

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 - Department
of Public Works dba Highways
and its successors
1827 Kaohu Street
Wailuku, HI 96793

Inspection Number: 1650075
Inspection Date(s): 02/08/2023-03/29/2023
Issuance Date: 04/12/2023

Certified Mail Number: 7022 2410 0000 2463 5231

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.

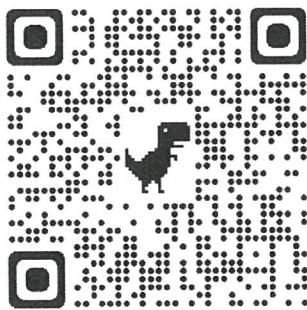
Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

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 - Department of Public Works dba Highways

Inspection Number: 1650075

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

Issuance Date: 04/12/2023

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 _____
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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.



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.

**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: 1650075
Issuance Date: 04/12/2023
Inspection Date(s): 02/08/2023-03/29/2023



Citation and Notification of Penalty

Company Name: County of Maui - Department of Public Works dba Highways

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 County of Maui Department of Public Works Highways Division employees who are involved in the chain link fence removal on the head wall to the storm drain channel during dry conditions and during high rain events were not provided with safety and health training so that they would have an understanding of the hazards that they are exposed to and on the procedures or practices needed to protect themselves from those hazards. On January 27, 2023, County of Maui Department of Public Works Highways Division employees were working at the head wall to the Kulanihakoi storm drain channel and removed the chain link fencing during a high rain event with an overflowing storm drain channel. The employees were not protected from falling into the storm drain channel which was full of storm rainwater that was flowing below into storm drainpipes with substantial differential pressures and suction forces. Also, County of Maui Department of Public Works Highways Division employees who have removed the chain link fencing in the past during dry conditions or non-high rain events were also not protected from falling 5.8-feet from the top of the head wall to the bottom of the flood drain channel. A County of Maui firefighter fell into the flood drain channel waters on January 27, 2023, as he was walking next to an unprotected area on the storm drain channel head wall and was sucked into a drainpipe traveling 1350 feet to a spillway and was rescued 40 to 50-feet offshore in the ocean. The Firefighter passed away of injuries or an illness due to the incident. County of Maui Department of Public Works Highway Division employees were working in the same unprotected area where the firefighter fell into the storm drain channel waters.

Date By Which Violation Must be Abated:

May 17, 2023

Proposed Penalty:

\$14,063.00



Inspection Number: 1650075
Issuance Date: 04/12/2023
Inspection Date(s): 02/08/2023-03/29/2023

Citation and Notification of Penalty

Company Name: County of Maui - Department of Public Works dba Highways
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 and 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 - The County of Maui-Department of Public Works Highways Division Supervisors and Managers who were at the Kulanihakoi storm drain channel incident scene on January 27, 2023 were not adequately trained to recognize the potential and actual hazards in the area or on how to maintain safety and health protection for the employees who were instructed to remove the chain link fencing on the head wall to the storm drain channel during a high rain flooding event. The County of Maui-Department of Public Works Highways Division employees who were working on the removal of the chain link fencing on the head wall to the Kulanihakoi storm drain channel were not protected from falling into the storm drain channel that was overflowing with storm rainwater or from the differential pressures and suction forces below the storm drain channel surface waters that were flowing into three storm drainpipes. One of the storm drainpipes was not equipped with a grate. The County of Maui-Department of Public Works Highways Division Supervisors & Managers on the incident scene also did not warn the County of Maui Fire Department personnel working in the area of any hazards due to the chain fencing removal activity. A County of Maui Firefighter fell into the storm drain channel waters and was sucked into the storm drainpipe that was not equipped with a grate and traveled 1,350 feet to a spillway and was rescued 40 to 50-feet offshore in the ocean. The Firefighter later passed away due to injuries or an illness due to the incident. The County of Maui-Department of Public Works Highways Division employees were working in the same area as the Firefighter who fell into the storm drain channel.

Date By Which Violation Must be Abated:
Proposed Penalty:

May 17, 2023
\$14,063.00

**STATE OF HAWAII -
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Department of Labor and Industrial Relations
Ka 'oihana Pono Limahana
Hawaii Occupational Safety and Health Division

Inspection Number: 1650075
Issuance Date: 04/12/2023
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Citation and Notification of Penalty

Company Name: County of Maui - Department of Public Works dba Highways

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 - A) The chain link fence erected along the Kulanihakoi storm drain channel head wall which was a physical guard or barrier to prevent anyone from falling into the storm drain channel was removed. The unprotected areas next to the head wall after the removal of the chain link fencing exposed employees of the County of Maui-Department of Public Works Highways Division and employees of the County of Maui Department of Fire and Public Safety to serious injuries or death due to fall hazards of falling into the storm drain channel that was overflowing with storm rain waters. While walking next to the unprotected head wall area a County of Maui-Department of Fire and Public Safety Firefighter fell into the storm drain channel and was sucked into a drainpipe that did not have a grate. The Firefighter traveled 1,350 feet through the drainpipe exiting into a spillway and was rescued 40 to 50-feet offshore in the ocean. The Firefighter later passed away of injuries or an illness due to the incident.

