

Small Business Regulatory Review Board Meeting

Wednesday, April 18, 2018

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
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Tel 808 586-2594

### AGENDA

Wednesday, April 18, 2018 ★ 10:00 a.m.

No. 1 Capitol District Building  
250 South Hotel Street - Conference Room 436

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Robert Cundiff  
Vice Chairperson  
Oahu

Garth Yamanaka  
2<sup>nd</sup> Vice Chairperson  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Kyoko Kimura  
Maui

Reg Baker  
Oahu

Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of March 21, 2018 Meeting Minutes

#### III. New Business

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 15 Chapter 218, **Kakaako Reserved Housing Rules**, promulgated by Department of Business Economic Development and Tourism / Hawaii Community Development Authority – **Discussion Leader - Mark Ritchie**
- B. Discussion and Action on Proposed New HAR Title 13 Chapter 60.9, **Mo'omomi Community-Based Subsistence Fishing Area, Molokai**, promulgated by the Department of Land and Natural Resources – **Discussion Leader – Mark Ritchie**
- C. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, promulgated by Department of Health (DOH) – **Discussion Leader - Nancy Atmospera**
- D. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, **Commercial Services at Public Airports**, promulgated by the Department of Transportation – **Discussion Leader – Kyoko Kimura**
- E. Discussion and Action on Proposed Repeal of HAR Title 11 Chapter 281, and Adoption of HAR Title 11 Chapter 280.1, **Underground Storage Tanks**, promulgated by DOH – **Discussion Leader – Nancy Atmospera**

#### IV. Legislative Matters

- A. Update on Senate Bill 2753, “Relating to the Small Business Regulatory Review Board” – Clarifies the Intent of the Small Business Regulatory Review Board’s Powers when Reviewing State and County Administrative Rules that Impact Small Business
- B. Update on Governor’s Message 675 for Consideration of the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 30, 2020
- C. Update on Proposed Governor’s Messages 673 and 674 for Consideration of the Gubernatorial Nomination of Will Lydgate to the Small Business Regulatory Review Board, to expire June 30, 2018 and June 30, 2022, respectively
- D. Update on Governor’s Messages 513 and 514 for Consideration of the Gubernatorial Nomination of Reg Baker to the Small Business Regulatory Review Board, to expire June 30, 2018 and June 30, 2022, respectively

- E. Update on Senate Bill 2059 “Relating to Public Accountancy” – Establishes procedures for an out-of-state individual licensed as a certified public accountant or certain accountancy firms to be granted practice privileges in this State by the board of public accountancy if the licensee or firm meets certain qualifications and requirements for substantial equivalency; makes conforming amendments to the laws relating to public accountancy to reflect practices privileges; takes effect on 1/1/2019

**V. Administrative Matters**

- A. Discussion and Action on the Board’s Investigative Taskforce’s Recommendation for the Redesign of the existing Website, in accordance with Section 92-2.5(b)(1)(C), Hawaii Revised Statutes (HRS)
- B. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, HRS

**VI. Next Meeting:** Scheduled for Wednesday, May 16, 2018, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

**VII. Adjournment**

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

## II. Approval of March 21, 2018 Meeting Minutes

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - DRAFT

March 21, 2018

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:02 p.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Kyoko Kimura
- Reg Baker
- Mark Ritchie / Carl Nagasako

**ABSENT MEMBERS:**

- Nancy Atmospera-Walch

**STAFF:** DBEDT

Dori Palcovich  
Arthur Mori

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF JANUARY 24, 2018 MINUTES**

Vice Chair Cundiff made a motion to accept the January 24, 2018 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15, Chapter 37, Solar Water Heater Variance, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Dean Masai, Energy Analyst from DBEDT's Energy Division, explained that two testifiers attending the public hearing provided input; neither was a small business. One testifier recommended that DBEDT enforce the intent of the law more strictly; however, Mr. Masai stated that it would be difficult to justify such a change without the express assent of the legislature through further legislative action.

Mr. Ritchie made a motion to pass the rules onto the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments and Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Chapter 22, Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes, promulgated by Department of Labor and Industrial Relations (DLIR)

Ms. Pamela Martin, Administrator at DLIR's Wage Standards Division, stated that DLIR has been attempting to amend these rules since 2007. The public hearing occurred on February 16, 2018; two written and one oral testimony were received. One of the written testimonies and the oral comment focused on supporting the inclusion of certain types of work regulated under the law; the testimonies supported the current amendments and past interpretation that DLIR has made through its determination.

Testifier, Mr. Joe Trehern, a private testifier/union member, provided testimony in support of the rule changes, stating that Ms. Martin explained the proposed amendments very well.

Ms. Martin stated that the rule changes will apply to all contractors big and small that choose to work on public work projects. The intent of the law is to provide a level playing field for bidding on these projects so that the bids are won because of experience and expertise, not because a contractor chooses to pay their employees lower wages. Also noted was that training and outreach regarding the rules is provided twice a year and targeted to the small businesses.

Vice Chair Cundiff made a motion to pass the rules onto the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12, Chapter 44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council (HSFC) / Department of Labor and Industrial Relations (DLIR)

Mr. Lloyd Rogers, HSFC Administrative Specialist, explained that the promulgation of the rule amendments has been a long, tedious process.

At the public hearing, one testifier believed that the training given to his employees surpasses the training required by the State of Hawaii; this belief is not concurred by HSFC for several reasons as the existing training is substantially sufficient. Mr. Nakamoto thanked HSFC for its rigor and thoroughness in the promulgation and process of amending the rules.

Mr. Nakamoto made a motion to pass the amendments onto the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing on HAR Title 18, Chapter 237, General Excise Tax Law, as follows, promulgated by Department of Taxation (DoTax):

1. Amendments to Section 8.6, County Surcharge

Discussion leader, Mr. Baker stated that at the public hearing a concern was raised by the Tax Foundation of Hawaii. In response, Ms. Kristen Sakamoto, Administrative Rules Specialist at DoTax, explained that the Tax Foundation had a legal challenge with the rules due to eliminating the “nexus” standard requirement. However, DoTax’s reason for eliminating this requirement relates to the federal commerce clause which does not apply to activity within the state and not required by Hawaii’s state law.

Mr. Baker made a motion to pass the rules onto the Governor for adoption. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

## 2. Proposed New Section 29.53, Exported Services

Ms. Sakamoto explained that as there are currently no rules for exported services, this proposal will add thirteen new sections; they are intended to clarify how to determine whether gross income is derived from services; i.e., Expedia and Expedia or from contracting.

Due to the massive changes being made to the rules (more than 60 pages) two public hearings were held. Discussion leader Mr. Reg Baker noted that comments at the public hearing from the Tax Foundation of Hawaii were generally supportive of the rules. Ms. Sakamoto added that comments from Priceline and Expedia at the first hearing expressed concern that the rules violated federal law under the Internet Tax Freedom Act; these comments were reiterated at the second public hearing. However, the State’s Deputy Attorney General confirmed that there was no violation and approved the rules “to form.”

Mr. Baker made a motion to pass the rules onto the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## IV. NEW BUSINES

### A. Discussion and Action on Proposed Amendments to HAR Title 13, Chapter 104, Rules Regulating Activities Within Forest Reserves, promulgated by Department of Land and Natural Resources

Mr. Ryan Peralta, Forest Management Supervisor at DLNR’s Division of Forestry and Wildlife, explained that the proposed changes provide more opportunity for small businesses, which is referred to in the rules as “commercial harvest,” but that the rules require new permit fees. Overall, the changes are expected to promote a mixed-use management strategy in forest reserves.

Mr. Peralta further explained that personal use of the lands is free, but commercial use permit fees require a charge; funds from the fees go into a special account and used for operating expenses. There is also a salvage permit fee used for example when a tree is cut down and sold; another fee relates to direct resale.

Chair Borge suggested that DLNR engage the small businesses that may be impacted by the rule/fee changes. Ms. Kimura recommended Mr. Peralta contact: HTA (Hawaii Tourism Authority), HVCB (Hawaii Visitors and Convention Bureau), HLTB (Hawaii Lodging and Tourism Association), and Activities & Attractions of Hawaii, Inc.

Mr. Ritchie made a motion to pass the rules onto the Governor for public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 162, Food Safety Certification Costs Grant Program, promulgated by Department of Agriculture (DoAg)

Discussion leader Vice Chair Cundiff explained that these new rules create a grant program that provides the farming community with assistance pay for costs associated with compliance with the U.S. Food and Drug Administration. There are no fees or fines involved in submitting a grant; any costs for the small business farmers may vary depending on their present infrastructure, training, and other food safety practices.

Vice Chair Cundiff made a motion to pass the rules onto the Governor for public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Repeal of HAR Title 11, Chapter 200, and Proposed New Chapter 200.1, Environmental Impact Statement Rules, promulgated by Department of Health (DOH)

Mr. Scott Glenn, Director of the Office of Environmental Quality Control, an attached agency of DOH, stated that the proposed rules are premised on statutory changes of Chapter 343, HRS, that go back to 1995/1996 and will reflect today's electronic means. The proposed changes may have an impact on small businesses regarding the new requirement that adds a cost element to the process.

In regard to the businesses that will be impacted by the rules, a list of company-applicants that prepared an EIS (environmental impact statement) from 2012 through 2017 was included in the Board's small business impact statement; the companies include a mix of small businesses as defined by Section 201M-1, HRS.

While the current rules state that a scoping meeting is optional, the federal process requires a public scoping meeting. As DOH believes that requiring a public scoping meeting will better realize Chapter 343, HRS, the proposed changes will standardize the requirement of an EIS preparation notice by revising its definition and standardizing the requirements for content and process at the notice stage, including the requirement of a public scoping meeting.

In addition to making the public scoping meeting mandatory rather than optional, the rules will also require a set portion for oral comments that will be audio recorded and summarized in writing in the draft EIS; this will be retained and made available to the public. Chair Borge noted that streamlining and updating the rules and incorporating the stakeholders is important to Hawaii's environment.



Mr. Nakamoto made a motion to move the rules to the Governor for public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 15, Land Use Commission Rules, promulgated by DBEDT / Land Use Commission (LUC)

Mr. Scott Derrickson, Chief Planner at DBEDT's LUC, explained that the proposed amendments entail housekeeping changes, clarify procedures, provide updates, and clarify requirements for a petition and the methodology for presenting evidence to Land Use Commission.

Regarding the involvement of small business, the impact would largely be indirect as it would relate to construction and construction projects' use of land. Because LUC is a small office with only two planners and an executive officer, there is not a great of opportunity for outreach. However, LUC does work with the Land Use Research Foundation and the Farm Bureau, which represent a collection of small business developers.

Chair Borge requested from Mr. Derrickson a list of small businesses and/or small business organizations in the "small business statement after the public hearing" that were involved in the process.

Mr. Ritchie made a motion to move the rules to public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

**V. LEGISLATIVE MATTERS**

A. Update on House Bill 2235, Senate Bill 2753, and Senate Bill 2885, "Relating to the Small Business Regulatory Review Board"

Chair Borge explained that the only measure still alive is Senate Bill 2753, which clarifies the Board's authority regarding the review of county rules.

B. Discussion and Action on Proposed Governor's Message to the State Legislature Submitting for Consideration the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 20, 2020

Mr. Baker made a motion to approve and testify in support of the gubernatorial nomination of Ms. Mary Albitz as a member of the Small Business Regulatory Review Board. Mr. Ritchie seconded the motion, and the board members unanimously agreed.

C. Discussion and Action on Proposed Governor's Message to the State Legislature Submitting for Consideration the Gubernatorial Nomination of Will Lydgate to the Small Business Regulatory Review Board for a term to expire June 20, 2022

Mr. Baker made a motion to approve and testify in support of the gubernatorial nomination of Mr. Will Lydgate as a member of the Small Business Regulatory Review Board. Mr. Ritchie seconded the motion, and the board members unanimously agreed.

D. Update on Governor's Message 513 and 514 Submitting for Consideration the Gubernatorial Nomination of Reg Baker to the Small Business Regulatory Review Board for a term to expire June 30, 2018 and June 30, 2022

This measure is currently with Senator Wakai's committee; the next step is that it will be scheduled for a hearing.

E. Discussion and Action on Senate Bill 2059 "Relating to Public Accountancy"

Mr. Baker explained that this measure reflects an ongoing battle for years where Hawaii is the only state in the country that does not have CPA-mobility. Thus, if a person is licensed as a CPA in another state, he/she can cross the border and do work in Hawaii without having a temporary license; Mr. Baker added that he does not support this measure.

**VI. ADMINISTRATIVE MATTERS**

A. Discussion and Action on the Board's Investigative Taskforce's Recommendation for Proceeding with the Redesign of the existing Website

Mr. Ritchie stated that the website taskforce approached three different well-known website companies/organizations to discuss recommendations for the redesign of the Board's existing website; the meetings went very good.

One of the organizations that was approached was HIC (Hawaii Information Consortium), which has a master contract with the State. While HIC submitted a proposal to the Board, the other two organizations would need to respond to an RFP, just as other organizations would be required to do so. However, if the Board does not want to go through the RFP process, which will take a lot of time and effort, it can instead go with HIC's proposal without going through the procurement process. Mr. Ritchie also stated that the proposed bid from HIC appears to be "within the ballpark."

This item will be deferred until the next Board meeting.

B. Discussion on Governor's Administrative Directive No. 18-02, dated January 1, 2018, updating the policy and procedure by which departments or agencies request executive approval of any proposed adoption, amendment, or repeal of administrative rules

Deputy Attorney General Waihee-Polk explained that the new Governor's Administrative Directive (AD), on a policy level, provides less information than the prior AD. The new AD requires that before submitting a request to conduct public hearing, if the proposed rules affect small business, agencies must complete and submit a small business impact statement pursuant to Chapter 201M, HRS.

She added that on the website where agencies submit their rule proposals, the process requires the small business impact statement with this Board's comments attached. It is not clear from the AD if this Board's comments are to be submitted before the public hearing or not.

C. Discussion and Action on the Board's proposed Letter to Governor Ige regarding the current Pilot Project that allows Uber and Lyft Drivers to Operate at the Honolulu International Airport

Chair Borge reminded the board members about Ms. Dale Evans, President and CEO of Charlie's Taxi, previously approaching this Board to discuss a pilot program instituted by the Department of Transportation (DOT) that allows Uber and Lyft drivers to operate at the Honolulu airport without the advantage of rules or regulations. As DOT has indicated to this Board that there were no plans to institute new or amended rules, it is beyond this Board's jurisdiction.

During the board's discussion, however, it was noted that DOT was in the process of promulgating rules regarding this matter and that the rules will be coming before this Board in the very near future. In the meantime, DBEDT staff will contact DOT to determine the status of the proposed rules.

D. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS - Discussion and Action on Hawaii Small Business conference held at Maui Art & Cultural Center on May 2 to 3, 2018

It was announced that DBEDT staff was approved to attend the two-day Maui small business conference for board outreach purposes.

- VII. **NEXT MEETING** – The next meeting is scheduled for Wednesday, April 18, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.
- VIII. **ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Mr. Baker seconded the motion; the meeting adjourned at 1:10 p.m.

### **III. New Business**

A. Discussion and Action on Proposed Amendments  
to HAR Title 15, Chapter 218, **Kakaako  
Reserved Housing Rules**, promulgated by  
DBEDT/HCDA



March 21, 2018

HAWAII COMMUNITY DEVELOPMENT AUTHORITY



To: Ms. Dori Palcovich, Administrator  
Small Business Regulatory Review Board, DBEDT

From: Garrett H. Kamemoto, Interim Executive Director  
Hawaii Community Development Authority *GHC*

Subject: Request for Approval to Hold a Public Hearing on Proposed Amendments to Title 15, Chapter 218, Relating to Kakaako Reserved Housing Rules

David Y. Ige  
Governor

Pursuant to Administrative Directive No. 09-01, we are requesting preliminary approval from the Small Business Regulatory Review Board (SBRRB) to conduct a public hearing on the proposed amendments to the subject Kakaako Reserved Housing Rules (Reserved Housing Rules.) The Reserved Housing Rules have been reviewed by the Attorney General's Office to ensure compliance with applicable State legal requirements.

John Whalen  
Chairperson

As a matter of background, the HCDA staff presented an earlier draft of the proposed amendments to the SBRRB on September 21, 2016 at which time the SBRRB unanimously voted the proposed amendments proceed to public hearing. Subsequently the HCDA held several public hearings on the amendments before adopting the amendments on September 6, 2017. On October 18, 2017, the HCDA staff provided an update to the SBRRB on the public hearings regarding the amendments and adoption by the HCDA board at which meeting the SBRRB voted unanimously to recommend the Governor approve the amendments.

Jesse K. Souki  
Executive Director

On January 29, 2018 the HCDA received a letter from Governor Ige indicating that he will not be signing the amended Kakaako Reserved Housing Rules. The letter indicated concerns regarding the 30-year buyback provision in the proposed Kakaako Reserved Housing Rules. It also suggested that he will consider a 10-year buyback since it has a proven track record and is consistent with other state policies.

547 Queen Street  
Honolulu, Hawaii  
96813

To address the issues raised by the Governor, HCDA has prepared a new draft of the amendment that changes the buyback period from 30 years to 10 years. The new draft also makes some minor changes for clarity

Telephone  
(808) 594-0300

Facsimile  
(808) 587-0299

The amendments to the Reserved Housing Rules have no impact to small businesses as the rules pertain to provisions for providing reserved housing units as a requirement for development of a residential project.

E-Mail  
contact@hcdaweb.org

Website  
www.hcdaweb.org

For your reference, please see the attached Pre-Public Hearing Small Business Impact Statement (SBIS) to SBRRB form, HAR Chapter 15-218, "Kakaako Reserve Housing Rules" in ramseyer format, a summary of the proposed rule amendments and Governor David Ige's letter dated January 24, 2018.

Please contact Deepak Neupane, P.E., AIA Director of Planning and Development at 594-0300, if you have any questions.

Thank you.

Attachments:

Pre-Public Hearing SBIS to SBRRB  
HAR Chpt. 15-218 "Kakaako Reserved Housing Rules" (Ramseyer Format)  
Summary of Amendments to HAR, Chapter 15-218  
Governor David Ige's January 24, 2018 Letter to HCDA Chair John Whalen



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HAWAII COMMUNITY  
DEVELOPMENT  
AUTHORITY

DAVID Y. IGE  
GOVERNOR

January 24, 2018

Mr. John Whalen, Chairman  
Hawai'i Community Development Authority  
547 Queen Street  
Honolulu, Hawai'i 96813

RE: Proposed Amendments to Kaka'ako Reserved Housing Rules (HAR) Chapter 15-218

Dear Mr. Whalen:

I write to inform you that I will not be signing the proposed amendments to the Hawai'i Administrative Rules related to housing in the Kaka'ako District.

While I agree with certain aspects of the proposed changes, I have serious concerns about others. I support creating a mechanism to stabilize re-sale prices including an equity sharing program for workforce housing. However, I am concerned about the proposed 30-year regulatory term on unsubsidized for-sale units. Similar well-meaning housing rules have failed to produce more affordable units on the neighbor islands. In fact, they had quite the opposite effect. A 10-year term seems to be working for most of the counties, and I would be open to considering this since it has a proven track record and is more consistent with other state policies.

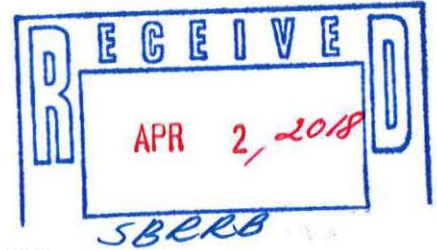
Increasing housing production is one of my top priorities, and any proposed amendments to the rules must balance affordable mandates with adequate incentives to offset costs (or losses) to make projects financially feasible. We cannot afford to make a mistake with our affordable housing policies given where we are in the construction cycle and low interest rate environment.

I appreciate your hard work on this issue and thank the Authority for its extensive effort. I encourage you to continue working with the stakeholders to find a better balance to facilitate production. Should you have any questions or concerns, please do not hesitate to contact me.

With warmest regards,

David Y. Ige  
Governor, State of Hawai'i

c: G. Kamemoto, Hawai'i Community Development Authority



PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Department or Agency: Hawaii Community Development Authority
Administrative Rule Title and Chapter: Title 15, Chapter 218
Chapter Name: Kakaako Reserved Housing Rules
Contact Person/Title: Deepak Neupane, Director of Planning & Development
Phone Number: 594-0300
E-mail Address: deepak.neupane@hawaii.gov Date: March 19, 2018

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes [ ] No [X] (If Yes, please provide webpage address and when and where rules may be viewed in person)

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

- I. Rule Description: New [ ] Repeal [ ] Amendment [X] Compilation [ ]
II. Will the proposed rule(s) affect small business? Yes [ ] No [X] (If No, no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

- III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes [ ] No [X] (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

- IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes [ ] No [X] (If Yes, no need to submit this form.)

\* \* \*



**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Small businesses that will be required to comply with the Rule amendments are developers or landowners who propose to develop or redevelop a residential project in the Kakaako Community Development District. Other small businesses in Kakaako will not be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Direct costs to small businesses who develop residential projects in the Kakaako Community Development District may include revenue loss as a result from providing low-to-moderate residential units as opposed to market-to-luxury residential units. Note that the proposed requirement of providing Reserved Housing Units is 20% of total number of units in a multi-family residential development on a lot greater than 20,000 square feet.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

Current rule does not have a provision for fee.

- b. Amount of the proposed fee or fine and the percentage increase.

The proposed rules provides for establishing fees for administering reserved housing and workforce housing program, however, no specific fee is promulgated in the rule.

- c. Reason for the new or increased fee or fine.

Reason for providing for establishment of fees is to offset the cost of administering the reserved housing and workforce housing program. Fees will be typically paid by reserved housing and workforce housing owners in case of buybacks where preparation of real estate appraisal and other legal documents may be necessary. There no fee for the developer for sale or reserved housing or workforce housing units.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

Fees will be based on actual cost of preparing the documents necessary for buyback and transactions related to reserved or workforce housing units.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

The probable benefits to the agency or other agencies include the additional number of reserved housing units that will 'integrate residents of varying incomes, ages and family groups' as mandated by Chapter 206E-22, Kakaako Community Development District, Development Guidance Policies, Hawaii Revised Statutes.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Not applicable.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Not applicable.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Not applicable.

7. How the agency involved small business in the development of the proposed rules.

Authority workshops, meetings and presentations on the Reserved Housing Rules were scheduled and noticed pursuant to HCDA Bylaws.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Comments were received from Developers, but it was not determined if the Developer qualified as a small business.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

No, proposed rule provisions are required by Chapter 206E-33, Kakaako Community Development District, Development Guidance Policies, Hawaii Revised Statutes, that states: "Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages and family groups; and an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use."

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

The public purpose is to provide for an increased supply of housing for residents of low- or moderate-income levels within the Kakaako Community Development District.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

Chapter 206E-33, Kakaako Community Development District, Development Guidance Policies, Hawaii Revised Statutes, that states: "Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages and family groups; and an increased supply of housing for residents of low- or moderate-income may be required as a condition of redevelopment in residential use."

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

Reserved Housing Rules are specific to the Kakaako Community Development District.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

Reserved Housing Rules are specific to the Kakaako Community Development District.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

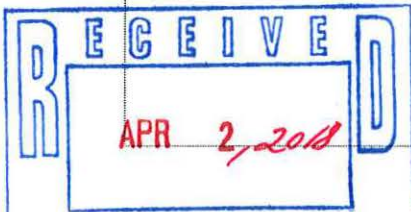
No adverse effects on small businesses.

\* \* \*

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594  
Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the  
SBRRB Website at:  
<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-pubic-hearing>

<b>List of Proposed Kakaako Reserved Housing Rules:</b>	
<b>Section:</b>	<b>Description of Proposed Rule Change:</b>
§15-218-1 Purpose and intent	Non-substantive amendments; for clarification only.
§15-218-3 Severability	Non-substantive amendments; for clarification only.
§15-218-4 Interpretation by the executive director	Non-substantive amendments; for clarification only.
§15-218-5 Definitions	<p>Add, delete and/or clarify the following terms:</p> <ul style="list-style-type: none"> <li>• Area Median Income: clarify</li> <li>• Authority or HCDA: clarify</li> <li>• Eligible Borrower: delete</li> <li>• Fair Market Value: add new definition</li> <li>• Gross Revenue: add new definition</li> <li>• Household: add new definition</li> <li>• Household Income: clarify</li> <li>• HUD: add new definition</li> <li>• Low Income Household: add new definition</li> <li>• Moderate Income Household: add new definition</li> <li>• Multi-family residential development: clarify</li> <li>• Residential Floor Area: delete</li> <li>• Workforce Housing Project: clarify</li> </ul>
§15-218-17 Requirements for reserved housing units	<ul style="list-style-type: none"> <li>• Amends Reserved Housing (RH) Requirements <ul style="list-style-type: none"> <li>○ Current Requirement <ul style="list-style-type: none"> <li>➤ 20% of floor area required to be RH.</li> <li>➤ Applicable to residential projects on lot size of greater than 20,000 square feet.</li> </ul> </li> <li>○ Proposed Requirement <ul style="list-style-type: none"> <li>➤ 20% of total numbers of units in a multi-family residential development on a lot greater than 20,000 gross square feet.</li> </ul> </li> </ul> </li> <li>• Added Cash-in-lieu provision</li> <li>• Requires developers to provide the Authority a copy of a duly executed construction contract.</li> <li>• Other revisions to provide clarity</li> </ul>



<b>Section:</b>	<b>Description of Proposed Rule Change:</b>
§15-218-18 Adjustments to heights, density and general development requirements for reserved housing units	<ul style="list-style-type: none"> <li>• Removes parking requirements for reserved housing units.</li> <li>• Allows RH parking requirement to be modified.</li> </ul>
§15-218-19 Unit type and corresponding factor	New section utilizing the unit type and a factor to determine the total number of RH required for any development.
§15-218-20 Occupancy guidelines for sale or rental of reserved housing and workforce housing units	New section on occupancy guideline and preferred and minimum household size.
§15-218-21 Workforce housing projects	New section on Workforce housing; project should provide 75% on the units for sale or rent to households earning no more than 140% of AMI, 100% floor area bonus, off street parking requirement may be modified.
§15-218-29 Purpose	Workforce housing added.
§15-218-30 General Qualification for purchase of reserved housing and workforce housing units.	<ul style="list-style-type: none"> <li>• Adds new qualifications: <ul style="list-style-type: none"> <li>○ Has never before purchased a RH or workforce housing unit under this Chapter</li> <li>○ Has sufficient gross income to qualify for loan or demonstrate ability to rent.</li> </ul> </li> <li>• Provides for purchase of a larger RH unit by a current RH unit owner subject to certain conditions.</li> <li>• Provides for income qualification for purchase of workforce housing unit.</li> </ul>
§15-218-31 Sale and rental of reserved housing and workforce housing units	<ul style="list-style-type: none"> <li>• Creates separate provisions for for-sale and rental units.</li> <li>• Qualified priority given to applicants displaced within KCDD as a result of redevelopment.</li> </ul>
§15-218-32 Income	<ul style="list-style-type: none"> <li>• Maintains the maximum qualifying household income at 140% of AMI.</li> <li>• Provides for exemption of retirement accounts and gifts of up to 20% of down payment from counting towards assets.</li> </ul>
§15-218-33 Occupancy requirements	Includes occupancy requirement for workforce housing units. Deletes existing provisions that are no longer applicable.
§15-218-34 Factors to be used for reserved house and workforce housing unit sale price determination	<ul style="list-style-type: none"> <li>• Establishes determining factors for RH and workforce housing sale price: <ul style="list-style-type: none"> <li>○ Down payment (10% of sale price)</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Maximum monthly allowable housing costs: mortgage payment, mortgage insurance, AOA dues; not to exceed 33% of gross household income.</li> <li>○ 30 year mortgage interest rate published by Freddie Mac (6 month average)</li> <li>○ Unit type factor</li> <li>• ED to establish and publish RH sale price formula every year.</li> </ul>
<p>§15-218-35 Terms of reserved housing and workforce housing for sale</p>	<ul style="list-style-type: none"> <li>•</li> <li>• Establishes 1<sup>st</sup> option to purchase the RH or workforce housing unit by the Authority.</li> <li>• Establishes requirements of sale or transfer and formula for buy back purchase price.</li> <li>• Regulates any subsequent mortgage placed on the RH or workforce housing unit.</li> </ul>

<b>Section:</b>	<b>Description of Proposed Rule Change:</b>
§15-218-36 First option to purchase	Deletes section; no longer necessary.
§15-218-37 Sale or transfer of reserved housing units	Deletes section; no longer necessary.
§15-218-38 Foreclosure	Corrects section references.
§15-218-39 Transfers of title pursuant to a mortgage foreclosure	Corrects section references.
§15-218-40 Incorporation in deed	Corrects section references. Includes workforce housing units.
§15-218-41 Equity sharing requirements	<ul style="list-style-type: none"> <li>• Requires equity sharing for workforce housing units.</li> <li>• Clarifies the Authority's first right of refusal.</li> <li>• Amends equity sharing requirements.</li> <li>• Amends equity sharing formula.</li> <li>• Deletes provisions for the developer to buy out equity sharing</li> <li>• Makes allowance for cost of Owner's improvements.</li> </ul>
§15-218-42 Deferral of first option to purchase and equity sharing.	Adds conditions to deferral of first option to purchase and equity sharing.
§15-218-43 Terms of reserved housing and workforce housing for rent	<p>New section; establishes terms of RH and workforce housing for rent</p> <ul style="list-style-type: none"> <li>• Maximum allowable rent based on 140% of AMI and weighted average rent based on 120% of AMI.</li> <li>• Regulated for 30 years</li> </ul>
§15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for Rent	<p>New section; establishes factors for RH and workforce housing rents</p> <ul style="list-style-type: none"> <li>○ Rent = 30% of <i>Applicable AMI</i></li> <li>○ Includes all utilities and other building cost, but exempts telephone, television, internet service and parking.</li> <li>• ED to establish and publish formula for calculating monthly rents of a rental reserved housing units.</li> </ul>
§15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner	New Section; addresses rental of a RH or workforce housing unit by the owner.
§15-218-46 Cash-in-lieu	<p>New section; establishes formula for calculating cash in lieu. The cash-in-lieu of providing reserved housing shall be the higher of:</p> <ul style="list-style-type: none"> <li>• 7% of Gross revenue, or</li> </ul>

	<ul style="list-style-type: none"> <li>• Difference of average fair market value and average RH sales price multiplied by the number of RH units.</li> </ul>
§15-218-47 Effects of subsequent rule amendments	Adds workforce housing units.
§15-218-48 Fees for administering reserved housing and workforce housing program	New section. Adds a provision for establishing fees for administering reserved housing and workforce housing program.
Subchapter 4	Repealed.



<b>Section:</b>	<b>Description of Proposed Rule Change:</b>
§15-218-55 Workforce Housing Projects	<ul style="list-style-type: none"> <li>• Provides for rental workforce housing.</li> <li>• Amends AMI to 120%.</li> <li>• Deletes unit size limit.</li> <li>• Deletes workforce housing exemption from the requirements of §15-218-35, <i>Terms of RH for Sale</i>, §15-218-36, <i>First Option to Purchase</i>, and §15-218-41, <i>Equity Sharing Requirements</i>.</li> <li>• Allows Authority to consider modifications to Chapter 217.</li> <li>• Makes workforce housing subject to provisions of RH Rules, unless specifically exempted.</li> <li>• Exempts Workforce Housing from §15-218-39, <i>Transfers of Title pursuant to a Mortgage Foreclosure</i>.</li> </ul>
§15-218-56 Factors to be used for workforce housing unit sale price determination	New section; establishes factors to be used to determine the sales price for workforce housing.
§15-218-57 Terms of Workforce Housing	<p>New section; provides for and regulates buy back of workforce housing units.</p> <ul style="list-style-type: none"> <li>○ Authority shall have the first option to purchase the unit. Provides notification requirements, options to purchase, and provisions for purchase by transfer.</li> <li>○ Purchase price shall be based on the lower of: <ul style="list-style-type: none"> <li>➤ The workforce housing sales price based on the applicable AMI at the time of resale; or</li> <li>➤ The original sales price of the workforce housing unit escalated by a corresponding consumer price index factor from the date of initial purchase to the date of resale on the unit.</li> </ul> </li> <li>○ Any subsequent mortgage shall not exceed 80% of the original purchase price of the workforce housing unit and shall require ED approval.</li> </ul>

<b>Section:</b>	<b>Description of Proposed Rule Change:</b>
§15-218-58 Terms of Workforce Housing for Rent	New section; establishes terms of rental workforce housing units, including if the workforce housing unit is converted to a for sale unit.
§15-218-59 Factors to be Used for Determining Monthly Rent for Workforce Housing for Rent	New Section; establishes factors for determining rent for workforce housing unit.
§15-218-60 Rental of Workforce Housing Unit by Workforce Housing Owner	New Section; provides for and regulates rental of workforce housing unit by workforce housing owner.
§15-218-61 Deferral of First Option to Purchase Workforce Housing Unit	New section; provides for the deferral of first option to purchase workforce housing units under certain circumstances.
§15-218-62 Incorporation in Deed for Workforce Housing	New Section that provides for deed restriction of workforce housing units.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Rules Amending Title 15  
Hawaii Administrative Rules

\_\_\_\_\_, 2018

1. Chapter 218 of Title 15, Hawaii Administrative Rules, entitled "Kakaako Reserved Housing Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT [~~AND~~] &  
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

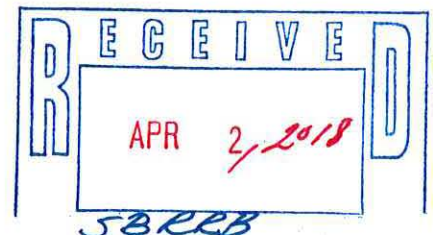
CHAPTER 218

KAKAAKO RESERVED & WORKFORCE HOUSING RULES

Subchapter 1 General Provisions

§15-218-1 Purpose and intent  
§15-218-2 Administration  
§15-218-3 Severability  
§15-218-4 Interpretation by the executive  
director  
§15-218-5 Definitions

§§15-218-6 to 15-218-16 Reserved



Subchapter 2     Reserved Housing and Workforce  
Housing Requirements

\$15-218-17	Requirement for reserved housing units
\$15-218-18	Adjustments to height, density, and general development requirements for reserved housing units
<u>\$15-218-19</u>	<u>Unit type and corresponding factor</u>
<u>\$15-218-20</u>	<u>Occupancy Guidelines for sale or rental of reserved housing and workforce housing units</u>
<u>\$15-218-21</u>	<u>Workforce housing project(s)</u>

§§15-218-22 to 15-218-28     Reserved

Subchapter 3     Sale and Rental of Reserved  
Housing and Workforce Housing  
Units

\$15-218-29	Purpose
\$15-218-30	<u>General Qualifications for purchase of reserved housing and workforce housing units</u>
\$15-218-31	Sale and rental of reserved housing <u>and workforce housing units</u>
\$15-218-32	Income
\$15-218-33	Occupancy requirements
\$15-218-34	<del>[Affordability Criteria]</del> <u>Factors to be used for reserved housing and workforce housing unit sale price determination</u>
\$15-218-35	<del>[Term]</del> <u>Terms of reserved housing <del>[requirements]</del> and workforce housing units for sale</u>
\$15-218-36	Repealed
\$15-218-37	Repealed
\$15-218-38	Foreclosure
\$15-218-39	Transfers of title pursuant to a mortgage foreclosure
\$15-218-40	Incorporation in deed
\$15-218-41	Equity sharing requirements

- §15-218-42      Deferral of first option to purchase and equity sharing
- §15-218-43      Terms of reserved housing and workforce housing for rent
- §15-218-44      Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent
- §15-218-45      Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term
- §15-218-46      Cash-in-lieu
- §15-218-47      Effects of subsequent rule amendments
- §15-218-48      Fees for administering reserved housing and workforce housing program

§§15-218-49 to 15-218-54   Reserved

Subchapter 4    Repealed

§15-218-55      Repealed

Historical note: Chapter 15-218 is based substantially upon Chapter 15-22. [Eff 9/8/86; am and comp 1/28/88; am 7/28/88; am 12/10/88; am 3/9/89; am 7/8/89; am 10/28/89; am 1/29/90; am and comp 2/24/90; am 7/26/90; am 9/15/90; am 10/3/94; am 12/15/94; am 8/14/95; am 11/25/96; am 1/25/97; am 3/27/97; am 6/13/97; am 8/1/97; am 9/19/97; am 8/16/99; am 1/13/00; am 9/15/01; am 6/13/05; R 11/11/11]

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## SUBCHAPTER 1

### GENERAL PROVISIONS

**§15-218-1 Purpose and intent.** Consistent with the intent of section 206E-33, Hawaii Revised Statutes, the purpose of ~~[these rules]~~ this chapter is to establish an increased supply of housing for ~~[residents of]~~ low- or moderate-income households within the Kakaako community development district. Such housing targeted to low-or moderate-income ~~[housing,]~~ households, is henceforth termed "reserved housing" and "workforce housing" in the subsequent subchapters. ~~[shall be required as a condition of new residential development or redevelopment within the Kakaako community development district.]~~ Reserved housing shall be required as a condition of multifamily residential development or redevelopment within the Kakaako community development district. Workforce housing shall be voluntary as part of workforce housing program described in this chapter.

[Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-2 Administration.** The authority, through its executive director, shall administer the provisions of this chapter. [Eff 11/11/11; comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-3 Severability.** If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of ~~[these rules]~~ this chapter shall

continue to be separately and fully effective. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-4 Interpretation by the executive director.** (a) In administering this chapter, the executive director ~~[may]~~, when deemed necessary, may render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity, and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the problem;
- (3) A statement of interpretation; and
- (4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to ~~[these rules]~~ this chapter shall be public record, and shall be effective on the date signed by the executive director. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-5 Definitions.** As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Area median income" means ~~[area median income (AMI) for Honolulu that is provided to Fannie Mae by the Federal Housing Finance Agency;]~~ the area median family income (AMI) determined by the United States, Department of Housing and Urban Development annually for the Honolulu metropolitan statistical area as adjusted for household size.

"Authority" or "HCDA" means the Hawaii community development authority established by section 206E-3, [~~HRS~~] Hawaii Revised Statutes.

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any man-made change over, upon, under, or across improved or unimproved real property within the mauka area[~~;~~].

~~["Eligible borrower" means any person or family, irrespective of race, creed, national origin, or sex, who:~~

- ~~(1) Has never before obtained a loan under this part; and~~
- ~~(2) Meets other qualifications as established by rules adopted by the authority;]~~

"Executive director" means the executive director of the authority[~~;~~].

"Fair market value" means the unencumbered fair market value of a property that has no state or county restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, Hawaii Revised Statutes.

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a percent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot[~~;~~].

"Gross revenue" means the gross receipt from sale of all residential units, associated parking, and other common area elements in a project for the purpose of calculating cash-in-lieu payment in lieu of providing for-sale reserved housing units. For rental reserved housing, the capitalized value of net operating rent shall be utilized as gross revenue for the purpose of calculating cash-in-lieu payment.

"Household" means:

- (1) Single person;
- (2) Two or more persons regularly living together related by blood, marriage, or by operation of law;
- (3) A live-in aide, who is essential to the care



and well-being of a household member subject to proper documentation and credential as a qualified caregiver; or

- (4) No more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to the authority in its sole discretion. Affidavits from family members or neighbors are not acceptable.

"Household income" means the total annual income, before taxes and personal deductions, received by all members of the applicant's household, including[7] but not limited to[7] wages, salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, social security payments, retirement benefits, income derived from assets, cost of living allowance, net income from business or profession, unemployment benefits, welfare benefits, interest and dividend [payments7] payments. Household income shall exclude income of a co-mortgagor who is not a household member, income from employment of minor children including foster children, and income from employment of full-time students under the age of twenty-three years.

"HRS" means the Hawaii Revised Statutes [7].

"HUD" means the United States, Department of Housing and Urban Development.

"Land trust" means a recorded instrument as defined in chapter 558, HRS[7].

"Licensed life care facilities" means licensed assisted living facilities as defined in section 321-15.1, HRS[7].

"Low-income household" means a household whose household income does not exceed eighty percent of the area median income.

"Moderate-income household" means a household whose household income is greater than eighty percent but does not exceed one hundred forty percent of the area median income.

"Multi-family [~~dwelling~~] residential development" means residential building consisting of more than one residential unit[~~;~~].

~~["Net appreciation" means the resale fair market value of a reserved housing unit less the original contract price of the same and actual sales costs incurred, if any;]~~

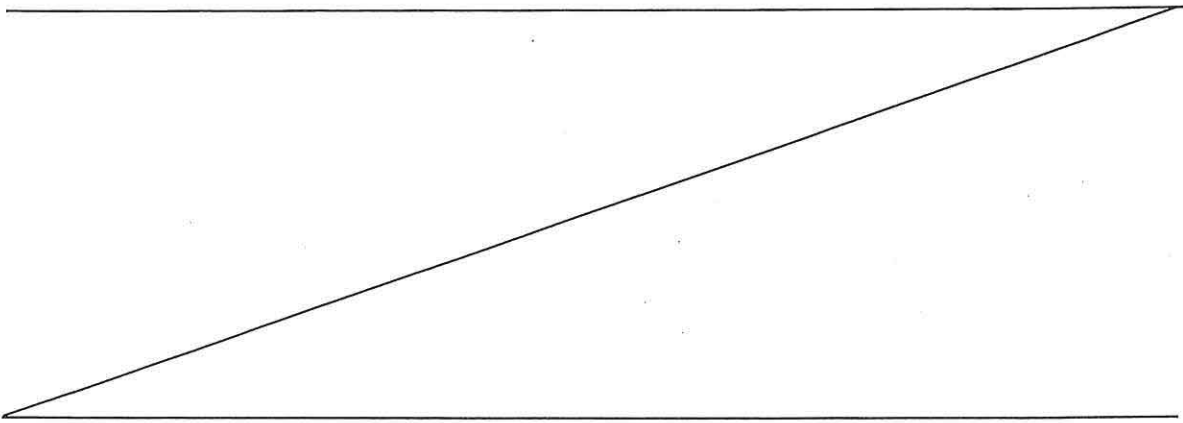
"Reserved housing" means housing designated for residents in the low-income or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule[~~;~~].

~~["Residential floor area" means the gross total residential floor area including the dwelling unit(s) and limited common areas such as lobby, hallways, storage, covered recreation area, and similar areas set aside for the residents; and]~~

"Workforce housing project" means new multi-family residential [project(s)] development where at least seventy-five percent of the residential units are set aside for purchase [~~by families between one hundred to one hundred forty per cent of the AMI,~~] or for rent by households earning no more than one hundred forty per cent of the AMI. [~~and which does not require financial assistance for construction from Federal, State, or County governmental bodies, and which meets the size requirements set forth in subchapter 4 of this chapter].~~

Terms not defined in this section shall be accorded their commonly accepted meanings. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-6 to 15-218-16 (Reserved) [~~-~~]



## SUBCHAPTER 2

### RESERVED HOUSING AND WORKFORCE HOUSING REQUIREMENTS

**§15-218-17 Requirement for reserved housing units.** (a) Every developer applying for a development permit for approval to construct multi-family dwelling units on a lot greater than 20,000 gross square feet shall provide at least twenty percent of the total number of residential units in the development as reserved housing units. [~~construct and reserve at least twenty per cent of the total residential floor area as reserved housing units. The percentage of residential floor area developed as reserved housing shall be fifteen per cent if the units are developed as rental units.~~] Reserved housing units may be provided as for-sale units or rental units.

(b) [~~Such reserved~~] Reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 3. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and [~~such~~] the agreements shall be binding upon the developer and any successors in interest, and shall run with the land. The agreement shall provide that the developer must provide certification to the authority as to the compliance of the requirements herein to qualify for a certificate of occupancy for the project for which provisions of this chapter are applicable.

(c) Occupants of reserved housing units shall have access to and use privileges for the same amenities as all other occupants of the development. Reserved housing units shall be distributed in the building in such a manner that they do not form an isolated section of the project.

(d) If the authority so determines, it may allow the developer to meet the requirement of subsection (a) [~~above~~] through the following alternatives instead

of providing reserved housing units within the development:

- (1) By providing [~~such~~] reserved housing units elsewhere within the mauka area; [~~or~~]
- (2) By providing [~~such~~] reserved housing units elsewhere within urban Honolulu. The authority may impose additional reserved housing requirements in approving transfer of reserved housing from mauka area to other locations within urban Honolulu. [~~Such~~] The additional reserved housing requirements shall be determined on a case-by-case basis by the authority at the time of approval of the development permit[-]; or
- (3) By allowing a cash-in-lieu payment instead of providing reserved housing units.

(e) The [~~delivery~~] construction of reserved housing units shall [~~be required~~] commence prior to the issuance of the initial certificate of occupancy for the project for which [~~provision of this chapter are applicable and~~] reserved housing is required and shall be secured by the developer with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the authority prior to the approval of the building permit for the project by the authority. In addition, the developer shall provide the authority a copy of a duly executed construction contract with a general construction contractor licensed to conduct business in the State of Hawaii for the construction of the reserved housing units.

(f) The developer shall execute such agreements as are necessary to implement any alternative reserved housing requirement, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land.

(g) Licensed life care facilities shall be exempt from the reserved housing requirement. In a proposed development that includes licensed life care facilities as well as residential dwelling units, the

reserved housing requirements shall apply only to the residential dwelling portion of the development.

(h) No construction shall commence for any development within the mauka area on a lot greater than 20,000 square feet unless the development conforms to the provisions of this chapter and the authority has certified that the development complies with the requirements of this chapter.

(i) The authority may require guarantees, may enter into recorded agreements with developers and with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to ~~[assure]~~ ensure that ~~[these]~~ the reserved housing units are provided and that they are occupied by qualified persons for the ~~[required duration.]~~ regulated term.

(j) The authority may suspend ~~[these]~~ the requirements for reserved housing for a limited duration or modify any provisions of this rule, if, based on market conditions and in its sole judgment, it determines that ~~[these]~~ the requirements of this rule may unduly impede, preclude, or otherwise negatively impact the primary objective of the authority to promote redevelopment within the Kakaako community development district.

(k) When it has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the development permit application approved as to the reserved housing requirements of this chapter. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

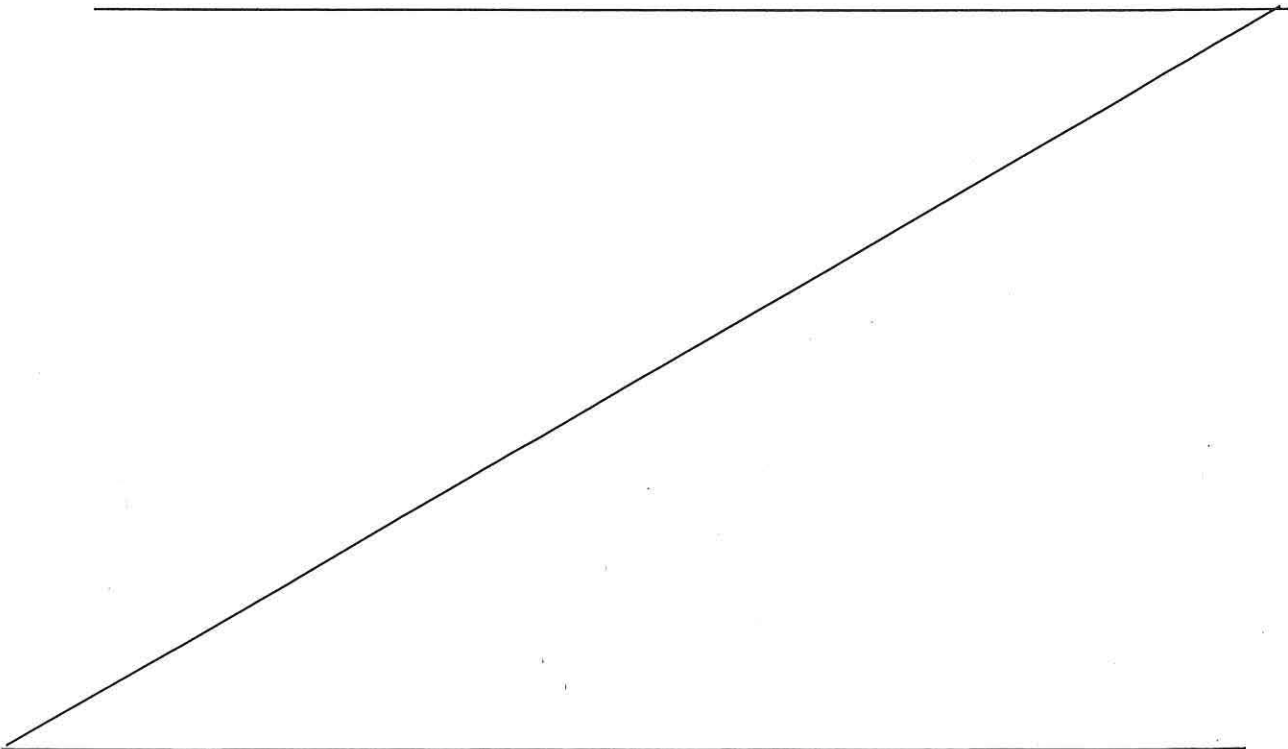
**§15-218-18 Adjustments to height, density, and general development requirements for reserved housing units.** (a) Except as otherwise provided, any ~~[developer who applies for a development permit proposing a]~~ multi-family residential development on a lot greater than 20,000 square feet ~~[who]~~ that meets

applicable provisions of this chapter shall be entitled to adjustments in FAR and general development requirements as follows:

- (1) Residential floor area for reserved housing shall be excluded from calculations of floor area ratio; and
- (2) Residential floor area for reserved housing shall be exempt from the provisions of ~~{Hawaii administrative rules, section 15-217-65; and~~
- ~~(3) For reserved housing units, the off-street parking space requirement shall be one stall per unit.~~ Hawaii administrative rules, section 15-217-65.

(b) The authority may also consider modifying the following requirements of the mauka area rules as an incentive to providing [additional] reserved housing by an applicant:

- (1) Building height;
- (2) Street setbacks; [and]
- (3) Off-street parking; and
- ~~[-(3)-]~~ (4) Loading space. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)



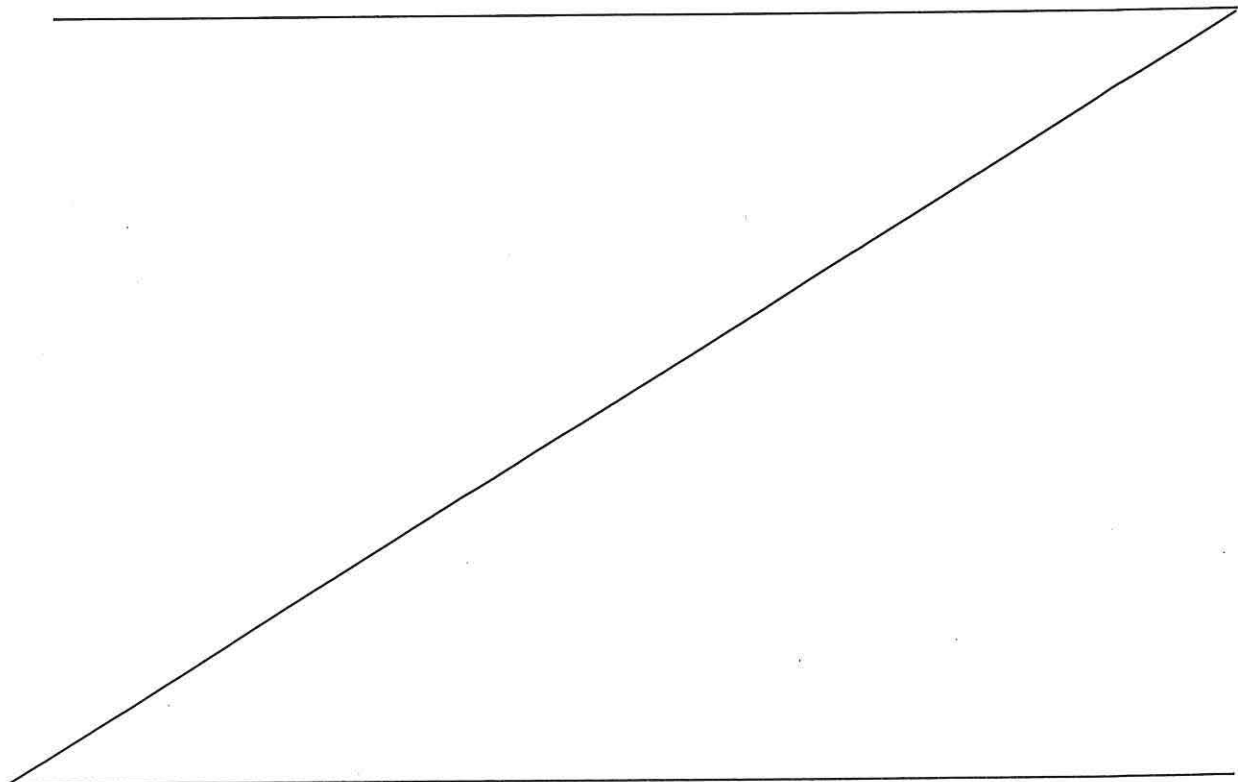
**§15-218-19 Unit type and corresponding factor.**

The Reserved Housing Unit Type and Corresponding Factor Table below shall be utilized in determining the total number of reserved housing units required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND  
CORRESPONDING FACTOR TABLE

<u>Unit Type</u>	<u>Factor</u>
<u>0 Bedroom</u>	<u>0.70</u>
<u>1 Bedroom</u>	<u>0.90</u>
<u>2 Bedrooms</u>	<u>1.00</u>
<u>3 Bedrooms</u>	<u>1.08</u>
<u>3+ Bedrooms</u>	<u>1.16</u>

[Eff and comp ] (Auth: HRS §§206E-4,  
206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)



**§15-218-20 Occupancy guidelines for sale or rental of reserved housing and workforce housing units.** (a) The following occupancy guidelines shall be used for sale or rental of reserved housing units during the initial application period when the number of applications exceeds the number and type of reserved housing units available:

Occupancy Guideline

<u>Unit Type</u>	<u>Preferred Household Size</u>	<u>Minimum Household Size</u>
<u>Studio</u>	<u>1 person</u>	<u>1 person</u>
<u>1 Bedroom</u>	<u>2 persons</u>	<u>1 person</u>
<u>2 Bedrooms</u>	<u>3 persons</u>	<u>2 persons</u>
<u>3 Bedrooms</u>	<u>4 persons</u>	<u>2 persons</u>
<u>4 Bedrooms</u>	<u>5 persons</u>	<u>3 persons</u>

The corresponding household size may be modified by the authority if the units are unsold, unrented, or includes a live-in aide.

(b) The maximum household size shall be based on permissible household size determined by the City and County of Honolulu housing code.

[Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-21 Workforce housing project(s).** (a) New residential project(s) where at least seventy-five percent of the residential units are set aside for



purchase or for rent by households earning no more than one hundred forty percent of the AMI shall qualify as a workforce housing project.

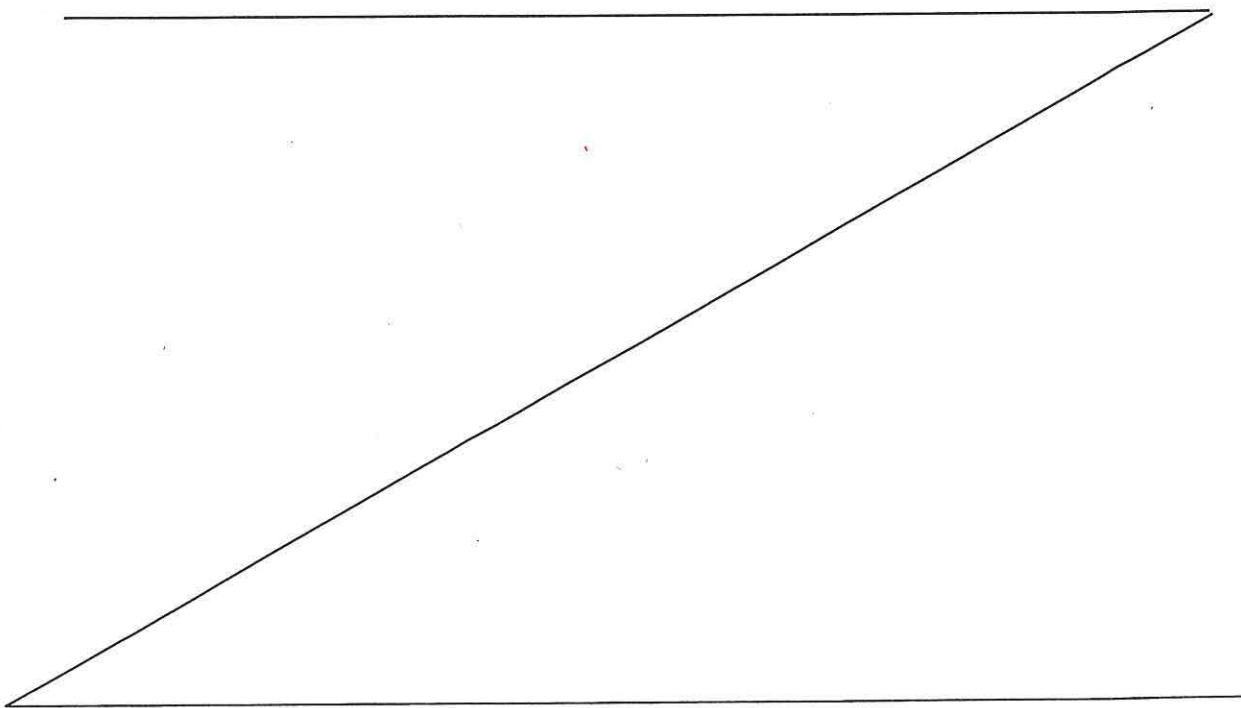
(b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

(c) Workforce housing project(s) shall receive a floor area bonus of one hundred percent, provided that the bonus floor area shall be used towards the construction of workforce housing project(s) only.

(d) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(e) The authority may also consider modifying off street parking and loading requirements of the mauka area rules for workforce housing projects. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~[[§15-218-19]~~ §§15-218-22 to 15-218-28 (Reserved) [-]



SUBCHAPTER 3

SALE AND RENTAL OF RESERVED HOUSING AND WORKFORCE  
HOUSING UNITS

**§15-218-29 Purpose.** The rules set forth in this subchapter shall govern the sale, rental, or transfer of reserved housing and workforce housing provisions of subchapter 2. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-30 General qualifications for purchase of reserved housing and workforce housing units.** (a) The following shall be qualifications for purchasing or [~~leasing of~~] renting reserved housing or workforce housing units by a buyer or a tenant. The buyer or the tenant:

- (1) Shall be at least the age of majority;
- (2) Shall not have a majority interest in a principal residence or a beneficial interest in a land trust on a principal residence within or without the State for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;
- (3) Shall not have a spouse or dependent child who has a majority interest, in a principal residence or a beneficial interest in a land trust on a principal residence for a period of three years immediately prior to the date of application for a reserved housing or a workforce housing unit under this section;
- (4) Has never before purchased a reserved housing or workforce housing unit under this chapter;
- [~~(4)~~] (5) Shall be the owner or lessee and occupant of the reserved housing or workforce housing unit; [~~and~~]

~~[-5-]~~ (6) Shall not have a record or history of conduct or behavior, including past rent payments, which may prove detrimental to other tenants or the authority. This criterion shall be applied within parameters set by federal laws on discrimination, including the Americans with Disabilities Act~~[-]~~; and

(7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing or workforce housing unit, or in case of a rental reserved housing or workforce housing unit demonstrate an ability to pay rent as established by the authority and meet any additional criteria established by the authority for the respective rental housing development for which the applicant is applying.

(b) Subject to approval of the executive director, a current owner of a reserved housing or workforce housing unit may apply to purchase a larger reserved housing or workforce housing unit provided that:

- (1) The applicant's current household size determined by the number of individuals on title and their dependents, has increased and exceeds the occupancy guideline established in section 15-218-20;
- (2) The applicant has resided in the current reserved housing or workforce housing unit for at least one year; and
- (3) The applicant qualifies to purchase a reserved housing or workforce housing unit in accordance with subsection (a), except that the applicant's current ownership of a reserved housing or workforce housing unit shall not disqualify the applicant under subsection (a)(2), (3), and (4). [Eff 11/11/11; am and comp ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

(c) If a household includes two or more persons regularly living together that are related by blood, marriage, or by operation of law, the majority interest restriction shall apply to all household members. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-31 Sale and rental of reserved housing and workforce housing units.** (a) The authority may advertise the sale or rental of reserved housing and workforce housing units and qualify and select persons for reserved housing and workforce housing units. It may also permit the developer of such units, or the developer's designated representative, to be responsible for advertising, qualifying, and selecting persons subject to the provisions of this chapter.

(b) Applications for the purchase or rental of reserved housing and workforce housing units shall be accepted on a first-come, first-served or on a lottery basis. The applications shall be submitted in person by the applicant. Only completed applications shall be acceptable. Applicants shall not be required to submit a deposit amount exceeding \$500.

(c) Notice of the proposed sale or rental of reserved housing and workforce housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include[~~7~~] but not be limited to[~~7~~] the following:

- (1) General description of the project in which the reserved housing or workforce housing units are located including its location, number of reserved housing or workforce housing units, size of the reserved housing or workforce housing units by number of bedrooms, and sales prices or rental rates;
- (2) Qualification requirements for purchase of reserved housing or workforce housing units including maximum income limits, restrictions on ownership of property, the

authority's first option to purchase and shared equity requirements for reserved housing or workforce housing units for sale, and occupancy guidelines [~~permissible household sizes~~];

- (3) A statement that buyers or renters shall be selected on a first-come, first-served or on a lottery basis, whichever is applicable;
- (4) Where and when applications may be obtained and the first date, including time and place, when applications will be accepted, and subsequent dates, times, and places for submission of applications;
- (5) Deadline for submission of applications; and
- (6) In the case of a reserved housing unit and workforce housing for sale, the deposit amount and mode of acceptable payment.

The time period between publication of the notice and the first acceptance of applications shall not be less than fourteen business days. The period shall be computed from the first day of publication of the notice.

(d) Priority shall be given to applicants who have been displaced from housing within the Kakaako community development district as a result of [~~development~~] redevelopment in the mauka area [~~-~~] within a five-year period.

(e) Applicants shall be allowed to select a reserved housing or workforce housing unit based on maximum income limits, qualifying income, preference, occupancy guidelines [~~permissible household sizes~~], and availability of the reserved housing or workforce housing unit.

(f) In the event the developer, or the developer's designated representatives have accepted and processed applications and selected applicants for reserved housing or workforce housing units, a certification shall be submitted to the authority that the selection was made on a first-come, first-served or a lottery basis. Applicants shall be listed in the order in which the applications were accepted and the list shall be available for inspection by the

authority. The final applications for those persons selected shall be made available to the authority and the authority shall review the applications to ensure that the applicants meet the eligibility requirements established under this chapter.

(g) Reserved housing and workforce housing applicants shall provide financial and family information with the reserved housing or workforce housing application.

(h) The authority may also require applicants to provide documentation to verify information submitted to the authority, including but not limited to:

- (1) Asset verification;
- (2) Verification of deposit;
- (3) Verification of employment; and
- (4) Credit bureau report. An applicant found to have [~~willfully~~] wilfully submitted false information, made misstatements, or withheld important information shall be disqualified from purchasing or renting a reserved housing or a workforce housing unit under this chapter. The authority retains its right to recover any money wrongfully gained by the applicant or to any other recourse provided by law. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-32 Income.** (a) The household income of the applicant shall not exceed one hundred forty percent of the area median income (AMI) as determined by the United States Department of Housing and Urban Development.

(b) The adjusted household income shall be the income earned during the most current calendar year preceding the date of application to purchase or rent a reserved housing or workforce housing unit and shall be verified by submittal of most current state [~~or~~] and federal tax returns.

(c) The assets of the applicant shall not exceed one hundred thirty-five percent of the applicable income limit set forth in subsection (a) [~~above~~]. As used [~~herein~~] in this section, assets include [~~r~~] all cash, securities, and real and personal property at current fair market value, less any outstanding liabilities secured by [~~such~~] these assets. Qualified retirements accounts and gifts of up to twenty percent of the purchase price to assist in the down payment for purchase of a reserved housing or a workforce housing unit shall not be counted towards assets. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-33 Occupancy requirements.** (a) The following are occupancy requirements for reserved housing and workforce housing units:

- (1) Applicants for reserved housing and workforce housing units shall certify that, if selected, all applicants will be occupants of the [~~reserved~~] unit; and
- (2) The purchaser or lessee shall physically occupy the reserved [unit; and
- ~~(3) The city and county of Honolulu maximum occupancy limits for a residential dwelling unit shall apply.]~~ housing or workforce housing unit.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section [~~15-218-36~~] 15-218-35 or evict the renter from the unit, as applicable. The authority may require verification of occupancy from the purchaser or the lessee of a reserved housing or workforce housing unit and the purchaser or the lessee shall provide occupancy verification within thirty calendar days from the date of receipt of notification from the authority.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by

the authority shall expressly contain the restrictions on ~~[use]~~ occupancy prescribed in this section.

(d) The restriction prescribed in subsection (a) above shall not apply if the authority waives its option to purchase the reserved housing or the workforce housing unit or subsequent to the expiration of the option to purchase period. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-34 [Affordability criteria.] Factors to be used for reserved housing and workforce housing unit sale price determination.** (a) The following ~~[criteria shall be used in determining price and income equivalencies of units for sale:]~~ factors shall be used in determining the reserved housing and workforce housing unit respective sale price:

- (1) Down payment amount shall not exceed ten percent of the purchase price;
- (2) ~~[Monthly payments, which consist of]~~ Maximum allowable monthly housing cost consisting of mortgage payment including principal and interest, real property taxes, mortgage insurance premium, and fees and costs required by the bylaws of a condominium property regime, shall not exceed thirty-three percent of gross monthly ~~[income or some other percentage approved by the United States Department of Housing and Urban Development; and]~~ household income;
- (3) Interest rate shall be derived by taking the average of ~~[the interest rate on thirty-year fixed rate mortgages posted for major Honolulu banks in the first week of each of the preceding six months.]~~ the thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by the Federal Home Loan Mortgage Corporation (Freddie Mac); and
- (4) Unit type and corresponding factor as provided in section 15-218-19.



(b) ~~[The following criteria shall be used in determining price and income equivalencies of units for rent: monthly rent and all utilities and other building operating costs (excluding telephone, cable television and internet service) shall not exceed thirty-three per cent of the renter's gross monthly income.]~~ Annually within forty-five days of HUD's update of area median income (AMI) limits, the executive director shall establish and publish a formula for calculating the applicable sale price of reserved housing and workforce housing units based on the factors enumerated in subsection (a).

(c) The maximum allowable sales price of a reserved housing or a workforce housing unit may be calculated based on an AMI of no more than one hundred forty percent, provided that the weighted average sales price of all reserved housing or workforce housing units in a project shall be the price calculated based on an AMI of no more than one hundred and twenty percent.

[Eff 11/11/11; am and comp ] (Auth:  
HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4,  
206E-5, 206E-7)

**§15-218-35** ~~[Term]~~ Terms of reserved housing and workforce housing~~[requirements.]~~units for sale. ~~[(a)]~~  
The regulated term for reserved housing units that are for sale shall be five years from the date of issuance of certificate of occupancy. Reserved housing rental units shall be regulated for fifteen years. The authority may suspend or modify regulated term and qualifying income requirements on a project by project basis, if, in its sole judgment, it determines that these requirements are negatively impacting the sale or rental of reserved housing units as the primary objective of the authority to promote redevelopment within the Kakaako community development district.

~~(b) During the regulated term, a reserved unit owner shall not purchase additional limited common elements or personal property.~~

~~(c) During the regulated term, the executive director shall approve any initial or subsequent mortgage placed on a reserved unit which does not exceed eighty per cent of the original purchase price of the unit.~~

~~(d) After the end of the regulated term, the owner may sell the unit or assign the property free from any transfer or price restrictions except for applicable equity sharing requirements set forth in section 15-218-41.]~~

(a) The regulated term for a reserved housing or workforce housing unit shall be ten years from the issuance of certificate of occupancy. If the owner of a reserved housing unit or a workforce housing unit wishes to sell the unit within ten years from the date of issuance of certificate of occupancy for the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(b) After the end of the regulated term, the owner may sell the unit or assign the property free from any transfer or price restrictions except for applicable equity sharing requirements set forth in section 15-218-41.

(c) Sale or transfer of reserved housing or workforce housing units shall be as follows:

- (1) The owner shall notify the authority in writing of the intent to sell the reserved housing or workforce housing unit;
- (2) The authority shall notify the owner of authority's decision within sixty days of receipt of the owner's notification required in subsection (b) (1). The authority may:
  - (A) Waive its option to purchase the unit;
  - (B) Agree to purchase the unit; or
  - (C) Designate another buyer for the unit;
- (3) If the authority fails to notify the owner of a decision in the manner prescribed in paragraph (2), the authority shall have waived its first option to purchase the

unit;

- (4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority.

(d) The buyback price shall be determined based on the original fair market value of the reserved housing or workforce housing unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors plus the allowable cost of improvements made by the owner, if any, less the authority's share of equity in the unit. The owner shall provide financial documents acceptable to the authority indicating the actual cost of the improvements before the cost shall be eligible for inclusion in determining the buyback price. The buyback price shall be no less than the original sale price of the reserved housing or workforce housing unit. The amount paid by the authority to the seller shall be the difference, if any, between the buyback price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

(e) Any subsequent mortgage placed on the reserved housing or workforce housing unit by the owner shall require approval from the executive director and shall not exceed the buyback price established by subsection (d).

