

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department Of Justice
ROBERT D. MULLANEY (Cal. Bar No. 116441)
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Tel: (415) 744-6491

FLORENCE T. NAKAKUNI (2286)
United States Attorney
District of Hawaii
DERRICK K. WATSON (Cal. Bar No. 154427)
Assistant United States Attorney
300 Ala Moana Boulevard
PJKK Federal Building, Room 6-100
Honolulu, Hawaii 96850
Telephone: (808) 541-2850

Attorneys for Plaintiff United States of America

[Attorneys for Plaintiff State of Hawaii on next page]

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA

and

STATE OF HAWAII,

Plaintiffs,

v.

CITY AND COUNTY OF
HONOLULU,

Defendant.

Civil No. 94-00765 DAE-KSC

SUPPLEMENTAL COMPLAINT
FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

MARK J. BENNETT (Hawaii Bar No. 2672)
Attorney General of Hawaii

EDWARD G. BOHLEN (Hawaii Bar No. 8333)
KATHLEEN S.Y. HO (Hawaii Bar No. 3424)
Deputy Attorneys General
465 South King Street, Room 200
Honolulu, Hawaii 96813
Tel: (808) 587-3050

Attorneys for Plaintiff State of Hawaii

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States and at the request of and on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff State of Hawaii, by Mark J. Bennett, its Attorney General, and Chiyome Fukino, Director of the Hawaii Department of Health (“DOH”) (collectively, the “State”), through their undersigned counsel, allege the following:

STATEMENT OF THE CASE

1. The United States brings this civil action pursuant to Section 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (“Clean Water Act,” “CWA” or “the Act”), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the assessment of civil penalties against the City and County of Honolulu (“CCH” or “Defendant”). Specifically, CCH violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), and its National Pollutant Discharge Elimination System (“NPDES”) permits by discharging pollutants from its sanitary sewage collection system (“Collection System”), failing to comply with permit effluent limitations, and failing to meet permit construction deadlines for its treatment plant. The State brings this action for violations of Haw. Rev. Stat. § 342D-50(a) and (d), and seeks the imposition of civil penalties and injunctive relief for violations referenced in that section.

JURISDICTION, VENUE, NOTICE, AND JOINDER

2. This Court has jurisdiction over the subject matter of this action pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the claims asserted by the State pursuant to 28 U.S.C. § 1367 and Haw. Rev. Stat. §§ 342D-11, 342D-30(a), and 342D-56. This Court also has jurisdiction over the parties to this action.

3. Venue is proper in this district pursuant to 33 U.S.C. § 1319(b) and 28

U.S.C. §§ 1391(b), (c), and 1395(a), because the transactions and events giving rise to this action occurred in this district, and because Defendant is located here.

4. EPA has provided notice of the commencement of this action to the State of Hawaii, through DOH, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b). The State has been joined as co-plaintiff and has filed this action in accordance with Section 309(e) of the Act, 33 U.S.C. § 1319(e).

PARTIES

5. Plaintiff United States is acting at the request of and on behalf of the Administrator of EPA (“Administrator”). The Attorney General is authorized to appear and represent the United States in this action pursuant to CWA Section 506, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

6. Plaintiff State of Hawaii is acting at the request and on behalf of DOH. Haw. Rev. Stat. §§ 28-1, 342D-11, and 342D-56. The State is a “person” as that term is defined in CWA Section 502(5), 33 U.S.C. § 1362(5), and within the meaning of Haw. Rev. Stat. § 342D-1.

7. Defendant CCH is a “municipality” within the meaning of CWA Section 502(4), 33 U.S.C. § 1362(4), and is a “person” within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5). Defendant CCH is also a “person” within the meaning of Haw. Rev. Stat. § 342D-1.

8. CCH is a county in the State of Hawaii created by statute and has the power to sue and be sued. Haw. Rev. Stat. § 46-1.5(22).

FEDERAL STATUTES AND REGULATIONS

9. Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by and in compliance with certain other sections of the Act, including CWA Section 402, 33 U.S.C. § 1342.

