



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

HAR-O.0001886.23

AUGUST 1, 2023

HARBOR MASTER NOTICE
HAR-O NO. 01-24

NOTICE OF ILLEGAL MOORING
WITHIN HONOLULU HARBOR

Subject: Removal of Ocean Energy 35 from Honolulu Harbor, by order of the Harbormaster, under the authority of Hawaii Revised Statutes §266 and Hawaii Administrative Rules Chapters §19-41 and §19-42

Background:

The Hawaii Department of Transportation (HDOT) issued a mooring permit for the vessel referred to as the Ocean Energy 35 (OE35), to relocate from Pier 9 to Pier 35 as provided in the terms of the HDOT's lease agreement with the University of Hawaii (UH). The mooring permit to berth the OE35 at Pier 35 was effective May 8, 2023 and terminated on July 31, 2023 (Attachment 1).

On July 26, 2023, the HDOT notified Norton Lilly, as agent for the OE35, that the termination of the mooring permit was quickly approaching and should the OE35 remain in Honolulu Harbor beyond July 31, 2023, it will be considered illegally moored (Attachment 2). The HDOT informed Norton Lilly that if an agreement was reached between Norton Lilly and UH, hereinafter "Parties," to allow the OE35 to berth at Pier 35 beyond July 31, 2023, HDOT would abide by the Parties' agreement.

On July 27, 2023, Norton Lilly informed HDOT that the Parties reached an agreement to allow the OE35 to berth at Pier 35 until August 26, 2023 (Attachment 3). The HDOT understands that, as a part of the agreement, UH informed Norton Lilly that it has other vessels scheduled to arrive at Pier 35 in late August and will need the berth currently occupied by OE35 to honor the previous commitments made by UH.

Agents represent the interests of a shipowner or charterer while the ship is in port by providing their clients assistance and advice, while also ensuring compliance with local laws and policies. Their duties are guided by two principal aspects, namely professional agent standards (i.e., certification through ASBA, ISO, BIMCO, etc.), and in Hawaii, their knowledge of the Hawaii Administrative Rule (HAR). [HAR §19-41-5 implied agreement; HAR §19-42-11 Liability for fees.]

Conditions:

1. Pursuant to HAR, §19-41-2, the HDOT Harbormaster/Commercial Harbors Manager is appointed by the Director of Transportation and vested with the operational control of a state commercial harbor, to include but not limited to, enforcing rules, berthing of vessels, allocation of storage space, and the movement of vessels into, out of, and within the harbor.
2. Given the Parties agreement, the HDOT reviewed the terms of Lease No. H-15-60, at Article III, A.2, between the HDOT and UH, and determined that UH is accepting the OE35 as a “visiting research vessel,” or “other vessel” to berth at Pier 35 as provided in the lease. Norton Lilly is therefore notified that the OE35 is allowed to remain at Pier 35, under the terms of the lease between HDOT and UH, until August 26, 2023.
3. Norton Lilly is informed that the HDOT will not accept any berthing request for the OE35 at any other pier within Honolulu Harbor. Norton Lilly, as Agent of the OE35, is hereby ordered to remove the OE35 from Honolulu Harbor on or before August 26, 2023.

The HDOT notifies Norton Lily that a violation to the Harbormaster’s Order shall result in the offender being subject to penalties provided in both the Hawaii Revised Statutes (HRS), and HAR, to include HRS §266-25:

§266-25 Violation of rules; penalty. (a) “ *In addition to the reimbursement of fines and costs as provided in section 266-28, any person who violates any rule made, adopted, and published by the department of transportation as herein provided, or who violates any lawful command of any harbor master, harbor agent, facility security officer, or harbor district manager, while in the discharge of the person's duty, or who violates this chapter, except as provided in subsections (b) and (c), shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, a court, the department, or an administrative hearings officer may deprive the offender of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more [than] one year; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list.* ”

We thank you in advance for your cooperation. Should you have any questions, please contact the HDOT Harbormaster’s Office.

Sincerely,

Peter Pillone

Peter Pillone
Harbormaster/Commercial Harbor Manager

Attachments

ATTACHMENT 1



Mooring Permit

State of Hawaii Department of Transportation
Harbors Division – Oahu District

Permit Number: DOT-HAR-O-23006

Vessel Name: M/V OE-35 Wave Energy Buoy

Owner Name: Ocean Energy USA, LLC

Owner's Address: 1104 Corporate Way
Sacramento, CA 95831

Agent: Waldron Norton Lilly, Inc.

Contact Number: (808) 306-2045

Alternate Number: (808) 545-2466

Period of validity: May 8, 2023 to July 31, 2023

By signing this document, the owner, owning company, agent, and all representatives (collectively hereafter referred to as the "permittee") agrees to the following terms and conditions:

- 1) By signing this agreement, the permittee agrees to be governed by and to pay all charges specified in the Hawaii Administrative Rules for Harbors Division.
- 2) Use of state harbors and harbor facilities is subject to compliance with the Hawaii Administrative Rules for Harbors Division as well as all applicable federal, state, and county laws, ordinances, rules, and regulations (HAR 19-42-15).
- 3) The permitted vessel has and will maintain for the entirety of the validity period all conditions, documentation, and insurance required under HAR 19-42-37.
- 4) Neither the agreement nor the privileges attendant thereto is assignable or in any way transferable, in whole or in part, to any other party.
- 5) The state reserves the right to revoke this permit at any time in accordance with HAR 19-42-44.
- 6) The permittee may cancel this permit upon thirty days written notice to the department as per HAR 19-42-45, and removal of vessel from Honolulu Harbor.
- 7) Harbors Division has the sole right to assign any berth of their choosing. Berthing assignments may change during the period of validity, and the permittee shall move the vessel immediately upon receiving such instructions, at their sole time and expense.
- 8) The permittee shall book all vessel movements and berthing requests in PortCall.
- 9) The term of this use permit shall terminate upon expiration of the stated period, thereby requiring a renewal of the permit to continue to use the harbor and its facilities. Rights to utilize Honolulu Harbor under this permit shall cease at

the end of the period of validity, and the permittee agrees to remove the vessel from Honolulu Harbor unless a new permit is issued by the department.

10) Harbors Division is not responsible for any damage or loss incurred. If the permittee should require any security in addition to what has been provided, the permittee shall provide same at their sole expense.

11) The permittee agrees to indemnify the State and its officers and employees for damages, loss, and injuries arising out of the permittee's exercise of privileges granted by this use permit

12) The permittee agrees to pay monthly all dockage and other relevant charges per current tariff rates under the Hawaii Administrative Rules. The State is hereby authorized to assess collection and service charges on delinquent accounts. Additionally, failure to remain current on charges due to the State is a breach of this agreement.

13) In the event charges that accrue in favor of the department are not paid by the permittee, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies provided by law or otherwise.

14) The permittee agrees to pay all costs and attorney's fees, including cost of collection of delinquent fees and charges in the event the State is forced to institute a suit against the owner and is successful in such a suit

15) Permittee agrees to evacuate the vessel from the harbor if ordered by Harbors Division due to an emergency.

A full version of the Hawaii Administrative Rules of the Harbors Division is available online at <http://hidot.hawaii.gov/harbors/library/> or by contacting Harbors Division at (808) 587-2050.

Signed: Brad Gettelfinger

Date: 5/8/23

Printed Name / Title: Brad Gettelfinger - Port Manager

Approved by: [Signature]

Harbormaster

5/8/23

Date

Permit Number: DOT-HAR-O-23006