[Eff 11/11/11; am and comp ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)

~~§15-218-36 First option to purchase.~~ If the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit. The purchase price shall be based on the lower of:

- ~~(1) The current fair market price of the reserved housing unit as determined by the authority less the authority's share of equity in the unit as determined by section 15-218-42; or~~
- ~~(2) The reserved housing unit price calculated based on the AMI at the time of sale of the unit.] [ {Eff 11/11/11; R \_\_\_\_\_ }  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~

~~§15-218-37 Sale or transfer of reserved housing units.~~ Sale or transfer of reserved housing units during the regulated term shall be as follows:

- ~~(1) The authority or an entity approved by the authority shall have the first option to purchase the unit in the manner indicated in section 15-218-36;~~
- ~~(2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;~~
- ~~(3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (a)(2) above. The authority may:  
(A) Wave its option to purchase the unit,  
(B) Agree to purchase the unit, or  
(C) Designate another buyer for the unit;~~
- ~~(4) If the authority fails to notify the owner of a decision in the manner prescribed in~~

~~subsection (a)(3), the authority shall have waived its first option to purchase the unit;~~

~~(5) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and~~

~~(6) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-36 (1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.]~~

~~[{Eff 11/11/11; R \_\_\_\_\_} (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~

**§15-218-38 Foreclosure.** In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing or workforce housing unit ~~[and land or leasehold interest]~~ subject to the restrictions of ~~[sections 15-218-35, 15-218-36, and 15-218-37,]~~ section 15-218-35, shall, prior to commencing mortgage foreclosure proceedings, notify the authority ~~[of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS. The authority shall be a party to any foreclosure action, and shall be~~

~~entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record. The person in default shall be entitled to any amount remaining provided the amount shall not exceed the lower of the amounts computed in section 15-218-35.]~~ of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS.

The authority shall be a party to any foreclosure action and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record, up to a maximum of the authority's share of equity in the unit. The person in default shall be entitled to any amount remaining after payment of the authority's share of equity in the unit. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-39 Transfers of title pursuant to a mortgage foreclosure.** The conditions prescribed in [~~sections 15-218-35, 15-218-36, and 15-218-37(a)(1) through (6) above~~] section 15-218-35 and section 15-218-41 shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-40 Incorporation in deed.** The provisions of sections 15-218-35 [~~through 15-218-37, and section~~] and 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other

instrument of conveyance for reserved housing and  
workforce housing units. [Eff 11/11/11; am and  
comp ] (Auth: HRS §§206E-4, 206E-5,  
206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-41 Equity sharing requirements.**

(a) The authority's share of the equity in the reserved housing or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one percent.

~~[The authority's share of the equity in the reserved housing unit shall become due upon resale of the reserved housing unit.]~~

(b) If the authority waives its first option to purchase a reserved housing or workforce housing unit as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or workforce housing unit shall become due upon sale of the unit.

~~[The authority's share of the equity in the reserved housing or workforce housing unit shall be the higher of:~~

- ~~(1) An amount equal to the difference between the original fair market price of the unit as determined by the authority and its original sales contract price; or~~
- ~~(2) An amount equivalent to the percentage of net appreciation calculated as the difference between the original fair market price of the unit as determined by the authority and its original contract price divided by the original fair market price of the unit.~~

~~(c) At its sole discretion, the authority may allow the project developer to buy out the shared appreciation provisions for all or a portion of the reserved housing units by making a cash payment to the authority of an amount equal to the amount for equity sharing calculated in subsection (b) above.]~~

(c) If the authority's percentage share of equity is less than one-half of one percent, or if the resale fair market value of the reserved housing or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (a) shall not be applicable.

~~[(d) The owner of the reserved housing unit shall provide financial documents acceptable to the authority before the cost of improvements made by the owner can be deducted from the sale price.]~~

~~[(e)]~~ (d) The authority shall determine the fair market value of the reserved housing or workforce housing unit at the time of original sale and also at the time of resale.

~~[(f)]~~ (e) The resale price and terms shall be approved by the authority.

(f) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to the mortgage or lien in writing.

[Eff 11/11/11; am and comp ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS  
§§206E-4, 206E-5, 206E-7)



**§15-218-42 Deferral of first option to purchase and equity sharing.** The authority may [~~consider deferring the equity sharing in case an owner of a reserved housing unit wishes to transfer title to the unit by devise or through the laws of descent to a family member who would otherwise qualify for purchase of a reserved housing unit under this chapter.~~] defer its first option to purchase and equity sharing in the following instances:

- (1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
- (2) Transfer to a relative who meets eligibility requirements upon death of the purchaser;
- (3) Transfer to spouse or children who meet eligibility requirements;
- (4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes the owner;
- (5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
- (6) Transfer into a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability. [Eff 11/11/11; am and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-43 Terms of reserved housing and workforce housing for rent.** Reserved housing and workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. The maximum allowable rent may be calculated based on an AMI of one hundred and forty percent. The weighted average rent of all reserved housing or workforce housing units in a project shall not exceed the allowable rent

calculated based on one hundred twenty percent of AMI.  
[Eff and comp ] (Auth: HRS §§206E-4,  
206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent.** Monthly rent for reserved housing or workforce housing units for rent shall be based on no more than thirty percent of the applicable AMI. Monthly rent shall include all utilities and other building operating costs but may exclude telephone, cable television, and internet service, and parking fees. Allowance for tenant furnished utilities and other services shall be based on data published by the authority on an annual basis. Annually within forty-five days of HUD's update of area median income limits, the executive director shall establish and publish a formula for calculating the applicable monthly rents for reserved and workforce housing units based on the factors enumerated in this section. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term.** The authority may on a case-by-case basis consider requests from a reserved housing or workforce housing unit owner to rent the reserved housing or workforce housing unit during the regulated term. The rental of reserved housing or workforce housing units by owner shall be regulated by sections 15-218-32, 15-218-43 and 15-218-44. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§15-218-46 Cash-in-lieu.** The authority, at its sole discretion, may allow a developer to provide a

cash payment in lieu of providing the required reserved housing units. The amount of such cash-in-lieu payment shall be the higher of:

- (1) Seven percent of the gross revenue of the development project; or
- (2) The difference between the average fair market value of the unit in the development project and the average reserved housing unit sale price in the development project multiplied by the number of reserved housing units required.

For determining a partial cash-in-lieu payment, a proportional formula shall be utilized. [Eff and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§15-218-43~~ **§15-218-47 Effects of subsequent rule amendments.** (a) In the case of subsequent rule amendments, reserved housing and workforce housing owners shall be permitted at their election to:

- (1) Remain subject to the rules in effect at the time of the purchase of the unit~~[ ]~~; or
- (2) Be governed by the amended rules.

(b) The authority~~[ ]~~ or any other entity that the authority transfers the reserved housing or workforce housing to shall notify all reserved housing or workforce housing owners of any change made by law, ordinance, rule, or regulation within one hundred eighty days of ~~[such]~~ the changes. ~~[Such]~~ The notice shall clearly state the enacted or proposed new provisions, the date upon which they are to be effective and offer to each owner of reserved housing units constructed and sold prior to the effective date, an opportunity to be governed by ~~[such]~~ the new provision.

(c) No reserved housing or workforce housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing or workforce housing unit, without the written permission of the holder of a duly-recorded first mortgage on the unit and the owner

of the fee simple or leasehold interest in the land underlying the unit.

(d) This section shall apply to all reserved housing and workforce housing units developed, constructed and sold pursuant to this chapter. [Eff 11/11/11; §15-218-43; am, ren §15-218-47, and comp ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-48 Fees for administering reserved housing and workforce housing program. The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for administering its reserved housing and workforce housing program. At the beginning of each fiscal year the executive director shall publish a schedule of fees for administering the reserved housing and workforce housing program.

[~~§§15-218-44~~] §§15-218-49 to 15-218-54  
(Reserved) [-]

[SUBCHAPTER 4

~~WORKFORCE HOUSING PROJECT(S)~~

~~§15-218-55 Workforce housing project(s).~~ (a) New residential project(s) where at least seventy-five per cent of the residential units are set aside for purchase by families earning between one hundred to one hundred forty per cent of the AMI, which does not require financial assistance for construction from Federal, State, or County governmental bodies, and which meets the following unit size requirements] shall qualify as a workforce housing project.

<del>{Unit Type</del>	<del>Maximum Unit Size (Square Feet)</del>
<del>Studio with one bathroom</del>	<del>500</del>
<del>One bedroom with one bathroom</del>	<del>650</del>
<del>Two bedroom with one bathroom</del>	<del>800</del>
<del>Two bedroom with one and a half bathroom</del>	<del>900</del>
<del>Two bedroom with two bathroom</del>	<del>1,000</del>
<del>Three bedroom with one and a half bathroom</del>	<del>1,100</del>
<del>Three bedroom with two bathroom</del>	<del>1,200</del>
<del>Four bedroom with two bathroom</del>	<del>1,300}</del>

~~—— (b) Workforce housing project(s) shall be exempt from the requirements of sections 15-218-35, 15-218-36, and 15-218-41 of subchapter 3 of this chapter.~~

~~—— (c) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.~~

~~—— (d) Workforce housing project(s) shall receive a floor area bonus of one hundred per cent, provided that such bonus floor area shall be used towards the construction of workforce housing project(s) only.~~

~~—— (e) In approving development permit for a qualified workforce housing project the authority may consider modification(s) to the provisions of Hawaii administrative rules, chapter 217, title 15, mauka area rules.~~

~~—— (f) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.~~

~~Eff 11/11/11; am and comp \_\_\_\_\_ ] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~

~~[§§15-218-56 to 15-218-66 (Reserved)."]~~

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. The amendment to and compilation of chapter 15-218, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

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John Whalen  
Chairperson  
Hawaii Community Development  
Authority

APPROVED AS TO FORM:

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Deputy Attorney General

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DAVID Y. IGE  
Governor  
State of Hawaii

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Filed

### **III. New Business**

B. Discussion and Action on Proposed New HAR  
Title 13, Chapter 60.9, **Mo'omomi Community-  
Based Subsistence Fishing Area, Molokai,**  
promulgated by DLNR



PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Department or Agency: DLNR Division of Aquatic Resources

Administrative Rule Title and Chapter: Title 13, Chapter 60.9

Chapter Name: Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i

Contact Person/Title: David Sakoda, Program Specialist

Phone Number: 587-0104

E-mail Address: David.Sakoda@hawaii.gov Date: April 2, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes  No  (If Yes, please provide webpage address and when and where rules may be viewed in person ☺  
<http://dlnr.hawaii.gov/dar/rules-and-public-notice/>; 1151 Punchbowl St. Room 330 Honolulu, HI 96813, 8am - 3:30 pm, M-F, except Holidays.  
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New  Repeal  Amendment  Compilation

II. Will the proposed rule(s) affect small business? Yes  No  (If No, no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business ... that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes  No  (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes  No  (If Yes, no need to submit this form.)

\* \* \*



**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

The proposed rules prohibit commercial fishing within the Mo'omomi CBSFA, with exceptions for commercial bottomfishing for deep 7 bottomfish and commercial trolling. Commercial fishers will be adversely affected because they will no longer be allowed to commercially fish for nearshore species within the area.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

No increase in direct costs. During the 5-year period from 2013-2017, the reported annual value of commercial catch from the area, excluding deep 7 bottomfish and pelagic species, ranged from \$1,603 to \$3,069 (average \$2,246/year). Over the same time period, between 6 and 13 commercial fishermen fished in the area each year. Projected indirect costs in the form of revenue loss is approximately \$2,246 per year for the entire fishery.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

N/A

- b. Amount of the proposed fee or fine and the percentage increase.

N/A

- c. Reason for the new or increased fee or fine.

N/A

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

N/A

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

There are no changes in fees or fines associated with the proposed rule, so there is no change to the monetary costs and benefits to DLNR or any other agency.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

The proposed rule generally prohibits commercial fishing in the area, but provides exemptions for commercial trolling and commercial bottom fishing for deep 7 bottomfish species.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

The proposed rules are necessary to adequately protect the nearshore marine resources and subsistence fishing practices within the area. No practicable alternative exist.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

The proposed rules have been modified to allow commercial trolling, which targets pelagic species, and commercial fishing for deep 7 bottomfish species in waters deeper than 40 fathoms within the area. The size of the CBSFA was also reduced, which reduces the impact on commercial fishers.

7. How the agency involved small business in the development of the proposed rules.

The Department held four public scoping meetings, two on Molokai, one on Maui, and one on Oahu, as well as a number of stakeholder meetings, to obtain feedback on the proposed rules. The rules were modified as a result of these discussions.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Yes. As described above, the proposed rules were modified to allow continued commercial trolling and take of deep 7 bottomfish species within the area, and the size of the CBSFA was reduced.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

The proposed rules do not include provisions that are mandated by comparable or related federal, state, or county standards.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

N/A

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

N/A

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

N/A

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the  
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

April 13, 2018 BLNR Meeting  
ITEM F-2

Request for Approval to Hold Public Hearings to Adopt a New Chapter Under Hawaii Administrative Rules (“HAR”) as Title 13 Chapter 60.9, Mo‘omomi Community-Based Subsistence Fishing Area, Moloka‘i, to Manage and Protect Fish Stocks and to Reaffirm Traditional and Customary Native Hawaiian Subsistence Fishing Practices Along the Northwest Coast of Moloka‘i.

The Rules can be reviewed online at <http://dlnr.hawaii.gov/dar/rules-and-public-notices/> or can be reviewed or obtained in person at the Division of Aquatic Resources (DAR) offices on Oahu at 1151 Punchbowl St. Room 330 Honolulu, Hawaii 96813 from 8:00 am to 3:30 pm, Monday through Friday, except Holidays.



DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.9  
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.9, Hawaii Administrative Rules, entitled "Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.9

MO'OMOMI COMMUNITY-BASED SUBSISTENCE FISHING AREA,  
MOLOKA'I

\$13-60.9-1	Purpose
\$13-60.9-2	Definitions
\$13-60.9-3	Boundaries
\$13-60.9-4	Permitted and prohibited activities



§13-60.9-1

§13-60.9-5 Kawa'aloa Bay Protected Area  
§13-60.9-6 Penalty  
§13-60.9-7 Severability

**§13-60.9-1 Purpose.** The purpose of this chapter regarding the Mo'omomi Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of communities along the north coast of Moloka'i through culturally-rooted, community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of aquatic life;
- (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area; and
- (4) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§188-22.6, 188-53, 190-3, Haw. Const. art. XI, §6) (Imp: HRS §§188-22.6, 188-53, 190-3)

**§13-60.9-2 Definitions.** As used in this chapter, unless otherwise provided:

"A'ama crab" means any crab known as *Graspus tenuicrustatus* or any recognized synonym.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof;

or freshwater or marine plants, including seeds, roots products, and other parts thereof.

"Area" means the Mo'omomi Community-Based Subsistence Fishing Area (Mo'omomi CBSFA), as encompassed within the boundaries described in section 13-60.9-3(a).

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Day" means a twenty-four hour period.

"Deep 7 bottomfish" means *Pristipomoides filamentosus* ('ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), and *Epinephelus quernus* (hāpu'upu'u).

"Department" means the department of land and natural resources.

"Diving" means any activity conducted in the water involving the use of an underwater breathing apparatus or a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Fish" means any species of marine life with a backbone, gills, and with limbs that are fins, if any.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, rake, or any other tool or implement.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Limu" means any marine alga, including algae in the intertidal zone.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as Pacific threadfin.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Spear" means any device or implement that is designed or used for impaling marine life, whether propelled by hand or with the use of elastic bands or other means. Spears may include but are not limited to spear gun shafts, arbalettes, arrows, Hawaiian slings, or three-prong spears.

"Spiny lobster" means any crustacean in the family Palinuridae. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, green lobster, or ula.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to



fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life.

"Trolling" means fishing by dragging artificial lures or bait behind a vessel that is under way at sufficient speed to produce a wake.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while the person's face is below the surface of the water.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water.

§13-60.9-3

[Eff \_\_\_\_\_ ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.9-3 Boundaries.** (a) The Mo'omomi Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Moloka'i consisting of all state waters and submerged lands between 'Ilio Point in the west and Nihoa Flats in the east, from the shoreline out to approximately one mile. The boundaries of the Mo'omomi CBSFA are described by eastern and western boundary lines, landward and seaward boundary lines, and seven reference points (A, B, C, D, E, F, and G) identified by their latitude and longitude coordinates as follows:

- (1) The western boundary of the Mo'omomi CBSFA is an imaginary straight line drawn along  $157^{\circ}15'14.73''W$  longitude.
- (2) Point A is the point along the western boundary line at the high water mark on shore, located at approximately  $21^{\circ}13'26.00''N$ ,  $157^{\circ}15'14.73''W$ .
- (3) Point B is a point approximately one mile due north of Point A, located along the western boundary line at  $21^{\circ}14'16.41''N$ ,  $157^{\circ}15'14.73''W$ .
- (4) The seaward boundary of the Mo'omomi CBSFA consists of a series of points connected by imaginary straight lines beginning at Point B; then to Point C, located at  $21^{\circ}14'4.93''N$ ,  $157^{\circ}12'31.36''W$ ; then to point D, located at  $21^{\circ}13'23.01''N$ ,  $157^{\circ}11'2.85''W$ ; then to Point E, located at  $21^{\circ}12'56.24''N$ ,  $157^{\circ}9'16.14''W$ ; then to point F, located at  $21^{\circ}11'51.77''N$ ,  $157^{\circ}1'0.47''W$ .
- (5) Point F is a point along the eastern boundary line located approximately one mile seaward of the shoreline.

- (6) The eastern boundary of the Mo'omomi CBSFA is an imaginary straight line drawn contiguous with the western boundary of Kalaupapa National Park that intersects  $21^{\circ}10'50.18''\text{N}$ ,  $157^{\circ}1'12.13''\text{W}$  and  $21^{\circ}11'15.36''\text{N}$ ,  $157^{\circ}1'6.80''\text{W}$ .
- (7) Point G is the point along the eastern boundary line at the high water mark on shore, located at approximately  $21^{\circ}11'1.54''\text{N}$ ,  $157^{\circ}1'9.69''\text{W}$ .
- (8) The landward boundary of the Mo'omomi CBSFA is an imaginary line drawn along the shoreline at the highest wash of the waves between Point A and Point G.

The foregoing boundaries and reference points are shown on Exhibit A entitled "Map of the Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i", dated September 28, 2017, located at the end of this chapter.

(b) The Kawa'aloa Bay Protected Area is established as a subzone within the Mo'omomi CBSFA, and includes all state waters and submerged lands bounded by a line drawn starting from the shoreline at Kaiehu Point on the western side of Kawa'aloa Bay, located at approximately  $21^{\circ}12'4.50''\text{N}$ ,  $157^{\circ}9'26.03''\text{W}$ , to the northernmost submerged rocks offshore of the eastern side of Kawa'aloa Bay, located at approximately  $21^{\circ}12'2.94''\text{N}$ ,  $157^{\circ}9'8.47''\text{W}$ ; then southeast to the submerged rocks located at approximately  $21^{\circ}12'1.55''\text{N}$ ,  $157^{\circ}9'6.30''\text{W}$ ; then due south to a point on the shoreline at the eastern boundary of Kawa'aloa Bay, located at approximately  $21^{\circ}11'54.46''\text{N}$ ,  $157^{\circ}9'6.30''\text{W}$ , as shown on Exhibit B entitled "Map of the Kawa'aloa Bay Protected Area", dated September 28, 2017, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line

§13-60.9-4

drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff  
] (Auth: HRS §§188-22.6, 188-53, 190-3)  
(Imp: HRS §§187A-1.5, 188-22.6, 190-3)

**§13-60.9-4 Permitted and prohibited activities.**

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Mo'omomi Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes, provided that:

- (1) Any fish may be taken by trolling for commercial purposes and may be sold or offered for sale; and
- (2) Deep 7 bottomfish species may be taken in waters deeper than forty fathoms for commercial purposes and may be sold or offered for sale.

(c) It is unlawful for any person to take or possess marine life while diving within the area between 6:00 p.m. and 6:00 a.m.

(d) It is unlawful for any person within the area to engage in or attempt to engage in SCUBA spearfishing, to possess both SCUBA gear and a spear at the same time, or to possess both SCUBA gear and speared aquatic life at the same time.

(e) The following restrictions apply within the Mo'omomi Community-Based Subsistence Fishing Area:

- (1) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time;
- (2) From April 1 through June 30, no person may take or possess any uhu pālupaluka or uhu 'ahu'ula;

- (3) From July 1 through March 31, no person may take more than a total of two uhu pālupaluka or uhu 'ahu'ula per day, or possess more than a total of two uhu pālupaluka or uhu 'ahu'ula at any one time;
- (4) From January 1 through March 31, no person may take or possess any kūmū;
- (5) From April 1 through December 31, no person may take more than two kūmū per day, or possess more than two kūmū at any one time;
- (6) No person may take or possess any kūmū greater than sixteen inches fork length;
- (7) From April 1 through June 30, no person may take or possess any kole;
- (8) From July 1 through March 31, no person may take more than twenty kole, or possess more than twenty kole at any one time;
- (9) No person may take or possess any kole less than five inches in fork length;
- (10) No person may take or possess any moi greater than eighteen inches fork length;
- (11) Moi may only be taken by hook-and-line, spear, or throw net;
- (12) No person may take more than two spiny lobster per day, or possess more than two spiny lobster at any one time;
- (13) Spiny lobster may only be taken by hand harvest or by hook;
- (14) No person may take any 'ōpihi while diving; and
- (15) No person may take or possess any limu with holdfasts or roots attached. [Eff  
] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-6, 188-22.6, 188-53, 190-3)

**§13-60.9-5 Kawa'aloa Bay Protected Area.** (a) It is unlawful for any person to engage in swimming, surfing, body boarding, snorkeling, diving, fishing, operating a vessel, or any other activity that may

§13-60.9-6

otherwise disturb the marine environment within the Kawa'aloa Bay Protected Area. This subsection shall not apply:

- (1) In the case of an emergency requiring such action as may be necessary to prevent loss of life or destruction of property;
- (2) To authorized law enforcement or rescue operations; or
- (3) To persons engaged in subsistence activities as provided in subsection (c).

(b) It is unlawful for any person to take or possess any marine life within the Kawa'aloa Bay Protected Area, except as provided in subsection (c).

(c) Subsections (a) and (b) notwithstanding, any person may engage in the following activities within the Kawa'aloa Bay Protected Area for subsistence purposes only:

- (1) Take and possess any fish species using a throw net from the shoreline between 6:00 a.m. and 6:00 p.m.;
- (2) Take and possess 'a'ama crab by hand-harvest from the shoreline at any time;
- (3) Take and possess limu from the shoreline between 6:00 a.m. and 6:00 p.m., provided that no person shall take limu with the holdfast or roots attached; and
- (4) Take and possess any fish with hook-and-line from the shoreline between 6:00 a.m. and 6:00 p.m., provided that only artificial lures may be used. [Eff ]  
(Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.9-6 Penalty.** (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;

(2) Criminal penalties as provided by section 188-70, HRS; and

(3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff \_\_\_\_\_] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-12.5, 188-22.6, 188-70, 190-5)

**§13-60.9-7 Severability.** If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff

\_\_\_\_\_] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)

2. The adoption of chapter 13-60.9, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

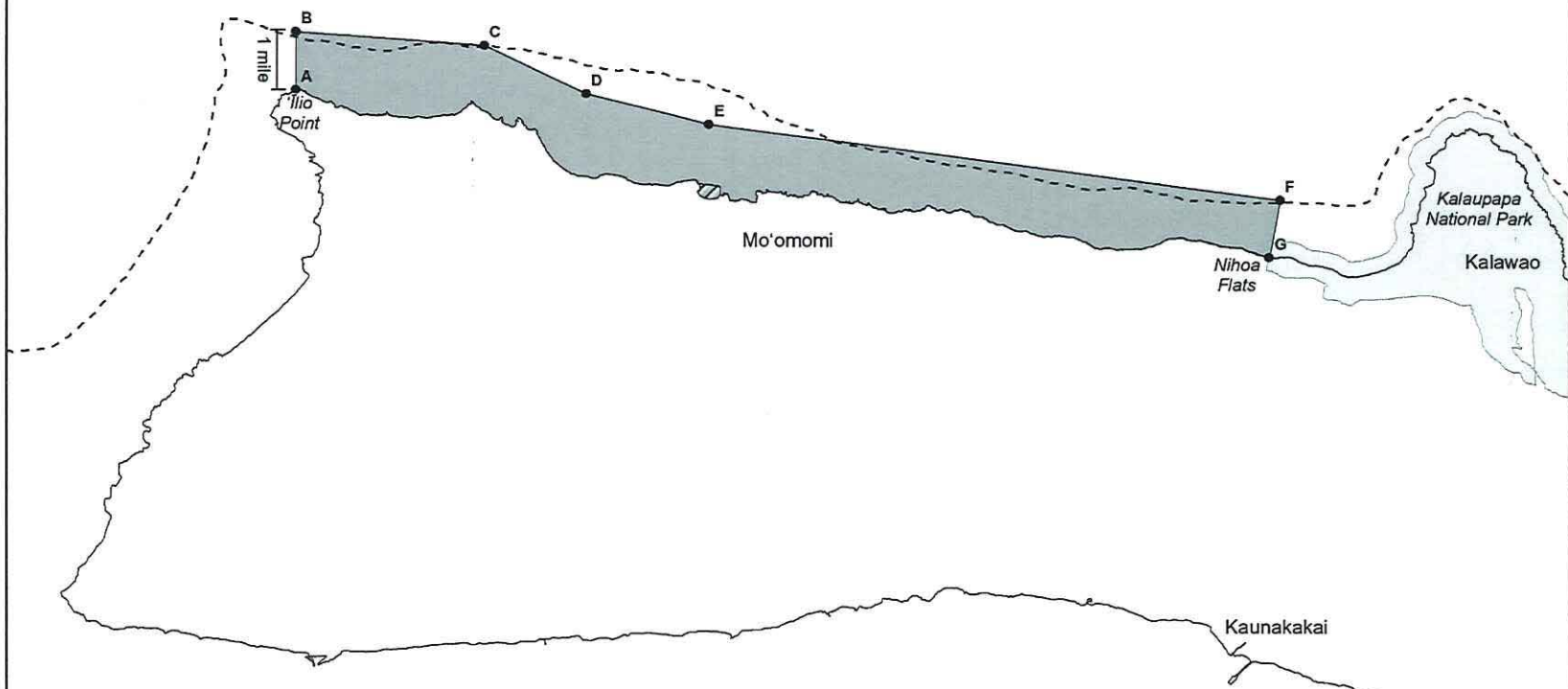
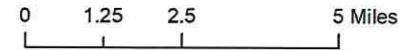
\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and Natural  
Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



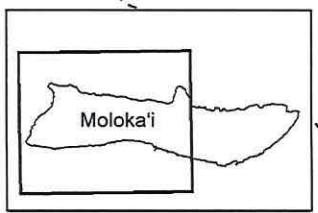
### Exhibit A. Map of the Mo'omomi Community-Based Subsistence Fishing Area, Moloka'i September 28, 2017



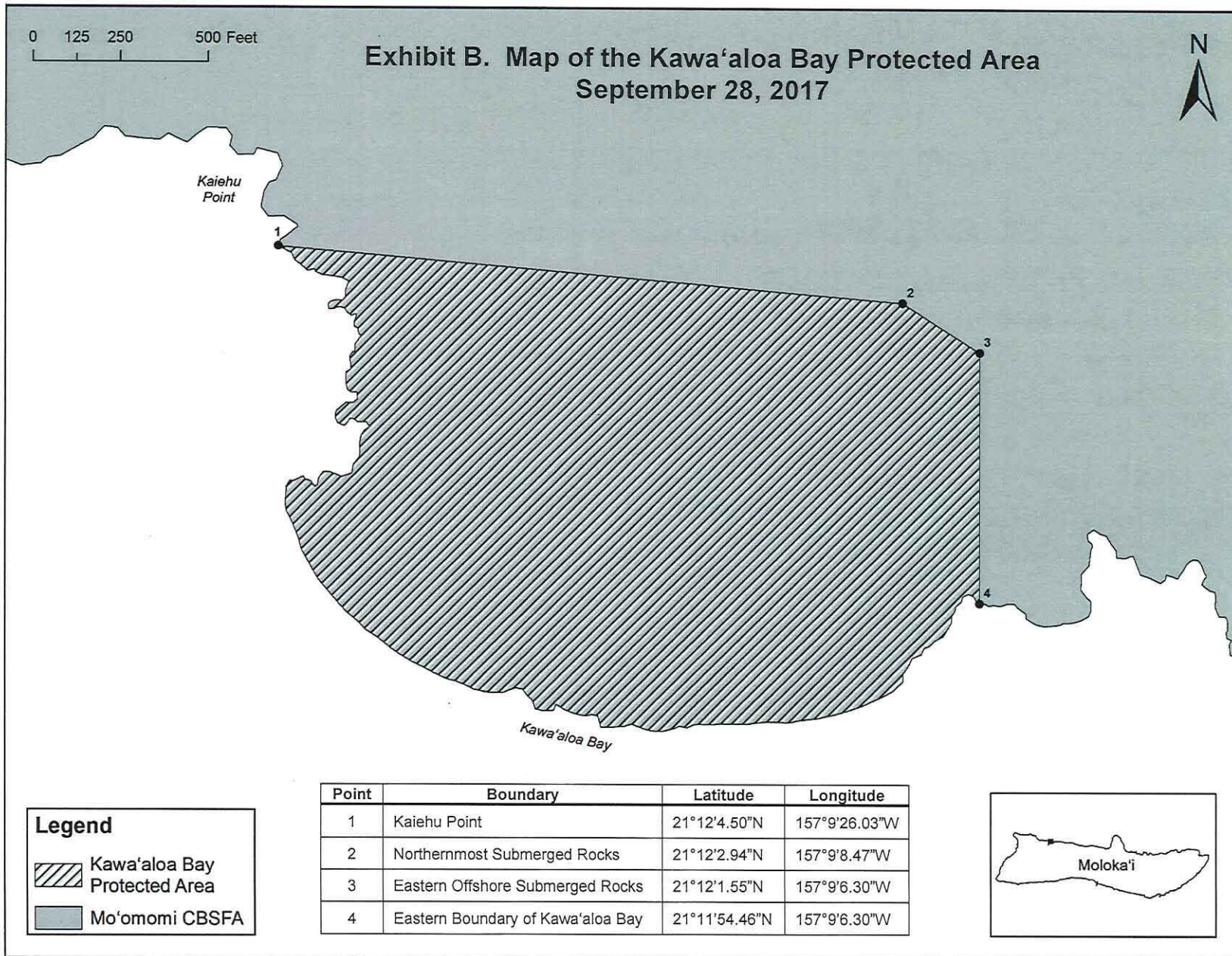
**Legend**

- Mo'omomi CBSFA
- Kawa'aloa Bay Protected Area
- Kalaupapa National Park
- 40 Fathom Depth Contour

Point	Latitude	Longitude
A	21°13'26.00"N	157°15'14.73"W
B	21°14'16.41"N	157°15'14.73"W
C	21°14'4.93"N	157°12'31.36"W
D	21°13'23.01"N	157°11'2.85"W
E	21°12'56.24"N	157°9'16.14"W
F	21°11'51.77"N	157°1'0.47"W
G	21°11'1.54"N	157°1'9.69"W







### **III. New Business**

C. Discussion and Action on Proposed Amendments  
to HAR Title 11, Chapter 55, **Water Pollution  
Control**, promulgated by DOH



PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Department or Agency: Hawaii Department of Health, Clean Water Branch

Administrative Rule Title and Chapter: HAR 11-55, Appendices C, J, and L

Chapter Name: Water Pollution Control

Contact Person/Title: Darryl Lum

Phone Number: (808) 586-4309

E-mail Address: cleanwaterbranch@doh.hawaii.gov Date: April 3, 2018

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes  No  (If Yes, please provide webpage address and when and where rules may be viewed in person)

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New  Repeal  Amendment  Compilation

II. Will the proposed rule(s) affect small business? Yes  No  (If No, no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes  No  (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes  No  (If Yes, no need to submit this form.)

\* \* \*

**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

See attachment.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

See attachment.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
  - b. Amount of the proposed fee or fine and the percentage increase.
  - c. Reason for the new or increased fee or fine.
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

See attachment.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

See attachment.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

See attachment.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

See attachment.

7. How the agency involved small business in the development of the proposed rules.

See attachment.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

See attachment.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

See attachment.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
  
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
  
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
  
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
  
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the  
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>



# Small Business Regulatory Review Board Small Business Impact Statement

## For Proposed Revisions to Hawaii Administrative Rules (HAR) Chapter 11-55 Water Pollution Control

Department of Health (DOH)  
Environmental Management Division (EMD)  
Clean Water Branch (CWB)



The federal Clean Water Act (CWA) provides for most water pollution permits under the National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system required by Section 402 of the CWA that authorizes certain types of point source discharges (through a pipe or discrete conveyance), as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The US Environmental Protection Agency (EPA) has authorized the Hawaii Department of Health (DOH) since 1974 to issue NPDES permits in Hawaii. NPDES permits in Hawaii are governed by Hawaii's Water Pollution statute, Hawaii Revised Statutes (HRS), Chapter 342D, and Hawaii Administrative Rules (HAR), Chapters 11-54, Water Quality Standards, and 11-55, Water Pollution Control. HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES allows for General Permits, which authorize a category of discharges, a group of similar types of activities or facilities (*e.g.*, storm water discharges from construction activities), and contain requirements to minimize pollutants from being discharged to State waters. General Permits are issued as rules in the HAR and not specifically to any individual owner or operator and are incorporated into the HAR Chapter 11-55 as appendices. An owner or operator may request to be covered under an applicable General Permit, if eligible, by submitting a Notice of Intent (NOI) to the DOH. By submitting an NOI, an owner or operator thereby agrees to comply with all requirements of the applicable General Permit.

If a General Permit is available (*i.e.*, for the specific category of discharge), the processing of coverage under the General Permit can be obtained more expeditiously than if coverage were to be processed under an Individual NPDES Permit, which may benefit small businesses. Coverage under an NPDES Individual Permit is processed on a case by case basis and requires the CWB to develop permit conditions and solicit public comment. More than 75% of the authorizations issued by DOH are for coverage under a General Permit.

Appendix C of HAR Chapter 11-55 authorizes discharges composed entirely of storm water runoff associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of

one acre or more of total land area. Appendix C also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Appendix J of HAR Chapter 11-55 covers occasional or unintentional discharges composed entirely of: R-1 water; or R-1 water with any combination of storm water or potable water or water used primarily for irrigation.

Appendix L of HAR Chapter 11-55 authorizes discharges of circulation water from decorative ponds or tanks containing fish or other aquatic species, not including mammals. Appendix L also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled "Water Quality Standards."

The revisions common to all the aforementioned general permits include:

- Updated the renewal term of the general permit and of the effective date of the general permit
- Deleted the prohibition preventing General Permit coverage for discharges to Class AA (marine) and Class 1 (Inland) State waters. In accordance with the State's Water Quality Standards specific criteria in HAR Chapter 11-54, the General Permit requirements provide equal protection to all classes of waters.
- Replaced the word "timely" when describing the inspection frequency with measurable requirements (e.g., "at least once per discharge or once daily, if discharge is continuous and duration is longer than one day.") The subjectivity of the word "timely" had varying interpretations that caused confusion as to how the permittee was to comply to meet the DOH's expectations.
- Added language to the requirement for inspecting the State receiving water when the effluent commingles with offsite water or pollutant sources. The added language requires the Permittee to inspect the effluent after it exits the site and prior to commingling to ensure that inspection is representative of the (facility/activity) discharge being covered.
- Added requirement for electronic reporting per Federal regulations
- Added requirement to clarify that laboratory results must accompany monitoring reports
- Added a section for renewals. Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.
- Added a section for (NOI) Forms. Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

Revisions to the main body of HAR 11-55 include:

- Added the expiration date of certain general permits in the HAR 11-55 Appendices

Acronyms used in this reference:

HAR	Hawaii Administrative Rules
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
DOH	State of Hawaii, Department of Health
NPDES	National Pollutant Discharge Elimination System
MS4	Municipal Separate Storm Sewer System
NGPC	Notice of General Permit Coverage

**HRS §201M Determination of Small Business Impact**

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are:

The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules are those businesses within the State of Hawaii that require coverage under an NPDES permit and are subject to HAR Chapter 11-55 and any revisions. This may include large, medium, and small businesses.

