

CIVIL 11-00211SOM-RLP

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
Apr 1, 2011
At 1 o'clock and 20 min 1

ORDER SETTING RULE 16 SCHEDULING CONFERENCE

ORDER SETTING STATUS CONFERENCE

for **Monday, June 27, 2011** at 9:00 a.m before:

Magistrate Judge Barry M. Kurren in Courtroom 7

Magistrate Judge Kevin S.C. Chang in Courtroom 5

Magistrate Judge Richard L. Puglisi in Courtroom 6

Pursuant to Rule 16 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P.") and Local Rule 16.2 of the Rules of the United States District Court for the District of Hawaii:

- Parties are reminded that, unless otherwise ordered by the Court, a meeting of the parties must occur at least 21 days prior to the Scheduling Conference and a report submitted to the Court. Except as otherwise provided by L.R. 26.1(c), no formal discovery may be commenced before the meeting of the parties.
- Each party shall file a Scheduling Conference Statement pursuant to L.R. 16.2(b), and shall attend in person or by counsel.
- Failure to file and/or attend will result in imposition of sanctions, (including fines or dismissal), under Fed.R.Civ.P. 16(f) and L.R. 11.1.

DATED at Honolulu, Hawaii on Friday, April 01, 2011.

/s/ Susan Mollway
Chief, U.S. District Judge

I hereby acknowledge receipt of the Order Setting Rule 16 Scheduling Conference.

Date April 1, 2011

Signature 

Atty () Secy () Messenger ()

THIS SCHEDULING ORDER IS ATTACHED TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL) & MUST BE SERVED WITH THE DOCUMENT. PLEASE DO NOT REMOVE.



UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
OFFICE OF THE CLERK
300 ALA MOANA BLVD., RM C-338
HONOLULU, HAWAII 96850

Sue Beitia
CLERK

TEL (808) 541-1300
FAX (808) 541-1303

M E M O

To: All Federal Bar Members
From: Sue Beitia, Clerk of U.S. District Court, District of Hawaii
Date: April 1, 2011
Subject: Corporate Disclosure Statements

Federal Rule of Civil Procedure 7.1 and Criminal Rule 12.4 both address the filing of Corporate Disclosure Statements.

Both rules state "A party must:

(1) file the Rule 7.1(a) (*or 12.4(a)*) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and

(2) promptly file a supplemental statement upon a change in the information that the statement requires."

Thank you for your cooperation in this matter.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

1 APR 01 2011

at _____ o'clock and _____ min M.
SUE BEITIA, CLERK

Sam Monet, pro se
1741 Ala Moana Blvd. #98
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CV11 00211 SOM RLP

SAM MONET

Plaintiff,

vs.

STATE OF HAWAII; HAWAII
DEPARTMENT OF LAND AND
NATURAL RESOURCES and
WILLIAM AILA, DIRECTOR OF THE
DEPARTMENT OF LAND AND NATURAL
RESOURCES, in his official
Capacity, LORETTA J. FUDDY,
ACTING DIRECTOR OF THE
DEPARTMENT OF HEALTH, in her
official capacity, UNITED
STATES ENVIRONMENTAL PROTECTION
AGENCY, and LISA P. JACKSON its
ADMINISTRATOR, in her official
capacity.

Defendants.

) CIVIL No: _____
)
) **COMPLAINT FOR DECLARATORY,**
) **INJUNCTIVE RELIEF,**
) **CIVIL AND CRIMINAL PENALTIES;**
) **EXHIBITS "A-D"; VERIFICATION;**
) **SUMMONS;**

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE RELIEF, CIVIL AND CRIMINAL PENALTIES**

Plaintiff SAM MONET, pro se, alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this action pursuant to the Clean Water Act ("CWA"), 33 U.S.C. § 1365(a)(1), which authorizes citizens to bring civil actions against any person who is alleged to be in violation of an effluent standard or limitations established pursuant to the CWA; the Emergency Planning & Community Right-to-Know Act 42 U.S.C. §11001; and pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")42 CFR 103.

2. Plaintiff seeks declaratory and injunctive relief and civil penalties for acts and omissions by named Defendants to remedy numerous on going violations of CWA "effluent limitations" ("HAZARDOUS MATERIALS") committed by the State of Hawaii "STATE", William Aila, Director of the Department of Land and Natural Resources ("DLNR") and Loretta J. Fuddy, Acting Director of the State of Hawaii Department of Health ("HEALTH"), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, LISA P. JACKSON its ADMINISTRATOR, in her official capacity ("EPA"). (collectively "Defendants")

3. Plaintiff seeks declaratory relief that the Defendants' numerous practices, acts and omissions and conduct violate CWA effluent limitations, including Defendant's (a) spills of petroleum products and unknown HAZARDOUS MATERIALS and other chemicals exceeding levels allowed by CWA, (b) discharge of wastewater with pollutants exceeding levels allowed by CWA, (c)

failure to comply with operations and maintenance requirements pursuant to CWA and EPA regulations, (d) failure to maintain a current storm water pollution control plan, and (e) storage and discharge of HAZARDOUS MATERIALS products and chemicals without CWA and National Pollutant Discharge Elimination System ("NPDES") permits; all at Defendant's former "boat yard" ("SITE") operations located within and arising out of Defendants' ownership, operation, control, and management of STATE'S Ala Wai Small Boat Harbor ("HARBOR"), in Waikiki island of Oahu.

4. Plaintiff is informed and believes STATE receives federal funds for some of its operations at the SITE and HARBOR.

5. Plaintiff seeks and order from this Court compelling EPA and Defendants comply with CWA, NPDES, the Emergency Planning & Community Right-to-Know Act 42 U.S.C. §11001; and The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 CFR 103 (collectively "LAWS").

6. Defendants failed to apply for permits and exemptions for storage, treatment or transport of HAZARDOUS MATERIALS or waste used and stored at the SITE pursuant to the eligibility criteria and specified conditions in 40 CFR 266.225 (solid waste) and 40 CFR 266.230 (for storage and treatment) and in 40 CFR 266.310 and 40 CFR 266.315 (for transportation and disposal). The HAZARDOUS MATERIALS or waste used, spilled, dumped and leached into the soil and navigable waters of the HARBOR and stored at the SITE fails to

satisfy the eligibility criteria and conditions and is regulated, HAZARDOUS MATERIALS or waste.

7. Plaintiff seeks an injunction compelling Defendants to take necessary steps to comply with LAWS statutory and regulatory requirements including but not limited to: (a) ceasing or curtailing spills of petroleum products and unknown HAZARDOUS MATERIALS chemicals exceeding levels allowed by CWA, (b) ceasing or curtailing the discharge of wastewater with pollutants exceeding levels allowed by CWA, (c) ceasing the storage and discharge of HAZARDOUS MATERIALS products and chemicals without CWA and National Pollutant Discharge Elimination System (NPDES) permits, (d) implementing treatment and remedial measures necessary to reduce the levels of pollutants and HAZARDOUS MATERIALS discharged from the SITE, (e) comply with infrastructure, operation and maintenance measures pursuant to CWA and NPDES, (f) implement and maintain a current storm water pollution control plan, and (e) acquire necessary and valid CWA and National Pollutant Discharge Elimination System (NPDES) permits to discharge of HAZARDOUS MATERIALS or products and chemicals.

