

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2100
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TELEPHONE 808.523.2500 FAX 808.523.0842
WWW.CARLSMITH.COM

DIRECT DIAL NO.
808.523.2531

JMATSON@CARLSMITH.COM

October 29, 2013

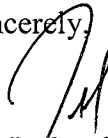
Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, D.C. 20460-0001

**Re: State of Hawaii, Department of Transportation, Highways Division
NPDES Permit No. HI S000001 Appeal No. 13-
Filing ID: PINT-9CX59X**

Dear Ms. Durr:

Per our discussion this morning and per your request, this submittal contains copies of the Petition for Review and Exhibits A through L that were electronically filed with the Environmental Appeals Board in the above-captioned matter on October 28, 2013. Per your request, this submittal separates Exhibits A through L from the Petition for Review. This letter also confirms that the filing date for the original Petition for Appeal and Exhibits A through L will remain October 28, 2013.

Sincerely,



Ian L. Sandison
Arsina A. Muller
Jacob L. Matson
CARLSMITH BALL LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Tel: (808) 523-2500; Fax: (808) 523-0842

Counsel for Petitioner
STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION, HIGHWAYS DIVISION

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)

STATE OF HAWAII,)
DEPARTMENT OF TRANSPORTATION,)
HIGHWAYS DIVISION)

) NPDES Appeal No. 13-_____

NPDES Permit No. HI S000001)
_____)

PETITION FOR REVIEW

Ian L. Sandison
Arsima A. Muller
Jacob L. Matson
CARLSMITH BALL LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Tel: (808) 523-2500
Fax: (808) 523-0842

Counsel for Petitioner
STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION, HIGHWAYS DIVISION

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THRESHOLD PROCEDURAL REQUIREMENTS	1
III. FACTUAL AND STATUTORY BACKGROUND	2
A. The Petitioner and Permitted Activity	2
B. Issuance of the Permit	2
IV. PARALLEL PROCEEDINGS.....	7
V. TERMS AND PROVISIONS APPEALED.....	7
VI. ARGUMENT	8
A. The Schedules of Compliance Are Based on Clearly Erroneous Findings of Fact and Conclusions of Law	8
B. The Schedules of Compliance for the Waste Load Allocation Reductions for the Kapaa and Kaneohe Stream Watersheds as Set Forth in the Permit Are Stayed Pending Appeal	10
VII. RELIEF SOUGHT	11

TABLE OF AUTHORITIES

Page

Cases

Costle v. Pacific Legal Foundation et al.,
445 U.S. 198, 100 S. Ct. 1095 (1980)..... 11

In re City of Marlborough,
12 E.A.D. 235 (2005)..... 10

In re Matter of Star-Kist Caribe, Inc.,
3 E.A.D. 172 (1990)..... 8

Statutes

Haw. Rev. Stat. Ch. 342D..... 7

Rules

40 C.F.R. § 122.26(a)(3)..... 2

40 C.F.R. § 122.26(b)(4)..... 2

40 C.F.R. § 122.47 5, 7, 8, 9

40 C.F.R. § 122.47(a)..... 8

40 C.F.R. § 124.16..... 7, 10

40 C.F.R. § 124.16(a)..... 10

40 C.F.R. § 124.19(a)..... 1, 7

40 C.F.R. § 124.19(a)(2)..... 1

Haw. Admin. R. 11-55-5..... 7

Haw. Admin. R. 11-55-16..... 7

Haw. Admin. R. 11-55-21..... 7

Haw. Admin. R. 11-55-36..... 7

TABLE OF ATTACHMENTS

- Exhibit A: National Pollutant Discharge Elimination System Permit No. HI S000001, issued September 27, 2013
- Exhibit B: Comment letter from Petitioner to State of Hawaii, Department of Health, dated June 26, 2013
- Exhibit C: Approval letter from Environmental Protection Agency and Memorandum of Agreement, dated November 28, 1974
- Exhibit D: Letter from State of Hawaii, Department of Health, dated September 4, 2009
- Exhibit E: Excerpts from: (1) Total Maximum Daily Loads for Total Suspended Solids, Nitrogen, and Phosphorus in Kapa‘a Stream, Kailua, Hawaii Report, dated May 2007; and (2) Maximum Daily Loads (TMDLs) for Total Suspended Solids, Nitrogen and Phosphorus in Kaneohe Stream, Kaneohe, Hawaii Report, dated September 2009.
- Exhibit F: Comments from Petitioner to State of Hawaii, Department of Health, dated January 17, 2013
- Exhibit G: Draft public notice permit, dated March 7, 2013
- Exhibit H: Email from State of Hawaii, Department of Health to Petitioner, dated May 6, 2013
- Exhibit I: Memorandum from Petitioner to State of Hawaii, Department of Health, dated May 16, 2013
- Exhibit J: Public notice permit, dated May 31, 2013
- Exhibit K: Comment letter from Environmental Protection Agency to State of Hawaii, Department of Health, dated June 27, 2013
- Exhibit L: Final Fact Sheet to National Pollutant Discharge Elimination System Permit No. HI S000001, dated September 27, 2013

I. INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), the State of Hawaii, Department of Transportation, Highways Division, Oahu District (“**Petitioner**” or the “**State**”) petitions for review of a condition of National Pollutant Discharge Elimination System (“**NPDES**”) Permit No. HI S000001 (the “**Permit**”), which was issued to Petitioner on September 27, 2013, by the State of Hawaii, Department of Health (the “**DOH**”).¹ The Permit authorizes Petitioner to discharge storm water from the State's municipal separate storm sewer system (“**MS4**”), including storm water runoff from the Keehi, Kakoi, Pearl City, Waianae, and Windward Baseyards, and additional storm sewer outfalls that may be identified from time to time by Petitioner to the classes of inland and marine waters as specified in the Permit. Petitioner contends that the Permit condition in Part F.3.c. setting forth the schedules of compliance (“**SOCs**”) for the Kapaa Stream and the Kaneohe Stream watersheds (collectively, the “**Kapaa/Kaneohe Watersheds**”) is based on clearly erroneous findings of fact and/or conclusions of law. Specifically, Petitioner challenges the SOC to meet pollution reduction requirements associated with total maximum daily load (“**TMDL**”) reports for the Kapaa/Kaneohe Watersheds. The SOC is required under 40 C.F.R. § 122.47.

II. THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. part 124, to wit:

1. Petitioner has standing to petition for review of the permit decision because Petitioner participated in the public comment period on the Permit.² See 40 C.F.R. § 124.19(a)(2).

¹ A copy of the Permit is attached as Exhibit A.

² A copy of Petitioner’s comment letter dated June 26, 2013, is attached as Exhibit B.

2. The issue raised by Petitioner in this petition arises from and reflects a change from the DOH's public notice permit. *See id.*

III. FACTUAL AND STATUTORY BACKGROUND

A. The Petitioner and Permitted Activity

Petitioner is a governmental organization of the State of Hawaii, with its District Office at 727 Kakoi Street, Honolulu, Hawaii 96819. The mission of Petitioner is to provide a safe, efficient, and accessible highway system through the utilization of available resources in the maintenance, enhancement and support of land transportation facilities. Petitioner is considered a large MS4 as defined under 40 C.F.R. § 122.26(b)(4). As such, Petitioner is required to obtain an NPDES permit per 40 C.F.R. § 122.26(a)(3).

The Permit at issue in this petition governs the discharge of polluted storm water runoff from Petitioner's MS4 into State of Hawaii waters in and around the Island of Oahu, Hawaii. The United States Environmental Protection Agency ("EPA") delegated authority to issue NPDES permits in the State of Hawaii to the DOH.³ The Permit succeeds a current permit that was initially set to expire on September 8, 2009, but which was administratively extended on September 4, 2009.⁴

B. Issuance of the Permit

The waste load allocations ("WLA") for the Kapaa/Kaneohe Watersheds are set out in the TMDL reports for these two sites.⁵ A WLA is defined as the portion of a receiving water's

³ A copy of the approval letter from the EPA, along with the Memorandum of Agreement dated November 28, 1974, in which EPA delegates its permitting authority to the DOH, is attached as Exhibit C.

⁴ A copy of the DOH letter administratively extending the current permit is attached as Exhibit D.