The Federal CWA established the important principle that the discharge of water pollutants to State waters is not a right. The Federal CWA and HRS Chapter 342D prohibits the discharge of water pollutants to State waters, unless the discharger receives a NPDES permit or variance from the permitting agency (i.e. DOH for the State of Hawaii).

The Appendix C, Construction Storm Water General Permit being revised and renewed affects businesses that need to ultimately disturb one acre or more of land area. There are more than 965 permittees covered under Appendix C.

While the number of entities potentially affected by Appendix C is not insignificant, the Construction Storm Water General Permit mainly affects government agencies, though possibly some small businesses who are land developers, contractors, and businesses undergoing new development or capital improvement. While there are seven types of changes proposed, they are mostly procedural and are required to comply with Federal regulations. Some of the revisions would ease requirements for the small businesses. The proposed revisions to Appendix C include updating the effective dates; allowing coverage for these types of discharges to Class AA and Class 1 State waters; clarifying the existing receiving water inspection frequency requirement; clarifying that the existing requirement to inspect the effluent must be performed prior to commingling; adding a requirement for electronic reporting per federal regulations; adding a requirement for the Sufficiently Sensitive Methods per federal regulations; adding clarification that requests for renewals must be received no later than 30 calendar days before

these general permits expire; and replacing the monthly compliance submittal requirement to keeping the compliance report on-site and available upon request. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

The Appendix J, Discharges from Recycled Water Systems General Permit that are being revised and renewed would affect businesses that use recycled water and unintentionally or occasionally discharge that water to a State receiving water such as the ocean or a stream. **There is no permittee covered under Appendix J, so no small businesses will be affected currently.**

The Appendix L, Circulation Water from Decorative Ponds General Permit being revised and renewed affects businesses that discharge water from decorative ponds or tanks to a State receiving water such as the ocean or a stream. There are eight permittees, two government agencies and six private businesses, only five of which may be considered small businesses that are covered under this general permit. These five organizations are: Wai Koa Guava Plantation LLC; HTH Corporation, Pacific Beach Hotel; Doris Duke Foundation for Islamic Art; JW Marriott Ihilani Resort and Spa; and AOA Waiakea Villas. The proposed revisions to Appendix L include updating the effective dates; allowing coverage for these types of discharges to Class AA and Class 1 State waters; clarifying the existing receiving water inspection frequency requirement; clarifying that the existing requirement to inspect the effluent must be performed prior to commingling; adding a requirement for electronic reporting per federal regulations; adding a requirement for the Sufficiently Sensitive Methods per federal regulations; and adding clarification that requests for renewals must be received no later than 30 calendar days before these general permits expire. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected:

Appendix C primarily impact government agencies, municipalities, small businesses who are land developers, and businesses undergoing new development or capital improvements. Revisions to Appendix C only clarify existing submittal and compliance requirements and are required to comply with Federal regulations. In addition, the rules were revised to allow more projects to be covered under a general permit instead of an individual permit that would cost more and takes at least three times longer to issue. This broadening of eligibility of the General Permit should benefit small businesses by streamlining approvals.

Appendix J does not impact small businesses, so there should be no adverse impact from revisions.

Appendix L may impact five small businesses and similarly to Appendix C, revisions only clarify existing submittal and compliance requirements and are required to comply with Federal regulations.

- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance:

No direct cost increase for small businesses (no increase in fees or fines).

No significant indirect cost increase expected for small businesses.

- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used:

There is no additional monetary cost to Clean Water Branch or other agencies affected by the rule changes. The Clean Water Branch does not receive direct monetary benefit from the proposed revisions.

- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;

Revisions of HAR Chapter 11-55, either benefit or have no adverse impact on small business; therefore, methods to reduce the impact on small business were not explored.

- (6) How the agency involved small business in the development of the proposed rules; and

The DOH considered impacts of these proposed revisions and did not feel they would adversely impact small business, therefore, consultation during the review process was not pursued. However, we do want the SBRRB to review the revisions for approval.

- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

The standards proposed are not more stringent than any comparable or related federal, state, or county standards.

RATIONALE  
FOR  
PROPOSED REVISIONS

TO

HAWAII ADMINISTRATIVE RULES  
TITLE 11  
DEPARTMENT OF HEALTH  
CHAPTER 55  
WATER POLLUTION CONTROL

DEPARTMENT OF HEALTH  
ENVIRONMENTAL MANAGEMENT DIVISION  
CLEAN WATER BRANCH  
HONOLULU, HAWAII

February 2018



Rational for Proposed Revision to HAR Chapter 11-55  
February 2018

NPDES General Permits authorizing discharges of storm water associated with industrial activities and circulation water from decorative ponds or tanks, HAR 11-55, appendix C and L, will expire at midnight, December 5, 2018. Currently, discharges of storm water associated industrial activities and storm water and certain non-storm water discharges from small municipal separate storm sewer systems, HAR 11-55 Appendices B, D, E, F, G, H, I and K, are expired.

This rationale serves to provide an explanation for the changes which are proposed for Chapter 11-55, Appendix C, L, and J. Additional information may be obtained by calling (808) 586-4309 or by writing to the Clean Water Branch (CWB) at the following address:

Clean Water Branch  
Environmental Management Division  
Hawaii Department of Health  
2827 Waimano Home Road, Room 225  
Pearl City, HI 96782  
Fax: (808) 586-4352  
email: [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov)

### Chapter 11-55, Appendix C Fact Sheet

In accordance with NPDES regulations at 40 CFR 124.8(a) and 124.8(b) the following information is provided for HAR, Chapter 11-55, Appendix C.

1. A brief description of the type of facility or activity which is the subject of the draft permit;  
  
*National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges from construction activities.  
Construction sites disturbing one or more acres of land or smaller sites that are part of a common plan of development or sale are required to obtain NPDES permit coverage for their storm water discharges.  
Currently there are 965 construction projects covered by HAR 11-55, Appendix C Notice of General Permit Coverage (NGPC).*
  
2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.  
  
*Storm water discharge associated with construction activity.*
  
3. For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.  
  
*Not applicable.*
  
4. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);  
  
*The Clean Water Act ("CWA") establishes a comprehensive program "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The CWA also includes the objective of attaining "water quality which provides for the protection and propagation of fish, shellfish and wildlife and... recreation in and on the water." 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System ("NPDES") permits.  
  
The Water Quality Act of 1987 (WQA) added section 402(p) to the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the Federal Register, often called the "Phase I Rule", on*



November 16, 1990, establishing permit application requirements for, among other things, "storm water discharges associated with industrial activity." See 55 FR 47990. EPA defines the term "storm water discharge associated with industrial activity" in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of "industrial activity" pursuant to 40 CFR 122.26(b)(14)(s). The second rule implementing section 402(p), often called the Phase II Rule, was published in the Federal Register on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent limitations guidelines (ELGs) and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA. Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA sections 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). Prior to the issuance of such national standards, permitting authorities are required to incorporate technology based limits on a best professional judgment basis. CWA section 402(a)(1); 40 CFR 125.3(a)(2)(ii)(B). On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category. See 40 CFR Part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or "C&D rule", became effective on February 1, 2010; therefore, all NPDES construction permits issued by EPA or states after this date must incorporate the C&D rule requirements.

## Section 1.2

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**Original:** This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class I, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

**Revised:** This general permit covers all areas of the State except natural freshwater lakes, saline lakes, and anchialine pools.

**Rationale:** *Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Freshwater lakes, saline lakes, and anchialine pools are in reference to HAR 11-54-5.2(a)*

### **Section 3.1**

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor. This general permit expires the sooner of when section 11-55-34.02(b)(2) is amended and becomes effective or five years after section 11-55-34.02(b)(2) became effective.*

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

**Rationale:** *Reference to section 11-55-34.02(b)(6) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.*

### **Section 5.1.2.1.1.3**

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**Original:** *The compliance alternative selected above must be maintained throughout the duration of permit coverage, except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.*

**Revised:** *The compliance alternative selected above must be maintained throughout the duration of permit coverage, or until construction in that portion of the project is complete, and the area is restored and stabilized (as applicable), except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.*

***Rationale:** Considers the situation where construction of a portion of a project is complete and stabilized and the construction continues in other areas. Once a portion is restored or stabilized, DOH believes that the water pollution issue has been addressed.*

### **Section 9.1**

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***Original:** The permittee shall timely inspect the receiving state waters, storm water runoff and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.) Except, if the discharge enters an MS4 or separate drainage system, then the permittee may inspect their discharge when it enters a drainage system rather than at the receiving water (excluding an upset event, BMP failure, or rainfall events greater than 0.25 inches).*

***Revised:** The permittee shall inspect the receiving state waters, storm water runoff and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4 in accordance with this section. (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.) The permittee must inspect the receiving state waters only when there is a discharge from the project site and there is a potential for downstream erosion. If the discharge enters an MS4 or separate drainage system prior to the receiving state water, then the permittee may inspect their discharge where it enters the drainage system rather than at the receiving water. When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water or separate drainage system, in lieu of inspecting the receiving water or where it enters the drainage system, the permittee may inspect the effluent at a location representative of the discharge quality prior to commingling. The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.*

***Rationale:** The note considers both situations where the effluent may or may not enter a storm water drainage system. If it enters a storm water drainage system, the permittee may automatically assume that it commingles and therefore, inspection at the receiving water is not required.*

*If the state receiving water is located far away, but does not commingle with other waters then, inspection of the receiving water is still required. In this situation, the DOH is concerned with erosion and potential pollutants that may be picked up and transported in the effluent, for which the Permittee is responsible.*

#### **Section 11.4**

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**Original:** *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378*

**Revised:** *The owner or its duly authorized representative shall submit Notice of Intent Forms on Forms specified by the CWB.*

*Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>*

**Rationale:** *Clarify the location of electronic forms.*

#### **Section 13.1**

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**Original:** *The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department. Upon the department receiving EPA's Cross-Media Electronic Reporting Regulation (CROMERR), the monthly compliance reports shall be submitted through the e-Permitting Portal. Any comments provided by the department shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, preparation of the monthly compliance information is still required which states that there were "no changes, updates, or any incidences of non-compliance to report."*

*Note: EPA's Cross-Media Electronic Reporting Regulation (CROMERR) sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.*

*Revised: The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department.*

*Rationale: Removing the requirement in Section 13.1 to submit monthly compliance reports when EPA's CROMERR approval is obtained.*

#### **Section 15**

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*Original: The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years.*

*Revised: The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of three years.*

*Rationale: Consistent with 40 CFR 122.41(j)*

Commented [MC1]: added after internal review mailed to branch.

5. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

6. A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

Rational for Proposed Revision to HAR Chapter 11-55  
February 2018

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

7. Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

8. For NPDES permits, provisions satisfying the requirements of § 124.56.

*Refer to 40 CFR 450.*

9. Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

*Not applicable.*

**Chapter 11-55, Appendix L revisions:**

1. A brief description of the type of facility or activity which is the subject of the draft permit;

*This general permit covers facilities in the State of Hawaii that discharge circulation water from decorative ponds or tanks containing or not containing fish or other aquatic species, not including mammals.*

*Currently there are **eight (8)** circulation water from decorative ponds or tanks covered under HAR 11-55, Appendix L NGPC.*

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

*The allowed discharge is of process wastewater associated with circulation water from decorative ponds or tanks that have been treated such that, prior to discharge, any pollutant in the effluent is at or below Hawaii's waterbody-specific water quality standard for that pollutant.*

3. For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

*Not applicable.*

4. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

**Section 1(b)**

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**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except for natural freshwater lakes, saline lakes, and anchialine pools.*

**Rationale:** *Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality*

*Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Freshwater lakes, saline lakes, and anchialine pools are in reference to HAR 11-54-5.2(a)*

### **Section 3(a)**

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires when amendments to section 11-55-34.02(b)(6) are adopted, whichever is earlier.*

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor.*

**Rationale:** *Reference to section 11-55-34.02(b)(6) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.*

### **Section 4(b)(8)**

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**Original:** *A brief description of any treatment system used or to be used. The treatment system plan, and all subsequent revisions, shall be retained on-site or at a nearby office.*

**Revised:** *A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, the treatment system plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee*



shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

**Rationale:** *In order to afford more protection to Class AA and Class 1 waters, the treatment system plan will be required to be submitted with the NOI and reviewed.*

**Section 6(a)(4)(C)**

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**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. [End of section]*

**Revised:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv).*

**Rationale:** *incorporate federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.*

**Section 6(a)(5)(C)**

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**Original:** *The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:** *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

Note: When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water, in lieu of inspecting the receiving water, inspect the effluent after it exits the site and prior to commingling.

**Rationale:** The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

#### **Section 8(a)(5)**

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**Original:** (NEW)

**Revised:** Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:** Fulfills requirements of the NPDES eReporting rule in 40 CFR Part 127.

#### **Section 8(b)**

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**Original:** Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B), the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

**Revised:** Monitoring Report

The permittee shall include the monitoring results in the calculation and reporting of the values required in the discharge monitoring report form.

**Rationale:** Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is a requirement of the general permit and not discretionary

*for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR [and required in section 8(a)(3)] is included.*

**Section 13**

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**Original:** (NEW)

**Revised:** Renewal

Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit.

**Section 14**

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**Original:** (NEW)

**Revised:** Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

**Rationale:** Clarify the location of electronic forms.

**Table 34.8**

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**Original:** (NEW FOOTNOTE)

**Revised:** {11} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

**Rationale:** Clarify reporting of monitoring results when sampling is performed more frequently than once per quarter.

Rational for Proposed Revision to HAR Chapter 11-55  
February 2018

5. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

6. A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

7. Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

8. For NPDES permits, provisions satisfying the requirements of § 124.56.

*The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.*

*For this permit, the limits are based on Best Professional Judgement (BPJ) decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

9. Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter

*Not applicable.*

### Chapter 11-55, Appendix J Fact Sheet

In accordance with NPDES regulations at 40 CFR 124.8(a) and 124.8(b) the following information is provided for HAR, Chapter 11-55, Appendix J.

1. A brief description of the type of facility or activity which is the subject of the draft permit;

*National Pollutant Discharge Elimination System (NPDES) general permit for occasional or unintentional discharges from recycled water system composed entirely of R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.  
Currently there are **no facilities or activities** covered by HAR 11-55, Appendix J Notice of General Permit Coverage (NGPC).*

2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

*Recycled R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.*

3. For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

*Not applicable.*

4. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

#### Section 1.1

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***Original:** This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

***Revised:** This general permit covers all areas of the State except for natural freshwater lakes, saline lakes, and anchialine pools.*

**Rationale:** Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.

Freshwater lakes, saline lakes, and anchialine pools are in reference to HAR 11-54-5.2(a)

### Section 3(a)

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**Original:** This general permit becomes effective when section 11-55-34.02(b)(9) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(9) are adopted, whichever is earlier.

**Revised:** This general permit becomes effective ten days after filing with the office of the lieutenant governor.

**Rationale:** Reference to section 11-55-34.02(b)(6) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.

### Section 7(b)(2)

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**Original:** The permittee shall timely inspect the receiving state waters, the recycled water, and the implementation of control measures and best management practices to prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

**Revised:** The permittee shall inspect the receiving state waters, the recycled water, and the implementation of control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

Note: When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water, in lieu of inspecting the receiving water, inspect the effluent after it exits the site and prior to commingling.

**Rationale:** *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.*

#### Section 14

---

**Original:** (NEW)

**Revised:** Renewal

Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

**Rationale:** *Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit.*

#### Section 15

---

**Original:** (NEW)

**Revised:** Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at: <http://health.hawaii.gov/cwb/>

**Rationale:** *Clarify the location of electronic forms.*

5. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

6. A description of the procedures for reaching a final decision on the draft permit including:

Rational for Proposed Revision to HAR Chapter 11-55  
February 2018

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

7. Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

8. For NPDES permits, provisions satisfying the requirements of § 124.56.

*Refer to 40 CFR 450.*

9. Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

*Not applicable.*



CHAPTER 11-55 APPENDIX J

NPDES GENERAL PERMIT  
AUTHORIZING OCCASIONAL OR UNINTENTIONAL DISCHARGES  
FROM RECYCLED WATER SYSTEMS

This General Permit is effective on

and expires five years from this date,  
unless amended earlier.

1. Coverage under this General Permit

(a) This general permit covers occasional or unintentional discharges composed entirely of:

(1) R-1 water, or

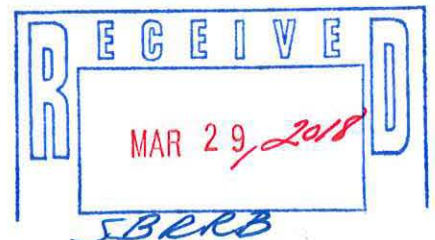
(2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation,

where the R-1 water is supplied from a treatment works and is conveyed or used by a recycled water system.

(b) This general permit covers all areas of the State except [for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."] natural freshwater lakes, saline lakes, and anchialine pools.

2. Limitations on Coverage under this General Permit

55-J-1



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- (a) This general permit does not cover the following:
- (1) Recycled water system discharges into a sanitary sewer system;
  - (2) Recycled water system discharges which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
  - (3) Recycled water system discharges which are regulated by an existing individual permit;
  - (4) Recycled water systems which the director finds to have violated, be violating, or contributing to a violation of chapter 11-62;
  - (5) Recycled water system discharges that the director finds more appropriately should be regulated under an individual permit; and
  - (6) Treatment works discharges that are not from an approved recycled water system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

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3. Term of General Permit

(a) This general permit becomes effective ~~[when section 11-55-34.02(b)(9) becomes effective]~~ ten days after filing with the office of the lieutenant governor. ~~[This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(9) are adopted, whichever is earlier.]~~

(b) A notice of general permit coverage under this general permit expires:

(1) Five years after the effective date of this general permit;

(2) When the notice of general permit coverage specifies; or

(3) When amendments to section 11-55-34.02(b)(9) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent (NOI) Requirements

(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.

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- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed;
  - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
  - (4) Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and
  - (5) Quantitative data of the R-1 water in the recycled water system.
- (c) The director may require additional information to be submitted.

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- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Wastewater Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Implementation of Best Management Practices

- (a) The permittee shall:

- (1) Implement the best management practices approved by the director under chapter 11-62 before and during the use or conveyance of recycled water;
- (2) Minimize discharges to state waters to the maximum extent practicable; and

- (b) The permittee shall implement or supplement the best management practices as needed to improve the quality of discharges to state waters, reduce the risk of discharges to state waters, reduce contamination of R-1

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water after it is produced, or when instructed by the director.

7. Effluent Limitations and Monitoring Requirements
- (a) The discharges shall be limited and monitored by the permittee's supplier as specified under chapter 11-62. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)
  - (b) Basic Water Quality Criteria and Inspections
    - (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
    - (2) The permittee shall [~~timely~~] inspect the receiving state waters, the recycled water, and the implementation of control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

Note: When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water, in lieu of inspecting the receiving water, inspect the effluent after it exits the site and prior to commingling.

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- (3) During each discharge or as soon afterwards as possible, the permittee shall inspect the discharge area and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.
- (4) Discharge and receiving water quality may also be monitored by grab samples or other means, and it shall be monitored by any means and at times specified by the director.

8. Corrective Action

- (a) If the permittee notices any item(s) which adversely affects receiving water quality, the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.
- (b) If the discharge is not of R-1 quality or the best management practices as approved by the director were not being implemented, then the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

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9. Reporting Requirements

- (a) If the discharge is of R-1 quality water and the best management practices as approved by the director were implemented, then the permittee shall orally report within twenty-four hours information regarding the discharge and the best management practices implemented. A summary of all discharges shall be tabulated quarterly and submitted to the wastewater branch within thirty days after the quarters ending March, June, September, and December.
- (b) If the discharge is not of R-1 quality, best management practices approved by the director were not being implemented, or water quality is adversely affected, then the permittee shall immediately notify the director of any discharge to state waters, corrective measures taken, and shall report in writing all of a month's discharges and corrective measures within five days after that month.
- (c) The permittee shall make oral reports by telephone to the Wastewater Branch at (808) 586-4294 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

10. Submittal Requirements



CHAPTER 11-55 APPENDIX J

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Wastewater Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine [or] and imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each

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submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

### 11. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

### 12. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

### 13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

### 14. Renewal

Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

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15. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at:  
<http://health.hawaii.gov/cwb/>

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NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF STORM WATER  
ASSOCIATED WITH CONSTRUCTION ACTIVITY

This General Permit is effective on

and expires five years from this date.

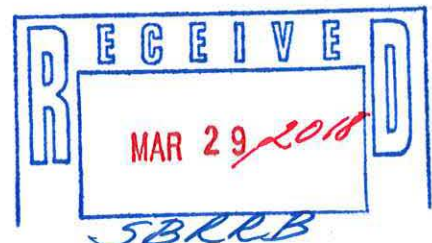
1. Coverage under this General Permit

1.1.

This general permit covers discharges composed entirely of storm water runoff associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Construction support activities include, but are not limited to, concrete or asphalt batch plants, rock crushing plants, equipment staging yards/areas, material storage areas, excavated material disposal areas, borrow areas, etc. Coverage under this general permit for construction support activities is allowed provided that the support activity is directly related to the construction site required to have permit coverage for storm water discharges; is not a commercial operation, nor does it serve multiple unrelated construction projects; does not continue to operate beyond the completion of the construction activity at the project it supports; and storm water controls are implemented in accordance with this

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section and if applicable, section 6, for storm water discharges from the support activity areas.

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1.2.

This general permit covers all areas of the State except ~~[for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."]~~ natural freshwater lakes, saline lakes, and anchialine pools.

1.3.

This general permit shall automatically cover discharges of storm water from construction activities in response to a public emergency proclaimed by the President of the United States or State Governor if all of the following conditions are met:

1.3.1.

The earth-disturbing activities are in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services); and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services; and

1.3.2.

Provide documentation to substantiate the issuance of the public emergency proclamation by the President of the United States or State Governor.

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1.4.

"Disturbance of land" refers to the penetration, turning, or moving of soil or resurfacing of pavement with exposure of the base course or the exposure of bare soil or ground surface, including the land surface exposed by construction roads, baseyards, staging areas, demolition, headquarters, and parking areas. It does not include grass or weed cutting, bush or tree trimming or felling that leaves soil or ground intact. It includes "grubbing" in its normal meaning of the use of equipment to knock down and push vegetation out of the way, typically uprooting vegetation and disturbing the ground surface.

1.5.

A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. "Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Note: Projects within a common plan of development must submit separate Notice of Intents (NOIs). For the purpose of this permit, a "project" means separate and distinct construction activities.

1.6.

A "SWPPP" (Storm Water Pollution Prevention Plan) is a site-specific, written document that, among other things: (1) identifies potential sources of storm water

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pollution at the construction site; (2) describes storm water control measures to reduce or eliminate pollutants in storm water discharges from the construction site; and (3) identifies procedures the permittee will implement to comply with the terms and conditions of this general permit.

1.7

"Infeasible" means not technologically possible, or cost prohibitive and not achievable in light of best industry practices.

2. Limitations on Coverage under this General Permit

2.1.

This general permit does not cover the following:

2.1.1.

Storm water discharges associated with construction activity which flow into a sanitary sewer system;

2.1.2.

Storm water discharges from construction activities using polymers, flocculants, or other treatment chemicals;

2.1.3

Storm water discharges associated with construction activities that are regulated by existing individual permits;

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2.1.4.

Storm water discharges from a construction activity which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;

2.1.5

Storm water discharges from construction approved under a CWA Section 404 permit or;

2.1.6.

Storm water discharges from the clearing of lands specifically for agricultural purposes in accordance with 40 CFR 122.3(e);

2.1.7.

Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of construction or industrial activity; and

2.1.8.

Storm water discharges that the director finds more appropriately regulated under an individual permit.

2.2.

Discharges of storm water from new sources that have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard are not eligible for coverage under this permit, except



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if the permittee has included appropriate controls and implementation procedures designed to bring the discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, the department expects that compliance with the storm water control requirements in this permit, including the requirements applicable to such discharges in section 6.2., will result in discharges that will not cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard.

For this permit "new sources" means projects which occur after this general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor.

2.3.

The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.11.

3. Term of the General Permit and Notice of General Permit Coverage

3.1. Term of the General Permit

This general permit becomes effective ~~[when section 11-55-34.02(b)(2) becomes effective, ]~~ ten days after filing with the office of the lieutenant governor. ~~[This general permit expires the sooner of when section 11-55-34.02(b)(2) is amended and becomes effective or five years after section 11-55-34.02(b)(2) became effective.]~~

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3.2. Term of the Notice of General Permit Coverage

A notice of general permit coverage under this general permit expires, the earlier of the following, unless the notice of general permit coverage is automatically terminated in accordance with section 2.3 or administratively extended under section 11-55-34.09(d):

3.2.1.

As specified on Page 55-C-1; or

3.2.2.

When the notice of general permit coverage specifies.

4. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

5. Effluent Limitation Applicable To All Discharges From Construction Sites

The permittee is required to comply with the following effluent limitations in this section for discharges from the site and/or from construction support activities.

Note: If the project is an "existing project" meaning that an administrative extension of the NGPC was granted or the NGPC was renewed under this general permit; or if the permittee is new because of a transfer of ownership and/or operation replaces the permittee of an already issued NGPC, and it is infeasible for the permittee to comply with a specific

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requirement in this section because (1) the requirement was not part of the 2007 Appendix C [permit previously covered under (i.e., the [2007]2013 Appendix C)], and (2) because the permittee is prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 6, 2013[the issuance date of this general permit], or because the permittee is unable to comply with the requirement due to the manner in which storm water controls have already been installed or were already designed prior to December 6, 2013[the issuance date of this general permit] the issuance date of this general permit, the permittee is required to document this fact in the SWPPP, refer to section 7, and are waived from complying with that requirement. This flexibility applies only to the requirements in sections 5.1 and 5.3.3. through 5.3.5. (except for sections 5.3.3.1., 5.3.3.2.2., 5.3.3.3.3.a., and 5.3.3.4.). This only applies to those portions of the site that have already commenced earth-disturbing activities or where storm water controls implemented in compliance with the previous permit have already been installed.

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5.1. Erosion and sediment control requirements.

The permittee shall design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities. For purposes of this general permit, "Minimize" means to reduce and/or eliminate to the extent achievable using storm water controls that are technologically available and economically practicable and achievable in light of best industry practices. To meet this requirement, the permittee shall comply with the following provisions.

5.1.1. General requirements applicable to all construction sites.

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5.1.1.1. Area of disturbance.

The permittee is required to minimize the amount of soil exposed during construction activities. The permittee is also subject to the deadlines for temporarily and/or permanently stabilizing exposed portions of the site pursuant to section 5.2.

5.1.1.2. Design requirements.

5.1.1.2.1.

The permittee shall account for the following factors in designing storm water controls:

5.1.1.2.1.1.

The expected amount, frequency, intensity, and duration of precipitation;

5.1.1.2.1.2.

The nature of storm water runoff and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and

5.1.1.2.1.3.

The range of soil particle sizes expected to be present on the site.

5.1.1.2.2.

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The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible. Use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.

### 5.1.1.3. Installation requirements.

#### 5.1.1.3.1.

Complete installation of storm water controls prior to earth-disturbance. Prior to earth-disturbing activities in any given portion of the site have begun the permittee shall install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities.

Note: The requirement to install storm water controls prior to earth-disturbance of the project does not apply to the earth disturbance associated with the actual installation of these controls.

#### 5.1.1.3.2.

Use good engineering practices and follow manufacturer's specifications. The permittee shall install all storm water controls in accordance with good engineering practices, including applicable design specifications.

Note: Design specifications may be found in manufacturer specifications and/or in applicable

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erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

5.1.1.4. Maintenance Requirements

5.1.1.4.1.

The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

5.1.1.4.2.

The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the permittee shall make the necessary repairs or modifications in accordance with the following schedule:

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it

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operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.1.2.

Erosion and sediment control requirements applicable to all sites.

5.1.2.1.

Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).

Note: The department does not consider all storm water control features (e.g., storm water conveyance channels, storm drain inlets, sediment basins) to be state waters.

Note: Written documentation allowing use is required from the owner of areas that are not owned by the permittee or that are otherwise outside the operational control to be considered areas of undisturbed natural buffer for purposes of compliance with this section.

The permittee shall ensure that any discharges to state waters through the area between the disturbed portions

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of the property and any state waters located within 50 feet of the site are treated by an area of undisturbed natural buffer and sediment controls.

Note: If the boundary of the disturbance area is within 50 feet of the State water, triggering this requirement, then the installation of the project's perimeter control may be considered equivalent to the installation of sediment control.

5.1.2.1.1. Compliance Alternatives.

The permittee can comply with this requirement in one of the following ways:

5.1.2.1.1.1.

Provide and maintain a 50-foot undisturbed natural buffer and sediment control; or

Note: If the earth disturbances are located 50 feet or further from a state water and have installed sediment control, then the permittee has complied with this alternative.

5.1.2.1.1.2.

Provide and maintain an undisturbed natural buffer that is less than 50 feet and double sediment control (e.g., double perimeter control) spaced a minimum of 5 feet apart; or

5.1.2.1.1.3.

If it is infeasible to provide and maintain an undisturbed natural buffer of any size, the permittee shall provide and maintain double sediment control (e.g., perimeter control) spaced a minimum of 5 feet apart and complete stabilization within 7 calendar days



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of the temporary or permanent cessation of earth-disturbing activities.

Note: For the compliance alternatives in sections 5.1.2.1.1.1. and 5.1.2.1.1.2., the permittee is not required to enhance the quality of the vegetation that already exists in the buffer, or provide vegetation if none exists. The permittee only need to retain and protect from disturbance the natural buffer that existed prior to the commencement of construction. Any preexisting structures or impervious surfaces are allowed in the natural buffer provided the permittee retain and protect from disturbance the natural buffer area outside the preexisting disturbance.

The permittee shall document the selected compliance alternative in the SWPPP, and comply with the applicable additional requirements described in section 5.1.2.1.2. and 5.1.2.1.3. below.

The compliance alternative selected above must be maintained throughout the duration of permit coverage, or until construction in that portion of the project is complete, and the area is restored and stabilized (as applicable), except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.

5.1.2.1.2.

Additional Requirements for the Compliance Alternatives in section 5.1.2.1.1.1. and 5.1.2.1.1.2. If either of the compliance alternatives in section 5.1.2.1.1.1. or 5.1.2.1.1.2. is chosen above, throughout the period of coverage under this permit, the permittee shall comply with the following additional requirements:

5.1.2.1.2.1.

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Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges caused by storm water within the buffer;

5.1.2.1.2.2.

Document in the SWPPP the natural buffer width retained on the property, and show the buffer boundary on the site plan; and

5.1.2.1.2.3.

Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas.

5.1.2.1.3.

Additional Requirement for the Compliance Alternative in section 5.1.2.1.1.3. If the compliance alternative in section 5.1.2.1.1.3. is chosen, the permittee shall also include in the SWPPP a description of why it is infeasible to provide and maintain an undisturbed natural buffer of any size.

5.1.2.1.4. Exceptions.

5.1.2.1.4.1.

If there is no discharge of storm water to state waters through the area between the site and any state waters located within 50 feet of the site, the permittee is not required to comply with the requirements in this section. This includes situations where control measures have been implemented, such as a berm or other barrier, that will prevent such discharges.

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5.1.2.1.4.2.

For "linear construction projects" where "linear construction projects" means the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area, the permittee is not required to comply with the requirements in this section if site constraints (e.g., limited right-of-way) prevent the permittee from meeting any of the compliance alternatives in section 5.1.2.1.1., provided that, to the extent practicable, the permittee limit disturbances within 50 feet of state waters and/or the permittee provide erosion and sediment controls to treat storm water discharges from earth disturbances within 50 feet of the state water. The permittee shall also document in the SWPPP the rationale as to why it is infeasible to comply with the requirements in section 5.1.2.1.1., and describe any buffer width retained and/or erosion and sediment controls installed.

5.1.2.1.4.3.

The following disturbances within 50 feet of a state water are exempt from the requirements in this Part: construction approved under a CWA 404 permit; or construction of a water-dependent structure or water access area (e.g., pier, boat ramp, trail).

The permittee shall document in the SWPPP if any of the above disturbances will occur within the buffer area on the site.

5.1.2.2 Install perimeter controls.

5.1.2.2.1.

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Installation requirements: The permittee shall install sediment controls along those perimeter areas of the site that will receive storm water from earth-disturbing activities.

For linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, the permittee shall maximize the use of these controls where practicable and document in the SWPPP why it is impracticable in other areas of the project.

5.1.2.2.2.

Maintenance Requirements: The permittee shall remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

5.1.2.3. Minimize sediment track-out.

The permittee shall minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting the construction site. To comply with this requirement, the permittee shall:

5.1.2.3.1.

Restrict vehicle use to properly designated exit points;

5.1.2.3.2.

Use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit;

5.1.2.3.3.

Where necessary, use additional controls to remove sediment from vehicle tires prior to exit; and

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5.1.2.3.4.

Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs during non-working hours. The permittee shall remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. The permittee is prohibited from hosing or sweeping tracked-out sediment into any storm water conveyance (unless it is connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or state water.

Note: The department recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after the implementation of sediment removal practices. Such "staining" is not a violation of this section.

5.1.2.4. Control discharges from stockpiled sediment or soil.

For any stockpiles or land clearing debris composed, in whole or in part, of sediment or soil, the permittee shall comply with the following requirements:

Note: For the purposes of this permit, sediment or soil stockpiles are defined as the storage for multiple days of soil or other sediment material to be used in the construction project or transported for disposal.

5.1.2.4.1.

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Locate the piles outside of any natural buffers established under section 5.1.2.1.1. and physically separated from other storm water controls implemented in accordance with section 5.1.;

5.1.2.4.2.

Protect from contact with storm water (including runoff) using a temporary perimeter sediment barrier;

5.1.2.4.3.

Where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge;

5.1.2.4.4.

Do not hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any storm water conveyance (unless connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or state water; and

5.1.2.4.5.

Unless infeasible, contain and securely protect from wind.

5.1.2.5. Minimize dust.

In order to avoid pollutants from being discharged into state waters, to the extent feasible, the permittee shall minimize the generation of dust through the appropriate application of water or other dust suppression techniques.

5.1.2.6. Minimize the disturbance of steep slopes.

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The permittee shall minimize the disturbance of "steep slopes." For this permit, "steeps slopes" means those that are 15 percent or greater in grade.

Note: The permit does not prevent or prohibit disturbance on steep slopes. For some projects, disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If a disturbance to steep slopes is required for the project, the department would recognize that it is not economically achievable to avoid the disturbance to steep slopes. However, in cases where steep slope disturbances are required, minimizing the disturbances to steep slopes consistent with this requirement can be accomplished through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances to these areas and using stabilization practices designed to be used on steep grades.

### 5.1.2.7. Preserve topsoil.

The permittee shall preserve native topsoil on the site, unless infeasible. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

Note: Some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, preserving topsoil at the site would not be feasible. Some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil.

Note: Stockpiling of topsoil at off-site locations, or transfer of topsoil to other locations, is an example

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of a practice that is consistent with the requirements in this section.

5.1.2.8.   —Minimize soil compaction.

