

**FILE COPY**  
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**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**  
(#7002 3150 0004 5563 6870)

March 17, 2005

05-254C&amp;E CAB

Ms. Georgette Silva  
President  
West Oahu Aggregate Company, Inc.  
855 Umi Street  
Honolulu, Hawaii 96819

Dear Ms. Silva:

**SUBJECT: 730 TPH Portable Stone Quarrying and Processing Plant with Two (2)  
Diesel Engine Generators and Portable Screening Plant  
Temporary Noncovered Source Permit No. 0041-01-CT**

The Department of Health, Clean Air Branch (DOH), conducted inspections on the 730 TPH Portable Stone Quarrying and Processing Plant with two (2) Diesel Engine Generators and Portable Screening Plant, at the Waimanalo Gulch Landfill on October 18, 2002 and September 30, 2003. A violation of the Hawaii Revised Statutes §342B-11, Hawaii Administrative Rules §11-60.1-2, and Temporary Noncovered Source Permit No. 0041-01-CT was noted:

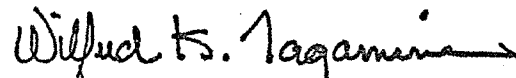
Attachment II, Section F.1.: The required annual performance tests on the stone processing plant, 503 HP diesel engine generator and the 680 HP diesel engine generator were not conducted for calendar years 2001 and 2002.

The DOH has elected to serve you with this informal written notice that a violation has occurred rather than pursuing its other remedies which may include administrative, civil, or criminal penalties. Although the DOH has decided not to seek sanctions against you at this time, it reserves the right to do so if further violations are noted.

Unannounced investigations may be conducted in the future, and civil and administrative fines may be imposed in an amount of not more than \$25,000 per day per violation. Accordingly, you should ensure that corrective actions, has been or will be taken as soon as possible.

If there are any questions, please contact Mr. David Wong of my staff at 586-4200.

Sincerely,



WILFRED K. NAGAMINE  
Manager, Clean Air Branch

DW:rkb

c: William Cooper, Deputy Attorney General, State of Hawaii  
bc: Nolan Hirai, Supervisor, Clean Air Branch

Mailed Out MAR 31 2005

**FILE COPY**

CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED  
(#7002 3150 0004 5563 7037)

March 30, 2005

05-282C&E CAB

Mr. Joaquin Silva  
President  
West Oahu Aggregate Company, Inc.  
855 Umi Street  
Honolulu, Hawaii 96819

Dear Mr. Silva:

SUBJECT: Visible Emissions Monitoring  
Covered Source Permit No. 0041-01-CT

The Department of Health, Clean Air Branch, conducted an investigation on September 13, 2004 at the West Oahu Aggregate Company, Inc., main office, Honolulu. Violations of Hawaii Revised Statutes §342B-11, Hawaii Administrative Rules §11-60.1-2, and the following condition of Temporary Covered Source Permit No. 0041-01-CT was noted:

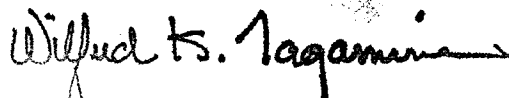
Attachment II, Section D, Special Condition 3: The permittee is not conducting two (2) consecutive observations at each emission point.

The Department of Health has elected to serve you with this informal written notice that a violation has occurred rather than pursuing its other remedies which may include administrative, civil, or criminal penalties. Although the Department of Health has decided not to seek sanctions against you at this time, it reserves the right to do so if further violations are noted.

Unannounced follow-up investigations may be conducted in the future, and civil and administrative fines may be imposed in an amount of not more than \$25,000 per day per violation. Accordingly, you should ensure that corrective action has been or will be taken as soon as possible.

If there are any questions, please contact Mr. David Wong of my staff at 586-4200.

