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GOVERNOR



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THOMAS R. KELLER
FIRST DEPUTY ATTORNEY GENERAL

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION

ROOM 300, KEKUAO'A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813

July 16, 1999

MEMORANDUM

TO: Brian Minaai, Deputy Director
Department of Transportation

FROM: Jeffery Kato, Deputy Attorney General

RE: Memorandum of Understanding with State Department of Health

Attached are two fully executed copies of a Memorandum of Understanding between the State Department of Health and the DOT regarding the Highway Division's NPDES storm water permit.

I would appreciate it if you could transmit these copies to the appropriate sections of the Highway Division for necessary action.

Thank you for your cooperation in this regard.

JK:jn
Enclosure
c:jn:mou.doh

DEPARTMENT
OF
TRANSPORTATION
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DEPUTY DIRECTOR

LAWY
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ATTOR

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COPY

July 13, 1999

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To: Jeffery Kato
Deputy Attorney General

Through: Chief, Environmental Management Division *Thomas R. Rizumi*

From: Denis R. Lau, P.E.
Chief, Clean Water Branch *Denis R. Lau*

Subject: **Signed Memorandum of Understanding (MOU)
State of Hawaii, Department of Transportation (DOT)
Highways Division
Municipal Separate Storm Sewer System (MS4)
Island of Oahu, Hawaii
NPDES Permit No. HI 0021245**

The "Memorandum of Understanding Between Department of Transportation, State of Hawaii, and Department of Health, State of Hawaii" was signed on July 8, 1999 by Gary Gill, Deputy Director for Environmental Health of the Department of Health (DOH). It was previously signed on June 25, 1999 by Brian Minaai, Deputy Director of Transportation, for the DOT's Director.

The DOH is returning two (2) signed copies of the MOU to you for distribution to the DOT. The remaining two (2) signed copies will be kept for our files.

If you have any questions, please call Mr. Alec Wong, Engineering Section Supervisor of the Clean Water Branch, at 586-4309.

JLS:auc

Enclosures: Two (2) signed copies of the MOU

c: Laurence K. Lau, Deputy Attorney General (w/encl.)
EPA, CWA Compliance Office, WTR-7 (w/encl.)
EPA, CWA Standards and Permits Office, WTR-5) (w/encl.)
Enforcement Section (w/encl.)

MEMORANDUM OF UNDERSTANDING

BETWEEN

DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII

COPY

AND

DEPARTMENT OF HEALTH
STATE OF HAWAII

I. Purpose

This Memorandum of Understanding is to help the Department of Transportation (DOT), Highways Division, comply with its NPDES Permit No. HI 0021245 (permit), in particular to control illicit discharges into the DOT Highway Division's municipal storm sewer system (drainage system) covered by the permit.

II. Background

The permit issued by the Department of Health (DOH), and 40 C.F.R. § 122.26(d)(2)(i) require DOT to prohibit certain discharges into its drainage system to ensure that certain discharges do not cause violations of the permit or state water quality standards, as covered by permit Part A, Discharge Limitations. These discharges are "illicit discharges" for the purposes of this memorandum.

DOT does not have its own statutes or rules to prohibit such illicit discharges.

III. Objectives

1. DOT and DOH want DOT to comply with its permit.
2. DOT and DOH want effective interagency cooperation.
3. DOH and DOT want DOT to be able to use the water pollution control enforcement authorities in chapter 342D, Hawaii Revised Statutes, administered by DOH. HRS section 342D-2 authorizes the director of health to

delegate certain powers and authorities. DOT will be authorized to prosecute administratively against illicit discharges to its drainage system, and DOH will reserve to itself the adjudicatory functions in those administrative cases.

IV. Delegation of enforcement authority

- A. Under HRS section 342D-2, the director of health delegates the authority to enforce HRS section 342D-50 against illicit discharges to the DOT drainage system covered by NPDES Permit no. HI 0021245, including the specific following powers:
1. Inspection of premises and records under HRS section 342D-8;
 2. The issuance of informal and formal administrative notices of violations and orders, including the imposition of penalties, under HRS section 342D-9(a), (b), (c);
 3. The collection by civil action of any unpaid penalties under HRS section 342D-9(f);
 4. The handling of public records received, created, or maintained by DOT, and requests for those records, under HRS section 342D-14;
 5. The testing of water and aquatic and other life under section 342D-52; and
 6. The requiring of record keeping and monitoring under HRS section 342D-55.
- B. The delegation is to the director of transportation and such DOT employees that the director of transportation appoints, and the director of transportation accepts the delegated powers.
- C. Under HRS section 342D-9(d), (e), (f), and (g), the director of health reserves the authority to appoint hearing officers for any HRS chapter 91 administrative

hearings, to conduct such hearings personally, to hear any administrative appeals from any hearing officers' recommendations, and to render the final administrative decisions in all HRS chapter 91 cases under HRS chapter 342D.

- D. This delegation of powers to the director of transportation and DOT employees is in addition to the powers delegated to DOH employees by the director of health and does not diminish or eliminate any powers of the director of health or DOH employees. For example, The DOH retains the power to enforce the permit against DOT.

V. Responsibilities

A. The DOT shall:

1. Investigate and enforce against illicit discharges.
2. Inform DOH of all complaints, investigations, and reports of alleged illicit discharges;
3. Send to DOH copies of all informal notices of violation and other informal enforcement letters regarding illicit discharges;
4. Coordinate with DOH before issuing formal notices of violation and orders against illicit discharges. This provision shall be reviewed within one year and may be terminated after one year;
5. Coordinate with DOH on whether the State should start a civil or criminal suit against illicit discharges.
6. Seek training and advice from DOH on investigation of and administrative enforcement against illicit discharges.

B. The DOH shall:

1. Train and advise DOT on the investigation of and administrative enforcement against illicit discharges.
2. Inform DOT of current developments in laws and programs regarding illicit discharges;
3. Coordinate with DOT regarding formal notices of violation and orders against illicit discharges;
4. Coordinate with DOT on whether the State should start a civil or criminal suit against illicit discharges.
5. Provide a hearing officer as needed to hear and recommend decisions on contested cases arising from DOT administrative enforcement cases against illicit discharges.

VI. Other provisions

- A. This MOU does not alter the statutory authority and responsibilities or the respective permit requirements under the NPDES of the DOT. The intent of the MOU is to form a basis by which the aforementioned goals and objectives can be carried out by each agency in a cooperative manner.
- B. The MOU does not obligate any funds from the DOT and DOH.
- C. The MOU complies with the nondiscrimination provision of Title VI of the Civil Rights Act of 1964, including Section 504, of Title IX, the Age Discrimination Act of 1975, and other applicable nondiscrimination policies.
- D. The MOU may be amended or terminated at anytime by mutual consent of the DOT or the DOH or the MOU may be terminated by any agency alone by giving 60 days notice in writing to the other.
- E. This MOU shall take effect upon signing by both the DOH and DOT.

DEPARTMENT OF TRANSPORTATION
State of Hawaii

By Prin Minami

Title for Its Director

Date 6/25/99

DEPARTMENT OF HEALTH
State of Hawaii

By G. Gill

Title Deputy Director

Date 7/8/99

DOT-MOU.L05