In areas of the site where final vegetative stabilization will occur or where infiltration practices will be installed, the permittee shall either:

5.1.2.8.1.       —Restrict vehicle/equipment use.

Restrict vehicle and equipment use in these locations to avoid soil compaction; or

5.1.2.8.2.       —Use soil conditioning techniques.

Prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible.

5.1.2.9.   —Protect storm drain inlets.

If discharging to any storm drain inlet that carries storm water flow from the site directly to a state water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), and the permittee has authority to access the storm drain inlet, the permittee shall:

5.1.2.9.1.       —Installation requirements.

Install inlet protection measures that remove sediment from the discharge prior to entry into the storm drain inlet.

Note: Inlet protection measures can be removed in the event of flood conditions where safety or loss of



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property is of concern or to prevent erosion, but must be reinstalled once safety, property loss, and erosion are no longer a risk.

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5.1.2.9.2. Maintenance requirements.

Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, the permittee shall remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible.

5.1.2.10 Contaminated soil and contaminated soil stockpiles.

The permittee shall either:

5.1.2.10.1.

Prevent storm water from contacting contaminated soil and contaminated soil stockpiles; or

5.1.2.10.2.

Prevent the discharge of storm water runoff from contaminated soil and contaminated soil stockpiles.

5.1.3.

Requirements applicable only to sites using these specific storm water controls.

The permittee is required to comply with the following requirements if installing any of the following storm water controls at the site:

5.1.3.1. Constructed storm water conveyance channels.

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Design storm water conveyance channels to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. Minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed storm water conveyance channel, and at any outlet to provide a non-erosive flow velocity.

5.1.3.2. Sediment Basins.

If installing a sediment basin, the permittee shall comply with the following:

5.1.3.2.1. Design requirements.

5.1.3.2.1.1.

Provide storage for either (1) the calculated volume of runoff from a minimum 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained;

5.1.3.2.1.2.

When discharging from the sediment basin, utilize outlet structures that withdraw water from the surface in order to minimize the discharge of pollutants, unless infeasible;

Note: The department believes that the circumstances in which it is infeasible to design outlet structures in this manner are rare. If determined by the permittee that it is infeasible to meet this requirement, the permittee shall provide documentation in the SWPPP to support the determination.

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5.1.3.2.1.3.

Prevent erosion of (1) the sediment basin using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet using erosion controls and velocity dissipation devices; and

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5.1.3.2.1.4.

Sediment basins must be situated outside of state waters and any natural buffers established under section 5.1.2.1.1., and must be designed to avoid collecting water from wetlands.

5.1.3.2.2. Maintenance requirements.

Keep in effective operating condition and remove accumulated sediment to maintain at least  $\frac{1}{2}$  of the design capacity of the sediment basin at all times.

5.1.3.3. Dewatering practices.

The permittee is prohibited from discharging ground water or accumulated storm water that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.

5.2. Stabilization Requirements.

The permittee is required to stabilize exposed portions of the site in accordance with the requirements of this section.

Note: For the purposes of this permit, "exposed portions of the site" means areas of exposed soil that are required to be stabilized. Note that the department does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). Otherwise, permanent stabilization is required for disturbed areas.

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5.2.1. Deadlines for initiating and completing stabilization.

5.2.1.1. Deadline to initiate stabilization.

The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas.

Note: Earth-disturbing activities have permanently ceased when clearing and excavation within any area of the construction site that will not include permanent structures has been completed.

Note: Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of 14 or more calendar days, but such activities will resume in the future.

The 14 calendar day timeframe above begins counting as soon as the permittee knows that construction work on a portion of the site will be temporarily ceased. In circumstances where the permittee experiences unplanned or unanticipated delays in construction due to circumstances beyond the permittee's control (e.g., sudden work stoppage due to unanticipated problems associated with construction labor, funding, or other

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issues related to the ability to work on the site; weather conditions rendering the site unsuitable for the continuation of construction work) and it is not known at first how long the work stoppage will continue, the permittee's requirement to immediately initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days. At that point, the permittee shall comply with sections 5.2.1.1. and 5.2.1.2.

Note: For the purposes of this permit, the department will consider any of the following types of activities to constitute the initiation of stabilization:

- a. prepping the soil for vegetative or non-vegetative stabilization;
- b. applying mulch or other non-vegetative product to the exposed area;
- c. seeding or planting the exposed area;
- d. starting any of the activities in a - c on a portion of the area to be stabilized, but not on the entire area; and
- e. finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization in sections 5.2.1.2. and 5.2.1.3.

This list of examples is not exhaustive.

Note: The term "immediately" is used to define the deadline for initiating stabilization measures. In the context of this provision, "immediately" means as soon as practicable, but no later than the end of the next

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work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

5.2.1.2. Deadline to complete stabilization activities.

As soon as practicable, but no later than 14 calendar days after the initiation of soil stabilization measures consistent with section 5.2.1.1.—, the permittee is required to have completed:

5.2.1.2.1.

For vegetative stabilization, all activities necessary to initially seed or plant the area to be stabilized; and/or

5.2.1.2.2.

For non-vegetative stabilization, the installation or application of all such non-vegetative measures.

5.2.1.3. Exceptions to the deadlines for initiating and completing stabilization.

5.2.1.3.1

Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee's control (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding), and the permittee is using vegetative cover for temporary or permanent stabilization, the permittee

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may comply with the following stabilization deadlines instead:

5.2.1.3.1.1.

Immediately initiate, and within 14 calendar days complete, the installation of temporary non-vegetative stabilization measures to prevent erosion;

5.2.1.3.1.2.

Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on the site; and

Note: The permittee is required to have stabilized the exposed portions of the site consistent with section 5.2.2. prior to terminating permit coverage.

5.2.1.3.1.3.

Document the circumstances that prevent the permittee from meeting the deadlines required in sections 5.2.1.1. and/or 5.2.1.2. and the schedule the permittee will follow for initiating and completing stabilization.

5.2.1.3.2.

Deadlines for sites discharging to impaired waters. For any portion of the site that discharges to a sediment or nutrient-impaired water (see section 6.2.), the permittee is required to complete the stabilization activities specified in sections 5.2.1.2.1. and/or 5.2.1.2.2. within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.



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Note: If the permittee qualifies for the deadlines for initiating and completing stabilization in section 5.2.1.3.1. or 5.2.1.3.2., the permittee may comply with the stabilization deadlines in section 5.2.1.3.1. or 5.2.1.3.2. for any portion of the site that discharges to an impaired water.

5.2.2. Criteria for stabilization.

To be considered adequately stabilized, the permittee shall meet the criteria below depending on the type of cover the permittee is using, either vegetative or non-vegetative.

5.2.2.1. Vegetative stabilization.

5.2.2.1.1.

For all sites, except those located on agricultural lands.

5.2.2.1.1.1.

If the permittee is vegetatively stabilizing any exposed portion of the site through the use of seed or planted vegetation, the permittee shall provide established uniform vegetation (e.g., evenly distributed without large bare areas), which provides 70 percent or more of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. The permittee should avoid the use of invasive species;

5.2.2.1.1.2.

For final stabilization, vegetative cover must be perennial; and

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5.2.2.1.1.3.

Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, the permittee shall select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established.

5.2.2.1.2.

For sites located on land used for agriculture. Disturbed areas on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction) that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. Areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, must meet the conditions for stabilization in this section.

5.2.2.2. Non-Vegetative Stabilization.

If the permittee is using non-vegetative controls to stabilize exposed portions of the site, or if the permittee is using such controls to temporarily protect areas that are being vegetatively stabilized, the permittee shall provide effective non-vegetative cover to stabilize any such exposed portions of the site.

5.3. Pollution prevention requirements.

The permittee is required to design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants. Consistent with this requirement, the permittee shall:

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- a. Eliminate certain pollutant discharges from the site (see section 5.3.1.);
- b. Properly maintain all pollution prevention controls (see section 5.3.2.); and
- c. Comply with pollution prevention standards for pollutant-generating activities that occur at the site (see section 5.3.3.).

These requirements apply to all areas of the construction site and any and all support activities covered by this permit consistent with section 5.

5.3.1. Prohibited Discharges.

The permittee is prohibited from discharging the following from the construction site:

- 5.3.1.1. Wastewater from washout of concrete;
- 5.3.1.2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials,;
- 5.3.1.3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 5.3.1.4. Soaps, solvents, or detergents used in vehicle and equipment washing; and
- 5.3.1.5. Toxic or hazardous substances from a spill or other release.

5.3.2. General Maintenance Requirements.

The permittee shall ensure that all pollution prevention controls installed in accordance with this

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section remain in effective operating condition and are protected from activities that would reduce their effectiveness. The permittee shall inspect all pollutant-generating activities and pollution prevention controls in accordance with the inspection frequency requirements in sections 9.1.2 or 6.2.2.1. to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharges to receiving waters, and must document the findings in accordance with section 9.1.7. If the permittee finds that controls need to be replaced, repaired, or maintained, the permittee shall make the necessary repairs or modifications in accordance with the following:

5.3.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

5.3.2.2.

When installation of a new pollution prevention control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7 calendar day timeframe. Where these actions result in changes to any of the pollution prevention controls or procedures documented

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in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.3.3. Pollution prevention standards.

The permittee is required to comply with the pollution prevention standards in this section if the permittee conducts any of the following activities at the site or at any construction support activity areas covered by this permit (see section 5):

- a. Fueling and maintenance of equipment or vehicles;
- b. Washing of equipment and vehicles;
- c. Storage, handling, and disposal of construction materials, products, and wastes; and
- d. Washing of applicators and containers used for paint, concrete, or other materials.

The pollution prevention standards are as follows:

5.3.3.1. Fueling and maintenance of equipment or vehicles.

If the permittee conducts fueling and/or maintenance of equipment or vehicles at the site, the permittee shall provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuel, from the area where these activities will take place.

To comply with the prohibition in section 5.3.1.3., the permittee shall:

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5.3.3.1.1.

If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR 112 and section 311 of the CWA;

5.3.3.1.2.

Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;

5.3.3.1.3.

Use drip pans and absorbents under or around leaky vehicles and equipment;

5.3.3.1.4.

Dispose of or recycle oil and oily wastes in accordance with other federal, state, and local requirements;

5.3.3.1.5.

Clean up spills or contaminated surfaces immediately, using dry clean up measures where possible, and eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and

5.3.3.1.6.

Do not clean surfaces by hosing the area down.

5.3.3.2. Washing of equipment and vehicles.

5.3.3.2.1.

The permittee shall provide an effective means to prevent the discharge of pollutants from equipment and

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vehicle washing, wheel wash water, and other types of washing; and

5.3.3.2.2.

To comply with the prohibition in section 5.3.1.4., for storage of soaps, detergents, or solvents, the permittee shall provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these detergents from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these storage areas.

5.3.3.3. Storage, Handling, and Disposal of Construction Products, Materials, and Wastes.

The permittee shall minimize the exposure to storm water of any of the products, materials, or wastes specified below that are present at the site by complying with the requirements in this section.

Note: These requirements do not apply to those products, materials, or wastes that are not a source of storm water contamination or that are designed to be exposed to storm water.

To ensure meeting this requirement, the permittee shall:

5.3.3.3.1.

For building products: In storage areas, provide either:

- a. Cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or

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- b. A similarly effective means designed to prevent the discharge of pollutants from these areas.

5.3.3.3.2.

For pesticides, herbicides, insecticides, fertilizers, and landscape materials:

- a. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals and materials from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and
- b. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.

5.3.3.3.3.

For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:

- a. To comply with the prohibition in section 5.3.1.3., store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
- b. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the



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source of the spill to prevent a discharge or a continuation of an ongoing discharge.

5.3.3.3.4.

For hazardous or toxic waste:

Separate hazardous or toxic waste from construction and domestic waste;

- a. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements;
- b. Store all containers that will be stored outside away from surface waters and within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);
- c. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements; and
- d. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.

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5.3.3.3.5.

For construction and domestic waste:

Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, the permittee shall:

- a. On work days, clean up and dispose of waste in designated waste containers; and
- b. Clean up immediately if containers overflow.

5.3.3.3.6.

For sanitary waste:

Position portable toilets so that they are secure and will not be tipped or knocked over.

5.3.3.4. Washing of applicators and containers used for paint, concrete, or other materials.

The permittee shall provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. To comply with this requirement, the permittee shall:

5.3.3.4.1.

Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;

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5.3.3.4.2.

Handle washout or cleanout wastes as follows:

- a. Do not dump liquid wastes in storm sewers;
- b. Dispose of liquid wastes in accordance with applicable requirements in section 5.3.3.3.; and
- c. Remove and dispose of hardened concrete waste consistent with the handling of other construction wastes in section 5.3.3.3.; and

5.3.3.4.3.

Locate any washout or cleanout activities as far away as possible from state waters and storm water inlets or conveyances, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

5.3.4. Emergency spill notification.

The permittee is prohibited from discharging toxic or hazardous substances from a spill or other release, consistent with section 5.3.1.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period, the permittee shall notify the National Response Center (NRC) at (800) 424-8802, the Clean Water Branch during regular business hours at 586-4309, and the Hawaii State Hospital Operator at 247-2191 and the Clean Water Branch via email at [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) during non-business hours as soon as the permittee has knowledge of the discharge. The permittee shall also, within 7 calendar days of knowledge of the release, provide a description

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of the release, the circumstances leading to the release, and the date of the release. State and local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.

5.3.5. Fertilizer discharge restrictions.

The permittee is required to minimize discharges of fertilizers containing nitrogen or phosphorus. To meet this requirement, the permittee shall comply with the following requirements:

- 5.3.5.1. Apply at a rate and in amounts consistent with manufacturer's specifications, or document departures from the manufacturer specifications where appropriate in section 7.2.7.2. of the SWPPP;
- 5.3.5.2. Apply at the appropriate time of year for the location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;
- 5.3.5.3. Avoid applying before heavy rains that could cause excess nutrients to be discharged;
- 5.3.5.4. Never apply to storm water conveyance channels with flowing water; and
- 5.3.5.5. Follow all other federal, state, and local requirements regarding fertilizer application.

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6. Water Quality-Based Effluent Limitations

6.1 General Effluent limitation to meet applicable water quality standards.

The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

In the absence of information demonstrating otherwise, the department expects that compliance with the conditions in this permit will result in storm water discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the department determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in section 10.2.1., and document the corrective actions as required in section 10.2.1. and section 10.4.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information in the NOI, or from other sources indicates that the discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in a state-established and EPA-approved Total Maximum Daily Load (TMDL).

6.2. Discharge limitations for impaired waters

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or

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phosphorus, the permittee is required to comply with the requirements in section 6.2.2.

Note: For the purposes of this section, "impaired waters" are waters identified as impaired on the State CWA section 303(d) list, and waters with a state-established and EPA-approved TMDL. The construction site will be considered to discharge to an impaired water if the first state water to which the discharge enters is to a water on the section 303(d) list or one with a state established and EPA-approved TMDL. For discharges that enter a storm water drainage system prior to discharge, the first state water to which discharge is the water body that receives the storm water discharge from the storm water drainage system.

If discharge is to an impaired water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards, including for it to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL, or if coverage under an individual permit is necessary.

If during the coverage under a previous permit, the permittee was required to install and maintain storm water controls specifically to meet the assumptions and requirements of a state-established and EPA-approved TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the permittee shall continue to implement such controls as part of this permit.

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6.2.1. Identify if you discharge to an impaired water.

If discharge is to an impaired water, the permittee shall provide the following information in the NOI:

- a. A list of all impaired waters to which discharge enters;
- b. The pollutant(s) for which the state water is impaired; and

6.2.2. Requirements for discharges to sediment or nutrient-impaired waters.

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter (e.g., total suspended solids (TSS) or turbidity) and/or (2) nutrients (e.g., nitrogen and/or phosphorus), including impaired waters for which a TMDL has been approved or established for the impairment, the permittee is required to comply with the following storm water control requirements in sections 6.2.2.1. and 6.2.2.2., which supplement the requirements applicable to the site in other corresponding sections of the permit.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if it is determined that the controls will not be sufficient to control discharges consistent with the assumptions and requirements of an applicable wasteload allocation of an approved or established TMDL or to prevent the site from contributing to the impairment.

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6.2.2.1. Frequency of site inspection.

The permittee shall conduct inspections at the frequency specified in section 9.1.3.

6.2.2.2. Deadline to complete stabilization.

The permittee shall comply with the deadlines for completing site stabilization as specified in section 5.2.1.3.2.

7. Storm Water Pollution Prevention Plan (SWPPP)

7.1. Requirement to develop a SWPPP prior to submitting an NOI.

All permittees and their contractors with a construction project to be covered under this permit must develop a SWPPP.

The Permittee is required to develop the site's SWPPP prior to submitting the NOI. The SWPPP must include at a minimum the information required in section 7.2. and as specified in other sections of this general permit and any other information as requested by the director. The permittee shall also update the SWPPP as required in section 7.4.

If a Site Specific Construction Best Management Practices (SSCBMP) Plan was previously developed for coverage under a previous version of this general permit, the permittee shall review and update the SSCBMP Plan to ensure that requirements of this permit's SWPPP are addressed prior to submitting the NOI.



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### 7.2. SWPPP Contents

The SWPPP must include the following information, at a minimum.

#### 7.2.1. Storm water team.

The permittee shall assemble and oversee a "storm water team," which is responsible for the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.

The SWPPP must identify the personnel (by name or position) that are part of the storm water team, as well as their individual responsibilities. Each member of the storm water team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.

#### 7.2.2. Nature of construction activities.

The SWPPP must describe the nature of the construction activities, including the size of the project site (in acres) and the total area expected to be disturbed by the construction activities (in acres), construction support activity areas covered by this permit (see section 5), and the maximum area expected to be disturbed at any one time.

#### 7.2.3. Emergency-related projects.

If conducting earth-disturbing activities in response to a public emergency (see section 1.3.), the permittee shall document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., state emergency proclamation or similar state proclamation),

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and a description of the construction necessary to reestablish effected public services. The proclamation of a civil defense emergency or similar proclamation is required to be from the President of the United States or State Governor.

7.2.4. Identification of other site contractors.

The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities.

7.2.5. Sequence and estimated dates of construction activities.

The SWPPP must include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity, for the following activities:

7.2.5.1.

Installation of storm water control measures, and when they will be made operational, including an explanation of how the sequence and schedule for installation of storm water control measures complies with section 5.1.1.3.1. and of any departures from manufacturer specifications pursuant to section 5.1.1.3.2., including removal procedures of the storm water control measures after construction has ceased;

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7.2.5.2.

Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;

7.2.5.3.

Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site;

7.2.5.4.

Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which the permittee is subject to in section 5.2.1.; and

7.2.5.5.

Removal of temporary storm water conveyances/channels and other storm water control measures, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the permittee or contractor to meeting these projections. When departures from initial projections are necessary, this should be documented in the SWPPP itself or in associated records, as appropriate.

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7.2.6. Site map.

The SWPPP must include a legible site map, or series of maps, showing the following features of the project:

Note: Included in the project site are any construction support activities covered by this permit (see section 5).

7.2.6.1.

Boundaries of the property and of the locations where construction activities will occur, including:

- a. Locations where earth-disturbing activities will occur, noting any sequencing of construction activities;
- b. Approximate slopes before and after major grading activities and drainage patterns with flow arrows. Note areas of steep slopes, as defined in section 5.1.2.6.;
- c. Locations where sediment, soil, or other construction materials will be stockpiled;
- d. Locations of any contaminated soil or contaminated soil stockpiles;
- e. Locations of any crossings of state waters;
- f. Designated points on the site where vehicles will exit onto paved roads;
- g. Locations of structures and other impervious surfaces upon completion of construction; and
- h. Locations of construction support activity areas covered by this permit (see section 5).

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7.2.6.2.

Locations of all state waters, including wetlands, that exist within or in the immediate vicinity of the site and indicate which waterbodies are listed as impaired;

7.2.6.3.

The boundary lines of any natural buffers provided consistent with section 5.1.2.1.1.;

7.2.6.4.

Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of storm water onto, over, and from the site property before and after major grading activities;

7.2.6.5.

Storm water discharge locations, including:

- a. Locations of any storm drain inlets on the site and in the immediate vicinity of the site to receive storm water runoff from the project; and
- b. Locations where storm water will be discharged to state waters (including wetlands).

7.2.6.6.

Locations of all potential pollutant-generating activities identified in section 7.2.7.;

7.2.6.7.

Locations of storm water control measures; and

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7.2.6.8.

Locations where chemicals will be used and stored.

7.2.7. Construction site pollutants.

The SWPPP must include the following:

- a. A list and description of all the pollutant-generating activities on the site.
- b. For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall and could be discharged from the construction site. The permittee shall take into account where potential spills and leaks could occur that contribute pollutants to storm water discharges. The permittee shall also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in section 5.3.5.1.

7.2.8. Sources of non-storm water.

The SWPPP must also identify all sources of non-storm water and information, including, but not limited to, the design, installation, and maintenance of the control measures to prevent its discharge.

7.2.9. Buffer documentation.

If the permittee is required to comply with section 5.1.2.1. because a state water is located within 50 feet of the project's earth disturbances, the permittee shall describe which compliance alternative the permittee has selected for the site, and comply with

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any additional requirements to provide documentation in section 5.1.2.1.

7.2.10. Description of storm water control measures.

7.2.10.1 Storm water control measures to be used during construction Activity.

The SWPPP must describe all storm water control measures that are or will be installed and maintained at the site to meet the requirements of section 5. For each storm water control measure, the permittee must document:

- a. Information on the type of storm water control measure to be installed and maintained, including design information;
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of the site to meet the requirement of section 5.1.2.2.1.;
- c. If contaminated soil exists on-site, the control measures to either prevent the contact of storm water with the contaminated soil, including any contaminated soil stockpiles, or prevent the discharge of any storm water runoff which has contacted contaminated soil or any contaminated soil stockpiles;
- d. For exit points on the site, document stabilization techniques the permittee will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with section 5.1.2.3.; and

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- e. For linear projects, where the permittee has determined that the use of perimeter controls in portions of the site is impracticable, document why the permittee believes this to be the case (see section 5.1.2.2.1.).

7.2.10.2. Stabilization practices.

The SWPPP must describe the specific vegetative and/or non-vegetative practices that will be used to comply with the requirements in section 5.2., including if the permittee will be complying with the stabilization deadlines specified in section 5.2.1.3.2. The permittee shall document the circumstances that prevent the permittee from meeting the deadlines specified in sections 5.2.1.1. and/or 5.2.1.2.

7.2.10.3. Post construction measures.

Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.

7.2.11 Pollution prevention procedures.

7.2.11.1. Spill prevention and response procedures.

The SWPPP must describe procedures that the permittee will follow to prevent and respond to spills and leaks consistent with section 5.3., including:



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- a. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with section 5.3.4. and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available.

The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that the permittee keeps a copy of that other plan onsite.

Note: Even if the permittee already has an SPCC or other spill prevention plan in existence, the plans will only be considered adequate if they meet all of the requirements of this section, either as part of the existing plan or supplemented as part of the SWPPP.

7.2.11.2. Waste management procedures.

The SWPPP must describe procedures for how the permittee will handle and dispose of all wastes generated at the site, including, but not limited to, clearing and demolition debris, sediment removed from

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the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

7.2.12. Procedures for inspection, maintenance, and corrective action.

The SWPPP must describe the procedures the permittee will follow for maintaining the storm water control measures, conducting site inspections, and, where necessary, taking corrective actions, in accordance with section 5.1.1.4., section 5.3.2., section 9, and section 10 of the permit. The following information must also be included in the SWPPP:

- a. Personnel responsible for conducting inspections;
- b. The inspection schedule the permittee will be following, which is based on whether the site is subject to section 9.1.2. or section 9.1.3., and whether the site qualifies for any of the allowances for reduced inspection frequencies in 9.1.4. If the permittee will be conducting inspections in accordance with the inspection schedule in section 9.1.2.a. or section 9.1.2.b., the location of the rain gauge on the site or the address of the weather station the permittee will be using to obtain rainfall data; and
- c. Any inspection or maintenance checklists or other forms that will be used.

7.2.13. Staff training.

The SWPPP must include documentation that the required personnel were trained in accordance with the following:

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7.2.13.1.

Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, the permittee shall ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- a. Personnel who are responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention measures);
- b. Personnel responsible for the application and storage of chemicals (if applicable);
- c. Personnel who are responsible for conducting inspections as required in Part 4.1.1; and
- d. Personnel who are responsible for taking corrective actions as required in Part 5.

Notes: (1) If the person requiring training is a new employee, who starts after the permittee commences earth-disturbing or pollutant-generating activities, the permittee shall ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. (2) For emergency-related construction activities, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply, however, such personnel must have the required training prior to NOI submission.

7.2.13.2.

The permittee is responsible for ensuring that all activities on the site comply with the requirements of

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this permit. The permittee is not required to provide or document formal training for subcontractors or other outside service providers, but must ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.

At a minimum, personnel must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):

- a. The location of all storm water controls on the site required by this permit, and how they are to be maintained;
- b. The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- c. When and how to conduct inspections, record applicable findings, and take corrective actions.

7.2.14. Documentation of compliance with Safe Drinking Water Act Underground Injection Control (UIC) requirements for certain subsurface storm water controls.

If using any of the following storm water controls at the site, as they are described below, the permittee must document any contact with the department's Safe Drinking Water Branch for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144 -147. Such controls would generally be considered Class V UIC wells:

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- a. Infiltration trenches (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);
- b. Commercially manufactured precast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate storm water flow; and
- c. Drywells, seepage pits, or improved sinkholes (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).

7.2.15. Information to be included in the SWPPP prior to the start of construction activities.

7.2.15.1. Contractor information.

The following contractor (general and subcontractors) information shall be included in the SWPPP: legal name, street address, contact person's name and position title, telephone number, and email address.

7.2.15.2. Other state, federal, or county permits.

The following are required to be included in the SWPPP prior to the start of construction activities, if applicable:

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;
- b. Copy of the county-approved grading permit;

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- c. Copy of the department of the army permit and section 401 water quality certification; and
- d. A list of other permits.

7.2.16. Any other information as requested by the director.

7.2.17. SWPPP certification.

The [permittee], certifying person or duly authorized representative must certify, sign, and date the SWPPP in accordance with section 15 of appendix A, chapter 11-55.

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7.2.18. Post-authorization additions to the SWPPP.

After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:

- a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;
- b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable).

7.3. On-site availability of the SWPPP.

The permittee is required to keep a current copy of the SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by the department; EPA; or local agency approving storm water management plans; the operator of a storm water drainage system receiving discharges from the site; or representatives of the

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U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).

The department may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.

Note: Information covered by a claim of confidentiality will be disclosed by the department only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of the construction site.

7.4. Required SWPPP modifications.

7.4.1. List of conditions requiring SWPPP modification.

The permittee shall modify the SWPPP, including the site map(s), in response to any of the following conditions:

7.4.1.1.

Whenever new contractors become active in construction activities on the site, or changes are made to the

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construction plans, storm water control measures, pollution prevention measures, or other activities at the site that are no longer accurately reflected in the SWPPP. This includes changes made in response to corrective actions triggered under section 10. ~~The permittee does not need to modify the SWPPP if the estimated dates in section 7.2.5. change during the course of construction.~~

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7.4.1.2.

To reflect areas on the site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;

7.4.1.3.

If inspections or investigations by site staff, or by local, state, or federal officials determine that SWPPP modifications are necessary for compliance with this permit;

7.4.1.4.

Where the department determines it is necessary to impose additional requirements on the discharge, the following must be included in the SWPPP:

- a. A copy of any correspondence describing such requirements; and
- b. A description of the storm water control measures that will be used to meet such requirements.

7.4.1.5.

To reflect any revisions to applicable federal, state, and local requirements that affect the storm water control measures implemented at the site. ~~and~~



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7.4.2. Deadlines for SWPPP modifications.

The permittee shall complete required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in section 7.4.1.

7.4.3. SWPPP modification records.

The permittee shall maintain records showing the dates of all SWPPP modifications. The records must include a signature of the person authorizing each change (see section 7.2.17. above), date, and a brief summary of all changes.

7.4.4. Certification requirements.

All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

7.4.5. Required notice to other contractors.

Upon determining that a modification to the SWPPP is required, if there are multiple contractors covered under this permit, the permittee shall immediately notify any contractors who may be impacted by the change to the SWPPP.

8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)

8.1.

The permittee shall design, operate, implement, and maintain the SWPPP to ensure that storm water discharges associated with construction activities will

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not cause or contribute to a violation of applicable state water quality standards.

8.2.

The permittee shall implement the SWPPP to improve the quality of storm water discharges or when instructed by the director.

9. Inspections

9.1 Site Inspections

The permittee shall ~~[timely]~~ inspect the receiving state waters, storm water runoff and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4 in accordance with this section. (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

The permittee ~~must~~ shall inspect the receiving state waters only when there is a discharge from the project site and there is a potential for downstream erosion. If the discharge enters an MS4 or separate drainage system prior to the receiving state water, then the permittee may inspect their discharge where it enters the drainage system rather than at the receiving water. When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water or separate drainage system, in lieu of inspecting the receiving water or where it enters the drainage system, the permittee may inspect the effluent at a location representative of the discharge quality prior to commingling. The permittee is not required to

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inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented. ~~[Except, if the discharge enters an MS4 or separate drainage system, then the permittee may inspect their discharge when it enters a drainage system rather than at the receiving water (excluding an upset event, BMP failure, or rainfall events greater than 0.25 inches).]~~

9.1.1. Person(s) responsible for inspecting site.

The person(s) inspecting the site may be a person on staff or a third party hired to conduct such inspections. The permittee is responsible for ensuring that the person who conducts inspections is a "qualified person."

Note: A "qualified person" is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact storm water quality, and the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.

9.1.2. Frequency of Inspections.

At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. or section 9.1.4.:

- a. At least once every 7 calendar days; or
- b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the

**Commented [DL1]:** For Rationale: The note considers both situations where the effluent may or may not enter a storm water drainage system. If it enters a storm water drainage system, the permittee may automatically assume that it commingles and therefore, inspection at the receiving water is not required.

If the state receiving water is located far away, but does not commingle with other waters then, inspection of the receiving water is still required. In this situation, the DOH is concerned with erosion and potential pollutants that may be picked up and transported in the effluent, for which the Permittee is responsible.

**Commented [HG2]:** Added that unsafe conditions must be documented.

**Commented [DL3]:** Revised based on Tavia's comment.

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permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: The permittee is required to specify in the SWPPP which schedule will be followed.

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

9.1.3. Increase in inspection frequency for sites discharging to impaired waters.

For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:

a. Once every 7 calendar days; and

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- b. Within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

Note: Inspections are only required during the project's normal working hours.

Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.

Note: If the permittee qualifies for any of the reduced inspection frequencies in section 9.1.4., the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water.

9.1.4. Reductions in inspection frequency.

For stabilized areas. The permittee may reduce the frequency of inspections to once per month in any area of the site where the stabilization steps in sections 5.2.1.2.1. and 5.2.1.2.2. have been completed. If construction activity resumes in this portion of the

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site at a later date, the inspection frequency immediately increases to that required in sections 9.1.2. or 9.1.3., if applicable. The permittee shall document the beginning and ending dates of this period in the records.

9.1.5. Areas that need to be inspected.

The permittee shall at a minimum inspect the following areas of the site:

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with section 5.2.;
- b. All storm water controls (including pollution prevention measures) installed at the site to comply with this permit;
- c. Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;
- d. All areas where storm water typically flows within the site, including drainageways designed to divert, convey, and/or treat storm water;
- e. All points of discharge from the site; and
- f. All locations where stabilization measures have been implemented.

The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel.

9.1.6. Requirements for inspections. During the site inspection, the permittee shall at a minimum:

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9.1.6.1.

Check whether all erosion and sediment controls and pollution prevention controls are installed, appear to be operational, and are working as intended to minimize pollutant discharges. Determine if any controls need to be replaced, repaired, or maintained in accordance with sections 5.1.1.4. and 5.3.2.;

9.1.6.2.

Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;

9.1.6.3.

Identify any locations where new or modified storm water controls are necessary to meet the requirements of sections 5 and/or 6;

9.1.6.4.

At points of discharge and, if applicable, the banks of any state waters flowing within the property boundaries or immediately adjacent to the property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge; and

9.1.6.5.

Identify any and all incidents of noncompliance observed.

9.1.6.6.

If a discharge is occurring during the inspection, the permittee is required to:

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- a. Identify all points of the property from which there is a discharge;
- b. Observe and document the visual quality of the discharge, and take note of the characteristics of the storm water discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of storm water pollutants; and
- c. Document whether the storm water controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.

9.1.6.7.

Based on the results of the inspection, initiate corrective action under section 10.

9.1.7. Inspection report.

9.1.7.1.

Requirement to Complete Inspection Report. The permittee must complete an inspection report within 48 hours of completing any site inspection. Each inspection report must include the following:

- a. The inspection date;
- b. Names and titles of personnel making the inspection;
- c. A summary of the inspection findings, covering at a minimum the observations made in accordance with section 9.1.6.;



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- d. If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and have conducted an inspection because of rainfall measuring 0.25 inches or greater, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection; and
- e. If determined that it is unsafe to inspect a portion of the site, the permittee shall describe the reason to be unsafe and specify the locations that this condition applied to.

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9.1.7.2. Signature Requirements.

Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

9.1.7.3. Recordkeeping Requirements.

The permittee is required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by the department or EPA.

All inspection reports completed for this section must be retained for at least 5 years from the date that the permit coverage expires or is terminated.

9.2. Inspection by the department or EPA.

The permittee shall allow the department, EPA, or an authorized representative of the EPA, to conduct the following activities at reasonable times:

- a. Enter onto areas of the site, including any construction support activity areas covered by this permit (see Section 5), and onto locations where records are kept under the conditions of this permit;
- b. Access and copy any records that must be kept under the conditions of this permit;
- c. Inspect the construction site, including any construction support activity areas covered by this permit (see section 5) and any storm water controls installed and maintained at the site; and

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- d. Sample or monitor for the purpose of ensuring compliance.

10. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

10.1 "Corrective actions" defined.

Corrective actions are actions taken in compliance with this section to:

- a. Repair, modify, or replace any storm water control used at the site;
- b. Clean up and properly dispose of spills, releases, or other deposits; or
- c. Remedy a permit violation.

10.2. Requirements for taking corrective actions.

The permittee shall complete the following corrective actions in accordance with the deadlines specified in this section. In all circumstances, the permittee shall immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational, including cleaning up any contaminated surfaces so that the material will not discharge in subsequent storm events.

Note: In this context, the term "immediately" requires construction contractors to, on the same day a condition requiring corrective action is found, take

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all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if the problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin on the following work day.

10.2.1.

For any of the following conditions on the site, the permittee shall install a new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document a schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe.

- a. A required storm water control was never installed, was installed incorrectly, or not in accordance with the requirements in sections 5 and/or 6; or
- b. The permittee becomes aware that the storm water controls installed and being maintained are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in section 6.1. In this case, the permittee shall notify the department by the end of the next work day; or
- c. One of the prohibited discharges in section 5.3.1. is occurring or has occurred.

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10.2.2.

Where corrective actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing corrective action work.

10.3. Corrective actions required by the department.

The permittee shall comply with any corrective actions required by the department as a result of permit violations found during an inspection carried out under section 9.2.

10.4. Corrective action report.

For each corrective action taken in accordance with this section, the permittee shall complete a corrective action report, which includes the applicable information in sections 10.4.1. and 10.4.2. Note that these reports must be maintained in the permittee's records but do not need to be provided to the department except upon request.