10. CWA Section 502(12) defines “discharge of a pollutant” to mean “any addition of any pollutant to navigable waters from any point source” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from

any point source other than a vessel or other floating craft.” 33 U.S.C. § 1362(12).

11. CWA Section 502(7) defines navigable waters to mean “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

12. CWA Section 502(6) defines “pollutant” to include sewage. 33 U.S.C. § 1362(6).

13. CWA Section 502(5) defines “person” to include a “State, municipality, commission, or political subdivision of a State.” 33 U.S.C. § 1362(5).

14. CWA Section 502(4) defines “municipality” to include a city. 33 U.S.C. § 1362(4).

15. EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, inter alia, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation or destruction of which would or could affect interstate or foreign commerce; (iv) tributaries of waters of the United States; (v) the territorial seas; and (vi) certain wetlands (or wetlands adjacent to these waters). 40 C.F.R. § 122.2.

16. CWA Section 502(14) defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well . . . [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

17. Pursuant to Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator may issue an NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permit.

18. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the

Administrator may approve a proposal submitted by a State to administer the NPDES program in that State. The Administrator approved Hawaii's proposal to administer the NPDES permit program in Hawaii in 1974. 39 Fed. Reg. 43,759 (Dec. 18, 1974). At all times relevant to this action, Hawaii DOH has been authorized to issue NPDES permits in conformity with federal law.

19. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i).

20. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates CWA Section 301, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

21. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, any person who violates Section 301(a) of the Act, 33 U.S.C. § 1311(a), or any condition or limitation contained in a permit issued under CWA Section 402, 33 U.S.C. § 1342, shall be subject to civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004. See 69 Fed. Reg. 7,121-01 (Feb. 13, 2004) (codified at 40 C.F.R. pt. 19). Violations occurring after January 12, 2009, are subject to penalties not to exceed \$37,500 per day for each violation. See 73 Fed. Reg. 75,340 (Dec. 11, 2008) (codified at 40 C.F.R. pt. 19).

HAWAII STATUTES AND REGULATIONS

22. Haw. Rev. Stat. § 342D-50(a) provides that no person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters, except in compliance with Chapter 342D, rules adopted pursuant to the Chapter, or a permit or variance issued by the Director of DOH.

23. Haw. Rev. Stat. § 342D-50(d) provides that no person, including any

public body, shall violate any rule adopted pursuant to Chapter 342D or any permit or variance issued or modified pursuant to the Chapter.

24. Haw. Rev. Stat. § 342D-1 defines “person” as “any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.”

25. Haw. Rev. Stat. § 342D-1 defines “water pollutant” as “dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.”

26. Haw. Rev. Stat. § 342D-1 defines “State waters” as “all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.”

27. Haw. Rev. Stat. § 342D-1 defines “wastewater” as “any liquid waste, whether treated or not, and whether animal, mineral, or vegetable including agricultural, industrial, and thermal wastes.”

28. Pursuant to Haw. Rev. Stat. Chapter 342D and other statutes, DOH has adopted the following rules: Hawaii Administrative Rules (“HAR”) chapter 11-55, entitled “Water Pollution Control,” and chapter 11-62, entitled “Wastewater Systems.”

29. HAR § 11-62-03 defines “owner” as “a person(s) who has legal title to a treatment works or individual wastewater system, or duly authorized representative of the owner.”

30. HAR § 11-62-03 defines “R-1 water” as “recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards in this chapter.”

31. HAR § 11-62-03 defines “Best Management Practices or BMPs” as “the most effective, practical schedules of activities, prohibitions of conduct, maintenance procedures, and other specifications of conduct to prevent or reduce the pollution. BMPs also include treatment requirements, operating procedures, and practices to site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.”

32. HAR § 11-55-03 prohibits the violation of Haw. Rev. Stat. § 342D-50 or any NPDES permit.

33. HAR § 11-62-06(g)(5) prohibits, in relevant part, any person or owner from causing or allowing any wastewater system to create or contribute to any wastewater spills, overflows, or discharges into surface waters or the contamination or pollution of State waters, except in compliance with a permit or variance under HAR Chapter 11-55.