Sincerely,



WILFRED K. NAGAMINE  
Manager, Clean Air Branch

DW:rkb

c: William Cooper, Deputy Attorney General, State of Hawaii  
bc: Nolan Hirai, Supervisor, Clean Air Branch

CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED  
(#7002 3150 0004 5563 7044)

Mailed Out MAR 31 2005

FILE COPY

March 30, 2005

05-281C&E CAB

Mr. Joaquin Silva  
President  
West Oahu Aggregate Company, Inc.  
855 Umi Street  
Honolulu, Hawaii 96819

Dear Mr. Silva:

SUBJECT: 730 TPH Portable Stone Quarrying and Processing Plant with Two (2)  
Diesel Engine Generators and Portable Screening Plant  
Temporary Noncovered Source Permit No. 0041-01-CT

The Department of Health, Clean Air Branch (DOH), conducted inspections on the 730 TPH Portable Stone Quarrying and Processing Plant with two (2) Diesel Engine Generators and Portable Screening Plant, at the Waimanalo Gulch Landfill on October 18, 2002 and September 30, 2003. A violation of the Hawaii Revised Statutes §342B-11, Hawaii Administrative Rules §11-60.1-2, and Temporary Noncovered Source Permit No. 0041-01-CT was noted:

Attachment II, Section F.1.: The required annual performance tests on the stone processing plant, 503 HP diesel engine generator and the 680 HP diesel engine generator were not conducted for calendar years 2001 and 2002.

The DOH has elected to serve you with this informal written notice that a violation has occurred rather than pursuing its other remedies which may include administrative, civil, or criminal penalties. Although the DOH has decided not to seek sanctions against you at this time, it reserves the right to do so if further violations are noted.

Unannounced investigations may be conducted in the future, and civil and administrative fines may be imposed in an amount of not more than \$25,000 per day per violation. Accordingly, you should ensure that corrective actions, has been or will be taken as soon as possible.

If there are any questions, please contact Mr. David Wong of my staff at 586-4200.

Sincerely,

  
WILFRED K. NAGAMINE  
Manager, Clean Air Branch

DW:rkb

c: William Cooper, Deputy Attorney General, State of Hawaii  
bc: Nolan Hirai, Supervisor, Clean Air Branch

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 05-CA-EO-06
STATE OF HAWAII,	)	
	)	
Complainant,	)	Portable Stone Quarrying
	)	and Processing Plant
	)	
vs.	)	NOTICE AND FINDING OF
	)	VIOLATION; ORDER; AND
	)	CERTIFICATE OF SERVICE
WEST OAHU AGGREGATE	)	
COMPANY, INC.,	)	
	)	
Respondent.	)	
	)	
	)	

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NOTICE AND FINDING OF VIOLATION

The Department of Health, State of Hawaii, brings this action under chapters 91 and 342B, Hawaii Revised Statutes (1993) ("H.R.S."), and the Department of Health's Air Pollution Control rules, Chapter 11-60.1, Hawaii Administrative Rules ("H.A.R."), and complains of WEST OAHU AGGREGATE COMPANY, INC., ("RESPONDENT") as follows:

A. AUTHORITY

1. General Authority. Sections 342B-2 and 342B-3, H.R.S., authorize the Director of Health ("Director") to administer Chapter 342B, H.R.S., and to prevent, control, and abate air pollution in the State, and to adopt rules.

2. Enforcement. Section 342B-42, H.R.S., authorizes the Director to issue this Notice and Finding of Violation, and the attached Order.
3. Prohibition. Section 342B-11, H.R.S., provides:

No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated air pollutant without first securing approval in writing from the director.
4. Section 11-60.1-2, H.A.R., provides:

No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing approval in writing from the director.
5. Remedies. Sections 342B-42, 342B-44, 342B-47, and 342B-48, H.R.S., apply to any person who violates chapter 342B, H.R.S., chapter 11-60.1, H.A.R., or a permit issued thereunder.
6. Section 11-60.1-19, H.A.R., provides:

Any person who violates any provision of this chapter, any term or condition of a permit, or any term or condition of an agricultural burning permit shall be subject to the penalties and remedies provided for in sections 342B-42, 342B-44, 342B-47 and 342B-48, H.R.S.
7. Section 11-60.1-82(a), H.A.R., provides:

Except as provided in subsections (d) and (e) and section 11-60.1-87, no person shall burn used or waste oil or begin construction, reconstruction,

modification, relocation, or operation of an emission unit or air pollution control equipment of any covered source without first obtaining a covered source permit from the director. The construction, reconstruction, modification, relocation, or operation shall continue only if the owner or operator of a covered source holds a valid covered source permit.

8. Section 342B-1, H.R.S., provides in part:

"Covered source" means:

- (1) Any major source;
- (2) Any source subject to a standard of performance for new stationary sources as established by the director pursuant to this chapter;
- (3) Any source subject to an emissions standard for hazardous air pollutants as established by the director pursuant to this chapter;...