10.4.1.

Within 24 hours of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall complete a report of the following:

- a. Which condition was identified at the site;
- b. The nature of the condition identified; and
- c. The date and time of the condition identified and how it was identified.

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10.4.2.

Within 7 calendar days of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall complete a report of the following:

- a. Any follow-up actions taken to review the design, installation, and maintenance of storm water controls, including the dates such actions occurred;
- b. A summary of storm water control modifications taken or to be taken, including a schedule of activities necessary to implement changes, and the date the modifications are completed or expected to be completed; and
- c. Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.

10.4.3.

Each corrective action report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

10.4.4.

The permittee shall keep a current copy of all corrective action reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by the department.

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All corrective action reports completed for this Part must be retained for at least 5 years from the date that the permit coverage expires or is terminated.

11. Notice of Intent requirements

11.1

The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the construction activity or thirty days before the expiration date of the applicable notice of general permit coverage.

11.2.

The owner or its duly authorized representative shall include the following information in the notice of intent:

11.2.1.

Information required in section 34 of appendix A of chapter 11-55;

11.2.2.

That coverage is being requested as a result of an emergency and meets the eligibility requirements under this permit and information required in section 7.2.3.

11.2.3.

That coverage is being requested for discharge to an impaired water, if applicable;

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11.2.4.

Preparation of a SWPPP in accordance with section 7 prior to submitting the NOI;

11.2.5.

Information required in section 7.2.2 - Nature of construction activities.

11.2.6.

Information required in section 7.2.5. - Sequence and estimated dates of construction activities.

11.2.7.

Information required in section 7.2.6. - Site map, except for sections 7.2.6.6. - 7.2.6.8.

11.2.8.

If applicable, army corps of engineers' jurisdictional determination and section 401 water quality certification best management practices plan.

11.2.9.

Agreement to the terms, conditions, and requirements in this general permit and all other applicable State, County, and Federal regulations.

11.3.

The director may require additional information to be submitted.



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11.4

The owner or its duly authorized representative shall submit ~~fa~~ complete notice of intent to the director at the following address or as otherwise specified: ~~Notice of i~~Intent ~~f~~Forms ~~orn~~ ~~f~~Forms specified by the CWB.

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[Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378]

Electronic notice of intent forms may be found at the ~~d~~Department's e-Permitting portal. The e-Permitting portal may be accessed via the ~~c~~Clean ~~w~~Water ~~B~~branch's website at: <http://health.hawaii.gov/cwb/>

12. Reporting Requirements

12.1

The permittee shall immediately notify the director of the incident and identify the pollutant(s) source(s) and the proposed and implemented control or mitigative measures as required in section 16 of appendix A of chapter 11-55.

12.2

The permittee shall notify the director of the construction start date through the e-Permitting portal ~~[by (add language for e-Permitting portal Compliance Submittal Form)]~~ ~~e-mail at~~ [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) ~~or~~ ~~fax at (808) 586-4352~~ within seven (7) calendar days before the start of construction activities. All

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communication ~~including but not limited to the e-mail and fax,~~ with the department shall include the file number and the certification statement. The notification will only be accepted from the person qualified in accordance with section 11-55-34.08(f).

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13. Submittal Requirements

13.1

The owner or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department. ~~[[Upon the department receiving EPA's Cross-Media Electronic Reporting Regulation (CROMERR), the monthly compliance reports shall be submitted through the e-Permitting Portal. Any comments provided by the department shall be answered in the time specified and to the satisfaction of the department. If the activity is in compliance and none of the information on file with the department requires updating, or there were no incidences of non-compliance, preparation of the monthly compliance information is still required which states that there were "no changes, updates, or any incidences of non-compliance to report."]]~~

[Note: EPA's Cross-Media Electronic Reporting Regulation (CROMERR) sets performance-based, technology-neutral standards for systems that states, tribes, and local governments use to receive electronic reports from facilities they regulate under EPA-authorized programs and requires program modifications or revisions to incorporate electronic reporting. CROMERR also addresses electronic reporting directly to EPA.]

Commented [MC4]: Removing the requirement in Section 13.1 to submit monthly compliance reports when EPA's CROMERR approval is obtained.

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13.2

When all construction activities have ceased, the owner shall submit to the department a completed Notice of Cessation ~~(-form)~~. The department shall receive this information within 7 calendar days after the end of the month.

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13.3

The owner or its duly authorized representative shall submit signed copies of all reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

13.4

The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

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penalties for submitting false information, including the possibility of fine ~~for~~ and imprisonment for knowing violations."

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13.5

The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

14. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

15. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of ~~three~~ [five] years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

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16. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

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NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF CIRCULATION WATER  
FROM DECORATIVE PONDS OR TANKS

This General Permit is effective on

and expires five years from this date,  
unless amended earlier.

1. Coverage under this General Permit

- (a) This general permit covers discharges of circulation water from decorative ponds or tanks containing fish or other aquatic species, not including mammals. This general permit also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled "Water Quality Standards."
- (b) This general permit covers all areas of the State except for ~~[discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."]~~ natural freshwater lakes, saline lakes, and anchialine pools.

2. Limitations on Coverage Under the General Permit

- (a) This general permit does not cover the following:

55-L-1



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- (1) Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system and
  - (2) Discharges of circulation water from decorative ponds or tanks which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.
3. Term of General Permit
- (a) This general permit becomes effective ~~[when section 11-55-34.02(11) becomes effective]~~ ten days after filing with the office of the lieutenant governor. ~~[This general permit expires when amendments to section 11-55-34.02(b)(11) are adopted, whichever is earlier.]~~
  - (b) A notice of general permit coverage under this general permit expires:
    - (1) Five years after the effective date of this general permit;
    - (2) When the notice of general permit coverage specifies; or

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- (3) When amendments to section 11-55-34.02(b)(11) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Description of the decorative fish pond or tank and the type of aquatic species being housed. The description should include, but not be limited to: material type of the pond or tank; water volume contained; the type, size, and number of aquatic species being housed; and, the type(s) and quantity of food utilized;
  - (3) Description of the average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means



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the number of days or hours per discharge. Provide the best estimate for new discharges;

- (4) Source(s) of the circulation water for the decorative fish pond or tank;
- (5) Quantitative data on pollutant(s) that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
- (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); and
- (8) A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, [The]the treatment system plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. [and all subsequent revisions, shall be retained] The permittee shall retain

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the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.8.

(1) Sampling Points

The permittee shall collect representative discharge samples downstream from the decorative fish

## CHAPTER 11-55 APPENDIX L

pond or tank circulation water discharge point(s) and prior to entering the receiving state water or separate storm water drainage systems or at a location that is approved by the department which is representative of the decorative fish pond or tank effluent water quality.

### (2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

### (3) Types of Samples

- (A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.
- (B) "Composite sample" means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

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(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken

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under the requirements of this general permit.

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall [~~timely~~] inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

Note: When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water, in lieu of inspecting the receiving water, inspect the effluent after it exits the site and prior to commingling.

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- (c) There shall be no floating solids, foam, or visible oil sheen in the effluent.
- (d) There shall be no discharge of pond or tank cleaning wastewaters that are generated during the cleaning of a pond or tank that has been drained of water below the normal operating level(s).
- (e) There shall be no discharge of filter backwash effluent.
- (f) There shall be no discharge of any water enhancement or treatment additives above applicable water quality standards or above detectable levels or quantities if no applicable water quality standard for such constituents exists.

7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in

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Table 34.8 and other requirements of this general permit.

- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
  - (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
  - (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
  - (5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.
- (b) ~~[Additional] Monitoring [by the Permittee] Report~~
- ~~[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as~~

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~~specified in section 6(a)(4)(B), the]The~~  
permittee shall include the ~~[results of~~  
~~this-]monitoring results~~ in the calculation  
and reporting of the values required in the  
discharge monitoring report form. ~~[—The~~  
~~permittee shall also indicate the increased~~  
~~frequency.]~~

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
    - (A) Violation of an effluent limitation specified in Table 34.8 or a basic water quality criteria specified in section 6(b) of this general permit;
    - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
    - (C) Unanticipated bypass or upset.
  - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.



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- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
  - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
  - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
  - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. For purposes of this general permit only, maintenance shall include, but not be limited to, the routine cleaning of

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the pond or tank while filled with water and otherwise still operated under normal conditions. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

- (b) The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information,

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the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine [or]and imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

The director may impose additional conditions under section 11-55-34.09(b).

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

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Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

### 13. Renewal

Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

### 14. Forms

Electronic notice of intent forms may be found at the Department's e-Permitting portal. The e-Permitting portal may be accessed via the Clean Water Branch's website at:  
<http://health.hawaii.gov/cwb/>

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TABLE 34.8

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS  
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (GPD)	{2}	Once/Quarter {11}	Estimate
Total Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Nitrate + Nitrite Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Ammonia Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Total Phosphorus (mg/l)	{2}	Once/Quarter {11}	Grab
Chlorophyl a (µg/l)	{2}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	10	Once/Quarter {11}	Grab
Turbidity (NTU)	{3}	Once/Quarter {11}	Grab
pH (standard units)	{4}	Once/Quarter {11}	Grab {5}
Fecal coliform or Enterococcus (no./100 ml) {6}	{7}	Once/Quarter {11}	Grab
Toxic Pollutants {8}	{9}	Once/Quarter {11}	{10}

GPD = gallons per day  
mg/l = milligrams per liter

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µg/l = micrograms per liter  
NTU = Nephelometric Turbidity Units  
no./100 ml = number per 100 milliliters

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.
- {3} Effluent limitation is the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.
- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} Applicable if potentially present in the discharge.
- {7} Effluent limitation is the specific criteria established in section 11-54-8 for the

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classification of the receiving state waters, as applicable.

- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.
- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {10} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.
- {11} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

### **III. New Business**

D. Discussion and Action on Proposed Amendments  
to HAR Title 19, Chapter 20.1, **Commercial  
Services at Public Airports**, promulgated by  
DOT





PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Transportation ~ Airports Division (DOT-A)
Administrative Rule Title and Chapter: 91-20.1
Chapter Name: Commercial Services at Public Airports
Contact Person/Title: Ross H. Higashi/DOT-A Deputy Director
Phone Number: 808-838-8602
E-mail Address: ross.higashi@hawaii.gov Date: April, 3, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes [checked] No [ ] (If Yes, please provide webpage address and when and where rules may be viewed in person)
https://hidot.hawaii.gov/airports/files/2018/04/DOT-A-Proposed-Admin-Rule-19-20.1-04-03-2018.pdf
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New [ ] Repeal [ ] Amendment [checked] Compilation [ ]

II. Will the proposed rule(s) affect small business? Yes [checked] No [ ] (If No, no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes [ ] No [checked] (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes [ ] No [checked] (If Yes, no need to submit this form.)

\* \* \*

**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Independent contractors using ride-sharing platforms will be required to conform to DOT-A rules and regulations and to pay fees for the use of State Airports in the same manner as other ground transportation providers.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

These independent contractors currently pay no fees to DOT-A for the use of the Airports. These users will now pay a fee based on a percentage of their revenues derived from the use of the Airports. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

These independent contractors currently pay no fee for the use of the State Airports.

- b. Amount of the proposed fee or fine and the percentage increase.

7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii.

- c. Reason for the new or increased fee or fine.

All State Airports ground transportation providers are required to pay a fee for access to pick up and drop off customers in designated areas and for the use of Airport roadways, curbside and facilities. These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

The existing fee structure for other ground transportation providers at State Airports.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

The DOT-A will receive 7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii would be derived as a benefit. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

Launched a pilot program that measures the efficiency and effectiveness of servicing the public's desire for an efficient, effective and economic ride-sharing customer experience by which the TNC's use a technology driven platform in delivering that experience.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

The proposed rules do NOT include provisions that are more stringent than those already in effect for other forms of ground transportation providers at State Airports. The proposed rules are simply providing opportunity for a digital technology driven platform and equal opportunity in a business space that could not or did not foresee this type of platform being a choice of the public to experience.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

All Ground Transportation entities should consider utilizing a comparable digital ride-sharing platform.

7. How the agency involved small business in the development of the proposed rules.

The proposed rules were based on the adaptation of a new age digital ride-sharing platform that leverages technology in organizing and executing a cost-effective, efficient ride-sharing program, thus exercising the performance and customer service needs of the public through a pilot program.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

The proposed rule changes are merely amending the rules to be inclusive of a technology driven platform that was not thought of or existed when the original rules were developed, written and adopted.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

The proposed rules do NOT include provisions that are more stringent than those already in effect for other forms of ground transportation providers at State Airports. There are currently no federal rules and regulations that govern these type of businesses.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

Provides safe customer pick-up and drop-off zones; controls impacts on vehicle traffic and circulation on Airports' roadways and curbsfronts.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

All State Airports ground transportation providers are required to pay a fee for access to pick up and drop off customers in designated areas and for the use of Airport roadways, curbsfronts and facilities. These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

The DOT-A will receive 7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii would be derived as a benefit. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

The implementation of the proposed rules will change the allocation of the current overall ridership usage of Ground Transportation programs and will be adjusted to accommodate the newly developed ride-sharing program that utilizes a digital technology driven platform. The overall ridership usage will not substantially increase, rather ridership usage will re-allocated across the Ground Transportation business spectrum.

\* \* \*

Small Business Regulatory Review Board / DBEDT

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This Statement may be found on the  
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-pubic-hearing>



TITLE 19

SUBCHAPTER 1 GENERAL PROVISIONS

§19-20.1-1 Applicability. This chapter shall apply to the following types of commercial services permitted at or in public airports:

- (1) Aircraft ground handling;
- (2) Baggage pickup and delivery;
- (3) Commercial photography;
- (4) Greeting services for hire;
- (5) In-flight catering;
- (6) Merchandise delivery;
- (7) Porter services; and
- (8) Prearranged ground transportation.

§19-20.1-2 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Aircraft" means airplanes, airships, dirigibles, helicopters, gliders, amphibians, seaplanes and any other contrivance now or hereafter used for the navigation of or flight in air space.

"Airline lessee means any aircraft operator that has entered into a lease with the department for the use of land or facilities at a public airport.

"Air operations area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas; maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

"Department" means the department of transportation of the State.

"Director" means the director of the department of transportation or his duly authorized representative.

"Gross receipts" includes all moneys paid or payable to the person providing or facilitating by way of a digital network one of the commercial services, specified in section 19-20.1-1, at a public airport, regardless of whether the order, reservation or payment for the commercial service is made within or without the public airport. The term "gross receipts" excludes any general excise taxes, tips, or pass through-fees upon a consumer collected by the person providing or facilitating by way of a digital network the commercial service at a public airport. (For prearranged ground transportation services, the term "gross receipts" also excludes public service company taxes, commissions to travel agents, revenues from arrival sightseeing enroute to the hotel in excess of two hours or its equivalent, and receipts reportable under other commercial service permits, provided all such exclusions are segregated and identified in the accounting process of the person providing prearranged ground transportation services at a public airport.)

"Passenger" means any person who arrives or departs from a public airport aboard an aircraft except for persons comprising the flight crew of the aircraft.

"Permittee" means any person authorized to provide or facilitate by way of a digital network any of the commercial services, specified in section 19-20.1-1, in or at a public airport under a permit or other written authorization from the director.

"Person" means any individual, firm, partnership, corporation, trust, association, company, joint venture, or any other legal entity (including any assignee, receiver, trustee, employee, or similar representative).

"Public airport" means that area of land and water under governmental jurisdiction which is used for landing and

taking-off of aircraft, any appurtenant areas which are used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; to seek actively though silently; or to try to obtain.

"State" means the State of Hawaii.

§19-20.1-3 Permit or authorization required. Any person providing or facilitating by way of a digital network any of the commercial services specified in section 19-20.1-1 in or at a public airport shall do so only upon receipt of a permit or other written authorization from the director which shall be issued upon payment of the applicable fees. A permit shall not be assigned or otherwise transferred. A permit shall not be issued to applicants who are in arrears in the payment of taxes, fees or other charges to state agencies.

§19-20.1-4 Payment of fees.

(a) The required fees for each type of commercial services are specified in the applicable subchapter.

(b) Time of payment.

(1) Annual fees shall be paid annually in advance of providing or facilitating by way of a digital network commercial services at or in public airports; and

(2) Monthly fees (including percentage fees) shall be paid on or before the twentieth day of the succeeding month.

(c) Any amount payable which is not paid when due shall bear interest at the rate of one percent per month or the maximum rate of interest allowable by law.

(d) Payments due under this chapter shall be made at or sent to the airports division, department of transportation, Honolulu International Airport, Honolulu, Hawaii 96819; or any of its offices located at Hilo International Airport, Hilo, Hawaii 96720; Kona International Airport at Keahole, Kailua-Kona, Hawaii

96740; Kahului Airport, Kahului, Hawaii 96732; or Lihue Airport, Lihue, Hawaii 96766.

§19-20.1-5 Records; audit of records; reports.

(a) This section shall apply to permittees who are required to pay percentage fees.

(b) The permittee shall maintain up-to-date records and books in accordance with a recognized system of bookkeeping and such records and books shall reflect a segregation of airport revenue in the general ledger, reconciled and supported by original source documents.

Such records including original source documents shall be kept for three years in the state following the end of the permit year.

(c) The State shall be granted access, at all reasonable times, to all books, accounts, records and reports including gross income tax reports, showing daily receipts; and at any reasonable time on twenty-four hours' notice the permittee will permit a complete audit to be made by the State's accountant or by a certified public accountant of the permittee's entire business affairs and records relating to the business conducted at, from or in connection with the airport for the term of the permit. The permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the State's accountant or by a certified public accountant disclose that fees have been underpaid by two percent or more for any period under examination, the State shall, in addition to the remedies provided in subsection (e) of this section, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the State's accountant or by a certified public accountant shall disclose that fees have been underpaid by five percent or more for the period under examination, the state shall, in addition to the foregoing rights, have the right, upon ten days' notice, to revoke the authorization to conduct the applicable commercial service at public airports.



(d) The permittee shall, on or before the twentieth day of the succeeding month, file with the director, on forms prescribed by the director, a report of its gross receipts for the previous month certified to by a qualified representative of the permittee; the certifier shall state that it has examined the books, records, and other evidence of the gross receipts of the permittee for the period reported and that to its knowledge the statement is true and correct. The statement shall be in such form and contain such details and breakdowns as the State may require. Payment of requisite fees shall be submitted with the report. Any amount payable which shall not have been paid when due shall bear interest at the rate of one percent per month

(e) Without prejudice and in addition to any other remedies the State may have for such default, if the permittee shall fail to promptly furnish any monthly report, the State may have such report prepared by an accountant to be selected by the State, at the expense and on behalf of the permittee. The permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the permittee shall pay to the State all expenses incurred by the State in securing such reports. Furthermore, the State may select procedures which would produce a reasonable gross receipts expectation, and assess percentage fees based upon gross receipts so computed. In the event that records have not been prepared and kept in accordance with this chapter, the State shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent of the gross receipt fee for the periods involved.

§19-20.1-6 Insurance.

(a) The permittee shall maintain and keep in force adequate insurance, as currently outlined in the applicable state or local insurance law, or as otherwise determined by the director to protect both the department and the permittee against claims for public

liability and property damage. The following types of insurance are required, as applicable:

(1) Automobile liability insurance. To provide coverage against all losses arising out of the person's operation of the registered vehicles, including motorized passenger carts, on airport premises and resulting in injury to persons or damage to property. (Commercial photography and greeting services for hire permittees are exempt from this requirement.)

(2) Comprehensive general liability policy; owners, landlords and tenants or manufacturers and contractors liability policy. To provide coverage against claims arising out of the person's operation on airport premises resulting in injury to persons or damage to property.

(b) The permittee shall provide the department with a certificate of insurance naming the permittee as the insured and the department as additional insured to the extent of liability arising out of the named insured's operations at the public airport with a thirty day advance notice of material changes in coverage or cancellation.

§19-20.1-7 Entry to air operations area. Except as may be authorized by the director, no person providing or facilitating commercial services at any public airport shall be permitted entry into the air operations area.

§19-20.1-8 Airport activity.

(a) Each permittee's activity shall be limited to the area designated by the director. The director may change the designated areas when such action is deemed necessary and in the best interest of safety to persons or property.

(b) The permittee or its independent contractors shall:

(1) Maintain its designated activity area in a safe and clean condition in compliance with

all applicable statutes, laws, ordinances, rules and regulations;

(2) Be liable for the fair value of any janitorial or maintenance service for cleaning or repairing airport premises necessitated by the permittee's failure to properly and adequately maintain its designated area;

(3) Conduct business in an orderly, courteous and businesslike manner;

(4) Be suitably dressed or uniformed, as applicable;

(5) Furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and will charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that the permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers; and

(6) Wear the identification badge (issued under this chapter) in plain sight, while at the airport, as applicable.

(c) The following provisions shall apply to permittees issued a [~~who operate vehicles under~~] a permit under [~~authorized by~~] this chapter:

(1) The permittee or its independent contractors shall keep all vehicles and equipment used at any public airport in good mechanical condition, clean and suited for their designated use. The department may [~~disapprove~~] disapprove the use by the permittee of any vehicle or equipment which the department deems unsafe or unsuitable for its designated use.

(2) All vehicles operating under or in connection with a permit authorized by this chapter shall be licensed by the state public utilities commission or appropriate governmental regulatory agency, if so required, and at all times display a current safety inspection sticker and current

evidence of licensing as required by the applicable regulatory agency of the government.

(3) ~~{The department shall issue decals which shall be placed by the permittee on those vehicles utilized at a public airport that meet the requirements of the department.}~~ No vehicle shall be used to provide commercial services authorized by this chapter at any public airport without a decal issued by the department; provided that where the department has authorized all of the vehicles used by a permittee to operate under a permit authorized by this chapter, the permittee may, subject to review and approval by the director, use its own trade dress, logo, or company identifier which shall be placed on the vehicle. Vehicles operating under a permit authorized by this chapter shall be parked only at locations designated by the director for the permitted activity. Vehicles [issued decals] operating under a permit authorized by this chapter shall not be used at any public airport for any purpose other than the activity authorized by the permit.

§19-20.1-9 Revocation of permit; termination. A permit issued under this chapter may be revoked by the department for violation of this chapter, upon ten days prior written notice. The permit may be terminated without cause by the department or by the permittee upon thirty days prior written notice.

§19-20.1-10 Subordination to sponsor's assurance agreement. A permit shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United States of America, which is in force during the term of the permit.

§19-20.1-11 Indemnification and hold harmless.

The permittee shall indemnify, defend and hold harmless the department and the State from any third party action or

claim for compensation arising out of the use of the permit or the airport.

§19-20.1-12 Severability. The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected.

§19-20.1-13 Enforcement. This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes.

§19-20.1-14 Penalty. Penalties for violations of this chapter shall be as set forth in section 261-21, Hawaii Revised Statutes.

#### SUBCHAPTER 9 PREARRANGED GROUND TRANSPORTATION

§19-20.1-54 Scope. The special provisions set forth in this subchapter shall apply to prearranged ground transportation services at public airports.

§19-20.1-55 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Hotel" includes motel.

"Operator" includes any person who is properly and physically qualified to operate and control any motor or other vehicle in connection with any ground transportation service provided at a public airport by a permittee or Transportation Network Company under this chapter. The operator may be a permittee itself or a qualified employee or independent contractor of the permittee.

"Prearranged ground transportation services" includes the providing or facilitating for hire of a motor vehicle, including off-airport rent-a-car vehicles, at any public airport for the purpose of transporting the hirer of, or passenger in, such motor vehicle and personal property where

such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at the public airport or, upon or after his arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation services to be performed, at least in part, at the public airport.

Prearranged ground transportation services also include passenger transportation services, tours, and courtesy car services for customers and guests upon vehicles owned or leased by the operators even if the services are provided gratuitously or may be an incidental part of another service.

Prearranged ground transportation services do not include the right to solicit, offer, and provide ground transportation services for hire to any person other than to persons for which ground transportation services had been arranged in advance.

"Taxi or taxicab service" includes the service of providing a motor vehicle for hire by the public at, on, or upon a public airport, which motor vehicle shall have a driver other than the hirer and be used for the purpose of transporting the hirer and incidental personal property to a destination and over a route controllable by a hirer.

"Transportation Network Company" means a person or an entity that uses a digital network or software application service to connect passengers to transportation network company drivers; provided that the person or entity: (1) Does not own, control, operate, or manage the personal vehicles used by transportation network company drivers; and (2) Is not a taxicab company or a for-hire vehicle owner.

§19-20.1-56 Fees. Persons authorized to provide prearranged ground transportation services at public airports shall, in consideration of using state airport facilities for

conducting business, pay the following fees as applicable or as otherwise approved by the director:

(1) Off-airport rent-a-car service.

(A) An annual administrative expense fee of \$100 in advance.

(B) An annual fee of \$20 for each off-airport rent-a-car vehicle in the permittee's fleet as of October 1 of each year.

(C) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(2) Courtesy vehicle service other than off-airport rent-a-car or hotel firms.

(A) An annual administrative expense fee of \$250 in advance.

(B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(3) Taxi, bus, limousine and stretch out.

(A) An annual administrative expense fee of \$100, in advance, per permittee providing these prearranged ground transportation services at any public airport.

(B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services at the public airports listed below.

(i) Seven percent at Honolulu International Airport.

(ii) Three percent at public airports other than Honolulu International Airport.

(4) Hotel courtesy vehicles. Prearranged ground transportation services between a public airport and a hotel, provided by the hotel for its guests upon vehicles owned or leased by the hotel shall be charged:

(A) An annual administrative expense fee of \$250 in advance.

(B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(C) An annual fee of \$2 per sleeping room for rental by the hotel.

(5) Transportation Network Company.

(A) An annual administrative expense fee of \$100.

(B) An amount equal to the following percentages of the monthly gross receipts which driver's using the operator's TNC network derives from providing prearranged ground transportation pickup services at the public airports listed below.

(i) Seven percent at Honolulu International Airport.

(ii) Three percent at public airports other than Honolulu International Airport.

§19-20.1-57 Exemptions. The director may, in the public interest, exempt all persons providing ground transportation services at certain public airports from the payment of the fees required under this subchapter.

§19-20.1-58 Taxi services. The director reserves the right to revoke any non-exclusive privilege of providing taxi service at any public airport, except prearranged taxi service, and grant an exclusive taxi service concession to prescribed by section any person in the manner 102-2, Hawaii Revised Statutes.

§19-20.1-59 Signs. No person shall display any sign that extends more than six inches above the roof, hood, or trunk of any motor vehicle used to provide ground transportation at public airports. Flashing lights and audible devices, other than that required by safety ordinances and regulations are prohibited. The display of any rates or fees on motor vehicles is also prohibited.



§19-20.1-60 Restrictions.

(a) Permittees and operators shall not solicit passengers or fares on airport premises. Pickup shall be limited to those passengers and clients who have made prior arrangement for the ground transportation service provided or facilitated by the permittee. The permittee, and its employees, agents and operators shall have evidence of such prior arrangements in the form of schedules, passenger manifests or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups.

(b) Permittees shall not use dispatchers, agents, customer service assistants, operators, employees or any other persons who have a working arrangement with the permittee to engage in any effort to solicit or obtain ground transportation business on any public airport premises.

§19-20.1-61 Records of off-airport rent-a-car permittees. Permittees who provide off-airport rent-a-car ground transportation services in or at public airports shall be obligated to maintain a record and original source documents which shall account for all of the vehicles in the permittee' fleet as of October 1 each year, segregated by airport districts. The record, including original source documents, shall be kept for three years in the State following the end of the permit year. The State shall be granted access at all reasonable times to all such records and documents and may make or cause to be made a complete audit to verify the reasonableness of the reported number of vehicles in the permittee's fleet as of October each year. In the event that records and original source documents have not been kept in accordance with this provision, the State, shall in addition to other payments required by this chapter, be entitled to demand and receive an additional payment of ten percent of the total amount payable by the off-airport

rent-a-car ground transportation service permittee to the State under this subchapter.

Material to be repealed is bracketed. New material is underscored.

### **III. New Business**

E. Discussion and Action on Proposed Repeal of HAR Title 11, Chapter 281, and Adoption of HAR Title 11 Chapter 280.1, **Underground Storage Tanks**, promulgated by DOH

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

April 9, 2018

Dear Small Business Regulatory Review Board,

Please find attached the Pre-hearing Small Business Impact Statement for proposed repeal of chapter 11-281, Hawaii Administrative Rules (HAR) and adoption of chapter 11-280.1, HAR, entitled "Underground Storage Tanks." This action will be presented for your consideration at your April 18, 2018 meeting.

While the proposed repeal and adoption involves many changes, the majority are mandated by federal regulations for the EPA-approved state Underground Storage Tank (UST) program to retain its program approval. There is only one state-initiated change that will affect small businesses (as defined in §201M-1, Hawaii Revised Statutes), which the impact statement describes in detail.

Also attached is a draft version of chapter 11-280.1, HAR. This is not the finalized draft that will be submitted for public comment, however, *no changes made after this point will affect the small business impact*. The Department of Health must comply with a March 23, 2018 court order to adopt new UST rules by July 15, 2018. Therefore, please accept this draft version of the chapter with our apologies. We will provide you with an updated version of the draft rules before April 18, as well as a detailed rationale and list of changes. We are working diligently to get this to you as soon as possible and appreciate your understanding in this unusual situation.

Please call our rule drafter, Noa Klein, at 586-4238 or Deputy Attorney General Wade Hargrove at 586-4070 if you need more information.

Thank you,

Lene Ichinotsubo  
Acting Chief, Solid & Hazardous Waste Branch



Pre-Public Hearing Small Business Impact Statement to the Small Business Regulatory Review Board (SBRRB): Proposed Repeal of Hawaii Administrative Rules, Title 11, Chapter 281 and Adoption of Hawaii Administrative Rules, Title 11, Chapter 280.1 Regarding Underground Storage Tanks (USTs)

**Background**

Hawaii is an approved state for the U.S. Environmental Protection Agency (EPA)'s national underground storage tank (UST) program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle I. In order to maintain approval and EPA funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 281 (40 CFR 281) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR 280, by October 13, 2018. The new (2015) federal rules improve environmental protection by increasing emphasis on properly operating and maintaining equipment. The lack of proper operation and maintenance of UST systems has been found to be one of the main causes of release of regulated substances to the environment. New requirements such as regular release detection equipment testing, walkthrough inspections, and proper operation and maintenance are key for preventing and quickly identifying releases.

The Department of Health (department) is proposing to repeal chapter 11-281, Hawaii Administrative Rules (HAR) and adopt chapter 11-280.1, HAR. This proposed rulemaking action involves numerous changes to the regulations. Most of the proposed changes are federal changes and are required for the continued EPA approval of the State UST program. For these federally-mandated changes, the department has no discretion to consider less restrictive alternatives. Therefore, the requirements of chapter 201M, Hawaii Revised Statutes do not apply to these changes. This small business impact statement focuses only on state-initiated changes that are not federally required.

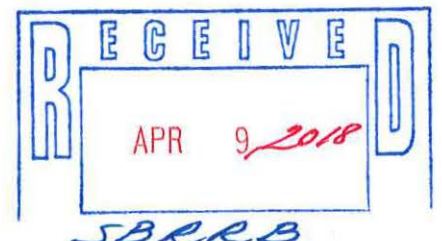
**The proposed state-initiated change affecting small businesses (as "affects small business" is defined in §201M-1) is:**

Require secondary containment for petroleum underground storage tanks (USTs) and piping installed before August 9, 2013, except for airport hydrant systems and UST systems with field-constructed tanks. (Secondary containment is already required for tanks and piping installed on or after August 9, 2013.) This requirement is proposed to become effective ten years after the effective date of the new rules.

The existing requirement is in §11-281-17, Hawaii Administrative Rules (HAR) and will be moved to §11-280.1-21(d)(1)(A). The new requirement will be in §11-280.1-21(d)(1)(B), HAR.

An analysis is provided below. The analysis covers the following requirements of §201M-2(b), Hawaii Revised Statutes:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;



- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

**(1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules**

Hawaii has approximately 717 facilities statewide that collectively own about 1507 regulated underground storage tanks (USTs). About 218 small businesses own regulated USTs.

Businesses that will be directly affected by, and bear the cost of, the proposed requirement are those that own or operate a UST storing petroleum that was installed prior to August 9, 2013 and does not have secondary containment and those whose UST systems have single-walled piping. The current chapter 11-281, HAR requires secondary containment for USTs and piping installed on or after August 9, 2013.

About 154 facilities within the state own a total of 417 single-walled USTs that must be closed or provided with secondary containment under the proposed rules. Statewide, about 113 facilities have some single-walled piping, and most of these facilities are the same ones with single-walled tanks. Many of these facilities are owned by the same large companies.

**(2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected**

About 52 affected facilities are small businesses, owning a total of 150 single-walled tanks (including 12 tanks that are temporarily closed). About 22 of these small businesses will need to replace single-walled tanks only and 30 will need to replace both single-walled tanks and piping. The affected small businesses are mainly gas stations.

UST system owners replacing single-walled tanks and piping will experience a negative financial impact in the short-term due to the cost of replacing their old tank(s) and piping with a new system provided with secondary containment or closing the old tank(s) that can no longer meet requirements. In the long-term, closing or replacing the single-walled UST system could help them avoid more costly release investigations, release response, and remediation costs.

**(3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance**

The average costs of removal/closure and replacement of tank systems varies widely and depends on a number of factors, including the number and size of tanks in a tank system, the amount of piping, and location variables such as the depth to the water table. According to two local contractors who perform this type of work, removal of three 10,000-gallon single-walled tanks and installation of three 10,000-gallon tanks with secondary containment could cost anywhere from \$350,000 to \$750,000, depending on site conditions. This is equivalent to approximately \$4,000 to \$8,000 per tank per year over the 30-year life of the tanks. The cost of replacing piping for an average gas station site is estimated to be \$25,000 to \$42,000. These estimates include the cost of a site assessment, but do not include any remediation costs.

The most common tank configuration at small businesses with single-walled USTs is one to three tanks ranging in size from 8,000 to 10,000 gallons, so these cost estimates are on the high side of representative. About one third of the affected small businesses will incur much lower costs to replace significantly smaller tanks or only one 10,000-gallon tank. About six small businesses may face higher costs to replace tanks larger than 10,000 gallons and/or to replace more than three tanks.

During the course of replacing old UST systems, tank owners may also incur costs for remediation. UST system owners and operators are already required to have financial assurance (insurance, surety bond, letter of credit, etc.) covering a minimum of \$500,000 in remediation costs. The department is aware of cases where cleanups have cost more than one million dollars, but costs around \$100,000 are typical. These costs are not associated with the proposed rules; however, the requirement to provide tanks and piping installed prior to August 9, 2013 with secondary containment may result in UST system owners incurring remediation costs sooner than would otherwise be the case.

**(4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used**

There are no monetary costs or benefits to the department or other regulatory agencies associated with the proposed changes. UST program staff expect to receive regulatory paperwork requiring review (closure reports, site assessments, permit applications, installation notification forms, release notifications, release response reports) in clusters that may slow processing time around the implementation deadline.