34. HAR § 11-62-06(g)(6) prohibits, in relevant part, any person or owner from causing or allowing any wastewater system to create or contribute to any “wastewater spill, overflow, or discharge (spill) onto the ground, except for R-1 water from a recycled water system that is implementing BMPs approved by the director” of DOH.

35. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, the State is authorized to seek injunctive relief and penalties not to exceed \$25,000 for each day of each violation of, inter alia, Haw. Rev. Stat. § 342D-50, HAR § 11-55-03, HAR § 11-62-06(g), or any NPDES permit.

GENERAL ALLEGATIONS

36. CCH owns and operates a publicly-owned treatment works (“POTW”), as defined in Section 212 of the Act, 33 U.S.C. § 1292, and in 40 C.F.R. § 403.3(q). The POTW collects, treats, and disposes of sanitary sewage for a major portion of the island of Oahu, Hawaii. CCH’s POTW serves a population of approximately 750,000 people. Total sewage flow treated in CCH’s POTW

averages 121 million gallons per day (“MGD”).

The Sand Island and Honouliuli Treatment Plants

37. The Sand Island Treatment Plant, located at 1350 Sand Island Parkway, Honolulu, Hawaii, serves a population of approximately 419,000 people and handles an average of 72.7 MGD of influent.

38. The Honouliuli Treatment Plant, located at 91-1501 Geiger Road, Ewa Beach, Hawaii, serves a population of approximately 189,000 people and handles an average of 27.2 MGD of influent.

The Sand Island and Honouliuli NPDES Permits

39. On February 20, 1990, EPA and DOH issued NPDES Permit No. HI 0020117 (“the Sand Island permit”), which authorizes CCH to discharge treated sanitary sewage from the Sand Island Treatment Plant to Mamala Bay from a designated outfall downstream of the Sand Island Treatment Plant; this outfall is a “point source” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14). The Sand Island permit was renewed on September 30, 1998. The Sand Island permit expired on its face on November 3, 2003, but has been administratively extended and thus remains in force.

40. On June 6, 1991, EPA and DOH issued NPDES Permit No. HI 0020877 (“the Honouliuli permit”), which authorizes CCH to discharge treated sanitary sewage from the Honouliuli Treatment Plant to Mamala Bay from a designated outfall downstream of the Honouliuli Treatment Plant; this outfall is a “point source” within the meaning of Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14). The Honouliuli permit expired on its face on June 5, 1996, but has been administratively extended and thus remains in force.

41. Neither the Sand Island permit nor the Honouliuli permit authorizes CCH to discharge sewage, whether treated or not, from any points other than the designated outfall downstream of the Sand Island and Honouliuli Treatment Plants.

42. Both the Sand Island and the Honouliuli permits authorize the

discharge of treated sanitary sewage that meets certain effluent limitations. The Sand Island permit sets forth maximum permissible pollutant concentrations for several different pollutant parameters, including, but not limited to, biochemical oxygen demand, total suspended solids, chlordane, dieldrin, and enterococci. The Honouliuli permit sets forth maximum permissible pollutant concentrations for several different pollutant parameters, including, but not limited to, biochemical oxygen demand, suspended solids, and whole-effluent toxicity. These permits also condition CCH's authorization to discharge on its compliance with further requirements regulating the operation of the Sand Island Treatment Plant, the Honouliuli Treatment Plant, and their respective Collection Systems.

Operation and Maintenance of the Collection System

43. The Sand Island permit includes the following specific conditions governing the proper operation and maintenance of the Sand Island Collection System and prohibiting the discharge of untreated sewage from the Sand Island Collection System:

Permit, p. 1: [CCH] is authorized to discharge treated wastewater from its Sand Island Wastewater Treatment Plant . . . through Discharge Serial Number 001 . . . in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein, and in the attached [DOH] "Standard NPDES Permit Conditions."

Standard Condition 3.a.: No discharge is authorized which does not totally pass through the final monitoring point.

Standard Condition 8: The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit or applicable law.

