

STATE OF HAWAII - KA MOKU'ĀINA O HAWAI'I

Department of Labor and Industrial Relations - Ka 'oihana Pono Limahana
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 Fax: (808) 586-9104



To: County of Maui - Dept. of Fire
and Public Safety
and its successors
200 Dairy Rd
Kahului, HI 96732

Inspection Number: 1649990
Inspection Date(s): 02/08/2023-03/30/2023
Issuance Date: 04/12/2023

Certified Mail Number: 7022 2410 0000 2463 5224

Citation and Notification of Penalty

Inspection Site:

Storm drain channel on Oluea St
Kihei, HI 96753

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health (HIOSH) Law. The penalty listed herein is based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you file a contest in the manner described in the section "Employer's Right to Contest" on page 2 of this Citation and Notification of Penalty. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this Citation. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as allowed by Law or, if contested, the Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the HIOSH Administrator during the 20-calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty. If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove, and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may also contest all citation items or only individual items. You may also contest the penalty and/or abatement dates without contesting the underlying violations. To contest you must submit a signed original letter of contest to the Administrator which must be postmarked or, if not mailed, received by the Administrator within 20 calendar days after you receive this Citation and Notification of Penalty. The letter of contest must be a signed original and may not be submitted by facsimile or e-mail. Address your letter of contest to the State of Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty. Once a letter of contest is received, it becomes the jurisdiction of the HLRB. If a timely contest is not filed, the Citation and Notification of Penalty will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number found on the front page on the remittance. HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the Citation. For Willful and Repeat violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the Citation is classified as Serious and the Citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the Citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: **1)** Your name and address; **2)** the inspection number (found on the front page); **3)** the citation and citation item number(s) to which the submission relates; **4)** a statement that the information is accurate; **5)** the signature of the employer or employer's authorized representative; **6)** the date the hazard was corrected; **7)** a brief statement of how the hazard was corrected; and **8)** a statement that affected employees and their representatives have been informed of the abatement. The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The signed original contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

NEW FEATURE NOW AVAILABLE!

Online Payment Options – Starting December 1, 2022, HIOSH penalties can be paid with credit card or personal bank account through an online portal. Simply visit hioshpayments.ehawaii.gov or scan the QR code below to be taken to the site. Search by your unique inspection number to bring up your invoice. If you were offered an Early Informal Settlement Agreement (EISA), included if applicable, you can choose to pay the EISA offered amount, which will be reflected once we receive your signed EISA and Abatement Certification (page 4). In you have any questions, please contact DLIR.HIOSH@hawaii.gov or call (808) 586-9116.



Equal Opportunity Employer/Program
Auxiliary aids and services are available upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-9116.

ABATEMENT CERTIFICATION

Company Name: County of Maui - Dept. of Fire and Public Safety **Inspection Number:** 1649990
Inspection Site: Storm drain channel on Oluea St **Issuance Date:** 04/12/2023
Kihei, HI 96753

List the specific method of correction for each citation item and supporting documentation as appropriate in this **Citation and Notification of Penalty** that does not state "Corrected" and return to: **Department of Labor and Industrial Relations – Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 425, Honolulu, HI 96813.**

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

Citation Number _____, Item _____ was corrected on _____
How Corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representative(s) have been informed of the abatement activities mentioned above and of their right to examine and copy this and all other abatement documents submitted to HIOSH.

Signature of Employer or
Employer's Authorized Representative

Date

Typed or Printed Name

Title

Posting: For posting requirements, please refer to Chapter 12-51, Hawaii Administrative Rules.

STATE OF HAWAII

KA MOKU'ĀINA O HAWAI'I

Department of Labor and Industrial Relations

Ka 'oihana Pono Limahana

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with the Hawaii Occupational Safety and Health Division (HIOSH) to discuss the Citation and Notification of Penalty issued on 04/12/2023.

The informal conference will be at the HIOSH office located at:

830 PUNCHBOWL STREET
ROOM 425
Honolulu, HI 96813

on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Inspection Number: 1649990
Issuance Date: 04/12/2023
Inspection Date(s): 02/08/2023-03/30/2023

Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety
Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Citation 1, Item 1 - Type of Violation: Serious

12-60-2(b)(4)(A), HAR: The employer shall develop and institute a safety and health training program for all employees so they have an understanding of the hazards to which they may be exposed, and the procedures or practices needed to protect them from these hazards.

Kulanihakoi storm drain channel head wall on Oluea street - The Maui Fire Department personnel who responded to civilian concerns on January 27, 2023 of flooding issues from what the civilians believed was due to debris stuck against the bottom of a chain link fence preventing some of the storm drain waters from flowing onto the roads were not adequately trained in the dangers of flood incident response, guidance for flood response hazard assessments, or response protocols for incidents involving flooding. The Maui Fire Department's current SOG on Flooding focuses on department wide preparations and not on specific company actions, response protocols, or hazard assessments for incidents concerning Flooding. A Firefighter fell into the storm drain water as he was walking in an unprotected area next to the Kulanihakoi storm drain channel head wall after a section of chain link fencing had been removed. After the firefighter fell into the storm drain channel water, he was sucked into the storm drain opening below that was missing the grate. The firefighter then traveled 1,350 feet through the storm drainpipe into a spillway and was rescued 40 to 50-feet offshore in the ocean. The Firefighter later passed away due to injuries, or an illness related to the incident.

