

US EPA ARCHIVE DOCUMENT

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of	)	
	)	
State of Hawaii	)	FINDINGS OF VIOLATION
Department of Transportation	)	
Harbors Division	)	AND
	)	
Proceedings under Sections 308(a) and 309(a)(3),	)	ORDER FOR COMPLAINEE
(a)(4) and (a)(5)(A) of the Clean Water Act, as	)	
amended, 33 U.S.C. Sections 1318(a) and	)	Docket No. CWA-309(a)-09-023
1319(a)(3), (a)(4) and (a)(5)(A)	)	

**STATUTORY AUTHORITY**

The following Findings of Violation and Order is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Clean Water Act [33 U.S.C. Sections 1318(a) and 1319(a)(3), (a)(4) and (a)(5)(A)] (hereinafter the Act). This authority has been delegated by the Administrator and the Regional Administrator of EPA Region 9 to the Director of the Water Division of EPA Region 9.

**FINDINGS OF VIOLATION**

The Director of the Water Division of EPA Region 9 finds that the State of Hawaii, Department of Transportation, Harbors Division (HDOT-Harbors or Harbors Division), is in violation of the Hawaii NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, as it applies to HDOT-Harbor's Honolulu and Kalaeloa Barbers Point Harbors on the Island of Oahu, Hawaii, and in

violation of Section 301(a) of the Act, 33 U.S.C. Section 1311(a). This Finding is made on the basis of the following findings:

1. Section 301(a) of the Act [33 U.S.C. Section 1311(a)] prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with, inter alia, a National Pollutant Discharge Elimination System (NPDES) permit issued in accordance with Section 402(a) of the Act [33 U.S.C. Section 1342].
2. Section 502(5) of the Act [33 U.S.C. Section 1362(5)] defines “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
3. Section 502(6) of the Act [33 U.S.C. Section 1362(6)] defines “pollutant” to mean sewage, garbage, sewage sludge, rock, sand, chemical wastes, biological materials, dredged spoil, solid waste, incinerator residue, munitions, radioactive materials, heat, wrecked or discarded equipment, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
4. Section 502(12) of the Act [33 U.S.C. Section 1362(12)] defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.
5. Section 502(7) of the Act [33 U.S.C. Section 1362(7)] defines the term “navigable waters” to mean the waters of the United States, including the territorial seas.
6. Section 502(14) of the Act [33 U.S.C. Section 1362(14)] defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged.

7. Section 402(p) of the Act [33 U.S.C. § 1342(p)] sets out specific requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p)(3)(B) requires permits to be issued for discharges from municipal separate storm sewers [33 U.S.C. § 1342(p)(3)(B)].
8. On November 16, 1990, EPA promulgated regulations at 40 C.F.R. Part 122.26 [55 Federal Register 47990], implementing Section 308 and the storm water permit provisions of Section 402(p) of the Act [33 U.S.C. § 1342(p)]. On December 8, 1999 revised the regulations at 40 C.F.R. Part 122.26 [64 Federal Register 68852], to, among other things, establish NPDES Permitting requirements for Small MS4s.
9. 40 C.F.R §122.26(b)(8) sets out the definition of "municipal separate storm sewer" which includes:
  - "roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State...or other public body (created by or pursuant to State law) having jurisdiction over disposal of...storm water ..."
10. 40 C.F.R. §122.26(b)(16) sets out the definition of "small municipal separate storm sewer system " which includes:
  - “all separate storm sewers that are:
    - (i) Owned or operated by ... a State ... having jurisdiction over disposal of ... storm water, ... including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity...
    - (ii) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of this section, or designated under paragraph (a)(1)(v) of this section.
    - (iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares...”
11. 40 C.F.R. §122.21(a) *Duty to apply* requires that any person who discharges or intends to discharge pollutants must apply for an NPDES permit unless exempt.
12. Section 402(b) of the Act [33 U.S.C. Section 1342(b)] authorizes states to administer the

- NPDES program, with approval of the Administrator of EPA. The State of Hawaii, through its Department of Health (DOH), is a state approved under section 402(b) of the Act to administer the NPDES program, including the issuance of storm water permits.
13. On October 25, 2002 DOH adopted, among other things, the Hawaii NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, HAR Chapter 11-55 Appendix K (the Hawaii Small MS4 General Permit). This general permit became effective on November 7, 2002. It expired on October 21, 2007, when the Hawaii Small MS4 General Permit was subsequently readopted by DOH with an effective date of October 22, 2007. The current general permit is set to expire on October 21, 2012.
  14. HDOT-Harbors is a political subdivision of the State organized under the laws of the State of Hawaii. HDOT- Harbors is therefore a "person" as defined by Section 502(5) of the Act, 33 U.S.C. Section 1362(5), and is thus subject to its requirements.
  15. HDOT-Harbors is, among other things, the owner and operator of the Honolulu Harbor and the Kalaeloa Barbers Point Harbor, both located on the Island of Oahu. Each of these respective harbors has a storm water drainage system consisting of, among other things, drain inlets, storm sewers and outfalls. HDOT-Harbors therefore is the owner of Small MS4s at these two facilities.
  16. These two HDOT-Harbors Small MS4s are each "point sources" as defined by Section 502(14) of the Act [33 U.S.C. Section 1362(14)], and the regulations at 40 C.F.R. §122.2. Stormwater runoff from these two Small Ms4s discharges to the receiving waters known as Honolulu Harbor and Kalaeloa Barbers Point Harbor, respectively.
  17. Honolulu Harbor and Kalaeloa Barbers Point Harbor are both "navigable waters" as defined at Section 502(7) of the Act [33 U.S.C. Section 1362(7)], and "waters of the