8. Plaintiff is a legal live aboard tenant (Slip #741), STATE the landlord at the (HARBOR).

9. Plaintiff seeks civil and criminal penalties from Defendants for their violations of CWA effluent limitations pursuant to CWA section 33 U.S.C §§ 1365(a), 1319(d) and 40 C.F.R. §19.4. Under

these provisions of law, each of Defendants violations subjects Defendants to a per diem penalty of \$25,000 prior to January 30, 1997, \$27,500 per diem penalty after January 30, 1997 through March 15, 2004, \$32,500 per diem penalty after March 15, 2004 through January 12, 2009, and \$37,500 per diem penalty after January 12, 2009; for all violations beginning with Defendants execution of lease with the former SITE tenant to the present. After termination of lease with the boatyard tenant, STATE continued to rent the SITE as a parking lot. The lease begin or termination dates are not known to Plaintiff, known to Defendants only and will be the subject of discovery.

10. Plaintiff has made numerous requests to STATE and DLNR to produce documents and things relating to the allegations contained in this Civil Complaint. Because Defendants are in sole possession of all studies, reports, core samples or other documents and things including but not limited to interoffice memoranda, orders, directives and communications, Plaintiff will required discovery to confirm or otherwise prove the allegations contained in this Civil Complaint. Plaintiff seeks an order from this Court compelling Defendants provide the aforementioned discovery.

11. Plaintiff seeks an award of \$10,000 pursuant to 42 CFR 103 § 9603, 9609 and 9611; or as may be determined by this Court; and all reasonable costs and fees.

II. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over the claims for violation of CWA by Defendants set forth in this Complaint pursuant to 33 U.S.C. § 1365(a)(1), and 28 U.S.C. § 1331 (an action for declaratory, injunctive and other relief arising under the Constitution and laws of the United States). This Court has jurisdiction over Federal Defendant.

13. This Court has personal jurisdiction over State Defendants because William Aila and Loretta J. Fuddy are employed by STATE as directors of their respective departments; are all located in and have extensive contact with the United State District of Hawaii.

14. Venue in the United States District Court for the District of Hawaii is proper under 33 U.S.C. § 1365 because the violations and source of the effluent limitation is located within the United States, District of Hawaii.

III. PARTIES

15. Plaintiff SAM MONET, is a legal, live aboard resident of the HARBOR, landlord STATE. Plaintiff is a native Hawaiian as defined by USPL 103-150; a native Hawaiian religious practitioner who believes among other things that according to the 2,500 year old "Kumulipo" Hawaiian Chant of creation, that all life on earth originated from the little creature in the sea, evolving eventually into all life today including man. For Plaintiff, the sea surrounding the Hawaiian Islands is akin to a temple or church for many native Hawaiians like himself. That sea has and continues to be polluted by the spills and discharges from the SITE, due to

the negligence of Defendants. Plaintiff on a regular basis uses the waters directly located outside and around the SITE and HARBORS for fishing, body contact water sports (swimming, surfing, diving, canoeing) and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. Plaintiff is concerned about water quality and is and will continue to be adversely affected by Defendant's CWA violations. Plaintiff pro se has prior experience in pursuing claims in the U.S. District Court of Hawaii.

16. Defendant STATE OF HAWAII oversees the DEPARTMENT OF LAND AND NATURAL RESOURCES and DEPARTMENT OF HEALTH, is responsible for ensuring compliance with federal and STATE laws and regulations relating to discharges into the waters adjacent (HARBOR), United States navigable waters and under the SITE. Defendant STATE receives federal financial assistance including money for assistance in managing its ocean assets and waterways.

17. Defendants William Aila and Loretta J. Fuddy are employed by STATE as directors of their respective departments responsible for the directing and managing of Defendants effluent limitations, spills, discharges, planning, construction and maintenance of collection and treatment systems at the SITE. Defendant STATE is responsible for the acts and omissions of its employees.

18. Defendants the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and LISA P. JACKSON its ADMINISTRATOR, in her official capacity are responsible for ensuring compliance with federal and State of

Hawaii regulations relating to discharges into the waters adjacent to and under the SITE.

IV. COMPLIANCE WITH NOTICE REQUIREMENTS

19. As early as on or about December 4, 2009 Plaintiff made written complaints as alleged in this Civil Complaint to EPA, STATE, HEALTH, DLNR and former Governor of the State of Hawaii Linda Lingle. (see attached Exhibit "A" incorporated herein by reference) This EPA complaint was sent to HEALTH and DLNR by mail and hand delivered.

20. As required by CWA section 505(b)(2), 33 U.S.C. § 1365(b)(2) and 40 C.F.R. section 135.2, Plaintiff sent by mail and hand delivered a Notice to File Suit pursuant to CWA section 505(a)(2) to Defendants STATE (the Governor), DLNR and HEALTH on August 18, 2010 and again on September 2, 2010 by hand delivery, regular and email; and again on several occasions by email and a supplemental notice personally served on the Governor of the State of Hawaii at his offices, Capital Building, Honolulu Hawaii on March 18, 2011 and to DLNR by email at the same time. Defendants have failed to offer to meet to discuss the allegations contained in this complaint, despite the fact that Plaintiff on at least 5 more occasions went to the DLNR Directors office in person to initiate communications.

21. Plaintiffs communications with Defendants included but were not limited to complaints to the Environmental Protection Agency, Hawaii State Department of Health, Hawaii State Department of Land

and Natural Resources, Hawaii State Legislature, the former Governor, the current Governor. Complaints included photographs of the violations along with narrative describing the violations, asking Defendants to cease, desist and comply with laws; and Notice of Intent to File Civil Complaint (see attached Exhibit "B" incorporated herein by reference). As of this date, Defendants have not responded in any way, offered to meet or replied to any of Plaintiff's communications; compelling Plaintiff to file this complaint in the U.S. District Court.

22. Defendants have ignored Plaintiff. The HAZARDOUS MATERIALS waste at the SITE constitutes an ongoing danger to the waterway and Plaintiffs health and safety. Plaintiff has thus complied with the notice requirements established by CWA section 505(b)(2) and 40 C.F.R. section 135.2.

V. STATUTORY AND REGULATORY BACKGROUND

23. (Clean Water Act) (33 U.S.C. 1251 - 1376: The original 1948 statute (Ch. 758; P.L. 845), the Water Pollution Control Act, as amended now the Clean Water Act (CWA) authorized the Surgeon General of the Public Health Service, in cooperation with other Federal, state and local entities, to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. During the development of such plans, due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and

aquatic life, recreational purposes, and agricultural and industrial uses. The original statute also authorized the Federal Works Administrator to assist states, municipalities, and interstate agencies in constructing treatment plants to prevent discharges of inadequately treated sewage and other wastes into interstate waters or tributaries. Since 1948, the original statute has been amended extensively either to authorize additional water quality programs, standards and procedures to govern allowable discharges, funding for construction grants or general program funding. Amendments in other years provided for continued authority to conduct program activities or administrative changes to related activities.

24. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States, unless in compliance with various enumerated sections of the CWA. In particular, CWA an NPDES permit issued pursuant to CWA section 402, 33 U.S.C. § 1342. Defendants have not sought or obtained an NPDES permit.

25. The CWA authorizes the U.S. Environmental Protection Agency ("EPA"), or states with permit programs approved by EPA, to issue NPDES permits allowing for the discharge of pollutants into waters of the United States. CWA § 402, 33 U.S.C. § 1342. EPA has approved DOH to administer an NPDES permit program in Hawai'i. In most instances, DOH issues NPDES permits for Hawaii. EPA retains

sole authority, however, to issue CWA section 301(h) waivers and NPDES permits which incorporate such waivers.

26. Absent a CWA section 301(h) waiver, an NPDES permit issued to any POTW must include effluent limitations set according to the pollutant reduction attainable via "secondary treatment." CWA §§ 301(b)(1)(B), 402(b)(1)(A); 33 U.S.C. §§ 1311(b)(1)(B), 1342(b)(1)(A). If EPA grants a CWA section 301(h) waiver, however, EPA may, with concurrence from the applicable state, issue an NPDES permit with limits less stringent than those attainable by secondary treatment. 33 U.S.C. § 1311(h).

27. 42 U.S.C. 103 The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a 1980 law commonly known as Superfund, authorizes EPA to respond to releases, or threatened releases, of HAZARDOUS MATERIALS substances that may endanger public health, welfare, or the environment. CERCLA also enables EPA to force parties responsible for environmental contamination to clean it up or to reimburse the federal government (Superfund) for response or remediation costs incurred by EPA.

28. The Superfund Amendments and Reauthorization Act (SARA) of 1986 revised various sections of CERCLA, extended the taxing authority for the Superfund, and created a free-standing law. This federal law is designed to clean up sites contaminated with HAZARDOUS MATERIALS substances.

29. The "Superfund" created the Agency for Toxic Substances and Disease Registry (ATSDR), and it provides broad federal authority to clean up releases or threatened releases of HAZARDOUS MATERIALS substances that may endanger public health or the environment. The law authorized the Environmental Protection Agency (EPA) to identify parties responsible for contamination of sites and compel the parties to clean up the sites. Where responsible parties cannot be found, the Agency is authorized to clean up sites itself, using a special trust fund.

30. A potentially responsible party (PRP) is a possible polluter who may eventually be held liable under CERCLA for the contamination or misuse of a particular property or resource as follows:

- a. the current owner or operator of the site;
- b. the owner or operator of a site at the time that disposal of a HAZARDOUS MATERIALS substance, pollutant or contaminant occurred;
- c. a person who arranged for the disposal of a HAZARDOUS MATERIALS substance, pollutant or contaminant at a site; and
- d. a person who transported a HAZARDOUS MATERIALS substance, pollutant or contaminant to a site, who also has selected that site for the disposal of the HAZARDOUS MATERIALS substances, pollutants or contaminants.

31. HAZARDOUS MATERIALS substance release reporting regulations (40 CFR Part 302) direct the person in charge of a facility to

report to the National Response Center (NRC) any environmental release of a HAZARDOUS MATERIALS substance which exceeds a reportable quantity. Reportable quantities are defined and listed in 40 CFR Section 302.4. A release report may trigger a response by EPA, or by one or more federal or state emergency response authorities.

32. Emergency Planning & Community Right-to-Know Act of 1986 42 U.S.C. §11001 et seq. (EPCRA) is concerned with emergency response preparedness. A free-standing law, EPCRA was commonly known as SARA Title III. Its purpose is to encourage and support emergency planning efforts at the state and local levels and to provide the public and local governments with information concerning potential chemical hazards present in their communities. Under its Emergency Planning (Sections 301-303) provisions state and local communities must prepare to respond to potential chemical accidents. As a first step, each state had to establish a State Emergency Response Commission (SERC). In turn, the SERC designated local emergency planning districts.

33. For each district, the SERC appoints, supervises and coordinates the activities of a Local Emergency Planning Committee (LEPC). The LEPC must, in turn, develop an emergency response plan for its district and review it annually. The membership of the LEPC includes representatives of public and private organizations as well as a representative from every facility subject to EPCRA emergency planning requirements.

34. STATE has repeatedly disbursed, spilled, flushed, disposed of, dumped or otherwise discharged HAZARDOUS MATERIALS, chemical and waste into waters of the United States. All such discharges constitute the unauthorized discharge of pollutants in violation of CWA.

35. The prohibition on the unauthorized discharge of pollutants set forth in CWA section 301(a) constitutes an effluent limitation within the meaning of CWA section 505(a) and (f), 33 U.S.C. § 1365(a),(f). Accordingly, every separate instance when landowner, landlord STATE spilled HAZARDOUS MATERIALS into waters of the United States constitutes a day (per diem) of the Defendants' violation of a CWA effluent limitation.

36. Civil and Criminal Penalties: 42 CFR 103 § 9609 (d) Awards: The President may pay an award of up to \$10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this chapter, including any violation of section 9603 of this title and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 9611 of this title.

VI. FACTUAL BACKGROUND

37. The SITE is located on the Waikiki side of the Ala Wai Small Boat Harbor (HARBOR) adjacent to the Ala Wai Bridge on Ala Moana Blvd. At all relevant times, the SITE was and is owned by STATE,

leased by DLNR for commercial purposes. The SITE is built on land fill and abuts the navigable water that exits the HARBOR where Plaintiff and other members of the public surf, swim, dive, canoe paddle and otherwise use the water for purposes describe in this Complaint. (see attached Exhibit "C" incorporated herein by reference)

38. HAZARDOUS MATERIALS, chemicals/liquids that originate on the surface of the SITE leach into the land fill under the SITE or run off the surface of the SITE then out into the HARBOR, eventually ending up in the surfing and diving spots outside the HARBOR.

39. All areas of the Pacific Ocean within three miles from the shore of Oahu, all bays and tidal waters of the Pacific Ocean adjacent to Oahu, Oahu estuaries connected to the Pacific Ocean, and freshwater streams and other waters on Oahu that are tributaries to the Pacific Ocean are waters of the United States within the meaning of the CWA. Specifically, all Pacific Ocean water extending fro the shore of Oahu out three miles are part of the territorial seas of the United States, hence waters of the United State. Ala Wai Canal and Small Boar Harbor (HARBOR), Poka'i Bay, Ke'ehi Lagoon, Honolulu Harbor, Kaneohe Bay, waters off of Sand Island and Point Panic, and Kailua Bay are all tidal waters and/or part of the territorial seas of the United States, hence are also waters of the United States. Manoa Stream that flows into the Ala Wai Canal (HARBOR), Kalihi Stream, Nu'uaniu Stream, Waimalu Stream, Puha Stream, Kawa Stream are all streams that flow into

the Pacific Ocean, hence are tributaries to a water of the United States, hence are themselves waters of the United States. All wetlands/wildlife sanctuaries are a wetland adjacent to a water of the United States, hence is a water of the United States.

