.S. EPA, Region 9

Date

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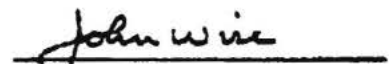
This Amendment to the Memorandum of Agreement will be effective upon approval of the DOH general permit program application by the Regional Administrator of EPA Region 9.

FOR STATE OF HAWAII, DEPARTMENT OF HEALTH


Director

SEP - 5 1991
Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Regional Administrator
U.S. EPA, Region 9

9.30.91
Date

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