- United States” as defined at the regulations at 40 C.F.R. §122.2.
18. DOH has established water quality standards for the waters of Honolulu Harbor and Kalaeloa Barbers Point Harbor, Hawaii Administrative Rules (“HAR”) Chapter 11-54.
  19. On March 7, 2003 HDOT-Harbors filed for coverage under the Hawaii Small MS4 General Permit for the Honolulu Harbor and Kalaeloa Barbers Point Harbor Small MS4s by submitting a complete Notice of Intent for each. DOH provided HDOT-Harbors with Notices of General Permit Coverage (NGPC) on May 19, 2003, assigning ID No. HIR03KB482 and HIR03KB488 for the Honolulu Harbor and Kalaeloa Barbers Point Harbor Small MS4s, respectively. On September 25, 2007 HDOT-Harbors submitted renewal NOIs to DOH, and on October 19, 2007 DOH administratively extended HDOT-Harbors’ coverage under the Hawaii Small MS4 General Permit.
  20. The Hawaii Small MS4 General Permit contains, among other things, the following requirements:
    - a. Part 6 of the Permit requires the Harbors Division to develop, implement, and enforce a storm water management plan (SWMP) designed to reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act. Specific requirements for SWMP contents are set out at Parts 6.(a)(1)-(6);
    - b. Part 6.(a)(3) of the Permit requires the Harbors Division to develop, implement, and enforce a program to detect and eliminate illicit discharges that includes the minimum elements specified in the Permit;
    - c. Part 6.(a)(3)(A) of the Permit requires the Harbors Division to establish rules, ordinances, or other regulatory mechanisms, including *enforcement procedures*

*and actions* (emphasis added), that prohibit non-storm water discharges into the permittee's Small MS4s that are not from allowable sources;

- d. Part 6.(a)(3)(B) of the Permit requires the Harbors Division to develop procedures to detect and eliminate illicit discharges into the permittee's Small MS4s;
- e. Part 6.(a)(3)(C) of the Permit requires the "compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges...";
- f. Part 6.(a)(4) of the Permit requires the Harbors Division to develop, implement, and enforce a program for construction site runoff control that includes the minimum elements specified in the Permit;
- g. Part 6.(a)(4) of the Permit further requires the Harbors Division to develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's Small MS4s from construction activities disturbing one acre or more, including those activities which are part of a larger common plan of development or sale;
- h. Part 6.(a)(4)(A) of the Permit requires the Harbors Division to establish "rules, ordinances, or other regulatory mechanisms, including *enforcement procedures and actions* (emphasis added), that require erosion and sediment controls";
- i. Part 6.(a)(4)(B) of the Permit requires the Harbors Division to develop "requirements for construction site operators to implement appropriate erosion and sediment control best management practices.";
- j. Part 6.(a)(4)(C) of the Permit requires the Harbors Division to develop "requirements for construction site operators to control waste such as discarded

- building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.”;
- k. Part 6.(a)(4)(F) of the Permit requires the Harbors Division to develop “procedures for site inspection and enforcement of control measures.” ;
- l. Part 6.(a)(5) of the Permit requires the Harbors Division to develop, implement, and enforce a program for post-construction storm water management that includes the minimum elements specified in the Permit;
- m. Part 6.(a)(5) of the Permit further requires the Harbors Division to develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee’s Small MS4s from new development and redevelopment projects that disturb greater than or equal to one acre, including projects that are part of a larger common plan of development or sale;
- n. Part 6.(a)(5)(A) of the Permit requires the Harbors Division to establish “rules, ordinances, or other regulatory mechanism[s], including *enforcement procedures and actions* (emphasis added), that address post-construction runoff from new development and redevelopment projects.”
- o. Part 6.(a)(5)(B) of the Permit requires the Harbors Division Post-Construction Storm Water Management Program to include structural and/or nonstructural BMPs to minimize water quality impacts and attempt to maintain pre-development runoff conditions; and
- p. Part 6.(b) of the Permit requires the Harbors Division to develop measureable goals to gauge permit compliance and program effectiveness for each Minimum Control Measure identified in the Permit.