⁵ Copies of excerpts from the applicable TMDL reports are attached as Exhibit E: (1) *Total Maximum Daily Loads for Total Suspended Solids, Nitrogen, and Phosphorus in Kapa'a Stream, Kailua, Hawaii* Report (dated May 2007), Table 6.10 - Consolidated Dry Season TMDL Allocations to Existing Sources (Pages 6-12) and Table 6.11 - Consolidated Wet Season TMDL Allocations to Existing Sources and Load Reductions Required to Achieve Kapaa Stream TMDLs (Pages 6-13) (full version available at http://health.hawaii.gov/cwb/files/2013/05/Integrated_Kapaa.pdf); and (2) *Total Maximum Daily Loads (TMDLs) for Total Suspended Solids, Nitrogen and Phosphorus in Kaneohe Stream, Kaneohe, Hawaii* Report (dated

loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation. The TMDLS for the Kapaa/Kaneohe Stream Watersheds define: (1) the existing pollutant load from Petitioner; (2) WLAs for Petitioner; and (3) the associated reduction in pollution required for Petitioner to meet the WLAs. This third value (referred to herein as WLA reductions) is the basis for Petitioner to demonstrate compliance with TMDL requirements.

There is a long history of interaction between the Petitioner and DOH regarding the TMDLS, appropriate WLAs, and the time frame for compliance. In response to a draft public notice permit circulated by DOH on October 11, 2011 (the “**October 2011 Draft PNP**”), Petitioner explained that compliance with any new TMDLS requires significant time because of the process involved.⁶ Petitioner noted that compliance with changing TMDLS require a capital improvement process that includes time for site selection, procurement of a designer, design, permitting, procurement of a contractor, construction, commissioning, and performance monitoring to verify pollutant removal.⁷ In response to Petitioner’s concern, DOH revised the draft permit to allow for a compliance schedule to be included in the permit.⁸

On March 7, 2013, the DOH provided Petitioner with another draft public notice permit (the “**March 7 Draft PNP**”).⁹ The March 7 Draft PNP set out WLA reductions based on 10% runoff reduction masses for dry and wet seasons.¹⁰ Specifically, the WLAs for the Kapaa Stream are as follows¹¹:

September 2009), Table 5.10. – Consolidated Dry Season TMDL Allocations to Major Sources and Table 5.11. – Consolidated Wet Season TMDL Allocations to Major Sources (Pages 5-11 and 5-12) (full version available at : http://health.hawaii.gov/cwb/files/2013/05/Integrated_KaneoheStream.pdf).

⁶ See Comments on October 11, 2011 2011 Draft Permit, attached as Exhibit F, pp. 2-4.

⁷ *Id.*, p. 2.

⁸ *Id.*, p. 4.

⁹ A copy of the March 7 Draft PNP is attached as Exhibit G.

¹⁰ See *id.*

¹¹ TSS is the total suspended solids; TN is total nitrogen; and TP is total phosphorus.

Dry Season 10% Runoff

WLA's			Existing			Reductions					
TSS	TN	TP	TSS	TN	TP	TSS		TN		TP	
(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(%)	(kg)	(%)	(kg)	(%)
0.2	0.0	0.0	0.3	0.0	0.0	0.0	5	0.0	4	0.0	6

Dry Season = 184 days

Wet Season 10% Runoff

WLA's			Existing			Reductions					
TSS	TN	TP	TSS	TN	TP	TSS		TN		TP	
(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(%)	(kg)	(%)	(kg)	(%)
17	0.2	0.1	23	0.2	0.2	6	27	0.1	28	0.1	60

Wet Season = 181 days

The March 7 Draft PNP also lists the WLA's for the Kaneohe Stream as follows:

Dry Season 10% Runoff

WLA's			Existing			Reductions					
TSS	TN	TP	TSS	TN	TP	TSS		TN		TP	
(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(%)	(kg)	(%)	(kg)	(%)
65	1.07	0.33	65	1.11	0.36	0	0	0.04	4	0.04	10

Wet Season 10% Runoff

WLA's			Existing			Reductions					
TSS	TN	TP	TSS	TN	TP	TSS		TN		TP	
(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(kg)	(%)	(kg)	(%)	(kg)	(%)
273	4.21	1.25	273	4.94	1.57	0	0	0.73	15	0.32	20

The March 7 Draft PNP did not contain a SOC, but did leave space for it to be included in the proposed permit.¹²

In an email dated May 6, 2013, the DOH clarified that Petitioner must first request a SOC in order for one to be written into the proposed permit.¹³ Because Petitioner did not believe it could achieve the stated WLA reduction goals set forth in the March 7 Draft PNP by the effective date of the permit, Petitioner submitted a memorandum dated May 16, 2013 (the “**May 16 Memo**”) to the DOH requesting the SOCs for the Kapaa/Kaneohe Watersheds.¹⁴ In the May

¹² See *id.*, pp. 38-39.

¹³ A copy of the DOH’s email dated May 6, 2013, is attached as Exhibit H.