**(5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements,**

**less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques**

As a consideration to small businesses affected by the proposed rule requiring secondary containment, the implementation timeline is set for ten years after the effective date of the new rules. In 2012, the department proposed to require tanks 30 years old or of unknown age to be provided with secondary containment. The SBRRB recommended that the rules proposing this requirement proceed to public hearing (letter dated April 23, 2012), but the rule was not finalized. Owners and operators were made aware at that time that the department would consider proposing this requirement again. By the time that owners and operators are required to either close or replace their single-walled tanks with secondarily contained tanks, all affected tanks will be at least 30 years old and affected small business owners will have had fifteen years of notice, a very reasonable timeline to prepare and consider business decisions for their aging facilities.

**(6) How the agency involved small business in the development of the proposed rules**

The department has included UST owners and operators, including small businesses, industry consultants, and other interested parties on its mailing list throughout the process of developing the proposed rules. The department e-mailed and mailed out a notice December 20-22, 2017 including information on where the public could view or download a draft of chapter 11-280.1, HAR online and inviting businesses to attend public meetings regarding the rulemaking between January 17 and February 1, 2018 on Oahu, Hawaii Island, Maui, and Kauai. The department will address small business concerns and official comments received from small businesses during the public hearing and comment period (planned for June 2018) before finalizing the rules.

**(7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard**

The proposed requirements do not have a direct counterpart in the federal UST regulations.





DEPARTMENT OF HEALTH

Repeal of Chapter 11-281 and Adoption of  
Chapter 11-280.1  
Hawaii Administrative Rules

[ADOPTION DATE]

1. Chapter 11-281, Hawaii Administrative Rules,  
entitled "Underground Storage Tanks", is repealed.

2. Chapter 11-280.1, Hawaii Administrative Rules,  
entitled "Underground Storage Tanks", is adopted to  
read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-280.1

UNDERGROUND STORAGE TANKS

Subchapter 1 Program Scope and Installation  
Requirements for Partially  
Excluded UST Systems

§§11-280.1-1 to 11-280.1-9 (Reserved)  
§11-280.1-10 Applicability  
§11-280.1-11 Installation requirements for partially  
excluded UST systems  
§11-280.1-12 Definitions  
§11-280.1-13 Installation requirements for partially  
excluded UST systems--codes of  
practice  
§§11-280.1-14 to 11-280.1-19 (Reserved)

Subchapter 2 UST Systems: Design, Construction,  
Installation, and Notification

- §11-280.1-20 Performance standards for UST systems
- §11-280.1-21 Upgrading of UST systems
- §11-280.1-22 Notification requirements
- §11-280.1-23 Tank and piping design for hazardous  
substance UST systems
- §11-280.1-24 Performance standards and design for  
UST systems--codes of practice
- §§11-280.1-25 to 11-280.1-29 (Reserved)

Subchapter 3 General Operating Requirements

- §11-280.1-30 Spill and overfill control
- §11-280.1-31 Operation and maintenance of corrosion  
protection
- §11-280.1-32 Compatibility
- §11-280.1-33 Repairs allowed
- §11-280.1-34 Reporting and recordkeeping
- §11-280.1-35 Periodic testing of spill prevention  
equipment and containment sumps  
used for interstitial monitoring  
of piping and periodic inspection  
of overfill prevention equipment
- §11-280.1-36 Periodic operation and  
maintenance walkthrough  
inspections
- §11-280.1-37 Periodic inspection and maintenance of  
under-dispenser containment  
sensing devices
- §11-280.1-38 General operating requirements--codes  
of practice
- §11-280.1-39 (Reserved)

Subchapter 4 Release Detection

- §11-280.1-40 General requirements for all UST

- systems
- §11-280.1-41 Requirements for petroleum UST systems
- §11-280.1-42 Requirements for hazardous substance UST systems
- §11-280.1-43 Methods of release detection for tanks
- §11-280.1-44 Methods of release detection for piping
- §11-280.1-45 Release detection recordkeeping
- §11-280.1-46 Release detection--codes of practice
- §§11-280.1-47 to 11-280.1-49 (Reserved)

Subchapter 5 Release Reporting, Investigation, and Confirmation

- §11-280.1-50 Reporting of suspected releases
- §11-280.1-51 Investigation of off-site impacts
- §11-280.1-52 Release investigation and confirmation steps
- §11-280.1-53 Reporting and cleanup of spills and overfills
- §§11-280.1-54 to 11-280.1-59 (Reserved)

Subchapter 6 Release Response Action

- §11-280.1-60 General
- §11-280.1-61 Immediate response actions
- §11-280.1-61.1 Posting of signs
- §11-280.1-62 Initial abatement measures and site assessment
- §11-280.1-63 Initial site characterization
- §11-280.1-64 Free product removal
- §11-280.1-65 Investigations for soil and groundwater cleanup
- §11-280.1-65.1 Notification of confirmed releases
- §11-280.1-65.2 Release response reporting
- §11-280.1-65.3 Site cleanup criteria
- §11-280.1-66 Corrective action plan
- §11-280.1-67 Public participation for corrective action plans
- §§11-280.1-68 to 11-280.1-69 (Reserved)

Subchapter 7 Out-of-Service UST Systems and  
Closure

- \$11-280.1-70 Temporary closure
- \$11-280.1-71 Permanent closure and changes-in-  
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- \$11-280.1-72 Assessing the site at closure or  
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- \$11-280.1-106 Local government guarantee
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- \$11-280.1-108 Substitution of financial assurance  
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- \$11-280.1-109 Cancellation or nonrenewal by a  
provider of financial assurance

- §11-280.1-110 Reporting by owner or operator
- §11-280.1-111 Recordkeeping
- §11-280.1-112 Drawing on financial assurance mechanisms
- §11-280.1-113 Release from the requirements
- §11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance
- §11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds
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#### Subchapter 9 Lender Liability

- §11-280.1-200 Definitions
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- §11-280.1-210 Participation in management
- §§11-280.1-211 to 11-280.1-219 (Reserved)
- §11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located
- §§11-280.1-221 to 11-280.1-229 (Reserved)
- §11-280.1-230 Operating an underground storage tank or underground storage tank system
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#### Subchapter 10 Operator Training

- §11-280.1-240 General requirement for all UST systems
- §11-280.1-241 Designation of Class A, B, and C operators
- §11-280.1-242 Requirements for operator training
- §11-280.1-243 Timing of operator training
- §11-280.1-244 Retraining
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- §§11-280.1-246 to 11-280.1-249 (Reserved)

Subchapter 11 (Reserved)

§§11-280.1-250 to 11-280.1-299 (Reserved)

Subchapter 12 Permits and Variances

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§11-280.1-323 Permit required

§11-280.1-324 Application for a permit

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§11-280.1-326 Permit renewals

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application for a permit

§11-280.1-328 Permit conditions

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§11-280.1-331 Change in owner or operator for a  
permit

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§11-280.1-335 Fees

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Subchapter 13 Enforcement

§§11-280.1-400 to 11-280.1-420 (Reserved)

§11-280.1-421 Purpose

§11-280.1-422 Field citations

§§11-280.1-423 to 11-280.1-428 (Reserved)

§11-280.1-429 Delivery, deposit, and acceptance  
prohibition

Historical note: This chapter is based  
substantially upon chapter 11-281. [Eff 1/28/00; am  
and comp 8/09/13; R ]

SUBCHAPTER 1

PROGRAM SCOPE AND INSTALLATION REQUIREMENTS FOR  
PARTIALLY EXCLUDED UST SYSTEMS

§§11-280.1-1 to 11-280.1-9 (Reserved.)

**§11-280.1-10 Applicability.** (a) The requirements of this chapter apply to all owners and operators of an UST system as defined in section 11-280.1-12 except as otherwise provided in this section.

- (1) Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter as follows:
  - (A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of this chapter, except that those installed before the effective date of these rules must meet the applicable requirements of section 11-280.1-22 and subchapters 3, 4, 8, 10, and 12 no later than three years after the effective date of these rules.
  - (B) UST systems that store fuel solely for use by emergency power generators must meet all applicable requirements of this chapter except that those installed before August 9, 2013 must meet the applicable requirements of subchapter 4 no later than three years after the effective date of these

rules.

- (2) Any UST system listed in subsection (c) must meet the requirements of section 11-280.1-11.
- (b) Exclusions. The following UST systems are excluded from the requirements of this chapter:
  - (1) Any UST system holding hazardous wastes listed or identified under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
  - (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under chapter 342D, Hawaii Revised Statutes, or Section 402 or 307(b) of the Clean Water Act;
  - (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (4) Any UST system whose capacity is one hundred ten gallons or less;
  - (5) Any UST system that contains a de minimis concentration of regulated substances; and
  - (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.
- (c) Partial Exclusions. Subchapters 2, 3, 4, 5, 7, 10, 11, and 12 do not apply to:
  - (1) Wastewater treatment tank systems not covered under subsection (b) (2);
  - (2) Aboveground storage tanks associated with:
    - (A) Airport hydrant fuel distribution systems; and
    - (B) UST systems with field-constructed tanks;
  - (3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and



- (4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 C.F.R. part 50. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-11 Installation requirements for partially excluded UST systems.** (a) Owners and operators must install an UST system listed in section 11-280.1-10(c)(1), (3), or (4) storing regulated substances (whether of single or double wall construction) that meets the following requirements:

- (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- (3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding subsection (a), an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank. [Eff

] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-12 Definitions.** When used in this chapter, the following terms have the meanings given below:

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Airport hydrant fuel distribution system" (also called "airport hydrant system") means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and

measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the department. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

"Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

"Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping,

dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the state department of health.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the state department of health.

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure assessment" means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST or tank system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farm includes fish hatcheries, rangeland, and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of

the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, except any substance regulated as a hazardous waste under chapter 342J, Hawaii Revised Statutes, or the rules adopted thereunder, or Subtitle C of the Solid Waste Disposal Act.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance or any mixture of such substances and petroleum, and that is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or

pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (e.g., motor gasoline blended with alcohol).

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

- (1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and
- (2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Permit" means written authorization, as provided for in section 342L-4, Hawaii Revised Statutes, from the director to install or operate an UST or tank system. A permit authorizes owners or operators to

install and operate an UST or tank system in a manner, or to do an act, not forbidden by chapter 342L, Hawaii Revised Statutes, or by this chapter, but requiring review by the department.

"Person" means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state or a county, the United States government, federal agency, interstate body, or any other legal entity.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities" (including gathering lines) means pipe rights-of-way and any associated equipment, facilities, or buildings.

"Regulated substance" means hazardous substances, petroleum, and any other substance designated by the department that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term regulated substance includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into groundwater, surface water, or subsurface soils.



"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overflow prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Replaced" means:

- (1) For a tank—to remove a tank and install another tank.
- (2) For piping—to remove 50 percent or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run. Residential tank is a tank located on property used primarily for dwelling purposes.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water collection system" or "wastewater

collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Temporary closure" or "temporarily closed" means that owners and operators do not deposit regulated substances into the UST or tank system nor dispense regulated substances from the UST or tank system for sixty days or longer.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil, groundwater, and surface water.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any:

- (1) Farm or residential tank of one thousand one

hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines):
  - (A) Which is regulated under 49 U.S.C. chapter 601; or
  - (B) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term underground storage tank or UST does not include any pipes connected to any tank which is described in paragraphs (1) to (9).

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and

containment system, if any.

"Variance" means a special written authorization from the director to own, install, or operate an UST or tank system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 C.F.R. part 280.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

[Eff ] (Auth: HRS §342L-3) (Imp: HRS §342L-3)

**§11-280.1-13 Installation requirements for partially excluded UST systems--codes of practice.**

The following codes of practice may be used as guidance for complying with section 11-280.1-11:

- (1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- (2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (3) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- (4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [Eff ]  
(Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§§11-280.1-14 to 11-280.1-19 (Reserved.)**

## SUBCHAPTER 2

### UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

**§11-280.1-20 Performance standards for UST systems.** (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, owners and operators of UST systems must meet the requirements of this section as follows:

- (1) Except for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, owners and operators of UST systems installed after December 22, 1988 must meet the requirements of this section.
- (2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks, owners and operators of UST systems installed on or after the effective date of these rules must meet the requirements of this section.

(b) Tanks. Each tank must be properly designed, constructed, and installed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or
- (2) The tank is constructed of steel and cathodically protected in the following manner:
  - (A) The tank is coated with a suitable

- dielectric material;
  - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
  - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or according to guidelines established by the department; or
- (3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or
  - (4) The tank is constructed of metal without additional corrosion protection measures provided that:
    - (A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
    - (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the tank; or
  - (5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1) to (4).
- (c) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, installed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:
- (1) The piping is constructed of a non-

- corrodible material; or
- (2) The piping is constructed of steel and cathodically protected in the following manner:
    - (A) The piping is coated with a suitable dielectric material;
    - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
    - (C) Impressed current systems are designed to allow determination of current operating status as required in section 11-280.1-31(3); and
    - (D) Cathodic protection systems are operated and maintained in accordance with section 11-280.1-31 or guidelines established by the department; or
  - (3) The piping is constructed of metal without additional corrosion protection measures provided that:
    - (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
    - (B) Owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (A) for the remaining life of the piping; or
  - (4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) to (3).
- (d) Spill and overflow prevention equipment.
- (1) Except as provided in paragraphs (2) and (3), to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators must use the

following spill and overflow prevention equipment:

- (A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
  - (B) Overflow prevention equipment that will:
    - (i) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;
    - (ii) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or
    - (iii) Restrict flow thirty minutes prior to overflowing, alert the transfer operator with a high-level alarm one minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing.
- (2) Owners and operators are not required to use the spill and overflow prevention equipment specified in paragraph (1) if:
- (A) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraph (1) (A) or (B); or
  - (B) The UST system is filled by transfers of no more than twenty-five gallons at one time.
- (3) Flow restrictors used in vent lines may not be used to comply with paragraph (1) (B) when



overflow prevention is installed or replaced after the effective date of these rules.

- (4) Overflow prevention methods that rely on the use of alarms must have the alarms clearly labeled "overflow alarm" and located where the delivery person can clearly see and hear the alarm in order to immediately stop delivery of the product.
- (5) Spill and overflow prevention equipment must be periodically tested or inspected in accordance with section 11-280.1-35.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection (e) by providing a certification of compliance on the "Certification of Underground Storage Tank Installation" form prescribed by the director and in accordance with section 11-280.1-325(d).

- (1) The installer has been certified by the tank and piping manufacturers;
- (2) The installer has been certified or licensed by the department;
- (3) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation;
- (4) The installation has been inspected and approved by the department;
- (5) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or
- (6) The owner and operator have complied with another method for ensuring compliance with subsection (g) that is determined by the department to be no less protective of human

health and the environment. [Eff  
] (Auth: HRS §§342L-3, 342L-  
32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-21 Upgrading of UST systems.** (a) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of UST systems must upgrade their UST systems as provided in this section.

(b) All owners and operators of UST systems must comply with one of the following requirements:

(1) UST system performance standards in section 11-280.1-20(b) to (d);

(2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before the effective date of these rules:

(A) The system performance standards under section 11-280.1-20(b) and (c); and

(B) Not later than three years after the effective date of these rules, the system performance standards under section 11-280.1-20(d); or

(3) Closure requirements under subchapter 7, including applicable requirements for corrective action under subchapter 6.

(c) Dispenser systems.

(1) Except for UST systems with field-constructed tanks and airport hydrant fuel distribution systems, all dispenser systems installed on or after August 9, 2013 must have under-dispenser containment.

(2) For UST systems with field-constructed tanks and airport hydrant fuel distribution systems, all dispenser systems installed on or after the effective date of these rules must have under-dispenser containment.

(3) Under-dispenser containment required by paragraph (1) or (2) must:

- (A) Be liquid-tight on its sides, bottom, and at any penetrations;
- (B) Be compatible with the substance conveyed by the piping;
- (C) Allow for visual inspection and access to the components in the containment system; and
- (D) Be monitored for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances.

(d) Tank and piping design for petroleum UST systems. Owners and operators of petroleum UST systems must ensure that tank and piping design meet the following requirements:

- (1) Except for airport hydrant fuel distribution systems and UST systems with field-constructed tanks:
  - (A) An UST or tank system and piping installed on or after August 9, 2013 must be provided with secondary containment that meets the requirements of section 11-280.1-23(1) to (3), except for suction piping that meets the requirements of section 11-280.1-41(b)(6).
  - (B) Not later than ten years after the effective date of these rules, all USTs or tank systems and piping must be provided with secondary containment that meets the requirements of section 11-280.1-23(1) to (3), except for suction piping that meets the requirements of section 11-280.1-41(b)(6).
- (2) UST systems with field-constructed tanks and airport hydrant fuel distribution systems:
  - (A) An UST or tank system and piping installed on after the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-23(1)

to (3), except:

- (i) Suction piping that meets the requirements of section 11-280.1-41(b)(6);
  - (ii) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and
  - (iii) Piping associated with airport hydrant systems.
- (B) Not later than twenty years after the effective date of these rules, an UST or tank system and piping installed before the effective date of these rules must be provided with secondary containment that meets the requirements of section 11-280.1-23(1) to (3) or must utilize a design which the director determines is protective of human health and the environment, except:
- (i) Suction piping that meets the requirements of section 11-280.1-41(b)(6);
  - (ii) Piping associated with UST systems with field-constructed tanks greater than 50,000 gallons; and
  - (iii) Piping associated with airport hydrant systems. [Eff  
] (Auth: HRS  
§§342L-3, 342L-32) (Imp: HRS  
§§342L-3, 342L-32)

**§11-280.1-22 Notification requirements. (a)**

The owner of an UST or tank system shall notify the department of any of the following changes in information relating to the UST or tank system:

- (1) Planned permanent closure or change-in-service, scheduled excavation work for permanent closure or change-in-service, and completed closure or change-in-service;

- (2) Temporary closure or the return to currently-in-use status;
- (3) Changes in product dispensing method, dispenser, or under dispenser containment;
- (4) Changes in financial responsibility mechanism;
- (5) Changes in leak detection method;
- (6) Changes in spill and overflow prevention method;
- (7) Changes in piping;
- (8) Changes in type of regulated substances stored;
- (9) Changes in corrosion protection mechanism;
- (10) Installation of or changes in secondary containment; and
- (11) Changes in designated Class A or Class B Operator(s).

(b) The owner shall submit notification within thirty days following any of the changes requiring notification under this section, except that:

- (1) Notification of planned permanent closures or change-in-service must be received by the department at least thirty days before commencement of excavation work for closure or change-in-service;
- (2) Notification of scheduled excavation work for permanent closure or change-in-service must be received by the department at least seven days before the scheduled work date;
- (3) Notification of change in type of regulated substance stored to a regulated substance containing greater than ten percent ethanol or greater than twenty percent biodiesel must be received by the department at least thirty days before the change; and
- (4) Notification of temporary closure must be received by the department within ninety days after commencement of the temporary closure.

(c) The notification shall be on the "Notification for Underground Storage Tanks" form prescribed by the director, except for notification of

changes in designated operators. Notification of changes in designated operators shall comply with the requirements of section 11-280.1-241(c). [Eff ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-3, 342L-7.5, 342L-30)

**§11-280.1-23 Tank and piping design for hazardous substance UST systems.** All hazardous substance UST systems and piping must be provided with secondary containment that meets the following requirements:

- (1) Secondary containment systems must be designed, constructed, and installed to:
  - (A) Contain regulated substances leaked from the primary containment until they are detected and removed;
  - (B) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
  - (C) Be checked for evidence of a release at least every thirty days.
- (2) Double-walled tanks must be designed, constructed, and installed to:
  - (A) Contain a leak from any portion of the inner tank within the outer wall; and
  - (B) Detect the failure of the inner wall.
- (3) External liners (including vaults) must be designed, constructed, and installed to:
  - (A) Contain one hundred percent of the capacity of the largest tank within its boundary;
  - (B) Prevent precipitation and groundwater intrusion from interfering with the ability to contain or detect a leak or release of regulated substances; and
  - (C) Surround the UST completely to effectively prevent lateral and vertical migration of regulated substances. [Eff ]

(Auth: HRS §§342L-3, 342L-32) (Imp:  
HRS §§342L-3, 342L-32)

**§11-280.1-24 Performance standards and design for UST systems--codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-20(b) (1):

- (1) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or
- (2) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".

(b) The following codes of practice may be used to comply with section 11-280.1-20(b) (2):

- (3) Steel Tank Institute "Specification STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
- (4) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
- (5) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";
- (6) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
- (7) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic

Protection," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(c) The following codes of practice may be used to comply with section 11-280.1-20(b)(3):

- (1) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";
- (2) Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";
- (3) Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or
- (4) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(d) The following codes of practice may be used to comply with section 11-280.1-20(c)(1):

- (1) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or
- (2) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".

(e) The following codes of practice may be used to comply with section 11-280.1-20(c)(2):

- (2) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
- (3) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";
- (4) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and



- Dispensing Systems”;
- (5) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”; or
  - (6) NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”.
- (f) Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of section 11-280.1-20(e):
- (1) American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”;
  - (2) Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”; or
  - (3) National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code” and Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages”.
- (g) When designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, “Petroleum Fuel Facilities”. [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

§§11-280.1-25 to 11-280.1-29 (Reserved.)

### SUBCHAPTER 3

#### GENERAL OPERATING REQUIREMENTS

**§11-280.1-30 Spill and overfill control.** (a)

Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 11-280.1-53. [Eff

] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-31 Operation and maintenance of corrosion protection.** All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
  - (A) Frequency. All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and
  - (B) Inspection criteria. The criteria that

are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

- (3) UST systems with impressed current cathodic protection systems must also be inspected every sixty days to ensure the equipment is operating properly.
- (4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained, in accordance with section 11-280.1-34, to demonstrate compliance with the performance standards in this section. These records must provide the following:
  - (A) The results of the last three inspections required in paragraph (3); and
  - (B) The results of testing from the last two inspections required in paragraph (2). [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-32 Compatibility.** (a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the department at least thirty days prior to switching to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

- (1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection

equipment, spill equipment, and overflow equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

- (A) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
  - (B) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or
- (2) Use another option determined by the department to be no less protective of human health and the environment than the options listed in paragraph (1).

(c) Owners and operators must maintain records in accordance with section 11-280.1-34(b) documenting compliance with subsection (b) for as long as the UST system is used to store the regulated substance. [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-33 Repairs allowed.** (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

- (1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
- (2) Repairs to fiberglass-reinforced plastic

- tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;
- (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications;
  - (4) Prior to the return to use of a repaired UST system, any repaired USTs must pass a tank tightness test in accordance with section 11-280.1-43(3);
  - (5) Prior to the return to use of a repaired UST system, any repaired piping that routinely contains product must pass a line tightness test in accordance with section 11-280.1-44(2);
  - (6) Prior to return to use of a repaired UST system, repairs to secondary containment areas of tanks and piping used for interstitial monitoring, containment sumps used for interstitial monitoring of piping, and containment walls must have the secondary containment tested for integrity using vacuum, pressure, or liquid methods in accordance with requirements developed by the manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements established by the department;
  - (7) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 11-280.1-31(2) and (3) to ensure that it is operating properly; and
  - (8) Prior to the return to use of repaired spill or overflow prevention equipment, the

repaired spill or overflow prevention equipment must be tested or inspected, as appropriate, in accordance with section 11-280.1-35 to ensure it is operating properly.

(b) UST system owners and operators must maintain records, in accordance with section 11-280.1-34, of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to section 11-280.1-71. [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-34 Reporting and recordkeeping.** (a)

Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests by the department for document submission, testing, and monitoring by the owner or operator pursuant to chapter 342L, Hawaii Revised Statutes.

(b) Reporting. Owners and operators must submit the following information to the department:

- (1) Notification for all UST systems as required in section 11-280.1-22, including certification of installation for UST systems (section 11-280.1-20(f)) and notification when any person assumes ownership of an UST system (section 11-280.1-331(c));
- (2) Notification prior to UST systems switching to certain regulated substances (section 11-280.1-32(b));
- (3) Reports of all releases including suspected releases (sections 11-280.1-50 and 11-280.1-52), spills and overfills (section 11-280.1-53), and confirmed releases (section 11-280.1-61);
- (4) Release response actions planned or taken, including initial abatement measures (section 11-280.1-62), initial site characterization (section 11-280.1-63), free

- product removal (section 11-280.1-64), investigation of soil and groundwater cleanup (section 11-280.1-65), and corrective action plan (section 11-280.1-66)
- (5) Quarterly release response reports (section 11-280.1-65.2); and
  - (6) Current evidence of financial responsibility as required in section 11-280.1-110.
- (c) Recordkeeping. Owners and operators must maintain the following information:
- (1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (section 11-280.1-20(b)(4); section 11-280.1-20(c)(3));
  - (2) Documentation of operation of corrosion protection equipment (section 11-280.1-31(4));
  - (3) Documentation of compatibility for UST systems (section 11-280.1-32(c));
  - (4) Documentation of UST system repairs (section 11-280.1-33(b));
  - (5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (section 11-280.1-35(c));
  - (6) Documentation of periodic walkthrough inspections (section 11-280.1-36(b));
  - (7) Documentation of compliance with under-dispenser containment sensing device requirements (section 11-280.1-37(b));
  - (8) Documentation of compliance with release detection requirements (section 11-280.1-45);
  - (9) Results of the site investigation conducted at permanent closure or change-in-service (section 11-280.1-74);
  - (10) Documentation of operator training (section 11-280.1-245);
  - (11) Permits or variances or both, including all documentation, as specified in section

11-280.1-334(a); and

- (12) Evidence of current financial assurance mechanisms used to demonstrate financial responsibility (section 11-280.1-111).

(d) Availability and maintenance of records.

Owners and operators must keep the records required at the following locations:

- (1) All records required by this section shall be made immediately available for inspection by the department by:

- (A) Being maintained at the UST site; or  
(B) Another method as approved by the director.

- (2) The permanent closure or change-in-service records required under subsection (c)(10) and section 11-280.1-74 may be maintained at a readily available alternative site and shall be provided for inspection to the department upon request. [Eff

] (Auth: HRS §§342L-3,  
342L-7.5) (Imp: HRS §§342L-3, 342L-7,  
342L-7.5)

**§11-280.1-35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.** (a)

Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

- (1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and must prevent releases to the environment by meeting one of the following:
- (A) The equipment is double walled and the integrity of both walls is periodically



monitored at a frequency not less than the frequency of the walkthrough inspections described in section 11-280.1-36. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test within thirty days of discontinuing periodic monitoring of this equipment;  
or

- (B) The spill prevention equipment is tested at least once every three hundred sixty-five days to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:
  - (i) Requirements developed by the manufacturer. (Note: Owners and operators may use this option only if the manufacturer has developed requirements.);
  - (ii) Code of practice developed by a nationally recognized association or independent testing laboratory;  
or
  - (iii) Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in clauses (i) and (ii).
- (2) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:
  - (A) The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in section 11-280.1-36. Owners and operators must begin meeting the requirements of subparagraph (B) and conduct a test

within thirty days of discontinuing periodic monitoring of this equipment;  
or

(B) The containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(3) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in section 11-280.1-20(d) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (1)(B)(i) to (iii).

(b) Owners and operators must begin meeting these requirements as follows:

(1) For UST systems in use before August 9, 2013, the initial spill prevention equipment test must be conducted not later than August 9, 2014. For UST systems brought into use on or after August 9, 2013, the requirements of subsection (a)(1) apply at installation.

(2) For UST systems in use before the effective date of these rules, the initial containment sump test and overfill prevention equipment inspection must be conducted not later than three years after the effective date of these rules. For UST systems brought into use on or after the effective date of these rules, the requirements of subsection (a)(2) and (3) apply at installation.

(c) Owners and operators must maintain records as follows (in accordance with section 11-280.1-34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill

prevention equipment:

- (1) All records of testing or inspection must be maintained for three years; and
- (2) For spill prevention equipment not tested every three hundred sixty-five days and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.  
[Eff \_\_\_\_\_ ] (Auth: HRS  
§§342L-3, 342L-7.5, 342L-32) (Imp: HRS  
§§342L-3, 342L-7.5, 342L-32)

**§11-280.1-36 Periodic operation and maintenance walkthrough inspections.** (a) To properly operate and maintain UST systems, not later than three years after the effective date of these rules owners and operators must meet one of the following:

- (1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:
  - (A) Every thirty-one days. (Exception: Spill prevention equipment at UST systems receiving deliveries at intervals greater than every thirty-one days may be checked prior to each delivery.):
    - (i) Spill prevention equipment—visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area;

- and
- (ii) Release detection equipment—check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed and current; and
- (B) Annually:
  - (i) Containment sumps—visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and
  - (ii) Hand held release detection equipment—check devices such as tank gauge sticks or groundwater bailers for operability and serviceability; and
- (C) For airport hydrant systems, at least once every thirty-one days if confined space entry according to the Occupational Safety and Health Administration is not required or at least annually if confined space entry is required (see 29 C.F.R. part 1910):
  - (i) Hydrant pits—visually check for any damage; remove any liquid or debris; and check for any leaks; and
  - (ii) Hydrant piping vaults—check for any hydrant piping leaks; and
- (2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks

- equipment comparable to paragraph (1); or
- (3) Conduct operation and maintenance walkthrough inspections developed by the department that checks equipment comparable to paragraph (1).

(b) Owners and operators must maintain records, in accordance with section 11-280.1-34, of operation and maintenance walkthrough inspections for three years. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every thirty-one days due to infrequent deliveries.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-37 Periodic inspection and maintenance of under-dispenser containment sensing devices.** (a) Sensing devices for under-dispenser containment required by section 11-280.1-21(c) must:

- (1) Be operated and maintained in accordance with one of the following:
    - (A) The manufacturer's instructions;
    - (B) A code of practice developed by a nationally recognized association or independent testing laboratory; or
    - (C) Requirements determined by the department to be no less protective of human health and the environment than those in subparagraphs (A) and (B).
  - (2) Be inspected for proper operation, and electronic and mechanical components tested, at least annually.
  - (3) Generate a record of the status of the under-dispenser containment and the sensor's proper operation at least every thirty days.
- (b) UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with subsection (a).

Written documentation of all maintenance, testing, and monthly records must be maintained for at least three years. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

**§11-280.1-38 General operating requirements-- codes of practice.** (a) The following codes of practice may be used to comply with section 11-280.1-30(a): the transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles". Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".

(b) The following codes of practice may be used to comply with section 11-280.1-31(2):

- (1) NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
- (2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
- (3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";
- (4) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
- (5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(c) The following code of practice may be useful in complying with section 11-280.1-32: American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations".

(d) The following codes of practice may be used to comply with section 11-280.1-33(a)(1):

- (1) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
- (2) American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";
- (3) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- (4) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";
- (5) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";
- (6) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";
- (7) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
- (8) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".

(e) The following codes of practice may be used to comply with section 11-280.1-33(a)(6):

- (1) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial

- Tightness Testing of Existing Underground Double Wall Steel Tanks”;
- (2) Fiberglass Tank and Pipe Institute Protocol, “Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space”; or
  - (3) Petroleum Equipment Institute Recommended Practice RP1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”.

(f) The following code of practice may be used to comply with section 11-280.1-35(a)(1)(B), (a)(2)(B) and (a)(3): Petroleum Equipment Institute Publication RP1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”.

(g) The following code of practice may be used to comply with section 11-280.1-36(a)(2): Petroleum Equipment Institute Recommended Practice RP 900, “Recommended Practices for the Inspection and Maintenance of UST Systems”. [Eff ]  
(Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-39 (Reserved.)**

SUBCHAPTER 4

RELEASE DETECTION

**§11-280.1-40 General requirements for all UST systems.** (a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:



- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
- (2) Utilizes equipment compatible with the regulated substances being stored;
- (3) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions;
- (4) Is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the department to be no less protective of human health and the environment than the requirements of paragraphs (1) to (3). All maintenance and service of the release detection equipment must be conducted by a technician with current certification or training appropriate to the equipment serviced. A test of the proper operation must be performed at least every three hundred sixty-five days, or in a time frame recommended by the equipment manufacturer, whichever is more frequent. Beginning one year after the effective date of these rules, as applicable to the facility, the test must cover at a minimum the following components and criteria:
  - (A) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;
  - (B) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;
  - (C) Automatic line leak detector: test

- operation to meet criteria in section 11-280.1-44(1) by simulating a leak;
- (D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
  - (E) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation; and
- (5) Meets the performance requirements in section 11-280.1-43 or 11-280.1-44, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in section 11-280.1-43(2), (3), (4), (8), (9), and (10) and section 11-280.1-44(1), (2), and (4) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (b) When a release detection method operated in accordance with the performance standards in section 11-280.1-43 or 11-280.1-44 indicates a release may have occurred, owners and operators must notify the department in accordance with subchapter 5.
- (c) Any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the change-in-service or closure procedures in subchapter 7. [Eff  
] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-41 Requirements for petroleum UST systems.** (a) Tanks. Owners and operators of petroleum UST systems must provide release detection for tanks as follows:

- (1) Except for airport hydrant fuel distribution systems and UST systems with field-

constructed tanks:

- (A) Tanks installed before August 9, 2013 must be monitored for releases at least every thirty days using one of the methods listed in section 11-280.1-43(4) to (9) except that:
    - (i) UST systems that meet the performance standards in section 11-280.1-20 and the monthly inventory control requirements in section 11-280.1-43(1) or (2) may use tank tightness testing (conducted in accordance with section 11-280.1-43(3)) at least every five years until ten years after the tank was installed; and
    - (ii) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1,000 gallons that meet the tank diameter criteria in section 11-280.1-43(2) may use manual tank gauging (conducted in accordance with section 11-280.1-43(2)).
  - (B) Tanks installed on or after August 9, 2013 must be monitored for releases at least every thirty days in accordance with section 11-280.1-43(7).
- (2) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons:
- (A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty days using one of the methods listed in section 11-280.1-43(4) to (9), except as provided in paragraph (1)(A)(i) and (ii).
  - (B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every

thirty days in accordance with section 11-280.1-43(7).