40. 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). The territorial seas include all ocean waters seaward of the ordinary high low water mark extending out to three miles. 33 U.S.C. § 1362(8). Waters of the United States include all waters which are, were or may be used in interstate commerce, including tidal waters, all their tributaries, and all wetlands adjacent to these waters and their tributaries. 33 C.F.R. § 328(a); 40 C.F.R. § 230.3(s). Such waters further include all waters, including wetlands, ponds and streams, "the use, degradation or destruction of which could affect interstate ... commerce." Id.

41. CWA section 502(6) defines "point source" to mean "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). The SITE, its surfaces, concrete slabs and asphalt foundations, boat works, and various equipment/conveyances at the SITE from which STATE has spilled or discharged sewage are all discernible, confined and discrete conveyances from which pollutants may be discharged, hence are point sources.

42. In 2004 City and County sewer discharged raw sewage into the Ala Wai Canal, flowing out of the HARBOR. Photos of the HARBOR showed clearly shows the pattern and disbursement water takes flowing out the HARBOR, ie. directly to the surfing spots outside the HARBOR where Plaintiff regularly surfs or otherwise spends long hours in the ocean.

43. For more than 40 years, STATE and DLNR leased the SITE to a boat yard operator whose normal business related operations at the site included but were not limited to applying, replacing, storing ignitable; corrosive, reactive and toxic painting wastes that contain toxic metal based pigments, acid or alkaline cleaning solutions, rust removers, battery acid, caustic hot tanks waste, petroleum parts washer solvents, solvent-based paint waste, waste kerosene or gasoline; and spent paint booth exhaust filters, cyanide plating wastes, waste concentrated bleaches, pressurized aerosol cans, warfarin (rat poison), wood products containing arsenic and cyanide, benzene, DDT, formaldehyde, vinyl chloride and metallic sodium and potassium along with other HAZARDOUS MATERIALS waste like old and leaking batteries and acids of all kinds, lead based paints, resins, acetones, solvents, paint thinners and other thinning agents, materials and equipment used fiberglass repairs, gasoline and diesel engine overhauls, milling and machining metal parts, removing and replacing asbestos insulation on engine heater and exhaust systems, installing and replacing electrical components that include mercury, operating an

overhead crane system utilizing large gasoline and electric motors and hydraulic systems, and parked vehicles and boats that leaked petroleum and other HAZARDOUS MATERIALS fluid from their engine or from holding tanks on their cabs or on or below decks.

44. Other HAZARDOUS MATERIALS used in typical boat yard like the SITE include spent halogenated solvents used in degreasing including but not limited to tetrachloroethylene, or perchloroethylene (perc), trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride and chlorinated fluorocarbons (freons); spent halogenated solvents, and still bottoms, from uses other than degreasing including but not limited to chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, or freon 112, ortho-dichlorobenzene and Trichlorofluoromethane (freon); spent non-halogenated solvents, and still bottoms, that are ignitable including but not limited to xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone (MIBK), n-butyl alcohol, cyclohexanone, methanol, cresols and cresylic acid, nitrobenzene, toluene, methyl ethyl ketone (MEK), carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol and 2-nitropropane.

45. As an example of a typical product used or stored at the SITE: Gasoline, both leaded and unleaded is HAZARDOUS MATERIALS, as defined by 29 CFR 1910.1200, is a Carcinogenic, Category 2 that may cause cancer, may cause lung damage if swallowed and if it contains benzene becomes more toxic and harmful. Benzene is a

colorless or light yellow liquid at room temperature used to make other chemicals that are used to make plastics, resins, and nylon and synthetic fibers. Benzene is also used to make some types of lubricants, rubbers, dyes, detergents, drugs, and pesticides. Benzene leaks from underground storage tanks or from HAZARDOUS MATERIALS and or waste sites containing benzene and can contaminate well water. The major effect of benzene from long-term exposure is on the blood (Long-term exposure means exposure of a year or more) is leukemia, cancer of the blood-forming organs. Benzene works by causing cells not to work correctly. Benzene can cause bone marrow not to produce enough red blood cells, which can lead to anemia, excessive bleeding and can affect the immune system, increasing the chance for infection. The Department of Health and Human Services (DHHS) has determined that benzene causes cancer in humans.

Another example of a typical solvent used or stored at the SITE: 46. Tetrachloroethylene is sometimes used for vapor degreasing in metal-cleaning operations in shipyards. The major effects from chronic inhalation exposure to tetrachloroethylene in humans are neurological effects, including sensory symptoms such as headaches, impairments in cognitive and motor neurobehavioral functioning and color vision decrements. Epidemiological studies of dry cleaning workers exposed to tetrachloroethylene and other solvents suggest an increased risk for a variety of cancers (esophagus, kidney, bladder, lung, pancreas, and cervix). Animal

studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats. Other effects noted in humans include cardiac arrhythmia, liver damage, and possible kidney effects. EPA considered the epidemiological and animal evidence on tetrachloroethylene as intermediate between a probable and possible human carcinogen (Group B/C.) Plaintiff was diagnosed with cardiac arrhythmia in 2009.

47. All at relevant times, STATE stored, used, spilled or otherwise release HAZARDOUS MATERIALS or waste limits that exceed CWA and EPA standards with or without a permit. In this case no permit has been applied for by STATE or granted to STATE or extended to STATE to the best of Plaintiff's knowledge, as of the date of filing this Complaint.

48. Negligent, ignorant, or unsupervised boat yard employees (many who were part time help hired for no more than a day or two, or boat owners and friends working on their boats at the dock) spilled HAZARDOUS MATERIALS, waste or fluids on to the ground that was exposed or otherwise covered with patched of asphalt and concrete. There was no monitoring or external controls over the use, storage, leaking, spilling or leaching of these HAZARDOUS MATERIALS by Defendants.

49. Plaintiff has first hand knowledge about the work performed and HAZARDOUS MATERIALS used at the SITE because he worked on a

boat in the yard for a few days. In addition, in the early 1960's Plaintiff was a Pearl Harbor Naval shipyard worker familiar with boat yard work and materials or chemicals typically found in a place where boats are repaired like the SITE.

50. The boat yard lease at the SITE terminated in or about 2007. STATE has since used the SITE for short term parking for movie vehicles, and other events. In addition, STATE has attempted to lease the property to a wedding company (HONEYBEE) over the objections of local residents.

51. On about August 12, 2010 Plaintiff observed Shinsato Engineers performing some core sample drilling for STATE at the SITE. At that time, Plaintiff observed black droplets that the drillers said was "petroleum products". An oily sheen could be seen on the salt water adjacent to the SITE coming out of the edge of the SITE near the location of the drilling, clearly indicating to Plaintiff that any disturbance to the land fill at the SITE resulted in leaching of whatever is in the fill, into the salt water HARBOR.

52. STATE has refused to release the findings or reports of those core samples to Plaintiff, despite the fact that Plaintiff requested this information on more than one occasion.

53. In about early August 2010, Plaintiff took photos of the SITE that clearly show discarded batteries, oil and chemical containers, exposed ground covered with black liquids and solids, and other apparently HAZARDOUS MATERIALS stored and spilled all

over the SITE. Plaintiff included these photos in his complaints to Defendants.