¹⁴ A copy of the May 16 Memo is attached as Exhibit I.

16 Memo, Petitioner proposed SOCs for the Kapaa/Kaneohe Watersheds with interim milestones.¹⁵ These SOCs were based on the WLA reductions as specified in the March 7 Draft PNP.

On May 31, 2013, the DOH issued a public notice permit for public comment (the “**May 31 PNP**”), with public comments to be accepted until June 30, 2013. The May 31 PNP included the SOCs requested and submitted by Petitioner to the DOH in the May 16 Memo.¹⁶ Significantly, the WLA reductions, upon which Petitioner’s requested SOCs were based, remained unchanged from the March 7 Draft PNP.¹⁷ As such, Petitioner did not provide any public comments with regards to the WLA reductions for the Kapaa/Kaneohe Watersheds or the SOCs for the Kapaa/Kaneohe Watersheds set forth in the May 31 PNP.

On June 27, 2013, the EPA submitted its comments to the May 31 PNP.¹⁸ The EPA recommended, among other things, that the WLAs associated with a 2% storm be included in the permit.¹⁹ The EPA also stated that the compliance schedules needed to meet the requirements of 40 C.F.R. § 122.47, and that the Fact Sheet needed to demonstrate such compliance.²⁰ Based in part on these comments, the DOH finalized and issued the Permit on September 27, 2013. Notably, the Permit contains WLA reductions that are different than those proposed in the May 31 PNP.²¹ Specifically, the new WLA reductions for the Kapaa Stream are listed as follows:

Season	TSS (kg per season)	TN (kg per season)	TP (kg per season)
Wet Season Reduction	288.60	3.25	7.21

¹⁵ See Exhibit I, pp. 7-8.

¹⁶ A copy of the May 31 PNP is attached as Exhibit J.

¹⁷ See Exhibit J, p. 42.

¹⁸ A copy of the EPA’s June 27, 2013 comments on the May 31 PNP is attached as Exhibit K.

¹⁹ See Exhibit K, p. 2.

²⁰ See *id.*

²¹ See Exhibit A, p. 43.

Dry Season Reduction	70.30	0.74	1.85
----------------------	--------------	-------------	-------------

Wet Season = 181 days (November 1 - April 30)

Dry Season = 184 days (May 1 - October 31)

In addition, the WLA reductions for the Kaneohe Stream are listed as follows:

Season	TSS (kg per season)	TN (kg per season)	TP (kg per season)
Wet Season Reduction	0	82.59	28.04
Dry Season Reduction	0	24.86	11.39

Wet Season = 181 days (November 1 - April 30)

Dry Season = 184 days (May 1 - October 31)

These WLA reductions are significantly higher than those listed in the May 31 PNP. According to the Final Fact Sheet to the Permit dated September 27, 2013 (the “**Fact Sheet**”),²² the adjustments to the WLA reductions were made for the following reason:

In the Public Notice Permit, the WLA reductions were interpreted from the TMDL documents to be seasonal loads. However, in the Final Permit the required WLA reductions were adjusted based on the WLA reductions in the TMDL documents being event based and to include the seasonal 2% runoff events. The revisions were required as a result [of] a comment received during the public comment period and also after further DOH review of the TMDL documents.²³

Despite the fact that the WLA reductions in the Permit reflected a change from the public notice permit and the fact that DOH was well aware of the significant impact such a change would have on Petitioner’s compliance time frame, the DOH did not make corresponding changes to the SOCs in the Permit.²⁴ The Fact Sheet explains:

The schedule of compliance as described in the Final Permit is in accordance with 40 CFR 122.47. The schedule of compliance is for WLAs that were not required in the previous permit and the existing discharge is not expected to comply with the requirements.

²² A copy of the Final Fact Sheet dated September 27, 2013, is attached as Exhibit L.

²³ Exhibit L, p. 14.

²⁴ *Cf.* Exhibit A, pp. 44-45 and Exhibit J, pp. 44-45.

Interim and final compliance dates included in the permit reflect having to consider the specific steps and represent a reasonable time period to complete the necessary tasks, and ensure compliance is achieved without unnecessary delay. Compliance tasks and dates are based on the proposed compliance schedules submitted by the [Petitioner]. . . ²⁵

Notice of the Permit was sent by electronic mail to Petitioner on September 28, 2013.

The Permit becomes effective on October 28, 2013.