21. Pursuant to Part 6 of the Small MS4 permit HDOT-Harbors developed and, in October 2007, submitted to DOH SWMPs for each of its harbor facilities on Oahu. In response to comments received from DOH in April 2008, HDOT-Harbors submitted to DOH a revised SWMP for the Kalaeloa Barbers Point Harbor Small MS4.
22. EPA Region 9, with assistance from the DOH and an EPA contractor, conducted an audit of the HDOT-Harbors' Small MS4 program on December 8-11, 2008. A report of the audit (Audit Report) was transmitted to HDOT on March 23, 2009. A copy of the Audit Report is attached hereto as Exhibit 1 and hereby made part of these Findings of Violation.
23. HDOT-Harbors has failed to comply with Part 6.(a)(3)(A) of the Permit in that it has failed to implement an IC/ID enforcement program sufficient to reduce pollutants to the maximum extent practicable. HDOT Harbors' SWMP relies almost exclusively on its Tenant Revocable Permits (TRP) and lease agreements to implement storm water quality requirements. During the audit, HDOT-Harbors staff could not demonstrate that it had established procedures for the enforcement of the terms and conditions of the TRPs and lease agreements. Harbors Division staff stated that formal enforcement procedures do not exist and no examples of past formal enforcement actions were provided.
24. HDOT-Harbors has failed to comply with Part 6.(a)(3)(B) of the Permit in that it has failed to develop and implement procedures to detect and eliminate illicit discharges sufficient to reduce pollutants to the maximum extent practicable. HDOT Harbors' SWMP relies largely on passive approaches such as training and outreach, and the audit found that Harbors Division had not developed an effective method of actively identifying and eliminating illicit discharges. Although a small boat is used to conduct dry weather visual inspection of outfalls under low tide conditions at a frequency of two

times per year, the Harbors Division staff stated that even under low tide conditions several outfalls remain submerged and any discharge is unobservable. In addition no records are kept of these visual observations to be able to document that the inspections are being conducted at all or at the specified frequency. Harbors Division staff stated that to date they have not identified any illicit discharges during these dry weather visual inspections. Furthermore, if dry weather flows were detected, HDOT-Harbors has no effective means of identifying the sources due to inadequate mapping of contributing inlets, connections and drainage areas and no other tools for up gradient dry weather screening.

25. HDOT-Harbors has failed to comply with Part 6.(a)(3)(C) of the Permit in that it has failed to adequately compile a list of non-storm water discharges or to implement measures to prevent such discharges, that are sufficient to reduce pollutants to the maximum extent practicable. HDOT Harbors' SWMP states that its Environmental Section annually collects reports of reported apparent storm water quality violations from the Marine Traffic Control Center (MTCC) and includes the list in the annual reports. After review of the annual reports, the Audit demonstrated that the list is both under inclusive and over inclusive. The MTCC activity logs are primarily spill and incident reports that include incidents unrelated to storm water such as offshore incidents. In addition, HDOT-Harbors Division is not identifying certain non-storm water discharges, such as wash water, for inclusion on the list. During the Audit, Harbors' Division staff did not properly identify non-storm water flows as potential pollutant sources. At the Honolulu Harbor – Kapalama Military Reservation, for example, the EPA Audit Team observed a number of tenants actively pressure-washing equipment in outdoor locations, and Harbors Division staff did not demonstrate any response to these activities. At

Honolulu Harbor – Pier 34, a Harbors Division maintenance crew was observed washing out a street sweeper bin adjacent to a storm drain inlet near the Oahu Lumber and Hardware Company. This area did not have appropriate controls in place to properly dispose of sweeper wash water and debris. Thus, HDOT-Harbors is failing to implement measures to prevent non-storm water discharges.

26. HDOT-Harbors has failed to comply with Part 6.(a)(4) of the Permit in that it has failed to develop, implement and enforce a program for construction site runoff that is sufficient to reduce pollutants to the maximum extent practicable. HDOT-Harbors SWMP references the programs implemented by the Department of Health and the City and County of Honolulu, but provides no coordination or relationship with those programs. The Audit found that HDOT-Harbors has no program of its own for oversight of construction activities by its tenants.
27. HDOT-Harbors has failed to comply with Part 6.(a)(4)(A) of the Permit in that it has failed to establish rules, ordinances and other regulatory mechanisms that require erosion and sediment controls sufficient to reduce pollutants to the maximum extent practicable from construction sites. HDOT Harbors' SWMP states that new connections or discharges require a permit to connect and/or discharge, however these procedures are not being implemented as only three such permits have been issued in the history of the SWMP program. The SWMP also relies upon the general requirements of its Tenants Revocable Permits (TRPs) and lease agreements, but, as stated above in paragraph 22, HDOT-Harbors staff could not demonstrate that it had established procedures for the enforcement of the terms and conditions of the TRPs and lease agreements. HDOT-Harbors staff stated that formal enforcement procedures do not exist and no examples of past formal enforcement actions were provided.

