

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

October 28, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

ADMINISTRATIVE ENFORCEMENT ACTION UNDER  
CITATION NO. 1 AI-OA-VKL171 ISSUED TO STEVE KANEKO ON  
SEPTEMBER 5, 2011 FOR THE EMERGENCY RULE PROHIBITION UNDER  
HAR SECTION 13-256-73.13, "AHU O LAKA SAFETY ZONE"

The Division of Boating and Ocean Recreation (DOBOR) submits the following citation for disposition by the Board of Land and Natural Resources (Board) of the violation of HAR section 13-256-73.13(b)(1) at the Kaneohe Bay sandbar, Ahu o Laka safety zone by Steve Kaneko.

BACKGROUND

Hawaii Administrative Rule (HAR) section 13-256-73.13 is an emergency rule adopted by the Board at its June 23, 2011 meeting, and signed and filed with the Office of the Lieutenant Governor on the same date. A legal notice of the emergency rule was published on June 28, 2011 in the Honolulu Star-Advertiser. Shortly thereafter, copies of the adopted rule were posted at the Heeia Kea Small Boat Harbor, the Kaneohe Yacht Club, and the Kaneohe Marine Air Corps Station. Progress in the adoption and enforcement of the new rule was followed closely in the local media with stories on the emergency rule appearing as early as June 21, 2011, with extensive coverage in both print media and on television.

The last three-day weekend involving a state holiday after the emergency rule took effect was the 2011 Labor Day weekend (September 3, 4, and 5), with the final day being a Monday.

ACTIVITIES ALLEGED

On or about 1525 hours, Monday, September 5, 2011, Steve Kaneko was cited for a single count of consuming, using, or possessing alcohol within Zone H-2 (Ahu o Laka safety zone), thereby committing an administrative infraction in violation of HAR section 13-256-73.13(b)(1). The alleged violator was observed in possession of alcohol by Division of Conservation and Resources Enforcement (DOCARE) officer(s) under the following circumstances:

DOCARE Officer V. Lime observed Kaneko reach down with his right hand into what appeared to be a cooler and remove a green Heineken light bottle of beer. As Kaneko held onto the glass bottle with his right hand, he turned his head in the direction of the DOCARE officers and then slowly hid the bottle with his body. At this time, Officer

Lime observed Kaneko step forward to mid-ship of the vessel, with the green bottle still in his hand, lean over next to the port gunwale and return to face our vessel with no bottle in hand. At this time, the DOCARE patrol vessel tied up with the vessel in question and Kaneko acknowledged that alcohol was not allowed in zone H-2 because officers had spoken with him and the people on the vessel earlier that morning, warning them about the prohibitions. At this time, Officer Lime asked for the green bottle that he had taken out of the cooler. Kaneko leaned over and with his right hand grabbed a green bottle that was next to his feet. The green bottle was unopened and labeled as a Heineken Light beer. Kaneko uttered that it was his beer and that no one else was drinking. Kaneko then handed Officer Lime the beer bottle which was taken into evidence.

Place: Ahu o Laka (GPS coordinates N 21 deg 28.103 min, W 157 deg 49.072 min),  
Zone H-2 ("portagee sandbar")

Date: September 5, 2011

Time: 1525 hrs

Identification: Steve Kaneko verbally identified himself. His identification was in his vehicle back on land.

Citation issued: Citation No. 1 AI-OA-VKL171 was given to Kaneko and he was instructed to appear before the Land Board meeting set for October 28, 2011, at 9:00 a.m.

The safety zone is delineated by six (6) white/orange cylindrical-shaped buoys which indicate the H-2 safety zone. The vessel that Kaneko was on was within the sandbar buoys.

## LEGAL REFERENCES

The emergency rule is effective for no more than 120 days from the June 23, 2011 filing date. Under subsection 13-256-73.13(b), HAR, the following actions are prohibited in the Ahu o Laka Safety Zone between the hours of 12:00 am and 11:59 pm of any day of a three-day weekend involving a state holiday. Infractions shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes (HRS).

1. Consumption, use, or possession of alcohol.
2. Entering or remaining in area while under the influence of alcohol, narcotics, or drugs.
3. Disorderly conduct, per section 711-1101, HRS.

As an administrative enforcement proceeding before the Board, under subsection (c), in addition to any other penalty authorized by law, a violation of subsection (b) is subject to penalties as provided in section 200-14.5, Hawaii Revised Statutes.

Section 200-14.5, HRS (General administrative penalties), authorizes the Board to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs.

Subsection 200-14.5(c), HRS, allows for fines of not more than \$5,000 for a first violation and increasing graduated penalties if for a previous violation or violations within five years of this violation.

## LEGAL STANDARD

If brought to an HRS chapter 91 contested case, an administrative enforcement action is judged by the *preponderance of evidence* standard, as per section 91-10, HRS.

## DISCUSSION

Subsection 13-256-73.13(b), HAR, states that the consumption, use, or possession of alcohol is prohibited in the Ahu o Laka Safety Zone, as well as entering or remaining while under the influence of alcohol. While there is no evidence that Mr. Kaneko was intoxicated and operating the vessel, he was in possession of alcohol within the boundaries of Zone H-2 which is an alcohol free zone.

As provided by section 91-9, HRS, and section 13-1-29, HAR, a contested case hearing may be requested either orally or in writing prior to the end of the Land Board meeting in the event that the person found in violation should choose to contest the outcome of the Board's decision. Under DLNR's rules of practice and procedure, a written request for a contested case hearing must also be mailed or delivered in person to the Office of the Chairperson within ten calendar days from the close of the Board meeting.

## RECOMMENDATIONS:

That the Board:

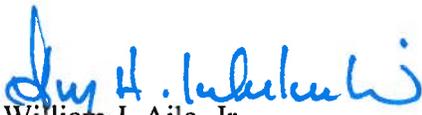
1. Find that an administrative infraction of HAR section 13-256-73.13(b)(1) was committed under Citation No. 1 AI-OA-VKL171 and that Steve Kaneko committed the infraction.
2. The Board determine the appropriate fine and/or penalty, if any, to issue to Steve Kaneko per section 200-14.5, HRS.

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL

  
For William J. Aila, Jr.  
Chairperson