Standard Condition 9: The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve

compliance with the conditions of this permit.

44. The Honouliuli permit includes the following specific conditions governing the proper operation and maintenance of the Honouliuli Collection System and prohibiting the overflow or bypass of untreated sewage from the Honouliuli Collection System:

Permit, p. 1: [CCH] is authorized to discharge treated domestic wastewater from [its Honouliuli Treatment Plant through] Discharge Serial Number 001 . . . in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

Standard Provision B.7.: Any “overflow” or “bypass” of facilities, including the “waste” collection system, is prohibited.^{1/}

Standard Provision C.2.: The discharger shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with this permit.

Standard Provision C.4.: Collection, treatment, and disposal systems shall be operated in a manner that precludes public contact with wastewater.

Standard Provision C.10.: The discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as necessary to determine the nature and impact of the violation.

^{1/} The Honouliuli permit contains the following definitions: (1) “overflow” means “the intentional or unintentional diversion of flow from the collection and transport systems, including the pumping facilities;” and (2) “bypass” means “the intentional diversion of waste streams from any portion of a treatment facility whose operation is necessary to maintain compliance with the terms and conditions of this permit.”

CCH's Unpermitted Discharges and Overflows of Sewage

45. On numerous occasions (including, but not limited to, some of those sanitary sewer overflows (“SSOs”) set forth in Appendix A) from on or about August 2005 through the present, sewage has overflowed from CCH’s Collection System and been discharged to waters of the United States and State waters. For purposes of this Supplemental Complaint and Appendix A, these sewage spills from the POTW Collection System shall be referenced as “Sand Island Collection System spills,” “Honouliuli Collection System spills” or “Other Collection System spills,” depending on the origin of the spills. The various waters into which CCH spilled sewage include, but are not limited to, Waimalu Stream, Nuuanu Stream, Palolo Stream, Honolulu Harbor, Lake Wilson, and various smaller creeks, drainage ditches, storm drains, culverts, and impoundments tributary to these water bodies, as well as adjacent wetlands to these water bodies.

46. The sewage spilled, overflowed, or discharged by CCH is a “pollutant” as defined in 33 U.S.C. § 1362(6) and a “water pollutant” and “wastewater” within the meaning of those terms as defined in Haw. Rev. Stat. § 342D-1.

47. On numerous occasions (including, but not limited to, some of those SSOs set forth in Appendix B) from on or about August 2005 through the present, wastewater has overflowed from CCH’s Collection System onto the ground. As a result of these overflows, CCH has violated: (1) Standard Provisions 8 and 9 of the Sand Island permit by failing to take all reasonable steps to minimize or prevent any discharge in violation of the permit or applicable law, and by failing to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the permit; and (2) Standard Provisions B.7., C.2., C.4., and C.10. of the Honouliuli permit, by allowing an overflow or bypass of the waste collection system, by failing to properly operate and maintain its Collection System in a manner that precludes public contact with wastewater and achieves compliance

with the permit, and by failing to take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

48. Untreated sewage contains organic matter, bacteria, and other pathogens, including viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi). The pathogens released from raw sewage create a potential public health risk if humans come into contact with the sewage. Sewage discharges and overflows are harmful to the environment, including marine life, and can also affect the livelihood of persons dependent on tourism, fishing, and shellfishing by contaminating marine waters and closing beaches.

Sand Island Permit's Discharge Limitations

49. The Sand Island permit establishes the following discharge limitations for biochemical oxygen demand (5-Day) ("BOD"): 116 mg/l and 79,330 lbs/day (Average Monthly); 160 mg/l and 109,421 lbs/day (Average Weekly). As a monthly average, the Sand Island permit requires CCH to achieve not less than 30 percent removal efficiency of the concentration of BOD in the Sand Island influent stream.

50. On several occasions from on or about August 2005 through the present, CCH violated the discharge limitations for BOD set forth in the Sand Island permit.