28. HDOT-Harbors has failed to comply with Part 6.(a)(4)(B) of the Permit in that it has failed to develop, implement and enforce a program that requires construction site operators to implement appropriate erosion and sediment control best management practices sufficient to reduce pollutants to the maximum extent practicable. HDOT Harbors' staff stated that they do not require the use of the construction BMP specifications manual or the inclusion of standard BMP notes on construction project plans. Nor was there any documentation that explicitly required the use of erosion and sediment controls. To the extent, HDOT-Harbors is relying on its TRPs and lease agreements, as stated above in paragraph 22, HDOT-Harbors staff could not demonstrate that it had established procedures for the enforcement of the terms and conditions of the TRPs and lease agreements. HDOT-Harbors staff stated that formal enforcement procedures have not been do not exist and no examples of past formal enforcement actions were provided.
29. HDOT-Harbors has failed to comply with Part 6.(a)(4)(C) of the Permit in that it has failed to develop, implement and enforce a program that requires construction site operators to control waste sufficient to reduce pollutants to the maximum extent practicable. HDOT-Harbors SWMP again relies on existing programs within DOH and the City and County of Honolulu. The Audit demonstrated that HDOT-Harbors has no program of its own. To the extent, HDOT-Harbors is relying on its TRPs and lease agreements, as stated above in paragraph 22, HDOT-Harbors staff could not demonstrate that it had established procedures for the enforcement of the terms and conditions of the TRPs and lease agreements. HDOT-Harbors staff stated that formal enforcement procedures do not exist and no examples of past formal enforcement actions were provided.

30. HDOT-Harbors has failed to comply with Part 6.(a)(4)(F) of the Permit in that it has failed to develop, implement and enforce a program of site inspection and enforcement of control measures sufficient to reduce pollutants to the maximum extent practicable. HDOT-Harbors SWMP merely notes that Marine Cargo Specialists and Construction Inspectors “may” note implementation of BMPs and contractor waste management practices. HDOT-Harbors provides no oversight of private construction and has only one inspector for public construction covering all of Oahu, including these two small MS4s. Moreover, HDOT-Harbors staff stated that the scope of the public construction inspections are not specific to storm water or water quality concerns. HDOT-Harbors has no other construction site inspection and enforcement procedures.
31. HDOT-Harbors has failed to comply with Part 6.(a)(5) of the Permit in that it has failed to develop, implement and enforce a program for post construction runoff from new development and redevelopment projects sufficient to reduce pollutants to the maximum extent practicable. HDOT Harbor’s SWMP relies primarily on the existing NPDES storm water construction program administered by the Department of Health and has no apparent program of its own. HDOT-Harbors staff could produce no documentation that addressed post construction runoff. Although the SWMP purports to rely on other “general practices” such as preservation of undeveloped areas, consideration of porous surface treatments, etc., HDOT-Harbors staff were unaware of these practices and could produce no examples where these practices had been implemented anywhere within the Harbors.
32. HDOT-Harbors has failed to comply with Part 6.(a)(5)(B) of the Permit in that it has failed to implement structural and/or non-structural BMPs to minimize water quality impacts and maintain pre-development runoff conditions from new development and

redevelopment construction sites sufficient to reduce pollutants to the maximum extent practicable. Harbors Division staff stated that structural BMPs or other Post-Construction treatment controls have not been considered or installed in any areas served by its MS4. The Audit documented at least two new development or redevelopment construction sites that occurred within the time frame of the requirements of Part 6.(a)(5) and would have benefited from such Post-Construction controls.

33. HDOT-Harbors has failed to comply with Part 6.(a)(5)(C) of the Permit in that it has failed to develop, implement and enforce a procedures for the long term operation and maintenance of post construction BMPs sufficient to reduce pollutants to the maximum extent practicable. As noted in paragraph 30 above, HDOT-Harbors had no program for post construction controls and thus also had no procedures for the long-term operation and maintenance of BMPs for such a program. HDOT-Harbors staff could produce no documentation of any such procedures.
34. HDOT-Harbors has failed to comply with Part 6.(b) of the Permit in that it has failed to develop measurable goals to gauge permit compliance and program effectiveness for each minimum control measure sufficient to sufficient to reduce pollutants to the maximum extent practicable. The SWMP states that 1) goals by which program effectiveness will be assessed “are established herein”, 2) the annual report will summarize “progress toward yearly goals for each minimum control measure” (emphasis added), and 3) the SWMP includes a discussion of “criteria through which the efforts will be assessed”. Beyond these and similarly conclusory statements, the Audit found that the SWMP did not contain clearly defined goals. Nor are “yearly goals” or “criteria” set forth for each minimum control measure.