Date By Which Violation Must be Abated:
Proposed Penalty:

May 17, 2023
\$15,625.00

STATE OF HAWAII -

KA MOKU'ĀINA O HAWAI'I

Department of Labor and Industrial Relations

Ka 'oihana Pono Limahana

Hawaii Occupational Safety and Health Division

Inspection Number: 1649990

Issuance Date: 04/12/2023

Inspection Date(s): 02/08/2023-03/30/2023



Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety

Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Citation 1, Item 2 - Type of Violation: Serious

12-60-2(b)(4)(C), HAR: The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

- (i) Recognize potential hazards;
- (ii) Maintain safety & health protection in the work area; and
- (iii) Reinforce employee training on the nature of the potential hazards and required protective measures.

Kulanihakoi Storm drain channel head wall on Oluea street - A) The hazards that Maui Fire Department personnel were exposed to while a chain link fence erected on the Kulanihakoi storm drain channel head wall was being dismantled were not identified with additional protective measures implemented to protect an employee once two sections or 11.5 feet of the chain link fencing had been removed and the employee was exposed to the drop off into the storm drain channel which was swollen and overflowing with storm rain water. The head wall that the chain link fencing was erected on measured 10-inches in width and only 6-inches in width from the fence poles to the edge of the drop off into the storm drain channel. The chain link fencing was the only safeguard to prevent anyone from falling into the storm drain channel. As the Firefighter walked into the unprotected area, he stepped off the head wall and into the storm drain channel disappearing under the storm rainwater and debris. The Firefighter was sucked into a drain opening below and traveled 1350 feet through a drainpipe into a spillway and was rescued 40 to 50-feet offshore in the ocean. The Firefighter later died of injuries or an illness due to the incident.

B) The Maui Fire Department supervisor on scene assisting concerned citizens with flooding concerns of their properties at the Kulanihakoi head wall fence area was not adequately trained to recognize the hazards associated with the water differential pressure force from the water in the Kulanihakoi storm drain channel flowing downhill and into the head wall drain opening and drainpipes. To the Firefighters on scene the water and debris on the top of the storm drain channel in front of the head wall did not appear to be swift moving and the actual hazard of very significant suction forces below due to storm drain water flowing into the head wall drain openings and drain pipes were not identified as a serious hazard to a Firefighter working in the area once the chain link fencing was removed and an open sided unprotected area exposed the employee to falling into the storm drain channel waters swollen and overflowing with storm rain water.

Date By Which Violation Must be Abated:

May 17, 2023

Proposed Penalty:

\$15,625.00

STATE OF HAWAII -

KA MOKU'ĀINA O HAWAI'I

Department of Labor and Industrial Relations

Ka 'oihana Pono Limahana

Hawaii Occupational Safety and Health Division

Inspection Number: 1649990

Issuance Date: 04/12/2023

Inspection Date(s): 02/08/2023-03/30/2023



Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety

Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Citation 1, Item 3 - Type of Violation: Serious

12-60-4, HAR: No person shall remove, displace, damage, destroy, or carry off any safety device, safeguard, notice, or warning furnished for use in any employment or place of employment.

Kulanihakoi storm drain channel head wall on Oluea street - Maui Fire Department personnel were exposed to serious hazards as a physical barrier to prevent falls into the Kulanihakoi storm drain channel was removed. The chain link fencing erected on the head wall to the Kulanihakoi storm drain openings was in the process of being dismantled with two sections or approximately 11.5-feet removed when a Maui Fire Department Firefighter walked into the unprotected area and stepped off the head wall and into the storm drain channel that was full of storm drain water. The Maui Fire Department Firefighter was sucked into a drain opening that was missing a grate and traveled through the drainpipe 1,350 feet exiting into a spillway and then was rescued 40 to 50-feet offshore in the ocean. The Firefighter later passed away due to injuries, or an illness related to the incident.

Date By Which Violation Must be Abated:

May 17, 2023

Proposed Penalty:

\$15,625.00



Inspection Number: 1649990
Issuance Date: 04/12/2023
Inspection Date(s): 02/08/2023-03/30/2023

Citation and Notification of Penalty

Company Name: County of Maui - Dept. of Fire and Public Safety
Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Citation 1, Item 4 - Type of Violation: Serious

29 CFR 1910.132(a) [Refer to 12-60-50(a), HAR]: Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Kulanihakoi storm drain channel at the head wall on Oluea street - A firefighter who fell into the storm drain channel waters while walking in an unprotected section of the head wall area next to the drop off area was not wearing a personal flotation device (PFD). The firefighter was pulled under the flood water and surface debris and got sucked into a drainpipe inlet traveling 1,350 feet through a drainpipe exiting into a spillway and then was rescued 40 to 50-feet offshore in the ocean. The firefighter later died of injuries or an illness due to the incident.

Date By Which Violation Must be Abated:
Proposed Penalty:

May 17, 2023
\$15,625.00

Bronson Luis, Manager
Occupational Safety Branch

STATE OF HAWAII - KA MOKU'ĀINA O HAWAI'I

Department of Labor and Industrial Relations - Ka 'oihana Pono Limahana

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET ROOM 425

Honolulu, HI 96813

PHONE: (808) 586-9110 FAX: (808) 586-9104



SUMMARY OF PENALTIES

Company Name: County of Maui - Dept. of Fire and Public Safety

Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Issuance Date: 04/12/2023

Summary of Penalties for Inspection Number: 1649990

Citation 1 Item 1, Serious	\$15,625.00
Citation 1 Item 2, Serious	15,625.00
Citation 1 Item 3, Serious	15,625.00
Citation 1 Item 4, Serious	15,625.00

TOTAL PROPOSED PENALTIES:	\$62,500.00
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Make check or money order payable to the **"Director of Budget and Finance."** Please indicate the **inspection number and dba, if company name is different, on the remittance.** A fee of \$25.00 will be charged for any returned check.

Alleged violations above may have been grouped (e.g., 1a, 1b, & 1c) because they have similar or related hazards that may increase the potential for illness and injury.