

STATE OF HAWAII

DEPARTMENT OF HEALTH
NOTICE OF VIOLATION AND ORDER

TO: Big Island Dairy, LLC 695 N 700 E Rupert, Idaho 83350	NOVO No. 2018-CW-EO-27 <i>Please write this NOVO number on all correspondence</i>
Respondent	Re: Unauthorized Discharges of Pollutants from Big Island Dairy, Concentrated Animal Feeding Operation to State waters
Attention: Steve Whitesides Owner	Property/Facility: Big Island Dairy, 39-3261 Hawaii Belt Road, Ookala, Hawaii 96720

The Department of Health (DOH) issues this Notice of Violation and Order (NOVO) under Hawaii Revised Statutes (HRS), Chapters 91 and 342D, and Hawaii Administrative Rules (HAR), Chapter 11-55, based on findings from the May 2, 2018, and May 17, 2018, inspections of the Big Island Dairy conducted by the DOH, Clean Water Branch (CWB).

Attached as exhibits are:

- Exhibit A: Notice of Violation and Order, Docket No. 2017-CW-EO-08 issued May 2, 2017;
- Exhibit B: Inspection Report No. HA0295 (Inspection Report from the May 2, 2018 Inspection);
- Exhibit C: Inspection Report No. HA0296 (Inspection Report from the May 17, 2018 Inspection); and
- Exhibit D: Inspection Report No. HA0297 (PG inspection report from August 6, 2018 Inspection).

This case deals only with violations alleged below. The DOH may bring additional orders 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-9,
 HRS, §342D-3,
 HRS, §342D-50(a)

Big Island Dairy, LLC**Background**

Respondent Big Island Dairy, LLC, operates a dairy in O'okala, Hawaii. Due to its size and configuration, the dairy is a categorical National Pollutant Discharge Elimination System (NPDES), large concentrated animal feeding operation point source subject to regulation under Hawaii Administrative Rules (HAR), Chapter 11-55. On July 26, 2017, Respondent submitted an NPDES application to the DOH-CWB requesting authorization to discharge wastewater from concentrated animal feeding operations and aquatic animal production facility. To date, Big Island Dairy, LLC does not have a permit to discharge pollutants to State waters as required.

On May 2, 2017, Respondent was issued NOVO, Docket No. 2017-CW-EO-08 for the unlawful discharge of pollutants observed during the March 29, 2017 inspection (Exhibit A). As part of the NOVO, Respondent was ordered to immediately cease discharging pollutants, including wastewater, to State waters. This included terminating unauthorized discharges from crop irrigation practices, wastewater impoundments, wastewater treatment systems or storm water that has been contaminated with waste from the Dairy's activities.

HRS, §342D-50(a), states 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 this chapter, rules adopted pursuant to this chapter, or permit or variance issued by the director."

The HRS, §342D-9(b)(4), states that "if the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter after having been served notice of violation, the director: may impose penalties as provided in section 342D-31..."

1. Unauthorized Discharge of Wastewater to State Waters

On April 13, 2018, Big Island Dairy, LLC notified the DOH-CWB that the Dairy discharged wastewater to Alaialoa Gulch, during crop irrigation (Exhibit B). Respondent's self-report estimated the discharge to be approximately 200 gallons. Alaialoa Gulch, is a Class 2, Inland State water.

The DOH finds that Big Island Dairy, LLC, violated HRS §342D-50(a) on one (1) count by discharging wastewater to State waters.

2. Unauthorized Discharge of Wastewater to State Waters

On May 6, 2018, Big Island Dairy, LLC discharged raw wastewater from its wastewater system to Alaialoa Gulch (Exhibit C). Respondent estimated the quantity of wastewater discharged to Alaialoa Gulch to be 10,000 gallons. Alaialoa Gulch, is a Class 2, Inland State water.

Based on the details above, the DOH finds that Big Island Dairy, LLC, violated HRS §342D-50(a) on one (1) count by discharging wastewater from its facility to State waters.

3. Unauthorized Discharge of Wastewater to State Waters

On May 7, 2018 through May 9, 2018, Big Island Dairy, LLC discharged wastewater from its wastewater system to Kaohaoha Gulch (Exhibit C). The respondents self-report stated that the discharge occurred from May 7, 2018 to May 9, 2018 and estimated the quantity of wastewater discharged to Kaohaoha Gulch to be 2.1 million gallons. Kaohaoha Gulch, is a Class 2, Inland State water.

Based on the details above, the DOH finds that Big Island Dairy, LLC, violated HRS §342D-50(a) on three (3) counts by discharging wastewater from its operation to State waters.

The facts of this case and the law justify the following order.