Conclusion

35 Based upon the foregoing, I find that HDOT-Harbors has violated the Hawaii Small MS4 General Permit and Sections 301(a) and 308 of the Act.

## ADMINISTRATIVE ORDER

Taking the above Findings of Violation into consideration and considering the potential environmental and human health effects of the violations and all good faith efforts to comply, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to Sections 308(a) and 309(a)(3), (a)(4) and (a)(5)(A) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3), (a)(4) and (a)(5)(A), IT IS HEREBY ORDERED that HDOT-Harbors comply with the following requirements:

1. By no later than December 31, 2009, HDOT-Harbors shall revise the SWMPs for Honolulu and Kalaehoa Barbers Point Harbors to include the requirements set out at paragraphs 6-15 below. The revised SWMPs<sup>1</sup> shall include the following information for each of the stormwater management program components:
  - a. Specific BMPs that shall be implemented for each of the program minimum control measures, with underlying rationale for their selection and inclusion;
  - b. Specific quantitative goals, metrics and milestones for each of the BMPs, with underlying rationale for their selection and inclusion; and
  - c. The name or position title and affiliation of the person or persons responsible for implementation or coordination of each program component.

HDOT-Harbors shall submit the revised SWMPs along with its annual reports for calendar 2009, which shall be submitted by no later than January 28, 2010.

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1- HDOT-Harbors may elect to develop a single MS4-wide SWMP that is appropriately specific to each of the two harbors but that applies to its overall Small MS4 and stormwater management program.



Review/Modification, Implementation and Resources

2. Pursuant to a request by either EPA and/or DOH, HDOT-Harbors shall make further revisions to its SWMPs and shall submit such further revisions within 60 days of receipt of such a request.
3. By no later than January 1, 2010, unless otherwise specified herein, HDOT-Harbors shall commence implementation of the revised SWMPs and achieve full implementation by no later than December 31, 2010.
4. HDOT-Harbors shall secure the resources necessary to meet the requirements of the Permit and this Order. In order to demonstrate sufficient financial resources, HDOT-Harbors shall include a detailed budget summary in its SWMPs that identifies both necessary resources, resources available as of the date of SWMP finalization, and a program for securing any additional required resources necessary to comply with the full implementation requirement of paragraph 3 immediately above.
  - a. HDOT-Harbors shall include a discussion of staffing and program implementation expenditures with its annual reports, commencing with the annual report due by no later than January 28, 2010.
5. HDOT-Harbors shall report on the cost of revising its SWMPs pursuant to the requirements of this Order provide information along with its submittal of its next Annual Report, by no later than January 28, 2010.

Tenant Inspection and Enforcement Response Program

6. HDOT-Harbors shall develop and implement a tenant inspection and progressive enforcement program to ensure that tenant facilities are brought into compliance with the stormwater-related requirements of the HDOT-Harbors' tenant agreement(s) within a reasonable period, as specified below at paragraphs 7 - 9 below.

Public Education and Outreach – Permit Part 6.(a)(1)

7. HDOT-Harbors shall modify the Public Education and Outreach Program of its SWMP to, at a minimum, include a tenant inspection and enforcement program. At a minimum, the modified program shall include requirements to: (1) identify, (2) track, (3) inspect, and (4) ensure compliance with the HDOT-Harbors' tenant agreements at commercial and industrial facilities.
- a. HDOT-Harbors shall develop and submit, as part of its revised SWMP, an inventory of businesses and industries currently operating at the Port. The inventory shall include the following minimum fields of information for each commercial or industrial facility:
- i) Business name, site address or location, and name and address of business owner and operator;
  - ii) Narrative description of business activities, and the SIC code that best reflects the type of business;
  - iii) Whether or not the site is covered under the Hawaii General Industrial Permit; and
  - iv) HDOT-Harbors shall update its business inventory at least annually and include the updated inventory in each Annual Report.
- b. HDOT-Harbors shall require, through tenant agreement or other means, that facilities reduce, to the maximum extent practicable (MEP), pollution in stormwater discharges to, and effectively prohibit unauthorized non-storm water discharges to the MS4.
- c. HDOT-Harbors shall inspect and conduct outreach at all commercial and industrial tenant facilities at least once per year beginning January 1, 2010.