IV. PARALLEL PROCEEDINGS

In addition to this petition, Petitioner has requested that the DOH hold a contested case hearing regarding the Permit pursuant to Hawaii Revised Statutes Chapter 342D and Hawaii Administrative Rules 11-55-5, -16, -21, and -36.

V. TERMS AND PROVISIONS APPEALED

The Environmental Appeals Board (“**EAB**”) may review and remand permits where a state with delegated authority has made determinations based on clearly erroneous findings of fact or conclusions of law, or where the permit appeals raises important matters of public policy or constitutes an abuse of discretion. *See* 40 C.F.R. § 124.19(a). As noted above and as set forth below, Petitioner seeks review and revision of the SOCs for the Kapaa/Kaneohe Watersheds set forth in the Permit. All provisions of the Permit which are not appealed by this Petition are severable, if the same can be severed, from the appealed provision that would be effective on October 28, 2013, but which appealed provision is stayed pursuant to 40 C.F.R. § 124.16.

²⁵ Exhibit L, p. 19.

VI. ARGUMENT

A. The Schedules of Compliance Are Based on Clearly Erroneous Findings of Fact and Conclusions of Law

As a general matter, NPDES permits must ensure compliance with water quality standards and WLA reductions immediately upon issuance (the effective date of a permit). *See In re Matter of Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 175 (1990). However, “[t]he permit may, when appropriate, specify a schedule of compliance leading to compliance with [the Clean Water Act] and regulations.” 40 C.F.R. § 122.47(a).

The Permit in this case, received September 27, 2013, contained material changes from the May 31 PNP regarding the WLA reductions for the Kapaa/Kaneohe Watersheds. These adjustments to the WLA reductions for the Kapaa/Kaneohe Watersheds have major consequences and impose increased requirements for Petitioner regarding compliance with the Permit. **Basing the WLA reductions on an event basis and including the seasonal 2% runoff events increases Petitioner’s WLA reductions up to 674 times the requirement presented in the May 31 PNP.** Despite this clearly material increase in WLA reductions, the associated SOCs remain unchanged from the SOCs set forth in the May 31 PNP.

DOH justifies the SOCs in the Permit by finding that they “represent a *reasonable* time period to complete the necessary tasks, and ensure compliance is achieved without unnecessary delay.”²⁶ This finding of reasonableness is required under 40 C.F.R. § 122.47. DOH’s finding, however, is not at all supported by the facts in this case. In order for Petitioner to meet the WLA reductions set forth in the Permit, Petitioner may need to build multiple structural best management practices (“BMPs”) to treat storm water runoff entering Petitioner’s MS4 from up

²⁶ *Id.* (emphasis added).

to eighty (80) acres of impervious surface.²⁷ Petitioner respectfully submits that the increased WLA reductions required by the Permit will necessitate additional BMPs to the BMPs initially anticipated and that such additional BMPs will require additional time and funds to complete. Obtaining additional funds to implement any additional BMPs will, in turn, require additional time. By Petitioner's calculations, it may take 15 years to achieve these additional BMPs for Kapaa, and 17 years to achieve the same for Kaneohe. The Permit, as currently written, only gives Petitioner 5 years to complete these actions.²⁸ This 5-year schedule is considerably shorter than necessary. Simply put, given the increase in the WLA reductions for the Kapaa/Kaneohe Watersheds imposed by the DOH, it would not even be possible for Petitioner to meet the SOCs as currently required in the Permit. The fact that DOH has imposed a schedule of compliance that is not possible to meet is unreasonable and contravenes the requirements of 40 C.F.R. § 122.47.²⁹ DOH's finding otherwise is clearly erroneous and an abuse of discretion.

Further, although DOH finds that the SOCs "are based on the proposed compliance schedules submitted by the [Petitioner],"³⁰ DOH has failed to take into account the assumptions that went into the calculation of the SOCs. In its May 16 Memo to DOH, Petitioner explained that the SOCs were based on the WLA reductions as provided in the March 7 Draft PNP.

Specifically, Petitioner explained:

The suggested schedules of compliance provided are based on these reductions requirements and methodology for demonstrating consistency with the assumptions of the TMDL documents. *If the reduction requirements and/or methodology for demonstrating consistency must be revised, the schedules will need to be revisited*

²⁷ Impervious surfaces are hard surfaces, such as sidewalks, roads, and rooftops, that do not allow water to seep into the ground. Impervious surfaces associated with urbanization reduce infiltration and increase surface runoff.

²⁸ See Exhibit A, pp. 44-45.