54. In about January 2011 STATE attempted to cover up its mess (unlawful acts and omissions) at the SITE by filling or covering evidence of HAZARDOUS MATERIALS, oily or discolored areas with new gravel or scraping off the discolored soil, power HAZARDOUS MATERIALS by washing and discharging the oily and discolored areas on the asphalt and cement into the adjacent salt water (HARBOR), removing the batteries and leaking cans of chemicals and solvents abandoned at the SITE, and erecting a fence around the SITE, all in an apparent attempt to hide the unlawful acts that had and have been occurring at the SITE over the last 45 years, under the lease to the boat yard and under direct control of STATE at the present time. (see attached Exhibit "D" incorporated herein by reference)

55. It is clear that Plaintiff is a mouse and Defendants a nearly deaf elephant. The only way this elephant was going to hear the complaints of the mouse was to bring this lawsuit to the federal Court. Plaintiff requests this federal Court compel the Defendants "elephant" to not only listen, but make right the wrongs that it has done at the SITE, HARBOR and to Plaintiff; by compelling Defendant to remove from or contain within the SITE the deadly soup of HAZARDOUS MATERIALS STATE and DLNR have deposited for so many years; and imposing civil and criminal penalties as may be available in law.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

HAZARDOUS WASTES Spill Discharges of Pollutants Without a Permit in Violation of the Clean Water Act 33 U.S.C. §§ 1311(a), 1365

56. Plaintiff realleges, as if set forth fully herein, and every allegation contained in the preceding paragraphs.

57. CWA section 301(a) provides: Except as in compliance with this section and sections . . . 1342 [which provides for NPDES permit authorization for pollutant discharges] . . . the discharge of any pollutant by any person shall be unlawful.

58. CWA section 502(12) defines "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

59. CWA section 502(6) defines "pollutant" to include "sewage," "chemical waste," "biological materials," and "municipal . . . , waste discharged into water." 33 U.S.C. § 1362(6). Accordingly, any HAZARDOUS WASTES spilled or discharged into water, whether treated or untreated, constitutes a "pollutant" within the meaning of the CWA.

60. HAZARDOUS MATERIALS defined hereinabove are ALL highly toxic, resistant chemicals many of which have effects on humans, including cardiac, nervous system and digestive system disorders, and cancer. These HAZARDOUS MATERIALS flow from on and under the SITE into the HARBOR and in areas of shallow groundwater.

61. NPDES typically requires that "appropriate flow measurement devices and methods consistent with accepted scientific practices

shall be used so as to insure the accuracy and reliability of measurements of the volume of discharges."

62. Plaintiff seeks a Declaratory Order from this Court confirming Defendants have not complied with CWA and other LAWS, compelling Defendants to conduct surface and subsoil CWA studies of the SITE and CWA water studies HARBOR to determine to what extent the HAZARDOUS MATERIALS, if any, affect the HARBOR.

SECOND CLAIM FOR RELIEF

Compel Defendant Produce reports, studies, Documents and Things

63. Plaintiff realleges, as if set forth fully herein, and every allegation contained n the preceding paragraphs.

64. Plaintiff is informed and believes that STATE, DLNR and HEALTH have conducted water quality, soil, surface, subsurface and other studies of the SITE and HARBOR for HAZARDOUS MATERIALS as described hereinabove.

65. Plaintiff seeks an Order from this court compelling Defendants to provide Plaintiff with documents and things of any and all studies and reports it has in its possession as of the date of filing this Complaint as well as any studies or reports ordered by this Court of the SITE and HARBOR to determine to what extent the HAZARDOUS MATERIALS, if any, affect the HARBOR and the health of Plaintiff.

THIRD CLAIM FOR RELIEF

Enjoin Defendants from further HAZARDOUS MATERIALS discharges

66. Plaintiff realleges, as if set forth fully herein, and every allegation contained in the preceding paragraphs.

67. Defendants have and continue to discharge, spill or otherwise release HAZARDOUS MATERIALS at the SITE, into the HARBOR that eventually leads to the surf area where Plaintiff surfs on a regular basis. Defendants failed to comply with LAWS, that prohibit discharge without permits.

68. Plaintiff seeks an Order from this court enjoining Defendants from further discharge of HAZARDOUS MATERIALS at the SITE or into the HARBOR in accordance with all applicable LAWS.

FORTH CLAIM FOR RELIEF

Standard NPDE Permit Conditions

69. Plaintiff realleges, as if set forth fully herein, and every allegation contained in the preceding paragraphs.

70. Defendants have not been granted any permits for discharge, spill or otherwise dumping of HAZARDOUS MATERIALS at the SITE, into the HARBOR. Defendants failed to comply with LAWS, that require discharge or other permits.

71. Plaintiff seeks an Order from this court compelling Defendants obtain permits for discharge of HAZARDOUS MATERIALS in accordance with all applicable LAWS.

FIFTH CLAIM FOR RELIEF

Superfund Clean Up in the Alternative

72. Plaintiff realleges, as if set forth fully herein, and every allegation contained in the preceding paragraphs.

73. Defendants have not been granted permits for discharge of HAZARDOUS MATERIALS at the SITE, into the HARBOR. Should Defendants fail to comply with LAWS, that require discharge or other permits, then in the alternative; Plaintiff seeks an Order from this court compelling Defendants clean up the HAZARDOUS MATERIALS at the SITE and HARBOR in accordance with all applicable LAWS.

SIXTH CLAIM FOR RELIEF

Interim progress Reports by Defendants

74. Plaintiff realleges, as if set forth fully herein, and every allegation contained in the preceding paragraphs.

75. Defendants have done their best to thwart the best efforts of Plaintiff to inquire into Defendants acts and omission at the SITE and HARBOR, or correct any unlawful or HAZARDOUS MATERIALS activities at the SITE or in the HARBOR.

76. Plaintiff seeks an Order from this Court compelling Defendants submit an interim progress report to the DOH and EPA every six months after such order is filed until such time as this Court deems necessary.

SEVENTH CLAIM FOR RELIEF

Awards and Fines

77. Plaintiff realleges, as if set forth fully herein, and every allegation contained n the preceding paragraphs.

78. Plaintiff seeks an Order from this court compelling Defendants to pay fines, compensation and or awards as this Court may deem appropriate or in accordance with LAWS.

VIII. REMEDY

79. CWA section 505(a) authorizes the Court to enforce, including via declaratory and injunctive relief, all effluent limitations or any administrative orders issued by the EPA or DOH requiring compliance with effluent limitations (HAZARDOUS WASTES). Declaratory judgment establishing the Defendants' liability for violating the CWA as set forth in this Complaint will clarify and settle the legal relations at issue and afford relief from the uncertainty and controversy giving rise to these proceedings and is thus appropriate. In addition, Plaintiffs have no plain, speedy, and adequate remedy, in the ordinary course of law, other than an injunction requiring the Defendants to comply with the CWA, because (a) Defendants have had opportunity to comply with CWA and failed, for whatever reason or for no reason whatsoever, to comply with LAWS, (b) Defendants have refused to acknowledge, answer or otherwise ignored the lawful requests of Plaintiff to comply with LAWS; and (c) there is no other mechanism for compelling the Defendants to take the action necessary to comply. The Defendants' on-going CWA violations are causing the Plaintiff and the public irreparable harm, and these harms outweigh any comparative harm that the Defendants would suffer if enjoined to

comply with the CWA and other LAWS. Accordingly, an injunction requiring the Defendants to comply with the LAWS is appropriate.