Inspection of and outreach to commercial and industrial tenants shall be designed and conducted to ensure the following:

- The facility operator has been made aware of storm water pollution prevention requirements and the consequences of non-compliance;
  - The facility operator is in compliance with its tenant agreement;
  - The potential for discharge of pollutants in storm water is reduced to the MEP; sources to be inspected may include industrial processes; equipment and vehicle maintenance and storage; equipment, vehicle, and surface washing; raw material and product handling and storage; solid waste handling and storage; and hazardous waste handling and storage;
  - Unauthorized non-storm water discharges do not occur at the facility; and
  - Illicit connections are not present at the facility.
- d. HDOT-Harbors need not perform additional inspections and outreach at commercial and industrial facilities that it has determined to have no pollution exposure to storm water and no potential for unauthorized non-storm water discharges. However, HDOT-Harbors shall continue to track these facilities, noting in its inventory the determination to discontinue inspections and outreach. HDOT-Harbors shall not halt inspections at any facilities covered under the Hawaii NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activity, HAR Chapter 11-55 Appendix B (the Hawaii Industrial General Permit);
- e. HDOT-Harbors shall respond to violations observed during these inspections in accordance with the ERP developed pursuant to paragraph 8 below.

Enforcement Response Plan

8. HDOT-Harbors shall develop and implement a written enforcement response plan (ERP) that provides a range of enforcement tools and establishes progressive escalation of the tools with regard to the seriousness of the illicit discharge and with repeat or recalcitrant dischargers. The enforcement tools shall include, at a minimum: verbal warnings; written notices; citations with monetary fines; stop work orders (e.g. for construction sites); abatement by HDOT-Harbors with re-imburement by the responsible party; lease termination; referral to DOH or other appropriate regulatory agency; and other measures. HDOT-Harbors shall apply its ERP in response to violations of stormwater-related requirements of tenant lease agreements and /or tariffs that may result in the discharge of unauthorized non-stormwater discharges and/or contaminated stormwater to either HDOT-Harbors' Small MS4s or directly to waters of the U.S.
- a. In the event that HDOT-Harbors determines, based on an inspection conducted pursuant to the program described at paragraph 7 above or by other means, that a facility operator has failed to control pollution discharges to the MS4 to the MEP, it shall take progressive enforcement action that, at a minimum, shall include a follow-up inspection within two weeks of the date of the initial inspection;
  - b. In the event that, after a follow-up inspection, HDOT-Harbors determines that a facility operator has failed to adequately control sources of pollution discharges to the MS4, HDOT-Harbors shall take further enforcement action as established through authority in its tenant agreement and as described in the ERP;
  - c. HDOT-Harbors shall initiate, within two business days, investigation of complaints transmitted by DOH regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the

facility to investigate the complaint and determine if the facility is out of compliance with HDOT-Harbors' tenant agreement with respect to stormwater-related requirements; and

- d. HDOT-Harbors shall maintain records, including inspection reports, warning letters, notices of violation, and other enforcement records, demonstrating its good faith effort to bring tenant facilities into compliance with applicable requirements;

Illicit Discharge Detection and Elimination - Permit Part 6.(a)(3)

9. HDOT-Harbors shall modify the Illicit Discharge Detection and Elimination Program of its current SWMPs to, at a minimum, develop and implement procedures to detect and eliminate illicit discharges into its Small MS4s as required by Part 6.(a)(3)(B) of the Permit. At a minimum, the revised Illicit Discharge Detection and Elimination Program shall include:

- Systemmatic, on-going review of applicable dry weather analytical monitoring data;
- Investigation/inspection and follow-up procedures;
- Elimination of discovered illicit discharges and connections;
- Enforcement against parties responsible for illicit discharges;
- Response, containment, and cleanup procedures for spills (including sewage spills from private laterals);
- Disposal of used oil and toxic materials in accordance with applicable federal, state and local requirements; and
- Elimination of discovered incidents of infiltration from sanitary sewer to storm sewers.

- a. HDOT-Harbors shall develop a comprehensive list of non-storm water discharges or flows that are or may be considered significant contributors of pollutants to the MS4s (including but limited to washwaters, fuels, paints, solvents, dust suppressant waters, etc.) and measures to be taken to prevent these discharges;
- b. By no later than December 31, 2010 HDOT-Harbors shall conduct dry weather field screening of its MS4s to detect illicit connections. HDOT-Harbors shall develop a field screening work plan that ensures field screening of all open channels and relevant underground pipes will be completed;
- c. Upon discovery or upon receiving a report of a suspected illicit connection, HDOT-Harbors shall initiate an investigation as soon as possible and in no event later than two weeks after discovery/notification to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection;
- d. HDOT-Harbors shall perform follow up investigations of illicit discharges as soon as practicable, and take enforcement action pursuant to its ERP to eliminate such discharges. For illicit discharges that are known or suspected to contain hazardous substances (as defined by federal or state law), HDOT-Harbors shall respond within one business day of discovery or a report of a suspected illicit discharge, with actions to abate, contain, and clean up such illicit discharges. This response shall be in addition to any other requirements of state or federal law for such substances. For illicit discharges not known or suspected to contain hazardous substances, HDOT-Harbors shall respond within two days of discovery or report, and at a minimum require the identified responsible party(ies) to immediately cease such discharges;

- e. By no later than March 1, 2010 and annually thereafter, HDOT-Harbors shall train all employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and other illicit discharges; and
- f. HDOT-Harbors shall list the discovery and resolution of any illicit discharges and illicit connections in its Annual Reports.