²⁹ It is pursuant to 40 C.F.R. § 122.47 that a schedule of compliance is even needed. This provision is the federal component of the Permit, which is the basis of this appeal.

³⁰ Exhibit L, p. 19.

*to be consistent with the assumptions used in the schedule development.*³¹

Having made revisions to the WLA reductions, DOH failed to then make the corresponding revisions to the SOC's, as Petitioner had requested. It is unreasonable for DOH to expect that significant increases to the WLA reductions would not have a corresponding impact on the SOC's. Its finding otherwise is clearly erroneous and an abuse of discretion.

In issuing the Permit, the DOH failed to provide sufficient explanation for not revisiting the SOC's relative to the increased WLA reductions. With the material increase in the WLA reductions which necessarily require more compliance efforts, and necessarily more time, it was incumbent upon the DOH to, at a minimum, address and explain the associated SOC's. To so markedly increase a reduction requirement warrants addressing the corresponding time for compliance at a minimum. *See generally In re City of Marlborough*, 12 E.A.D. 235, 252 (2005) (permit remanded for either explanation of requirement of substance limitation or modification of such limitation where the permit issuer failed to "sufficiently explain[] where or how [finding] is reflected in the record"). The fact that DOH did not address the impact of the changed WLAs on Petitioner's schedule for compliance in this case is clearly erroneous and an abuse of discretion.

B. The Schedules of Compliance for the Waste Load Allocation Reductions for the Kapaa and Kaneohe Stream Watersheds as Set Forth in the Permit Are Stayed Pending Appeal

Pursuant to 40 C.F.R. 124.16, the appealed permit condition of the SOC's for the Kapaa/Kaneohe Watersheds is stayed pending this appeal. *See* 40 C.F.R. 124.16(a) ("If a request for review of a ... NPDES permit under § 129.19 of this part is filed, the effect of the contested permit conditions shall be stayed ... pending final agency action."); *see generally Costle v.*

³¹ Exhibit I, p. 4 (emphasis added).

Pacific Legal Foundation et al., 445 U.S. 198, 100 S. Ct. 1095 (1980) (Court of Appeals stayed effect of compliance schedules pending final disposition of consolidated cases challenging extension of compliance schedules).

VII. RELIEF SOUGHT

Petitioner respectfully seeks review by the EAB of the appealed condition of the Permit for the SOCs for the Kapaa/Kaneohe Watersheds. After such review, Petitioner requests:

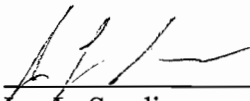
1. the opportunity to present oral argument in this proceeding and a briefing schedule for this appeal to assist the EAB in resolving the issue in dispute;
2. a remand to the DOH with an order to issue an amended Permit that conforms to the EAB's findings on the term and provision appealed by the Petitioner; and
3. any such other relief that may be appropriate under these circumstances.

As a related matter, Petitioner respectfully requests that the EAB confirm that the SOCs for the Kapaa/Kaneohe Watersheds as set forth in the Permit are stayed pending final disposition of the condition on appeal.

Date: October 28, 2013

Respectfully submitted,
STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION, HIGHWAYS DIVISION

By its Attorneys

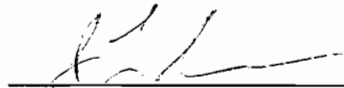


Ian L. Sandison
Arsima A. Muller
Jacob L. Matson
CARLSMITH BALL LLP
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Tel: (808) 523-2500
Fax: (808) 523-0842

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

I hereby certify that this petition for review, including all relevant portions, contains less than 14,000 words.

DATED: Honolulu, Hawai'i, October 28, 2013



IAN L. SANDISON
ARSIMA A. MULLER
JACOB L. MATSON

Attorneys for Petitioner
STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION, HIGHWAYS DIVISION

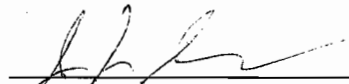
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Review and Statement of Compliance with Word Limitations were served on the following parties by United States First Class Mail, postage prepaid, on the date below:

Stuart Yamada, Chief
State of Hawaii, Department of Health
919 Ala Moana Blvd., Room 300
Honolulu, Hawaii 96814-4920

Jared Blumenfeld, Regional Administrator
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

DATED: Honolulu, Hawai'i, October 28, 2013



IAN L. SANDISON
ARSIMA A. MULLER
JACOB L. MATSON

Attorneys for Petitioner
STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION, HIGHWAYS DIVISION