B) A grate covering the inlet of a 4-foot-wide drainpipe opening on the Kulanihakoi storm drain channel head wall was removed on December 20, 2022. The grate was not replaced until after an incident on January 27, 2023, in which a County of Maui-Department of Fire and Public Safety Firefighter fell into the Kulanihakoi storm drain channel and got sucked into the drainpipe without a grate traveling 1,350 feet through the drainpipe exiting into a spillway and was rescued 40 to 50-feet offshore. The Firefighter later passed away of injuries or an illness related to the incident.

Date By Which Violation Must be Abated:

May 17, 2023

Proposed Penalty:

\$14,063.00

**STATE OF HAWAII -
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Inspection Number: 1650075
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Company Name: County of Maui - Department of Public Works dba Highways
Inspection Site: Storm drain channel on Oluea St, Kihei, HI 96753

Citation 1, Item 4 - Type of Violation: Serious

29 CFR 1910.28(b)(1)(i) [Refer to 12-60-50, HAR]: Unprotected sides and edges. (i) Except as provided elsewhere in this section, the employer must ensure that each employee on a walking-working surface with an unprotected side or edge that is 4 feet (1.2 m) or more above a lower level is protected from falling by one or more of the following:

- A) Guardrail systems;
- B) Safety Net Systems; or
- C) Personal fall protection systems, such as personal fall arrest, travel restraint, or positioning systems.

Kulanihakoi storm drain channel head wall area on Oluea street and other storm drain channels - County of Maui Department of Public Works employees involved in the removal of the chain link fencing during the cleaning of the storm drain channels and culverts and when erecting new chain link fencing were not protected from falling from the head wall area to the bottom of the storm drain channel by any type of conventional fall protection. The distance from the Kulanihakoi storm drain head wall to the bottom of the storm drain channel measured 5.8-feet.

Date By Which Violation Must be Abated:
Proposed Penalty:

May 17, 2023
\$12,055.00

Citation 1, Item 5 - 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 head wall on Oluea street - Employees involved in the removal of a chain link fence erected on the head wall to the storm drain channel during a high rain event and an overflowing storm drain channel were not wearing personal flotation devices.

Date By Which Violation Must be Abated:
Proposed Penalty:

May 17, 2023
\$14,063.00



Inspection Number: 1650075
Issuance Date: 04/12/2023
Inspection Date(s): 02/08/2023-03/29/2023

Citation and Notification of Penalty

Company Name: County of Maui - Department of Public Works dba Highways

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

Citation 1, Item 6 - Type of Violation: Serious

29 CFR 1910.132(d)(1) [Refer to 12-60-50(a), HAR]: The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

- (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment.
- (ii) Communicate selection decisions to each affected employee; and
- (iii) Select PPE that properly fits each affected employee.

Kulanihakoi storm drain channel head wall on Oluea street - A workplace hazard assessment was not conducted to determine if the employees who remove the chain link fencing on the head walls to the storm drain channels are exposed to any hazards which would necessitate the use of personal protective equipment. The employees involved in the chain link fencing removal and exposed to falling into the storm drain channel during high rain events when the channel is full of water were not provided with any personal flotation devices or protection to prevent the employees from falling into the storm drain waters. The employees who removed the chain link fencing on the head walls during dry conditions for the removal of debris at the bottom of the channels were not provided with any type of conventional fall protection to prevent falls into the storm drain channels.

Date By Which Violation Must be Abated:

May 17, 2023

Proposed Penalty:

\$14,063.00



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 - Department of Public Works dba Highways

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

Issuance Date: 04/12/2023

Summary of Penalties for Inspection Number: 1650075

Citation 1 Item 1, Serious	\$ 14,063.00
Citation 1 Item 2, Serious	14,063.00
Citation 1 Item 3, Serious	14,063.00
Citation 1 Item 4, Serious	12,055.00
Citation 1 Item 5, Serious	14,063.00
Citation 1 Item 6, Serious	14,063.00

TOTAL PROPOSED PENALTIES:

\$82,370.00

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.