

STATE OF HAWAII

DEPARTMENT OF HEALTH
NOTICE OF VIOLATION AND ORDER

TO: Michael Lee Graves Yui Paula Hoptowit 47-400 Waihee Road Kaneohe, Hawaii 96744 Respondents	NOVO No. 2025-CW-EO-21 <i>Please write this NOVO number on all correspondence</i> Re: Unauthorized Discharge of Pollutants to State waters Property: 47-400 Waihee Road, Kaneohe, Hawaii 96744 TMK: (1) 4-7-064:014
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The Department of Health (**DOH**) issues this Notice of Violation and Order (**NOVO**) under Hawaii Revised Statutes (**HRS**) Chapters 91 and 342D based on findings from the April 3, 2025 inspection, the March 25, 2025 complaint memo and subsequent file reviews performed by the DOH, Clean Water Branch (**CWB**) for 47-400 Waihee Road, Kaneohe, Hawaii 96744 TMK: (1) 4-7-064:014 (**Property**).

Attached as exhibits are:

- DOH Inspection Report No. OA2897, conducted on April 3, 2025 (Exhibit A); and
- Property Ownership Information (Exhibit B);
- Start of Earth Disturbance and Discharge Memo dated March 25, 2025 (Exhibit C);
- Diversion Field Check List for auwai 3 dated October 8, 2009 and April 27, 2010 (Exhibit D).

This case deals only with violations alleged below. The DOH may bring other cases for other violations. This case does not limit cases by any other public agency or private party.

Statutes/Rules

Nature of the Violation

HRS §342D- 1, HRS §342D-9, HRS §342D-31, HRS §342D-50(a)	Waihee Stream Crossing at 47-400 Waihee Road, Oahu <u>Background</u> Yui Paula Hoptowit and Michael Lee Graves own the 2.8-acre property located at 47-400 Waihee Road, Kaneohe, Hawaii 96744 TMK: (1) 4-7-064:014 (Exhibit B). On April 3, 2025, the DOH conducted an inspection of the Property in response to a complaint of dirt being pushed into Waihee Stream, a State water. Respondent Michael Graves (Graves) was present during the inspection. The DOH inspectors observed boulders, tree stumps, dirt and mulch placed in Waihee Stream and an auwai¹ branching off of Waihee Stream located on the Property (Exhibit D). The placement of material, considered a discharge to State waters, resulted from the construction of an unpermitted crossing. Based on observations made during the inspection, approximately 27 cubic yards of material was used to construct the crossing. Findings from the inspection are identified in Inspection Report No. OA2897 (Exhibit A). On March 25, 2025, photographs were provided to the DOH showing the start of earth disturbance occurring at the Property as early as March 18, 2025. Additionally, photographs depicting the discharge, starting from March 22, 2025, of rocks and dirt to Waihee Stream and the auwai from the Property were provided (Exhibit C). HRS §342D-1 defines “State waters” as all waters, fresh, brackish, or salt, around and within the State, including but not limited to coastal waters, wetlands, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds and reservoirs required as part of a water pollution control system are excluded. HRS §342D-1 defines “Water pollutant” to include “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.”
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¹ Nā Puke Wehewehe ‘Ōlelo Hawai‘i defines an auwai as a ditch, canal.