ORDER

You are ordered to:

1. Cease the discharge of pollutants from the Dairy to State waters, immediately. This includes discharges of storm water and excess well water which contacts animal waste, feed, or confined areas.
2. Immediately implement the use of a spotter to oversee fertilizer incorporation and spraying activities.
3. Within 30 days, begin making structural changes to the Dairy's wastewater treatment system such that no precipitation collects within the Dairy's wastewater lagoons. This may include installing covers or implementing other methods to prevent storm water from falling directly into the wastewater lagoons.
4. Within 30 days, begin making structural changes to the Dairy's solids handling areas such that all storm water that comes into contact with the Dairy's solids handling (composter) facility is contained and may be directed to the Dairy's wastewater treatment system.
5. Within 30 days, begin making structural and/or operational changes such that the Dairy's wastewater system is able to maintain a negative monthly water balance. The Dairy must be able to demonstrate that it is able to use or dispose of more wastewater and contaminated storm water captured and contained in its wastewater system than generated over a monthly period based on review of the last 10 years of operational records.
6. Within 45 days, address all findings and technical comments provided in the attached inspection report from August 6, 2018 (Exhibit D)
7. Within 60 days, submit a report, including revised Comprehensive Nutrient Management Plan, documenting all corrective actions made or planned to address the violations or Order in this NOVO. The plan must include schedules for any corrective action that will take longer than 30 days to complete. The DOH shall either comment or approve the Dairy's corrective action plan. If technical comments are provided by the DOH, the Dairy shall address all comments to the satisfaction of the Director within 30 days of receiving comments and re-submit the corrective action plan for approval. Upon approval of a corrective action plan, the Dairy shall implement the plan as an enforceable requirement of this Order.
8. Pay an administrative penalty of \$91,000 within 20 calendar days of the service of this NOVO. Send a certified check for \$91,000 to: Clean Water Branch, Department of Health, 2827 Waimano Home Road #225, Pearl City, Hawaii, 96782. The check should be made payable to "State of Hawaii" and include the NOVO reference number, 2018-CW-EO-27.

9. All reports, payments, or other submittals made pursuant to this Order shall be submitted to the DOH, Clean Water Branch, at:

Department of Health, Clean Water Branch
2827 Waimano Home Road #225
Pearl City, Hawaii 96782
Attn: Enforcement Section Supervisor

10. If you require additional time to complete tasks associated with the Orders detailed above, you must submit a request for a finite extension in writing to the DOH, Clean Water Branch and receive written permission for an extension. The DOH reserves its right to deny the request based on the information provided and compel Big Island Dairy to comply with the original timeframe provided above.
11. All submittals made for this Order shall be certified and signed by either Mr. Steve Whitesides, Mr. Derek Whitesides or other person legally authorized to sign on behalf of Big Island Dairy, LLC. All documents submitted pursuant to this Order must include the following Certification Statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The provisions of this Notice of Violation and Order shall become final unless, within 20 calendar days after receipt, you submit a **written** request for a hearing, along with a copy of the NOVO, without exhibit(s), to:

Hearing Officer
c/o Director of Health
1250 Punchbowl St., Third Floor
Honolulu, Hawaii 96813

You may file the hearing request in person at the Director's office listed above, during regular business hours, or may mail the same to the above address within the allotted time. **Failure to timely file the hearing request and related documents may result in a denial of your hearing request.**

If a hearing is properly requested, a pre-hearing conference will be set by the Hearings Officer and you will be notified of the date, time and place of the pre-hearing conference.

The hearing will be conducted in accordance with Chapter 91 of the Hawaii Revised Statutes and Title 11, Chapter 1 of the Hawaii Administrative Rules.

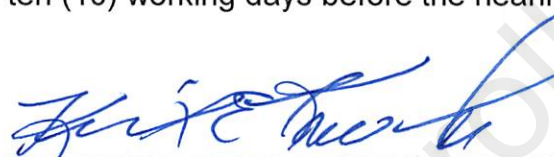
At the hearing, the parties may present relevant evidence and argument on the issues raised by this case. The parties may also examine and cross-examine witnesses and present exhibits. The parties may seek to avoid any penalty, and DOH may seek the maximum penalty of Twenty-Five Thousand Dollars (\$25,000) per day, per violation, although the actual penalty amount may be lower, or none.

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.

After such hearing, the Order shall be affirmed, modified or rescinded by the Director or Hearings Officer.


All inquiries regarding this matter, besides the request for hearing, shall be directed to: Mr. Matthew Kurano, Supervisor of the Enforcement Section, CWB, at (808) 586-4309.

If you have special needs due to a disability 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 ten (10) working days before the hearing or pre-hearing conference date.



KEITH E. KAWAOKA, D.Env.
Deputy Director for Environmental Health

Date: DEC 04 2018



Approved As To Form By:
Mr. Edward G. Bohlen
Deputy Attorney General