"Permit" means written authorization from the director to construct, modify, relocate, or operate any regulated air pollutant source. A permit authorizes the permittee to cause or allow the emission of a regulated air pollutant in a specified manner or amount, or to do any act, not forbidden by this chapter or by rules adopted pursuant to this chapter, but requiring review by the department.

"Regulated air pollutant" means:

- (1) Nitrogen oxides or any volatile organic compound;
- (2) Any air pollutant for which a national or state ambient air quality standard has been adopted; and
- (3) Any air pollutant that is established by rule pursuant to this chapter pertaining to standards of performance for new stationary sources and emissions standards for hazardous air pollutants.

9. Section 11-60.1-1, H.A.R., provides in part:

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated or hazardous air pollutant.

"Stationary source" means any piece of equipment or any activity at a building, structure, facility, or installation that emits or may emit any air pollutant.

B. STATEMENT OF FACTS

1. At all times pertinent hereto, RESPONDENT was and is a corporation organized and existing under the laws of the State of Hawaii.
2. RESPONDENT owns, operates, manages or controls the 730 TPH Portable Stone Quarrying and Processing Plant with two (2) Diesel Engine Generators and Portable Screening Plant, located at 92-460 Farrington Highway, Ewa, Oahu ("Stone Processing Plant").
3. On December 18, 2000, the Director issued RESPONDENT Temporary Covered Source Permit (CSP) No. 0041-01-CT ("CSP") effective from December 18, 2000 to December 1, 2005. The CSP authorizes the operation of the Stone Processing Plant at various temporary sites throughout the State of Hawaii and requires RESPONDENT to abide by certain standard and special conditions.
4. Attachment II, Section F, Special Condition 1 of the CSP states:

The permittee shall conduct or cause to be conducted annual performance tests on the stone processing plant, 503 HP diesel engine generator, and 680 HP diesel engine generator to determine the opacity of emissions. Test shall be conducted for each point subject to an opacity limit.
5. On September 13, 2004, during an annual inspection of the facility, a Department of Health ("DOH") agent found that RESPONDENT did not conduct the required annual performance test in 2003.

6. On September 13, 2004, RESPONDENT did not have written authorization from the Director to deviate from the requirements of Attachment II, Section F, Special Condition 1 of the CSP.
7. Attachment II, Section F, Special Condition 1 of the CSP states:

The permittee shall conduct or cause to be conducted annual performance tests on the stone processing plant, 503 HP diesel engine generator, and 680 HP diesel engine generator to determine the opacity of emissions. Test shall be conducted for each point subject to an opacity limit.
8. On February 3, 2005, during a records review of the CSP, a DOH agent found that RESPONDENT did not conduct the required annual performance test in 2004.
9. On February 3, 2005, RESPONDENT did not have written authorization from the Director to deviate from the requirements of Attachment II, Section F, Special Condition 1 of the CSP.
10. The nature and circumstances of the violation justify the imposition of a monetary penalty.

C. FINDING OF VIOLATION

On the basis of the Authority and Statement Of Facts above, it is hereby found and determined that:

1. On January 1, 2004, RESPONDENT violated Attachment II, Section F, Special Condition 1 of the CSP,

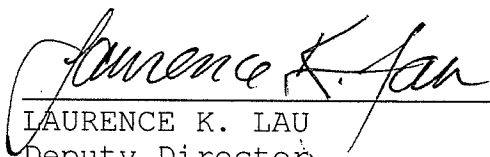


sections 11-60.1-2 H.A.R., and section 342B-11, H.R.S., by not conducting the required annual performance test in 2003.

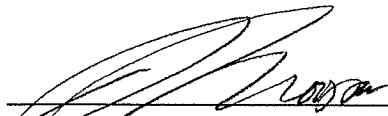
2. On January 1, 2005, RESPONDENT violated Attachment II, Section F, Special Condition 1 of the CSP, sections 11-60.1-2 H.A.R., and section 342B-11, H.R.S., by not conducting the required annual performance test in 2004.
3. Therefore, RESPONDENT is subject to the provisions of section 11-60.1-19, H.A.R., and sections 342B-42, 342B-44, 342B-47, and 342-48, H.R.S., including penalties not to exceed \$25,000 for each violation.

DATED: Honolulu, Hawaii, JUL 20 2005.