	HRS §342D-9 authorizes the Director of Health to order measures to be taken to correct violations and impose penalties for violations of HRS Chapter 342D. HRS §342D-31 states that “the [D]irector is authorized to impose by order the penalties specified in [HRS §]342D-30.” HRS §342D-30 states that violators shall be fined not more than \$60,000 per day for each separate offense and that each day of each violation constitutes a separate offense. HRS §342D-50(a) states that “[n]o 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 this chapter, rules adopted pursuant to this chapter, or a permit, water quality certification, or variance issued by the [D]irector.” 1. <u>Discharge of Pollutants to State waters</u> During the April 3, 2025, inspection, the DOH inspectors observed dirt, boulders, tree stumps and mulch discharged into Waihee Stream, a Class 2, inland State water, and the auwai to construct a stream crossing. Graves stated that the stream crossing was constructed in March 2025 and construction began approximately three weeks prior. The discharge of boulders, tree stumps, dirt and mulch was done or authorized by Graves and the discharge was not authorized under a permit or variance by the DOH. Based on the details above, the DOH finds that Respondents jointly and severally violated HRS §342D-50(a) by causing, authorizing, overseeing, and/or allowing the discharge of boulders, tree stumps, dirt and mulch from unpermitted construction activities to discharge from the Property at TMK (1) 4-7-064:014 and enter Waihee Stream and the auwai, without a DOH permit to discharge during the duration of the construction activity, for 13 days (March 22, 2025 to April 3, 2025).
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The facts of this case and the law justify the following order.

ORDER

Respondents are ordered to:

- 1) Immediately cease the discharge of pollutants into State waters. This includes ceasing the activity associated with the construction of a crossing in Waihee Stream.
- 2) Within 30 calendar days from the date this NOVO becomes final (**Effective Date**), develop and submit to the DOH a Corrective Action Plan (**CAP**) to remove all material placed within Waihee Stream and the auwai used for or in connection with the construction of the crossing. The CAP must identify required authorizations from County, State and Federal agencies including, but not limited to, City and County of Honolulu, Department of Land and Natural Resources and the United States Army Corps of Engineers. The CAP must clearly detail how the placed material will be removed as well as the Best Management Practices that will be implemented to prevent further illegal discharges. The CAP must be approved by the DOH before it is implemented. If the CAP is deemed insufficient by the DOH, Respondents must revise the plan to the DOH's satisfaction and re-submit for approval.
- 3) Within 30 calendar days of receiving the DOH's approval of the CAP, implement the CAP.
- 4) Within 30 calendar days of completing all corrective actions, submit a final report to the DOH that includes photographs of the restored site.
- 5) Pay an administrative penalty of \$65,000.00 within 20 calendar days of the Effective Date. Send a certified check for \$65,000.00 to: Clean Water Branch, Department of Health, 2827 Waimano Home Road #225, Pearl City, Hawaii 96782. The payment should be made payable to "State of Hawaii" and include the NOVO reference number, 2025-CW-EO-21.

All submittals made pursuant to any Order in this NOVO shall be certified and signed by a person legally authorized to sign on behalf of Respondents. All documents submitted pursuant to any Order in this NOVO must include the following Certification Statement:

"I certify under penalty of law that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that to the best of my knowledge and belief the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement."

The provisions of this NOVO shall become final unless, within 20 calendar days after receipt, both Respondents file a **written** request for a hearing, along with a copy of the NOVO, without exhibit(s), to:

PHIG Compliance, Hearings & Investigations Office
c/o Director's Office
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

and

Clean Water Branch
Department of Health
2827 Waimano Home Road, #225
Pearl City, Hawaii 96782

Respondents may file their hearing request in person at the Director's office listed above during regular business hours or by mail to the above address within the prescribed time. As indicated in HAR §11-1-4(d), the filing date of the written request for hearing is the date when the document is received by the Director's office, whether in person or by mail. **Failure to timely file the hearing request and related documents may result in a denial of the hearing request.**

The hearing will be conducted in accordance with HRS Chapter 91 and HAR Chapter 11-1. At the hearing, the DOH may seek the maximum penalty of \$60,000 per day, per violation.

Parties may be represented by legal counsel at their own expense. An individual may appear on his/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.

All inquiries regarding this matter, other than the request for hearing, shall be directed to the Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

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

Approved as to Form:

Kathleen Ho

KATHLEEN S. HO
Deputy Director for Environmental Health

Dale K. Sakata

Dale Sakata
Deputy Attorney General

Date: Jun 16, 2025