Construction Site Runoff Control - Permit Part 6.(a)(4)

10. HDOT-Harbors shall modify the Construction Site Runoff Control Program of its current SWMPs to, at a minimum, establish rules, ordinances, or other regulatory mechanisms, including enforcement procedures and actions, to: 1) require erosion and sediment controls at all construction projects in accordance with Part 6.(a)(4)(A) of the Permit; 2) require construction site operators to implement appropriate erosion and sediment control BMPs; and 3) require construction site operators to implement BMPs appropriate for the control of waste and other potential pollutant sources in accordance with Parts 6.(a)(4)(B)-(C) of the Permit. At a minimum, the revised Construction Site Runoff Control Program shall include the following:
  - Pollution prevention;
  - Source identification;
  - BMP implementation;
  - Construction site inspections;
  - Enforcement measures;
  - Reporting of non-compliant sites; and
  - Education outreach for construction site operators.

- a. HDOT-Harbors' program to control pollution discharges from construction sites shall apply to all construction projects within its jurisdiction, regardless of size or ownership of the construction site or activity.
- b. Prior to approving new construction that disturbs an area of one acre or greater, HDOT-Harbors shall require the construction site operator to certify that a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Intent have been submitted to DOH under the Hawaii NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity, HAR Chapter 11-55 Appendix C (the Hawaii Construction General Permit);
- c. Commencing by no later than March 1, 2010 HDOT-Harbors shall inspect construction sites for compliance with the stormwater-related requirements of its tenant agreement at least once every two weeks during the rainy season (i.e., October thru April), and at least bi-monthly during the remaining months, until construction is terminated and the site has been stabilized. These inspections shall ensure the following:
  - i. Sediments generated at the project site are retained using adequate source control and structural BMPs;
  - ii. Construction-related materials and wastes are retained at the project site to avoid discharge to the storm sewer and waters of the U.S.;
  - iii. Unauthorized non-storm water runoff is contained at the project site; and
  - iv. Erosion from slopes and channels are controlled by implementing an effective combination of erosion and sediment control BMPs, such as limiting grading during the wet season; inspecting graded areas during



rain events; planting and maintenance of vegetation on slopes; and covering slopes susceptible to erosion.

- d. HDOT-Harbors shall include in its Annual Reports a list of all construction projects, inspection dates, and resolution of any violations of stormwater-related requirements in tenant agreements.
- e. By no later than March 1, 2010 and annually thereafter, HDOT-Harbors shall train employees who are responsible for construction site inspections in the requirements of the MS4 and Hawaii General Permits.

Post-Construction Storm Water Management - Permit Part 6.(a)(5)

- 11. HDOT-Harbors shall develop and implement a Post-Construction Storm Water Management Program for polluted stormwater discharges from areas of new development and significant redevelopment pursuant to Part 6.(a)(5) of the Permit. The Post-Construction Storm Water Management Program shall include, at a minimum, the following:
  - a. HDOT-Harbors shall develop and implement a Development Standards Plan (DSP) that requires measures to reduce pollution discharges to the MEP from all new development and significant redevelopment projects. Development Standards requirements shall apply to all new development and significant redevelopment projects. The term “significant redevelopment” is defined as the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site. Significant redevelopment includes, but is not limited to expansion of a building footprint, or replacement of a structure; replacement of impervious surface that is not part of a routine maintenance activity; and land-disturbing activities related to structural or impervious surfaces. Where significant

redevelopment results in an increase of less than 50 percent of the impervious surfaces of a previously existing development, and the existing development was not subject to Development Standards, the BMP design standards discussed below apply only to the addition, and need not be applied to the entire development.

- i. The DSP shall include a list of recommended source and/or structural treatment control BMPs for all new development and significant redevelopment.
- ii. The DSP shall consider pollutants of concern or activities of concern in identifying appropriate BMPs for new development or significant redevelopment projects. In selecting BMPs, the following shall be considered: (1) pollutants of concern; (2) land use and pollutants associated with that land use type; (3) pollutants expected to be present on site at concentrations that would pose potential water quality concerns; and (4) changes in flow rates and volumes resulting from the development project and sensitivity of receiving waters to changes in flow rates and volumes.
- iii. The DSP shall require the utilization of Low Impact Design (LID) applications and approaches to the extent appropriate. Information on LID (aka Green Infrastructure) principles is available at <http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm>
- iv. The DSP shall describe procedures HDOT-Harbors shall use to implement the Development Standards. The procedures shall include, at a minimum, identification of the roles and responsibilities of various departmental

divisions in implementing the DSP, as well as any other measures necessary to ensure its implementation.