DEPARTMENT OF HEALTH  
STATE OF HAWAII

  
\_\_\_\_\_  
LAURENCE K. LAU  
Deputy Director  
for Environmental Health

APPROVED AS TO FORM:

  
\_\_\_\_\_  
WILLIAM F. COOPER  
Deputy Attorney General

IN THE DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 05-CA-EO-06
STATE OF HAWAII,	)	
	)	
Complainant,	)	ORDER
	)	
vs.	)	
	)	
WEST OAHU AGGREGATE	)	
COMPANY, INC.,	)	
	)	
Respondent.	)	
	)	
	)	

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ORDER

Pursuant to chapters 91 and 342B, Hawaii Revised Statutes (1993) ("H.R.S."); chapter 11-60.1, Hawaii Administrative Rules ("H.A.R."); and the attached Notice and Finding of Violation made this day in this Docket; WEST OAHU AGGREGATE COMPANY, INC., ("RESPONDENT") is hereby ordered to:

1. Take corrective action within twenty (20) days after the receipt of this Order, to prevent further violations, if RESPONDENT has not already done so.
2. Within twenty (20) days after the receipt of this Order, notify the Department of Health of the corrective actions taken.
3. Send to the Director of Health a certified check payable to the State of Hawaii in the amount of Eleven THOUSAND AND 00/100 DOLLARS (\$11,000), which is hereby assessed as the penalty for the violations described in the attached Notice and Finding of Violation.

This Order and the Notice and Finding of Violation are effective and become final twenty (20) days after receipt, unless before the twenty (20) days expire, RESPONDENT submits a written request to the Director of Health for a hearing pursuant to section 342B-42(d), H.R.S.

If a hearing is requested, the following subparagraphs will apply:

The hearing will be held on a date, time, and place and before a hearing officer to be specified later.

An informal conference will be held on a date, time, place to be determined later.

A prehearing conference for the hearing, should a hearing become necessary, has been tentatively scheduled for August 29, 2005 at 9:00 a.m. at 1250 Punchbowl Street, Room 200. Prior notification for this prehearing conference will be sent to confirm this date.

If you have special needs due to a disability that will aid you in participating in the hearing or prehearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or prehearing conference date.

The hearing will address the issues and facts raised by the Notice and Finding of Violation and Order in this case.

This hearing will be conducted in accordance with chapter 91, H.R.S., and H.A.R., chapter 11-1, Rules of Practice & Procedure. Parties may present evidence and argument on any issue or fact raised by any paragraph in the Notice and Finding of Violation and Order or otherwise raised by this case. Parties may examine and cross-examine witnesses and present exhibits.

Parties may be represented by lawyers at their own expense, or parties may represent themselves. An individual may appear on his or her own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

After such hearing, this Order shall be affirmed, modified, or rescinded by the Director of Health. The disputed or unresolved penalty amount based on evidence presented at the hearing, and the recommended penalty is not limited by the penalty amount specified in paragraph 3 of this Order. The penalty determined after the hearing may range from zero dollars (no penalty) to the statutory maximum. The Department of Health reserves the right to seek higher penalties, up to the statutory maximum, at the hearing.

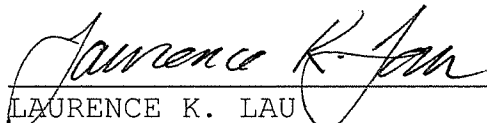
Please direct the written request for a hearing, if any, and all inquiries concerning this case to:

Mr. Wilfred K. Nagamine, Manager  
Clean Air Branch  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801  
Telephone: 586-4200  
Fax: 586-4359

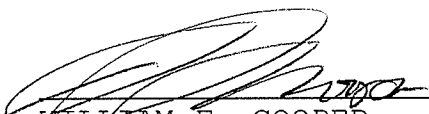
Failure to comply with this Order may subject RESPONDENT to penalties and measures found in chapter 342B, H.R.S., and the rules adopted thereunder.

DATED: Honolulu, Hawaii, JUL 20 2005.

DEPARTMENT OF HEALTH  
STATE OF HAWAII

  
LAURENCE K. LAU  
Deputy Director  
for Environmental Health

APPROVED AS TO FORM:

  
WILLIAM F. COOPER  
Deputy Attorney General

MARK J. BENNETT 2672  
Attorney General of Hawaii

HEIDI RIAN 3473  
WILLIAM COOPER 4501  
Deputy Attorneys General  
465 South King Street, Room 200  
Honolulu, Hawaii 96813  
Telephone: 587-3050

Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 05-CA-EO-06
STATE OF HAWAII,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	
WEST OAHU AGGREGATE COMPANY,	)	
INC.	)	
	)	
	)	
Respondent.	)	
	)	

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CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and WEST OAHU AGGREGATE COMPANY, INC., ("Respondent") enter into this Consent Order pursuant to chapter 342B, Hawaii Revised Statutes ("H.R.S."), and Air Pollution Control rules, Chapter 11-60.1, Hawaii Administrative Rules ("H.A.R.").