51. The Sand Island permit establishes the following discharge limitations for total suspended solids ("TSS"): 69 mg/l and 47,187 lbs/day (Average Monthly); 104 mg/l and 71,124 lbs/day (Average Weekly). As a monthly average, the Sand Island permit requires CCH to achieve not less than 60 percent removal efficiency of the concentration of TSS in the Sand Island influent stream.

52. From August 2005 through the present, CCH has violated the discharge limitations for TSS set forth in the Sand Island permit on at least one occasion.

53. Beginning on July 21, 2002, the Sand Island permit established the following discharge limitations for enterococci: 18,000 CFU/100 ml (Maximum Daily).

54. On numerous occasions from on or about August 2005 through the present, CCH violated the discharge limitations for enterococci set forth in the Sand Island permit.

55. The Sand Island permit establishes the following discharge limitations for chlordane: 0.0076 ug/l and 0.0052 lbs/day (Average Annual); 0.38 ug/l and 0.26 lbs/day (Average Daily).

56. On numerous occasions from on or about August 2005 through the present, CCH violated the discharge limitations for chlordane set forth in the Sand Island permit.

57. The Sand Island permit establishes the following discharge limitations for dieldrin: 0.012 ug/l and 0.0082 lbs/day (Average Annual); 0.18 ug/l and 0.12 lbs/day (Average Daily).

58. On numerous occasions from on or about August 2005 through the present, CCH violated the discharge limitations for dieldrin set forth in the Sand Island permit.

Honouliuli Permit's Discharge Limitations

59. The Honouliuli permit establishes the following discharge limitations for BOD (5-Day): 160 mg/l and 33,487 lbs/day (Monthly Average); 240 mg/l and 50,230 lbs/day (Weekly Average).

60. On several occasions from on or about August 2005 through the present, CCH violated the discharge limitations for BOD set forth in the Honouliuli permit.

61. The Honouliuli permit establishes the following discharge limitations for suspended solids: 95 mg/l and 19,882 lbs/day (Monthly Average); 142 mg/l and 29,720 lbs/day (Weekly Average).

62. From August 2005 through the present, CCH has violated the discharge limitations for suspended solids set forth in the Honouliuli permit on at least two occasions.

63. The Honouliuli permit establishes the following discharge limitations for whole-effluent toxicity: 159.7 toxic unit chronic (“TU_c”) (Monthly Average); 159.7 TU_c (Daily Maximum).

64. On numerous occasions from on or about August 2005 through the present, CCH violated the discharge limitations for whole-effluent toxicity set forth in the Honouliuli permit.

Sand Island Permit’s Construction Schedule Requirements

65. Part A.2. of the Sand Island permit contains a specific schedule of compliance designed to improve the Sand Island Treatment Plant’s performance and reliability, and to select and implement an effluent disinfection treatment option.

66. The Sand Island permit, Part A.2.g., provides that CCH shall investigate and determine appropriate disinfection technology, and design, construct, and operate continuously for one year, an effluent disinfection facility that achieves effective effluent disinfection. Effective disinfection is defined as compliance with a maximum daily discharge limitation of 18,000 CFU/100 ml for enterococci. CCH shall conduct this project in accordance with the following schedule of activities:

Activity Description	Start (no later than)
...	...
Continuous Operation	July 21, 2002

67. On information and belief, CCH did not commence continuous operation of this project until approximately November 15, 2006.

FIRST CLAIM FOR RELIEF
(Unpermitted Discharges of Sewage in Violation of
CWA Section 301(a) and Haw. Rev. Stat. § 342D-50(a))

68. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

69. On numerous occasions from on or about August 2005 through the present, CCH, as a result of sewage spills from the POTW Collection System, as described in Paragraph 45 and more specifically detailed in the non-exclusive Appendix A, discharged sanitary sewage to various waters from manholes, sewer lines, and various other confined discrete conveyances associated with its POTW.

70. The manholes, sewer lines, and various other confined discrete conveyances associated with the POTW from which CCH spilled sewage are point sources within the meaning of the CWA. 33 U.S.C. § 1362(14).