79. CWA section 505(a) authorizes the Court to apply any appropriate civil penalties pursuant to CWA section 509(d), 33 U.S.C. § 1319(d) and CWA section 309(d) and 40 C.F.R. section 19.4, Upon a finding of the Defendants' liability, some assessment of civil penalty is mandatory under CWA section 309(d). Considering the mandatory penalty assessment statutory factors set forth in CWA section 309(d), assessment of substantial penalties against the Defendants is required. If Defendants, in their official capacity or as individuals are found, after discovery and review by this Court, to have violated any criminal code(s) then this matter should be remanded to the United States Attorney General for criminal prosecution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

80. A declaratory judgment pursuant to CWA section 505(a), 33 U.S.C. § 1365(a), and 5 U.S.C. section 2201 establishing that the Defendants are in violation of effluent limitations (HAZARDOUS WASTES) established pursuant to the CWA and LAWS;

81. An injunction pursuant to CWA section 505(a), 33 U.S.C. § 1365(a), ordering Defendants to take all measures necessary and appropriate to cease or curtail their violations of CWA effluent limitations, discharge of HAZARDOUS MATERIALS including but not

limited to clean up of the Superfund SITE or a requirement to obtain permits as required by LAWS;

82. An order from the Court compelling Defendants provide Plaintiff with discoverable documents and things;

83. An order from this Court imposing Civil and criminal penalties against Defendants, and awards or compensation to Plaintiff, and pursuant to the CWA section 505(d), 33 U.S.C. § 1365(d) or as may be allowed under LAWS; and

84. Such other and further relief as this Court deems just and proper.

Respectfully submitted this _____ day of March 2011,

Sam Monet, pro se
1741 Ala Moana Blvd. #98
Honolulu, Hawaii 96815

State of Hawaii
Ala Wai Yacht Harbor
Waikiki, Oahu Hawaii
December 2009

Complaint to the EPA

This property is owned by the State of Hawaii managed by the Dpt. Land and Natural Resources, located at the Ala Wai Small Boat Harbor in Waikiki on the Island of Oahu. It is a former Boat repair yard where over the past 20 years, toxic materials like gasoline, diesel fuels, lead based paints and other hazardous materials were used and eventually leached into the soil and the ocean. State of Hawaii allowed this to happen.

Old batteries and other toxic liquids are still stored on the site. All photos taken by Sam Monet on Dec. 3, 2009. Gross negligence and mismanagement.

Please investigate this for any violation of State or Federal law. I make this complaint for myself and others who live in the harbor and may have been harmed by the acts and omissions of the State of Hawaii and the City and County of Honolulu, for their failure to manage this asset or this property in accordance with all applicable law, rules or ordinances. This complaint is made pursuant the Whistle Blower Protection Act.

Thank You,
Sam Monet
Resident Ala Wai Harbor
1741 Ala Wai Blvd. #98
Honolulu, Hawaii 96815
Ph: 808-2581611
Monets001@hawaii.rr.com



The Site, note adjacent to waters where the public swims and the State, landlord, rents slips to boaters, the tenant. We are entitled to a safe and habitable living condition (Landlord Tenant Code)



Potholes that lead directly to the water table below leached toxic materials and continue to leach toxic and hazardous materials into the Ala Wai Harbor water table. Hazardous liquids, old batteries are still stored on site, in the open.



Compliance and Enforcement

You are here: [EPA Home](#) [Compliance and Enforcement](#) [Report an Environmental Violation](#)

Report an Environmental Violation

OMB #2020-0032

[[En Espanol](#)]

Use this page to report what appears to you as a possible violation of environmental laws and regulations. Information you submit will be forwarded to EPA environmental enforcement personnel or to the appropriate regulatory authority. [More information.](#)

What Not to Report

Some issues are primarily concerns of other federal, tribal, state or local agencies. [Examples of different situations and who to call.](#)

Emergencies

If you are witnessing an environmental event that may lead to **imminent threat** to human health or the environment, you should report it through the [Environmental Emergencies page](#). Read about the [differences between environmental violations and emergencies](#).



Information about the suspected violation

Please provide as much information as you can in the form below. Asterisks (*) indicate required fields. If you do not know the name or address of the alleged violator, please enter "Unknown."

* Suspected Violator's name:

* Suspected Violator's address:

* Suspected Violator's city:

* Suspected Violator's state:

* Suspected Violator's zip code:

Date of Incident: If known

Your contact information

You are not required to provide your contact information in order for EPA to review your tip or complaint. However, if you do not provide contact information, EPA may be unable to contact you for additional information that may be needed to determine whether or not an investigation is warranted. If you do provide contact information, this information may be used to initiate follow-up communications with you and may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint. Please review the [EPA Web Privacy Policy](#) for more information.

Exhibit "A"

Your name:

Your email:

Your phone:

Your address:

Your city:

Your state:

Your zip code:

Is the suspected violation still occurring?

Yes No

Have you already notified your state/tribal DEP, DEQ, or DEM?

Yes No

Department contact (if known)

Please tell us how you would characterize the suspected violation?

* I would characterize the suspected violation as:

(Check One)	(Check One)	(Check All That Apply)	(Check One)
<input type="radio"/> Accidental	<input checked="" type="radio"/> Release	<input type="checkbox"/> Land	<input type="radio"/> Individual
<input checked="" type="radio"/> Intentional	<input type="radio"/> Dump/Buried	<input checked="" type="checkbox"/> Water	<input type="radio"/> Company
<input type="radio"/> Unknown	<input type="radio"/> Spill	<input type="checkbox"/> Air	<input checked="" type="radio"/> Government/Military
	<input type="radio"/> Spray	<input type="checkbox"/> Worker	<input type="radio"/> Unknown
	<input type="radio"/> Fill		
	<input type="radio"/> Falsified	<input type="checkbox"/> Documents	

* Please describe the incident or hazard:

(text will wrap automatically)

state of hawaii has dumped, stored and continues to allow the leaking hazardous waste materials, lead based paints, battery acid, gas and diesel fuels etc, at a former boat yard at the Ala Wai Yacht Harbor, in Waikiki, Island of Oahu. i will email you the pdf

Specific driving/walking/boating directions (from nearest intersection, main road, waterway or supply navigational coordinates, if necessary):

(4000 characters maximum, text will wrap automatically)

ala moana blvd. waikiki, next to the prince hotel in the ala wai small boat harbor, land owner state of hawaii, the site has pot holes that leach the hazardous waste directly into water table and is next to the ocean,

Exhibit "A"

* I understand that I am providing the information in this tip or complaint to the United States Environmental Protection Agency, a federal agency with the authority to investigate and seek penalties for certain violations of law. I understand that any information I provide in this tip or complaint must be true and accurate to the best of my knowledge. I also understand that EPA may review any information provided in this tip or complaint to determine whether or not an investigation into the matter is warranted.

When you have completed the form, click the "Send Comment" button to submit your report. Thank you for your help with protecting the environment.