1. STIPULATED FACTS AND FINDINGS

Respondent is a corporation organized and existing under the laws of the State of Hawaii, and is operating West Oahu Aggregate Company, Inc., located at 855 Umi Street, Honolulu, Hawaii.

On July 20, 2005, DOH issued Respondent a Notice and Finding of Violation and Order, 05-CA-EO-06, alleging that Respondent violated section 342B-11, H.R.S., sections 11-60.1-2 and 11-60.1-82(a), H.A.R. and Attachment II, Section F, Special Condition 1 of Temporary Covered Source Permit No. 0041-01-CT ("CSP") by not conducting the required annual performance tests in 2003 and 2004. DOH assessed a penalty of \$11,000.

The parties desire to settle their disputes without the risks and costs of a contested case hearing, adverse findings and conclusions, or a final order or judgment after litigation.

## 2. PENALTY

Respondent will pay a total penalty of ELEVEN THOUSAND DOLLARS AND NO CENTS (\$11,000.00). On August 10, 2005, DOH received a check in the amount of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00). Beginning in January 2006, Respondent shall pay five monthly installments of TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00), due by the fifteenth day of each month. Each payment shall be made by cashier's check, payable to the State of Hawaii. Respondent shall not deduct any part of this penalty from its federal or state tax liability. Failure to pay a monthly installment on time shall be deemed a default and a violation of this Consent Order.

### 3. NOTIFICATION

Whenever, under the terms of this Consent Order, notice or payment is required to be given by one party to another, such notice or payment shall be directed to the individual specified below, at the address given, unless a party gives notice in writing to the other party that another individual has been designated to receive such communications:

Mr. Wilfred K. Nagamine  
Manager, Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801  
Telephone: (808) 586-4200  
Telefax: (808) 586-4359

Mr. Joaquin Silva  
President  
West Oahu Aggregate Company, Inc.  
855 Umi Street  
Honolulu, Hawaii 96819  
Telephone: (808) 668-6191  
Telefax: (808) 842-3470

### 4. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent or the DOH against any third parties.

### 5. AUTHORITY OF SIGNATORIES

Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into the terms of this Consent Order and legally to bind the party which he or she represents.



6. BINDING EFFECT

The provision of this Consent Order shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, assigns and attorneys. Respondent shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to the DOH.

7. ENTIRE AGREEMENT

This Consent Order sets forth the entire agreement between the parties with respect to this matter.

8. EFFECTIVE DATE

This Consent Order shall become effective as soon as it has been signed by both parties.

9. MODIFICATIONS

This Consent Order shall not be modified except in writing, signed by both parties.

10. TERMINATION

Within thirty days after DOH determines that paragraph 2 of this Consent Order is satisfied, DOH shall issue a letter to Respondent certifying satisfactory compliance, which shall terminate this Consent Order.

11. EFFECT


This Consent Order constitutes the final order in this case, replacing the Notice and Finding of Violation and Order dated July 20, 2005.

12. COSTS

Each party shall bear its own costs and attorneys' fees.

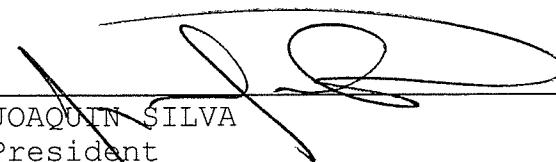
DATED: Honolulu, Hawaii, DEC 22 2005.

DEPARTMENT OF HEALTH  
STATE OF HAWAII

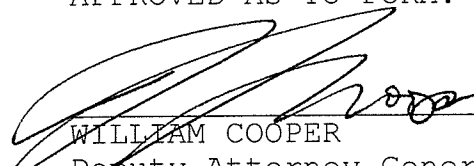
By:   
LAURENCE K. LAU  
Deputy Director  
Environmental Health Administration

DATED: Honolulu, Hawaii, DEC 22 2005.

WEST OAHU AGGREGATE COMPANY, INC.

By:   
JOAQUIN SILVA  
President

APPROVED AS TO FORM:

  
WILLIAM COOPER  
Deputy Attorney General