71. The various waters into which CCH spilled sewage are waters of the United States within the meaning of EPA regulations and Section 502(7) of the Act and are navigable waters within the meaning of Section 502(7) of the Act. 33 U.S.C. § 1362(7).

72. The surface waters into which CCH spilled, overflowed, or discharged sewage are State waters within the meaning of Haw. Rev. Stat. § 342D-1.

73. On numerous days since on or about August 2005 (including, but not limited to, some of those set forth in Appendix A) as described in Paragraph 45, above, and continuing through the date of this Supplemental Complaint, CCH has discharged untreated sewage to waters of the United States and State waters from discharge points within the POTW Collection System that were not and are not authorized by any NPDES permit.

74. On numerous days since on or about August 2005 (including, but not limited to, some of those set forth in Appendix A) as described in Paragraph 45, above, and continuing through the date of this Supplemental Complaint, CCH created or caused wastewater spills, overflows or discharges into surface waters or

contaminated or polluted State waters not in compliance with a permit or variance under HAR chapter 11-55.

75. Each of the discharges referred to in Paragraph 45 involved a discharge of pollutants from a point source into navigable waters of the United States, within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, without a NPDES permit or other exception specified in Section 301(a) of the Act, 33 U.S.C. § 1311(a).

76. CCH violated HAR § 11-62-6(g)(5) and Haw. Rev. Stat. § 342D-50(a) and (d) by creating or causing wastewater spills, overflows or discharges into surface waters or contaminating or polluting State waters not in compliance with a permit or variance under HAR chapters 11-55, as described in Paragraph 45 and more specifically detailed in Appendix A.

77. Each of the discharges referred to in Paragraph 45 constitutes a separate violation of Section 301(a), 33 U.S.C. § 1311(a), and Haw. Rev. Stat. § 342D-50.

78. Unless enjoined by an order of the Court, CCH will continue to violate the Act and Haw. Rev. Stat. § 342D-50(a) and (d).

79. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

80. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

SECOND CLAIM FOR RELIEF
(Overflows of Sewage in Violation of the Sand Island Permit)

81. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

82. In addition to spilling sewage to waters of the United States as described in Paragraph 45, above, on numerous additional days from on or about August 2005 to the present, CCH has spilled sewage to various other places, such as city streets and various private and public properties, regions that could affect the quality of the waters of the State, without such sewage reaching waters of the United States.

83. The Sand Island Collection System spills set forth in Paragraphs 45 and 47, above, violated the Sand Island permit on numerous days since on or about August 2005, because some of these spills constituted the discharging of pollutants at points other than Discharge Serial Number 001, which is specifically identified in the Sand Island permit as the authorized discharge point. Pursuant to Standard Condition 3.a., no discharge is authorized that does not totally pass through the final monitoring point. The Sand Island permit requires CCH to take all reasonable steps to minimize or prevent any discharge in violation of the Sand Island permit or applicable law. Accordingly, by spilling sewage from various points in the POTW Collection System upstream of the Sand Island Treatment Plant into waters of the United States, CCH has violated the Sand Island permit.

84. CCH has attributed the Sand Island Collection System spills set forth in Paragraphs 45 and 47, above, to a number of factors. A cause or contributing factor to many of these spills was the lack of proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) that are installed or used by CCH to achieve compliance with the Sand Island permit. Proper operation and maintenance of the POTW would have prevented many of these spills and ensured that sewage was transported from the Sand Island Collection System to the Sand Island Treatment Plant without spills or overflows. Accordingly, CCH violated Standard Condition 9 of the Sand Island permit on many of the occasions that it spilled sewage from the Sand Island Collection System.

85. Each day of each violation of the conditions of the Sand Island permit constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), as well as Haw. Rev. Stat. § 342D-50(d) and HAR § 11-62-6(g).

86. Unless enjoined by an order of the Court, CCH will continue to violate the Sand Island permit, the Act, and Haw. Rev. Stat. § 342D-50(d).

87. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

88. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

THIRD CLAIM FOR RELIEF
(Overflows of Sewage in Violation of the Honouliuli Permit)

89. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

90. The Honouliuli Collection System spills set forth in Paragraphs 45 and 47, above, have violated Standard Provision B.7. of the Honouliuli permit on numerous days since on or about August 2005, because each of these spills constitutes a prohibited overflow or bypass from the Honouliuli Collection System within the meaning of the Honouliuli permit.

91. CCH has attributed the Honouliuli Collection System spills set forth in Paragraphs 45 and 47, above, to a number of factors. A cause or contributing factor to many of these spills was the lack of proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) that are installed or used by CCH to achieve compliance with the Honouliuli permit. Proper operation and maintenance of the POTW would have prevented many of these spills and ensured that sewage was transported from the Honouliuli

Collection System to the Honouliuli Treatment Plant without spills or overflows. Accordingly, CCH violated Standard Condition C.2. of the Honouliuli permit on many of the occasions that it spilled sewage from the Honouliuli Collection System.

92. The Honouliuli Collection System spills set forth in Paragraphs 45 and 47, above, are evidence that CCH has failed to operate its collection, treatment, and disposal systems in a manner that precludes public contact with wastewater. Accordingly, CCH violated Standard Provision C.4. of the Honouliuli permit on each occasion that it spilled sewage from the Honouliuli Collection System.

93. The Honouliuli Collection System spills set forth in Paragraphs 45 and 47, above, are evidence that CCH failed to take all reasonable steps to minimize or prevent any discharge in violation of the Honouliuli permit that has a reasonable likelihood of adversely affecting human health or the environment. Accordingly, CCH violated Standard Provision C.10. of the Honouliuli permit on each occasion that it spilled sewage from the Honouliuli Collection System.

94. Each day of each violation of the conditions of the Honouliuli permit constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), as well as Haw. Rev. Stat. § 342D-50(d) and HAR § 11-62-6(g).

95. Unless enjoined by an order of the Court, CCH will continue to violate the Honouliuli permit, the Act, and Haw. Rev. Stat. § 342D-50(d).

96. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

97. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

FOURTH CLAIM FOR RELIEF

(State Only Claim)

(Spills of Wastewater Onto Ground in Violation
of Haw. Rev. Stat. §342D-50(d) and HAR §11-62-6(g)(6))

98. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

99. On information and belief, on numerous days since on or about August 2005 (including, but not limited to, some of those set forth in Appendix B) and continuing through the date of this Supplemental Complaint, CCH created or caused wastewater spills, overflows or discharges (spills) onto the ground that were not R-1 water from a recycled water system that is implementing BMPs approved by the director of DOH.

100. CCH violated Haw. Rev. Stat. § 342D-50(d) and HAR §11-62-6(g)(6) by creating or causing wastewater spills, overflows or discharges onto the ground that were not R-1 water from a recycled water system that is implementing BMPs approved by the Director of DOH on numerous days since on or about August 2005 to the present (including, but not limited to, some of those set forth in Appendix B).

101. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive and other relief to prevent any violation of this chapter and civil penalties of up to \$25,000 per day for each such violation.

FIFTH CLAIM FOR RELIEF

(Sand Island Permit – Discharge Limitation Violations other than Chlordane)

102. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

103. On numerous occasions from at least August 2005 through the present, CCH discharged pollutants into navigable waters of the United States through a point source at the Sand Island Treatment Plant in excess of the discharge limitations established in the Sand Island permit. A list of known violations is attached hereto as Appendix C.

104. Each day of each violation of the discharge limitations of the Sand Island permit constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Haw. Rev. Stat. § 342D-50(a) and (d).

105. Violation of a weekly average discharge limitation constitutes a violation on each day of the week in which the violation occurred.

106. Violation of a monthly average discharge limitation constitutes a violation on each day of the month in which the violation occurred.

107. Violation of an annual average discharge limitation constitutes a violation on each day of the year in which the violation occurred.

108. Unless enjoined by an order of the Court, CCH will continue to violate the discharge limitations of the Sand Island permit, the Act, and Haw. Rev. Stat. § 342D-50(a) and (d).

109. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

110. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

SIXTH CLAIM FOR RELIEF
(United States Only Claim)

(Sand Island Permit – Discharge Limitation Violations for Chlordane)

111. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

112. On numerous occasions from at least August 2005 through the present, CCH discharged pollutants into navigable waters of the United States through a point source at the Sand Island Treatment Plant in excess of the discharge limitations for chlordane established in the Sand Island permit. A list of

known violations is attached hereto as Appendix D.

113. Each day of each violation of the discharge limitations of the Sand Island permit constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

114. Violation of an annual average discharge limitation constitutes a violation on each day of the year in which the violation occurred.

115. Unless enjoined by an order of the Court, CCH will continue to violate the discharge limitations of the Sand Island permit and the Act.

116. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

SEVENTH CLAIM FOR RELIEF
(Honouliuli Permit – Discharge Limitation Violations)

117. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

118. On numerous occasions from at least August 2005 through the present, CCH discharged pollutants into navigable waters of the United States through a point source at the Honouliuli Treatment Plant in excess of the discharge limitations established in the Honouliuli permit. A list of known violations is attached hereto as Appendix E.

119. Each day of each violation of the discharge limitations of the Honouliuli permit constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Haw. Rev. Stat. § 342D-50(a) and (d).

120. Violation of a weekly average discharge limitation constitutes a violation on each day of the week in which the violation occurred.

121. Violation of a monthly average discharge limitation constitutes a violation on each day of the month in which the violation occurred.

122. Unless enjoined by an order of the Court, CCH will continue to violate the discharge limitations of the Honouliuli permit, the Act, and Haw. Rev. Stat. § 342D-50(a) and (d).

123. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for injunctive relief and civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009, and not to exceed \$37,500 per day for each violation thereafter.

124. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

EIGHTH CLAIM FOR RELIEF
(Sand Island Permit – Failure to Operate Disinfection Facility)

125. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 67 inclusive as though set forth in full herein.

126. CCH did not commence continuous operation by July 21, 2002, of an effluent disinfection facility that achieves effective effluent disinfection, as defined in the Sand Island permit, and as required by Part A.2.g. of the Sand Island permit.

127. Until November 15, 2006, CCH did not commence continuous operation of an effluent disinfection facility that achieves effective effluent disinfection, as defined in the Sand Island permit, and as required by Part A.2.g. of the Sand Island permit.

128. Each day between August 2005 and November 15, 2006, constitutes a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Haw. Rev. Stat. § 342D-50(d).

129. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by 40 C.F.R. Part 19, CCH is liable for civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, through and including January 12, 2009.

130. Pursuant to Haw. Rev. Stat. §§ 342D-11 and 342D-30, CCH is liable for injunctive relief and civil penalties of up to \$25,000 per day for each such violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States and the State of Hawaii, respectfully request that this Court:

1. Permanently enjoin CCH from operating its POTW in violation of the Clean Water Act and Haw. Rev. Stat. § 342D-50;
2. Assess civil penalties against CCH and in favor of the United States in an amount not to exceed \$32,500 per day for each violation of the Clean Water Act occurring on or before January 12, 2009, and in an amount not to exceed \$37,500 per day for each violation occurring after January 12, 2009;
3. Assess civil penalties against CCH and in favor of the State of Hawaii in an amount not to exceed \$25,000 per day for each violation of Haw. Rev. Stat. § 342D-50.
4. Award the United States and the State of Hawaii their costs and disbursements in this action; and
5. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

FOR PLAINTIFF THE UNITED STATES OF AMERICA

Date: _____

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

ROBERT D. MULLANEY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Tel: (415) 744-6491
Fax: (415) 744-6476

OF COUNSEL:

HUGH BARROLL
Assistant Regional Counsel
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, California 94105

FOR PLAINTIFF STATE OF HAWAII

MARK J. BENNETT
Attorney General of Hawaii

EDWARD G. BOHLEN
KATHLEEN S.Y. HO
Deputy Attorneys General
State of Hawaii
465 South King Street, Room 200
Honolulu, Hawaii 96813
Tel: (808) 587-3050