Send Comment

Clear Form

Definitions

DEP - Department of Environmental Protection

DEQ - Department of Environmental Quality

DEM - Department of Environmental Management

[Back to question](#)

Falsified - The tampering, misrepresentation, or otherwise altering of documents, permits, certifications, or any other records required by environmental statutes and/or regulations.

[Back to question](#)

OMB Control No. 2020-0032

The public reporting and recordkeeping burden for this collection of information is estimated to average ½ hour per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Sam Monet
1741 Ala Moana Blvd. #98
Honolulu, Hawaii 96815
Slip 741 Ala Wai Harbor
Ph: 2581611
Monets001@hawaii.rr.com

Governor Linda Lingle
Executive Chambers
States Attorney General
State Capitol
Honolulu, Hawaii, 96813
Phone: 586-0034
Fax: 586-0006
gov@hawaii.gov

Hand Delivered August 18, 2010
Hand Delivered August 18, 2010

State of Hawaii
Land Board DLNR
P. O. Box 621 Honolulu,
Hawaii 96809
Phone 808-587-0404
FAX 808-587-0390
adaline.f.cummings@hawaii.gov

Hand Delivered August 18, 2010

DLNR
Laura H. Thielen, Chairperson
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813
Ph: (808) 587-0400
dlnr@hawaii.gov
laura.h.thielen@hawaii.gov

Hand Delivered August 18, 2010

CERTIFIED MAIL hard copy and email

Re:

- 1) Last Request for Documents and Things as follows:
 - a. All correspondence, minutes of meetings and any other written or auditory thing of any kind including but not limited to email between Defendants Lingle, Thielen and DLNR relating to or including but not limited to Sam Monet; and or amending administrative rules relating to “boats leaving small boat harbors” on regular basis; and or relating to the lease or sale of the Ala Wai fuel dock or the former boat yard; and email between Defendant DLNR and the Hawaii Yacht Club, its officers or employees on or about January 18, 2007 “HAWAII YACHT CLUB REQUEST TO ASSIST DLNR / PLEASE READ”;
 - b. All correspondence of any kind including but not limited to email between Defendant Lingle and former Corrections Department Deputy Director Propotnic relating to Sam Monet;

- c. Copy of a small boat harbor rental agreement circa. 1969 and also circa. 1979.
 - d. Current financial statement for Hawaii small boat harbors.
- 2) Notice to Defendants State of Hawaii DLNR, Linda Lingle individual and Governor, Laura Thielen, individual and Director DLNR, Does 1-20; of intent to file complaint for violation HRS 91, HRS 521, and health and safety (EPA), Department of Health rules, and other related issues; admiralty jurisdiction on navigable waterways (Commercial).
 - 3) Request for meeting to settle issues and dispute prior to filing complaint in court(s) of competent jurisdiction.

Dear Governor Lingle, Director Thielen, State of Hawaii, DLNR “Defendants”

Monet has, many times, requested the documents and things from Defendants listed above without success, with no reply from Defendants. State has an obligation to provide and Monet has the lawful right to request. On **August 17, 2010** I went to the DLNR office at 333 Queen St. Honolulu to request the documents including but not limited to minutes of DLNR or land board harbor meeting, small boat harbor financials and archival records listed herein above. I was not alone. I met with DLNR agent/administrator Ed Underwood. Underwood and I argued over the meaning of HRS 200-9. Underwood became visibly upset and stated that the law gave DLNR unfettered authority to force recreational boats out of the harbor on bouy runs “anytime, even every 4 days, every day, or in the proposed case every 90 days under “regular basis”. I told Underwood that the US supreme court defines “regular” as “customary and traditional practices” not some arbitrary, capricious or punitive manner he describes. Underwood disagreed. Underwood then told me that I would need a subpoena to get the records. Underwood was very angry. I have a witness to the argument with Underwood.

Defendants and DLNR committed malfeasance, misconstrued, misinterpreted and wrongfully applied its mandate under legislative authority, if any authority exists as we challenge that authority, at HRS 200-9 enacted in 1976, by promulgating rules and regulations thereby redefining “regularly navigate” from 2 years, to 1 year to 90 days, all within the last 2 calendar years. Defendants made these rules without regard for customary and traditional practices that existed for decades; and constitutes an abuse of authority at HRS 200, 521 and 91 and under federal law.

All live aboards are tenants of the State at HRS 521; state the landlord. DLNR Administrative rules do not apply.

Ala Wai harbor rules allow commercial operations (commercial catamarans, yacht clubs), therefore all vessels therein fall under federal jurisdiction [28 U.S.C. 1333](#); not State.

At the former boat yard and at the fuel dock, both superfund sites by definition [33 U.S.C. § 1313](#); owner State has failed in its obligations at [33 U.S.C. § 1251](#) Clean water act. Again jurisdiction federal [28 U.S.C. 1333](#) not State. State cannot lease the sites without first cleaning them up.

Because Monet has opposed DLNR and made complaints to governmental agencies about an unlawful conspiracy by DLNR employees and its tenant Hawaii Yacht Club (corruption, bribery, conspiracy); and Defendant Lingle’s attempt to defame and slander Monet with his business associates (Propotnic); and Defendant Lingle making knowing false, unfounded and malicious allegations of “harassment” by Monet (Bank of Hawaii); and Defendant Thielen harassing statements to Monet (“pain in the ass”); Defendants Lingle and Thielen each have had personal contact with Plaintiff Monet that has led to personal amicus on the part of Defendants toward Monet. Defendants then conspired to punish Monet

and anyone associated with him to thwart his lawful activities at governmental meetings and at the Legislature. Sovereign immunity does not apply to individual Defendants Lingle and Thielen.

Defendants by their unlawful, arbitrary, capricious, discriminatory, wonton, deliberate, intentional malicious acts and omissions have in their official capacity and as individuals violated state and federal law; failed to follow the Landlord Tenant Code HRS 521 and HRS 91 (Administrative Rules) as these laws relates to boat rentals in small boat Harbors. Defendants promulgating rules and regulations requiring insurance, dwelling and boat inspections and other related rules that violate HRS 521, unlawful search. Ala Wai is a commercial harbor, jurisdiction admiralty.

Defendant Thielen knowingly lied to and misled the legislature and general public at hearings and Defendants acts constitute a quasi-legislative capacity. Existing Harbor Rules violate "unreasonable search" clause of the State and US Constitution.

In addition, Defendant DLNR failed to reissue amended RFP for "boatyard" development to Honey Bee when clearly the negotiated contract contains terms and conditions far outside the scope of the original RFP; and the parties must be enjoined, required to provide EIR, clean up property (superfund site) and lease the space, post clean up for boater related activities only.

Individual Defendants Lingle and Thielen's acts were unlawful arbitrary, capricious, wrongful, discriminatory, exhibited personal animus and were designed to punish Plaintiff Monet and other boat owners similarly situate, who made complaints to governmental agencies about the crime and corruption as will be proven in court.

The new and proposed Harbor rules violate the Landlord Tenant Code, constitute an unauthorized tax, and are intentionally designed to create hardship and punish Plaintiff(s). Defendants failed to provide proper notice, hold the required public hearings or notify individual interested persons; and agency DLNR failed to provide documents and things relating to minutes, hearings, decisions and evidence as required by law.