- b. Within three months of approval of the DSP, HDOT-Harbors shall implement its Development Standards, and amend its tenant agreements as necessary.
- c. HDOT-Harbors shall ensure that all new development and significant redevelopment projects are reviewed and conditioned for compliance with the Development Standards. Prior to project approval and issuance of local permits for new development and significant redevelopment, HDOT-Harbors shall review the proposed project plan and require measures to ensure that all development is in compliance with HDOT-Harbors' tenant agreements and other applicable requirements.

Pollution Prevention/ Good Housekeeping – Permit Part Part 6.(a)(6)

- 12. HDOT-Harbors shall revise the Pollution Prevention/ Good Housekeeping Program element of its current SWMPs to, at a minimum, include a program of scheduled inspections of and preventive debris removal from its MS4. This program shall include an internal record-keeping system to schedule and document the maintenance activities performed on the storm drainage system (e.g., catch basins, storm drain inlets, open channels, and any structural controls).
  - a. HDOT-Harbors shall designate appropriate sweeping frequencies for streets, material handling and storage areas, parking lots, and docks within its jurisdiction. HDOT-Harbors shall ensure that wash water from street sweeping and street sweeper rinse out is not discharged to the storm sewer. Where tenant operations deny or restrict storm drainage system maintenance by HDOT-Harbors

personnel, HDOT-Harbors shall develop, implement, and enforce a program to require the tenants to conduct the scheduled maintenance.

- b. HDOT-Harbors shall implement BMPs to prevent or minimize the direct discharge of materials associated with shipping, receiving and storage activities at its wharves.

#### Outreach to Vessel Operators

13. HDOT-Harbors shall include in its revised SWMPs BMPs for conducting outreach to vessel operators docking at HDOT-Harbors facilities to ensure their awareness that the discharge of pollutants, including vessel equipment wash water and deck wash-down water, to receiving waters within the harbors is prohibited. HDOT-Harbors shall monitor ship cargo loading and unloading to prevent, to the MEP, ship operators from discharging pollutants to receiving waters.

#### Kalaeloa Barbers Point Harbor Dredge Spoil Stockpile Management

14. HDOT-Harbors shall include in its revised SWMPs erosion and sediment control BMPs for management of the existing dredge spoil stockpiles at Kalaeloa Barbers Point Harbor, to also be applied at future dredge spoil stockpiles, if any. The purpose of the plan is to prevent both wind-and water-caused erosion of the stockpiled materials.

#### Program Effectiveness Evaluation

15. HDOT-Harbors shall include in its revised SWMPs a process for conducting annual performance and effectiveness evaluation of its Stormwater Management Program. This evaluation, which shall be presented in the Annual Reports, shall address specific direct and indirect measurements that the Discharger will use to track the long-term progress of its SWMPs towards achieving improvements in receiving water quality. Direct and indirect measures of effectiveness shall include, but are not limited to, conformance with

established performance standards, quantitative monitoring to assess the effectiveness of control measures, measurements or estimates of pollutant load reductions or increases, detailed accounting of SWMP accomplishments, and funds expended or staff hours used. In order to complete this assessment, the Discharger shall propose performance measures for BMPs included in its SWMPs. Methods to improve effectiveness in the implementation of tasks and activities including development of new, or modification of existing BMPs and performance measures, shall be identified through the SWMP effectiveness evaluation. Annual Reports shall also include a compliance status update that summarizes HDOT-Harbors' compliance with the Permit and the elements of the SWMPs.

- a. The first annual performance and effectiveness evaluation shall be submitted with the Annual Report due January 2010. It is recognized that the revised SWMPs will not by then have been fully implemented, and the initial annual performance and effectiveness evaluation shall be based on activities and measures utilized in 2009. Review of and feedback on the initial evaluation will assist in future years' efforts.
16. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of HDOT-Harbors [as specified by 40 CFR §122.22(b)] and shall include the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of

fine and imprisonment for knowing violations.”

17. All submittals shall be mailed to the following addresses:

U.S. ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, California 94105  
Attn: Amy C. Miller, Clean Water Act Compliance Office (WTR-7)

and

HAWAII DEPARTMENT OF HEALTH  
Clean Water Branch  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378  
Attn: Mike Tsuji

18. This Order shall be binding upon HDOT-Harbors and HDOT-Harbors’ officers, directors, agents, employees, heirs, successors, and assigns.
19. This Order is not a permit under the CWA, and does not waive or modify HDOT-Harbors’ obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
20. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
21. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).

- 22. HDOT-Harbors may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. If legally supportable, a claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
- 23. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a),(b), (d) and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.
- 24. The State of Hawaii Department of Health has been notified of this action.
- 25. This Order shall become effective upon the date of receipt by HDOT-Harbors.

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Alexis Strauss, Director  
Water Division

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Dated