"Where an administrative agency seeks to promulgate a 'rule,'" it "must consider the views of interested persons," for the "powers of government should not be used in a manner giving an appearance of being arbitrary."

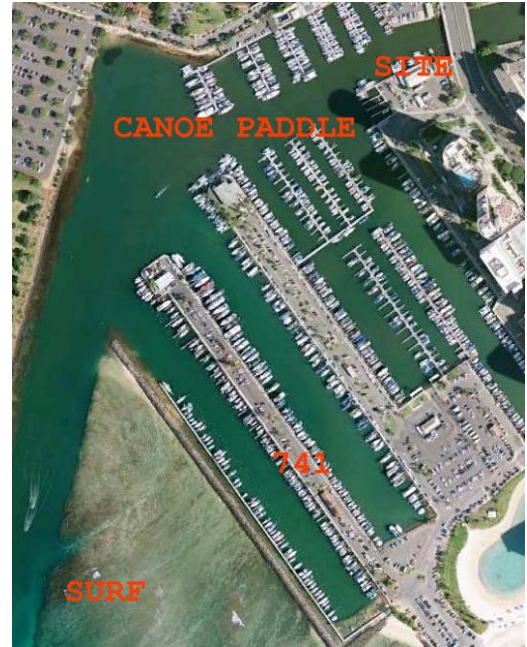
Plaintiffs will seek an order to reverse and vacate the unlawfully promulgated rules, require Defendants to comply with EPA and other federal maritime regulations; or in the alternative comply with landlord tenant code; and seek punitive and compensatory damages against individual Defendants including all costs and fees.

If you fail to timely schedule a pre-complaint settlement conference, a complaint will be filed in the courts of competent jurisdiction.

Sam Monet

Sam Monet, pro se
1741 Ala Moana Blvd. #98
Honolulu, Hi. 96815
Ph./cell (808) 258-1611
monets001@hawaii.rr.com

The SITE is located on the Waikiki side of the Ala Wai Small Boat Harbor (HARBOR) adjacent to the Ala Wai Bridge on Ala Moana Blvd. At all relevant times, the site was and is owned by STATE, leased by DLNR for commercial purposes. The SITE is built on land fill and abuts the navigable water that exits the HARBOR where Plaintiff and other members of the public surf, swim, dive, canoe paddle and otherwise use the water for purposes describe in this Complaint. HAZARDOUS MATERIALS, chemicals/liquids that originate on the surface of the SITE leach into the land fill under the SITE or run off the surface of the SITE then out into the HARBOR, eventually ending up in the surfing and diving spots outside the HARBOR.



This photo of the 2004 City and County



sewer discharge clearly shows the pattern and disbursement water takes flowing out the HARBOR, ie. directly to the surfing spots outside the HARBOR where Plaintiff regularly surfs or otherwise spends long hours in the ocean. For more than 40 years, STATE and DLNR leased the SITE to a boat yard operator whose normal business related operations at the site included but were not limited

to applying, replacing, storing ignitable, corrosive, reactive and toxic painting wastes.

Sam Monet, pro se
 1741 Ala Moana Blvd. #98
 Honolulu, Hi. 96815
 Ph./cell (808) 258-1611
monets001@hawaii.rr.com

In early August, Plaintiff took photos of the SITE that clearly show discarded batteries, oil and chemical containers, exposed ground covered with black liquids and solids, and other apparently HAZARDOUS MATERIALS stored and spilled all over the SITE.



In
 2011

about January

STATE attempted to cover up its mess (unlawful acts and omissions) at the SITE by filling or covering evidence of HAZARDOUS MATERIALS, oily or discolored areas with new gravel or scraping off the discolored soil, power HAZARDOUS MATERIALS by washing and discharging the oily and discolored areas on the asphalt and cement into the adjacent salt water (HARBOR), removing the batteries and leaking cans of chemicals and solvents abandoned at the SITE, and erecting a fence around the SITE, all in an apparent attempt to hide the unlawful acts that had and have been occurring at the SITE over the last 45 years, under the lease to the boat yard and under direct control of STATE at the present time.

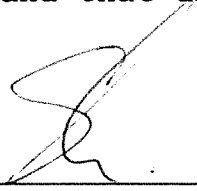


Despite STATE'S attempt to cover up its HAZARDOUS WASTE problems at the SITE, the evidence is still there as of the date of this filing of this lawsuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

VERIFICATION
STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

SAM MONET, pro se, being first duly sworn, deposes and says that he is the Plaintiff, author of this Complaint pro se, has read the Complaint and know the contents including the exhibits "A-D" thereof; and that the same are true of his own knowledge except as to matters as stated on information or belief and that as to those matters he believe them to be true.

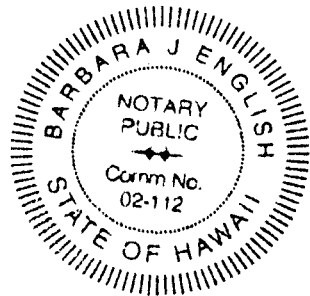
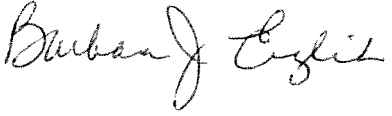


Sam Monet, pro se

Subscribed and sworn to before
Me this 1st day APRIL, 2011

Notary Public, 1st Circuit
State of Hawaii
My Commission expires: 3/31/2014

Dated: Honolulu, Hawaii 4/1/2011



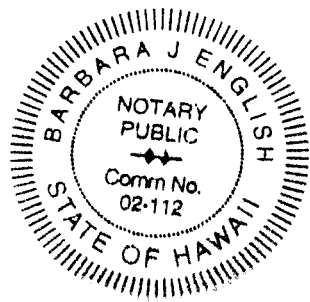
NOTARY CERTIFICATE

Doc. Description: Complaint for declaratory injunctive relief

Doc. Date: none # of Pages: 41

1st Circuit Hawaii Date of Certificate: 4/1/2011

Signature: Barbara J. English
Barbara J. English



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SAM MONET) CIVIL NO: _____
)
Plaintiff,) SUMMONS
)
vs.)
)
STATE OF HAWAII; HAWAII)
DEPARTMENT OF LAND AND)
NATURAL RESOURCES and)
WILLIAM AILA, DIRECTOR OF THE)
DEPARTMENT OF LAND AND NATURAL)
RESOURCES, in his official)
Capacity, LORETTA J. FUDDY,)
ACTING DIRECTOR OF THE)
DEPARTMENT OF HEALTH, in her)
official capacity, UNITED)
STATES ENVIRONMENTAL PROTECTION)
AGENCY, and LISA P. JACKSON its)
ADMINISTRATOR, in her official)
capacity.)
)
Defendants.)
)

SUMMONS

To the above-named Defendant(s):
You are hereby summoned and required to serve upon Plaintiff SAM MONET, pro se, whose address is 1741 Ala Moana Blvd. #98, Honolulu, Hi. 96815, an answer to the Complaint for Declaratory and Injunctive Relief, Civil and Criminal Penalties which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATED: Honolulu, Hawaii, April 1 . 2011

SUE BEITIA
S/ELLAPENE PAKI
CLERK
(BY) DEPUTY CLERK