- (3) For UST systems with field-constructed tanks with a capacity greater than 50,000 gallons:
  - (A) Tanks installed before the effective date of these rules must be monitored for releases at least every thirty days using one of the methods listed in section 11-280.1-43(4), (7), (8), and (9) or use one or a combination of the methods of release detection listed in section 11-280.1-43(10); and
  - (B) Tanks installed on or after the effective date of these rules must be monitored for releases at least every thirty days in accordance with section 11-280.1-43(7).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases as follows:

- (1) Except for piping associated with airport hydrant fuel distribution systems and UST systems with field-constructed tanks, piping installed before August 9, 2013 must meet one of the following:
  - (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
    - (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
    - (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with section 11-280.1-44(3).
  - (B) Suction piping. Underground piping that conveys regulated substances under suction must:
    - (i) Have a line tightness test

- conducted at least every three years and in accordance with section 11-280.1-44(2);
- (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-44(3); or
  - (iii) Meet the standards in paragraph (6)(A) to (E).
- (2) Except for piping associated with airport hydrant fuel distribution systems and UST systems with field-constructed tanks, piping installed on or after August 9, 2013 must meet one of the following:
- (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
    - (i) Be monitored for releases at least every thirty days in accordance with section 11-280.1-43(7); and
    - (ii) Be equipped with an automatic line leak detector in accordance with section 11-280.1-44(1).
  - (B) Suction piping. Underground piping that conveys regulated substances under suction must:
    - (i) Be monitored for releases at least every thirty days in accordance with section 11-280.1-43(7); or
    - (ii) Meet the standards in paragraph (6)(A) to (E).
- (3) Not later than ten years after the effective date of these rules, except for piping associated with airport hydrant fuel distribution systems and UST systems with field-constructed tanks, all piping must meet the requirements of paragraph (2)(A) or (B).
- (4) For piping associated with UST systems with field-constructed tanks with a capacity less than or equal to 50,000 gallons and not part of an airport hydrant system:
- (A) Piping installed before the effective

- date of these rules must meet the requirements of paragraph (1) (A) or (B).
- (B) Piping installed on or after the effective date of these rules must meet the requirements of paragraph (2) (A) or (B).
- (5) Piping associated with airport hydrant systems and field-constructed tanks with a capacity greater than 50,000 gallons must meet one of the following:
- (A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
- (i) Be equipped with an automatic line leak detector conducted in accordance with section 11-280.1-44(1); and
  - (ii) Have an annual line tightness test conducted in accordance with section 11-280.1-44(2) or have monthly monitoring conducted in accordance with any of the methods in section 11-280.1-43(7) to (9) designed to detect a release from any portion of the underground piping that routinely contains regulated substances; or
  - (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4).
- (B) Suction piping. Underground piping that conveys regulated substances under suction must:
- (i) Have a line tightness test conducted at least every three years and in accordance with section 11-280.1-44(2);
  - (ii) Use a monthly monitoring method conducted in accordance with section 11-280.1-43(7) to (9) designed to detect a release from

- any portion of the underground piping that routinely contains regulated substances;
- (iii) Use one or a combination of the methods of release detection listed in section 11-280.1-44(4); or
  - (iv) Meet the standards in paragraph (6)(A) to (E).
- (6) No release detection is required for suction piping that is designed and constructed to meet the following standards:
- (A) The below-grade piping operates at less than atmospheric pressure;
  - (B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
  - (C) Only one check valve is included in each suction line;
  - (D) The check valve is located directly below and as close as practical to the suction pump; and
  - (E) A method is provided that allows compliance with subparagraphs (B) to (D) to be readily determined. [Eff ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-42 Requirements for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must provide secondary containment for tanks and piping that meets the requirements of section 11-280.1-23 and monitor these containment systems in accordance with section 11-280.1-43(7) at least every thirty days. In addition, underground piping that conveys hazardous substances under pressure must be equipped with an automatic line leak detector in accordance with section 11-280.1-

44(1). [Eff ] (Auth: HRS §§342L-3, 342L-32, 342L-33) (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-43 Methods of release detection for tanks.** Each method of release detection for tanks used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons on a monthly basis in the following manner:
  - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (C) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
  - (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - (E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - (F) Product dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six



cubic inches for every five gallons of product withdrawn, and the meter is calibrated every three hundred sixty-five days; and

- (G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (2) Manual tank gauging. Manual tank gauging must meet the following requirements:
- (A) Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;
  - (B) If a manual measuring device is used (e.g., a gauge stick), the measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch;
  - (C) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
  - (D) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (E) A release is suspected and subject to the requirements of subchapter 5 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (four test average)
550 gallons or less .....	36 hours .....	10 gallons .....	5 gallons
551-1,000 gallons (when tank diameter is 64 inches) .....	44 hours .....	9 gallons .....	4 gallons
551-1,000 gallons (when tank diameter is 48 inches) .....	58 hours .....	12 gallons .....	6 gallons
551-1,000 gallons (also requires periodic tank tightness testing) .....	36 hours .....	13 gallons .....	7 gallons
1,001-2,000 gallons (also requires periodic tank tightness testing) ..	36 hours .....	26 gallons .....	13 gallons

(F) Tanks of five hundred fifty gallons or less nominal capacity and tanks with a nominal capacity of five hundred fifty-one to one thousand gallons that meet the tank diameter criteria in the table in subparagraph (E) may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of five hundred fifty-one to two thousand gallons may use manual tank gauging in place of inventory control in paragraph (1), combined with tank tightness testing as indicated in the table. Tanks of greater than two thousand gallons nominal capacity may not use this method to meet the requirements of this subchapter.

- (3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (4) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
  - (A) The automatic product level monitor test can detect a 0.2 gallon per hour

- leak rate from any portion of the tank that routinely contains product;
- (B) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of paragraph (1); and
  - (C) The test must be performed with the system operating in one of the following modes:
    - (i) In-tank static testing conducted at least once every thirty days; or
    - (ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty days.
- (5) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
  - (B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
  - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty days;
  - (D) The level of background contamination in the excavation zone will not

- interfere with the method used to detect releases from the tank;
- (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
  - (F) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (D) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
  - (G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (6) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:
- (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;
  - (B) Groundwater is never more than twenty feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
  - (C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;
  - (D) Monitoring wells shall be sealed from

- the ground surface to the top of the filter pack;
- (E) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
  - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;
  - (G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subparagraphs (A) to (E) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
  - (H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:
- (A) For double walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;
  - (B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;
    - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and

- impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;
- (ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
  - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
  - (iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days;
  - (v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
  - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (C) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (8) Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in paragraph (1) must meet the following requirements:
- (A) Report a quantitative result with a

- calculated leak rate;
  - (B) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty gallons within thirty days; and
  - (C) Use a threshold that does not exceed one-half the minimum detectible leak rate.
- (9) Other methods. Any other type of release detection method, or combination of methods, can be used if:
- (A) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
  - (B) The owner and operator can demonstrate to the department that the method can detect a release as effectively as any of the methods allowed in paragraphs (3) to (8), and the department approves the method. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.
- (10) Methods of release detection for field-constructed tanks. One or a combination of the following methods of release detection for tanks may be used when allowed by section 11-280.1-41.
- (A) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;
  - (B) Use an automatic tank gauging system to perform release detection at least every thirty days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test

- that can detect a 0.2 gallon per hour leak rate performed at least every three years;
- (C) Use an automatic tank gauging system to perform release detection at least every thirty days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;
  - (D) Perform vapor monitoring (conducted in accordance with paragraph (5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
  - (E) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty days that can detect a leak equal to or less than 0.5 percent of flow-through; and
    - (i) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or
    - (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with paragraph (5) or (6), respectively, for the stored regulated substance) at least every thirty days; or
  - (F) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (E). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff ] (Auth: HRS



SS342L-3, 342L-32, 342L-33) (Imp: HRS  
SS342L-3, 342L-32, 342L-33)

**§11-280.1-44 Methods of release detection for piping.** Each method of release detection for piping used to meet the requirements of sections 11-280.1-40 to 11-280.1-42 must be conducted in accordance with the following:

- (1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with section 11-280.1-40(a)(4).
- (2) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
- (3) Applicable tank methods. Any of the methods in section 11-280.1-43(5) to (9) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.
- (4) Methods of release detection for piping associated with airport hydrant systems and field-constructed tanks. One or a combination of the following methods of release detection for piping may be used when allowed by section 11-280.1-41.
  - (A) (i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST  
SECTION VOLUME

Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test—leak detection rate not to exceed (gallons per hour)
<50,000 .....	1.0	0.5
≥50,000 to <75,000 .....	1.5	0.75
≥75,000 to <100,000 .....	2.0	1.0
≥100,000 .....	3.0	1.5

- (ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS  
 ≥100,000 GALLONS IN VOLUME

First test .....	Not later than three years after the effective date of these rules (may use up to 6.0 gph leak rate).
Second test .....	Between three and six years after the effective date of these rules (may use up to 6.0 gph leak rate).
Third test .....	Between six and seven years after the effective date of these rules (must use 3.0 gph for leak rate).
Subsequent tests ..	Not later than seven years after the effective date of these rules, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

- (B) Perform vapor monitoring (conducted in accordance with section 11-280.1-43(5) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;
- (C) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every thirty days that can detect a leak equal to or less than 0.5 percent of flow-through; and
- (i) Perform a line tightness test (conducted in accordance with

- paragraph (4)) using the leak rates for the semiannual test) at least every two years; or
- (ii) Perform vapor monitoring or groundwater monitoring (conducted in accordance with section 11-280.1-43(5) or (6), respectively, for the stored regulated substance) at least every thirty days; or
- (D) Another method approved by the department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparagraphs (A) to (C). In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection. [Eff \_\_\_\_\_ ]  
 (Auth: HRS §§342L-3, 342L-32, 342L-33)  
 (Imp: HRS §§342L-3, 342L-32, 342L-33)

**§11-280.1-45 Release detection recordkeeping.**

All UST system owners and operators must maintain records in accordance with section 11-280.1-34 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the UST system. Records of site assessments required under section 11-280.1-43(5)(F) and (6)(G) must be maintained for as long as the methods are used. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer or professional geologist, or equivalent licensed

- professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department;
- (2) The results of any sampling, testing, or monitoring must be maintained for at least three years, except as follows:
    - (A) The results of annual operation tests conducted in accordance with section 11-280.1-40(a)(4) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in section 11-280.1-40(a)(4) or needs to have action taken, and describe any action taken to correct an issue;
    - (B) The results of tank tightness testing conducted in accordance with section 11-280.1-43(3) must be retained until the next test is conducted; and
    - (C) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with section 11-280.1-43(10) or section 11-280.1-44(4) must be retained until the next test is conducted;
  - (3) All records that the equipment being utilized to monitor or maintain the UST system is designed to produce must be maintained for at least three years after the record is generated; and
  - (4) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least three years. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-7.5, 342L-33) (Imp: HRS §§342L-3, 342L-7.5, 342L-33)

**§11-280.1-46 Release detection--codes of practice.** (a) The following code of practice may be used to comply with section 11-280.1-40(a)(3): Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".

(b) Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets" may be used, where applicable, as guidance in meeting the requirements of section 11-280.1-43(1). [Eff ] (Auth: HRS §§342L-3, 342L-33) (Imp: HRS §§342L-3, 342L-33)

**§§11-280.1-47 to 11-280.1-49 (Reserved.)**

## SUBCHAPTER 5

### RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

**§11-280.1-50 Reporting of suspected releases.** Owners and operators of UST systems must notify the department within twenty-four hours and follow the procedures in section 11-280.1-52 for any of the following conditions:

- (1) The discovery by any person of evidence of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).
- (2) Unusual UST or tank system operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden

loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:

- (A) The system equipment or component is found not to be releasing regulated substances to the environment;
  - (B) Any defective system equipment or component is immediately repaired or replaced; and
  - (C) For secondarily contained systems, except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.
- (3) Monitoring results, including investigation of an alarm, from a release detection method required under sections 11-280.1-40 to 11-280.1-42 that indicate a release may have occurred unless:
- (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;
  - (B) The leak is contained in the secondary containment and:
    - (i) Except as provided for in section 11-280.1-43(7)(B)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and
    - (ii) Any defective system equipment or component is immediately repaired or replaced;
  - (C) In the case of inventory control described in section 11-280.1-43(1), a second month of data does not confirm the initial result or the investigation determines no release has occurred; or
  - (D) The alarm was investigated and

determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing). [Eff ] (Auth: HRS §§342L-3, 342L-34) (Imp: HRS §§342L-3, 342L-34)

**§11-280.1-51 Investigation of off-site impacts.**

When required by the department, owners and operators of UST systems must follow the procedures in section 11-280.1-52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to the department's attention by any person. [Eff ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-52 Release investigation and confirmation steps.** (a) Unless release response action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 11-280.1-50 within seven days following the discovery of the suspected release, unless a written request for extension of time is granted by the director.

(b) Investigations and confirmations required in subsection (a) must use the following steps or another procedure approved by the department:

(1) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in sections 11-280.1-43(3) and 11-280.1-44(2) or, as appropriate, secondary containment testing described in section 11-280.1-33(a)(6).

(A) The test must determine whether:

(i) A leak exists in that portion of the tank that routinely contains

- product, or the attached delivery piping; or
- (ii) A breach of either wall of the secondary containment has occurred.
- (B) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a release exists.
  - (C) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.
  - (D) Owners and operators must conduct a site assessment as described in paragraph (2) if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.
- (2) Site assessment. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of groundwater, and other factors as appropriate for identifying the presence and source of the release.
- (A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin release response action in accordance with



subchapter 6;

(B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the department within thirty days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests required by subsection (b) as well as performance claims pursuant to section 11-280.1-40(a)(5). [Eff ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-53 Reporting and cleanup of spills and overfills.**

(a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in section 11-280.1-65.3.

(b) Owners and operators must notify the department within twenty-four hours and begin release response action in accordance with subchapter 6 in the following cases:

- (1) Spill or overflow of petroleum that results in a release to the environment that exceeds twenty-five gallons or that causes a sheen on nearby surface waters; and
- (2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity as determined in compliance with section 11-451-6.

(c) Owners and operators of UST systems must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons or a spill or overflow of a hazardous substance that is less than the reportable quantity as determined in compliance with section 11-451-6. If cleanup cannot be accomplished within twenty-four hours, then the owners

and operators must immediately notify the department of the incident and continue cleaning up the spill or overfill. Owners and operators must also complete and submit to the department a written report of the actions taken in response to the spill or overfill within ninety days.

(d) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

§§11-280.1-54 to 11-280.1-59 (Reserved.)

## SUBCHAPTER 6

### RELEASE RESPONSE ACTION

**§11-280.1-60 General.** Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subchapter, except for USTs excluded under section 11-280.1-10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended, or under section 342J-36, Hawaii Revised Statutes. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-61 Immediate response actions.** (a) Upon confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST system is identified in any other manner, owners and

operators must perform the following response actions within twenty-four hours:

- (1) Report the release to the department by telephone;
- (2) Take necessary actions to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST or tank system as possible;
- (3) Identify and mitigate any safety hazards (such as fire, explosion, and vapor hazards) posed by the release of the regulated substance; and
- (4) Take necessary action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must submit to the department a written notice of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken.

(c) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director within thirty days after identifying a release from an underground storage tank or tank system required to be reported under this section. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-34, 342L-35) (Imp: HRS §§342L-3, 342L-34, 342L-35)

**§11-280.1-61.1 Posting of signs.** (a) If the department determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.

(b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers

to be seen from any approach to the site.

(c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.

(d) The sign may be removed upon determination by the department that no further release response action is necessary or that posting of signs is no longer appropriate. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-62 Initial abatement measures and site assessment.** (a) Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

- (1) Continue to remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect the area around the UST or tank system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, air, surface water, and groundwater;
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement,

- or release response action activities;
- (5) Conduct an assessment of the release by measuring for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site assessment required by section 11-280.1-52(b) or the site assessment required for change-in-service or permanent closure in section 11-280.1-72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth and flow of groundwater and other factors as appropriate for identifying the presence and source of the release;
  - (6) Investigate to determine the possible presence of free product, and begin free product removal in accordance with section 11-280.1-64;
  - (7) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product; and
  - (8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local, state, and federal requirements.

(b) Within twenty days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under subsection (a) and any resulting information or data.  
[Eff ] (Auth: HRS §§342L-3, 342L-35)  
(Imp: HRS §§342L-3, 342L-35)

**§11-280.1-63 Initial site characterization.**

- (a) Owners and operators must assemble information about the site and the nature of the release,

including information gained while confirming the release or completing the initial abatement measures in sections 11-280.1-60 and 11-280.1-61. This information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
- (2) Data from available sources and all previous site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
- (3) Results of the site assessment required under section 11-280.1-62(a)(5); and
- (4) Results of the free product investigations required under section 11-280.1-62(a)(6), to be used by owners and operators to determine whether free product must be recovered under section 11-280.1-64.

(b) Within forty-five days of release confirmation, or another reasonable period of time determined by the department, owners and operators must submit the information collected in compliance with subsection (a) to the department in a manner that demonstrates its applicability and technical adequacy.

[Eff ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-64 Free product removal.** (a) At sites where investigations under section 11-280.1-62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the department while continuing, as necessary, any actions initiated under sections 11-280.1-61 to 11-280.1-63, or preparing for actions required under sections 11-280.1-65 to 11-280.1-66. In meeting the requirements of this section, owners and operators must:

- (1) Conduct free product removal in a manner

- that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
  - (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
  - (4) Prepare and submit to the department, within forty-five days after confirming a release, a free product removal report that provides at least the following information:
    - (A) The name of the person responsible for implementing the free product removal measures;
    - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
    - (C) The type of free product recovery system used;
    - (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
    - (E) The type of treatment applied to, and the effluent quality expected from, any discharge;
    - (F) All actions already performed or currently underway to remove free product, including steps that have been or are being taken to obtain necessary permits for any discharge;
    - (G) The disposition of the recovered free product; and
    - (H) Schedule for completion of free product removal.
- (b) Owners and operators shall initiate free

product removal as soon as practicable but no later than thirty days following confirmation of a release, or sooner if directed by the department. [Eff  
] (Auth: HRS §§342L-3, 342L-35) (Imp:  
HRS §§342L-3, 342L-35)

**§11-280.1-65 Investigations for soil and groundwater cleanup.** (a) For releases confirmed in accordance with section 11-280.1-52 or after a release from the UST system that is identified in any manner, in order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater and surface water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous release response actions);
- (2) Free product is found to need recovery in compliance with section 11-280.1-64;
- (3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under sections 11-280.1-60 to 11-280.1-64); and
- (4) The department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must include information collected in accordance with this section with each quarterly report required pursuant to section 11-280.1-65.2. [Eff  
] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.1 Notification of confirmed releases.** (a) Within ninety days following



confirmation of a release pursuant to section 11-280.1-52, or after a release from the UST or tank system is identified in any other manner, the owner and operator shall notify those members of the public directly affected by the release in writing of the release and the proposed response to the release, including a historical account of actions performed since the discovery of the release. Members of the public directly affected by the release shall include:

- (1) Persons who own, hold a lease for, or have easements at, any property on which the regulated substance released from the UST was discovered; and

- (2) Other persons identified by the director.

(b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;

- (2) Statement that a release of regulated substance has been confirmed at the UST or UST system;

- (3) Name of a contact person at the department; and

- (4) Reference to an attached factsheet pursuant to subsection (c).

(c) The letter to the members of the public directly affected by the release shall include a factsheet which contains the following information:

- (1) Name and address of the UST or UST system;

- (2) Name and address of the owner and operator of the UST or UST system;

- (3) Name, address, and telephone contact of the party performing the cleanup activities;

- (4) Date of the confirmed release;

- (5) Nature and extent of the confirmed release;

- (6) Summary of measures taken to assess the release and extent of contamination; and

- (7) Summary of the proposed response to the release.

(d) The factsheet shall be updated on a quarterly basis and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified

in the course of release response actions, then the owner and operator shall provide those persons with all previous and future letters and factsheets.

(e) The owner and operator shall include in the quarterly report required pursuant to section 11-280.1-65.2 the following information:

- (1) Copy of the letter pursuant to subsection (b);
- (2) List of the members of the public directly affected by the release and to whom the letter was sent; and
- (3) Copies of the factsheet and amended factsheets pursuant to subsections (c) and (d). [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-65.2 Release response reporting.** (a)

No later than ninety days following the confirmation of a release in accordance with section 11-280.1-52 or after a release from the UST or tank system is identified in any other manner, owners and operators must submit to the department a written report and an electronic copy of the written report in a format specified by the department. The report must include:

- (1) All release response actions taken pursuant to this subchapter during the first ninety-day period (first quarter); and
- (2) A plan for future release response actions to be taken.

(b) Beginning one hundred eighty days following confirmation of a release, owners and operators must submit to the department written quarterly progress reports and an electronic copy of the written report in a format specified by the department. The reports must document:

- (1) All response actions taken pursuant to this subchapter after the last reported date;
  - (2) A plan for future release response actions to be taken; and
  - (3) Information required pursuant to section 11-280.1-65.1.
- (c) Quarterly progress reports are not required

if:

- (1) Response actions have met the requirements of section 11-280.1-65.3; and
- (2) A final quarterly report has been submitted. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-35) (Imp: HRS §§342L-3, 342L-7.5, 342L-35)

**§11-280.1-65.3 Site cleanup criteria.** (a) For releases confirmed in accordance with section 11-280.1-52 or after a release from the UST or tank system that is identified in any other manner, owners and operators must remediate soil, surface water, and groundwater, and materials contaminated by releases from USTs or tank systems in a manner that is protective of human health and the environment and achieves cleanup as described in subsection (b).

(b) Owners and operators must remediate contaminated soil, groundwater, and surface water at the site to residual concentrations that meet one of the following criteria:

- (1) Default Tier 1 Screening Levels as presented in Table 1 in subsection (e); or
- (2) Site-specific action levels as approved by the department. Owners and operators should consult with the department on how the standards in this paragraph can be met. Site-specific action levels must take into account the following factors:
  - (A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population may be exposed without adverse effect during a lifetime or part of a lifetime, and incorporating an adequate margin of safety;
  - (B) For known or suspected carcinogens, acceptable levels are generally concentration levels in soil, groundwater and vapor that represent an excess upper bound lifetime cancer risk to an individual of between  $10^{-4}$  and  $10^{-6}$  using information on the relationship

between dose and response. The  $10^{-6}$  excess risk level shall be used as the point of departure for determining acceptable levels for alternatives when chemical-specific state or federal requirements are not available or are not sufficiently protective because of the presence of multiple contaminants at the site or multiple pathways of exposure;

- (C) Impacts to ecological receptors, including but not limited to plants and animals; and
- (D) Other applicable requirements, including but not limited to nuisance concerns for odor and taste, if applicable.

(c) The department may require the owners and operators to modify cleanup activities being performed at a site if the department determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels that are protective of human health and the environment. The department may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the department's notice by a time schedule established by the department.

(d) A schedule for estimated completion of site cleanup shall be included in each fourth quarter report required pursuant to section 11-280.1-65.2(b).

(e) The figure labeled "Table 1. Tier 1 Screening Levels of Soil and Groundwater" is made a part of this subsection.

Table 1. Tier 1 Screening Levels for Soil and Groundwater

Contaminant	DRINKING WATER SOURCE THREATENED				DRINKING WATER SOURCE NOT THREATENED			
	Groundwater (ug/l)	Basis <sup>1</sup>	Soil (mg/kg)	Basis <sup>2</sup>	Groundwater (ug/l)	Basis <sup>3</sup>	Soil (mg/kg)	Basis <sup>2</sup>
Acenaphthene	N/A <sup>4</sup>	-	120	L/VI	N/A <sup>4</sup>	-	120	L/VI
Benzene	5.0	DWP	0.30	L	71	CAT	0.77	VI
Benzo (a) pyrene	N/A <sup>4</sup>	-	3.6	DE	N/A <sup>4</sup>	-	3.6	DE
Dichloroethylene, cis 1,2-	70	DWP	0.36	VI	620	CAT	0.36	VI
Dichloroethylene, trans 1,2-	100	DWP	3.6	VI	560	CAT	3.6	VI
Ethylbenzene	7.3	CAT	0.90	L	7.3	CAT	0.90	L
Fluoranthene	N/A <sup>4</sup>	-	87	L	N/A <sup>4</sup>	-	87	L
Lead	5.6	CAT	200	DE	5.6	CAT	200	DE
Methyl Tert Butyl Ether (MTBE)	5.0	DWS	0.028	L	730	CAT	2.3	VI
Naphthalene	12	CAT	3.1	L	12	CAT	3.1	L
Polychlorinated Biphenyls (PCBs)	N/A <sup>4</sup>	-	1.2	DE	N/A <sup>4</sup>	-	1.2	DE
Tetrachloethylene (PCE)	5.0	DWP	0.098	VI	53	CAT	0.098	VI
Toluene	9.8	CAT	0.78	L	9.8	CAT	0.78	L
TPH-gasolines	300	DWP	100	GC	500	CAT	100	GC
TPH-middle distillates	400	DWP	220	DE	640	CAT	220	DE
TPH-residual fuels	500	DWS	500	GC	640	CAT	500	GC
Trichloroethylene	5.0	DWP	0.089	VI	47	CAT	0.089	VI
Vinyl Chloride	2.0	DWP	0.036	VI	18	VI	0.036	VI
Xylenes	13	CAT	1.4	L	13	CAT	1.4	L

Notes to Table 1.

1. Drinking water screening levels are the lowest of screening levels for: drinking water primary maximum contaminant levels based on toxicity ("DWP"), drinking water secondary maximum contaminant levels based on taste and odor concerns ("DWS"), vapor intrusion ("VI"), and chronic aquatic toxicity ("CAT").
2. Soil screening levels are the lowest of screening levels for: direct exposure ("DE"), vapor intrusion ("VI"), leaching ("L"), and gross contamination ("GC").
3. Non-drinking water screening levels are the lowest of screening levels vapor intrusion ("VI"), chronic aquatic toxicity ("CAT"), and gross contamination ("GC").
4. Testing for acenaphthene, benzo(a)pyrene, fluoranthene, and PCBs in groundwater is not necessary due to low solubility and low mobility. Cleanup of contaminated soil will be adequate to address potential groundwater concerns.

[Eff ] (Auth: HRS §§342L-3, 342L-35)  
(Imp: HRS §§342L-3, 342L-35)

**§11-280.1-66 Corrective action plan.** (a) The department may require that the owner and operator submit a written corrective action plan for responding to a release, if one or more of the following minimum threshold criteria is met:

- (1) Actual or probable release to groundwater which is a drinking water supply;
- (2) Actual or probable release to surface water which is a drinking water supply;
- (3) Actual or probable release to air that poses a threat to public health;
- (4) Actual or probable release to and extensive

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- contamination of soil that poses a direct contact hazard due to uncontrolled access;
- (5) Actual or probable existence of uncontrolled regulated substances that pose a direct contact hazard due to uncontrolled access;
  - (6) Actual or probable adverse impact to natural resources;
  - (7) Actual or probable imminent danger of fire or explosion; or
  - (8) A determination by the director that a release poses a substantial endangerment to public health or welfare, the environment, or natural resources.

(b) If a plan is required, owners and operators must submit the plan to the department in a format established by the department within thirty days of the department's request, unless an extension of time is granted by the department.

(c) Corrective action plans which are required to be submitted to the department shall be subject to the review and discretionary approval of the department in accordance with the procedures set forth in this section. Owners and operators are responsible for submitting a corrective action plan that provides for adequate protection of human health and the environment as determined by the department and must make necessary modifications to the plan when directed to do so by the department.

(d) The department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department will consider the following factors as appropriate:

- (1) Physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) Hydrogeologic characteristics of the facility and the surrounding area;
- (3) Proximity, quality, and current and future uses of nearby surface water and groundwater;
- (4) Potential effects of residual contamination

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- on nearby surface water and groundwater;
- (5) An exposure assessment; and
  - (6) All other information assembled in compliance with this subchapter.
- (e) The public participation procedures set forth in section 11-280.1-67 apply to all corrective action plans submitted under this section.
- (f) Upon approval of a corrective action plan, owners and operators must implement the plan, including any modifications to the plan made by the department. Owners and operators must monitor, evaluate, and report quarterly to the department the results of implementing the corrective action plan pursuant to this section and section 11-280.1-65.2.
- (g) Owners and operators who have been requested by the department to submit a corrective action plan are encouraged to begin cleanup of contaminated soils, surface water, groundwater, and materials before the plan is approved by the department provided that they:
- (1) Notify the department of their intention to begin cleanup;
  - (2) Ensure that cleanup measures undertaken are consistent with the cleanup actions required pursuant to section 11-280.1-65.3;
  - (3) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
  - (4) Incorporate self-initiated cleanup measures in the corrective action plan that is submitted to the department for approval.
- [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

**§11-280.1-67 Public participation for corrective action plans.** (a) The department shall conduct public participation activities in accordance with subsections (c) through (h) when:

- (1) A corrective action plan required pursuant to section 11-280.1-66(a) has been submitted



and the department has made a tentative decision concerning the proposed plan; or

- (2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the department.

(b) The department will provide notice to the public of the release and the applicable response as required in subsections (c) and (d). Costs for all public participation activities described in subsections (c) through (h) shall be borne by the owner and operator of the UST or UST system, including the costs of making copies of materials to the public under subsection (f).

(c) Notice to members of the public directly affected by the release, as defined in section 11-280.1-65.1(a), shall be given in the form of a letter from the department and shall include at least the following information:

- (1) Name and address of the UST or UST system;
- (2) Name and address of the owner and operator of the UST or UST system;
- (3) Summary of the release information and the proposed or previously approved corrective action plan;
- (4) The department's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;
- (5) Announcement that an informational meeting will be held in accordance with subsection (g);
- (6) Request for comments on the corrective action plan and the department's tentative decision; and
- (7) Availability of information on the release and the department's tentative decision.

(d) Notice to the general public shall be given in the form of a notice in a local newspaper and shall include at least the information required in subsection (c)(1) to (7).

(e) Comments shall be received by the department

no later than thirty days after the notice provided in subsections (c) and (d) or after the end of the public meeting held pursuant to subsection (g), if any, whichever occurs later.

(f) Information on the release, the proposed corrective action plan, and the department's tentative decision on the plan shall be made available to the public for inspection upon request.

(g) Before approving a corrective action plan, the department may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest. Public interest shall be indicated by written request to the department.

(h) At the director's discretion, a notice of final decision may be issued. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§342L-3, 342L-35) (Imp: HRS §§342L-3, 342L-35)

§§11-280.1-68 to 11-280.1-69 (Reserved.)

## SUBCHAPTER 7

### OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

**§11-280.1-70 Temporary closure.** (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31, and applicable release detection in accordance with subchapters 4 and 11. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. Spill and overflow operation and maintenance testing and inspections in subchapter 3 are not required during temporary closure. If the UST system is empty, release detection and release detection operation and

maintenance testing and inspections in subchapters 3 and 4 are not required. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for ninety days or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than twelve months, owners and operators must permanently close the UST system if it does not meet the applicable performance standards for UST systems in section 11-280.1-20 and upgrading requirements in section 11-280.1-21, except that the spill and overflow equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this twelve-month period in accordance with sections 11-280.1-71 to 11-280.1-74, unless the implementing agency provides an extension of the twelve-month temporary closure period. Owners and operators must complete a site assessment in accordance with section 11-280.1-72 before such an extension can be applied for. [Eff

] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-71 Permanent closure and changes-in-service.** (a) At least thirty days before beginning either permanent closure or a change-in-service of an UST or tank system under subsections (c) and (d), owners and operators must notify the department in writing of their intent to permanently close or make the change-in-service, unless such action is in response to a confirmed release. The required assessment of the excavation zone under section 11-

280.1-72 must be performed after notifying the department but before completion of the permanent closure or a change-in-service.

(b) At least seven days before a permanent closure or change-in-service action, owners or operators must notify the department of the exact date that the activity will occur.

(c) To permanently close a UST or tank system, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges;
- (2) Remove the UST or tank system from the ground, fill the UST or tank system with an inert solid material, or close the tank in place in a manner approved by the department; and
- (3) Conduct a site assessment in accordance with section 11-280.1-72.

(d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:

- (1) Empty and clean the UST and tank system by removing all liquids and accumulated sludges; and
- (2) Conduct a site assessment in accordance with section 11-280.1-72.

(e) Within thirty days of completing a permanent closure or change-in-service action, owners and operators must submit a notification to the department indicating completion of the closure or change-in-service. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-72 Assessing the site at closure or change-in-service.** (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST

site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth and flow of groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 11-280.1-43(5) and (6) is operating in accordance with the requirements in section 11-280.1-43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a), or by any other manner, owners and operators must begin release response action in accordance with subchapter 6. [Eff  
] (Auth: HRS §§342L-3, 342L-37) (Imp:  
HRS §§342L-3, 342L-372)

**§11-280.1-73 Applicability to previously closed UST systems.** (a) When directed by the department, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

(b) When directed by the department, the owner and operator of an UST system with field-constructed tanks or an airport hydrant fuel distribution system permanently closed before August 9, 2013 must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment. [Eff  
] (Auth: HRS  
§§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

**§11-280.1-74 Closure records.** (a) Owners and operators must maintain records in accordance with section 11-280.1-34 that are capable of demonstrating compliance with closure requirements under this subchapter. The results of the excavation zone assessment required in section 11-280.1-72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

- (1) By the owners and operators who took the UST system out of service;
- (2) By the current owners and operators of the UST system site; or
- (3) By mailing these records to the department if they cannot be maintained at the closed facility. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-37) (Imp: HRS §§342L-3, 342L-7.5, 342L-37)

**§11-280.1-75 Closure--codes of practice.** The following cleaning and closure procedures may be used to comply with section 11-280.1-71:

- (1) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";
- (2) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";
- (3) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
- (4) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," may be used as guidance for compliance with this section;

- (5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
- (6) National Institute for Occupational Safety and Health Publication 80-106, "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some tanks containing hazardous substances. [Eff ] (Auth: HRS §§342L-3, 342L-37) (Imp: HRS §§342L-3, 342L-37)

§§11-280.1-76 to 11-280.1-89 (Reserved.)

## SUBCHAPTER 8

### FINANCIAL RESPONSIBILITY

**§11-280.1-90 Applicability.** (a) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements in accordance with section 11-280.1-91.

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(d) The requirements of this subchapter do not apply to owners and operators of any UST system described in section 11-280.1-10(b), (c)(1), (c)(3), or (c)(4).

(e) If the owner and operator of a petroleum underground storage tank system are separate persons,

only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. [Eff ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-91 (Reserved.)**

**§11-280.1-92 Definition of terms.** When used in this subchapter, the following terms have the meanings given below:

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank system that results in a need for release response action and/or compensation for bodily injury or property damage neither expected nor intended by the tank system owner or operator.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
- (2) An annual report of tangible net worth



- submitted to Dun and Bradstreet; or
- (3) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

- (1) By EPA or the state to require release response action or to recover the costs of release response action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank system. This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include response actions associated with releases from USTs or tank systems

which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank system through one of the financial mechanisms listed in sections 11-280.1-95 through 11-280.1-107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST or tank system release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under section 11-280.1-97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the

retroactive date of the original policy. [Eff  
] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS  
§§342L-3, 342L-36)

**§11-280.1-93 Amount and scope of required financial responsibility.** (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:

- (1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; and
- (2) For all other owners or operators of petroleum USTs or tank systems: \$500,000.

(b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

- (1) For owners or operators of one to one hundred petroleum USTs: \$1,000,000; and
- (2) For owners or operators of one hundred one or more petroleum USTs: \$2,000,000.

(c) For the purposes of subsections (b) and (f) only, "a petroleum underground storage tank" or "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate

combinations of mechanisms to demonstrate financial responsibility for:

- (1) Taking corrective action;
- (2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases,

the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. [Eff

] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-94 Allowable mechanisms and combinations of mechanisms.** (a) Subject to the limitations of subsections (b) and (c):

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 11-280.1-95 through 11-280.1-103 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 11-280.1-104 through 11-280.1-107 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.

(b) An owner or operator may use a guarantee under section 11-280.1-96 or surety bond under section 11-280.1-98 to establish financial responsibility only if the State Attorney General has submitted a written statement to the director that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. [Eff

] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-95 Financial test of self-insurance.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of section 11-280.1-93 by

passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor, must meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.

(b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(A) The total of the applicable aggregate amount required by section 11-280.1-93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department, to EPA, or to a state implementing agency under a state program approved by EPA under 40 C.F.R. part 281;

(B) The sum of the RCRA subtitle C corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to demonstrate financial responsibility to the department under 40 C.F.R. sections 261.143 and 261.147, as incorporated and amended in section 11-261.1-1, 40 C.F.R. sections 264.101, 264.143, 264.145, and 264.147, as incorporated and amended in section 11-264.1-1, and 40 C.F.R. sections 265.143, 265.145, and 265.147, as incorporated and amended in section 11-265.1-1, to EPA under 40 C.F.R. sections 261.143, 261.147, 264.101, 264.143, 264.145, 264.147, 265.143, 265.145, and 265.147, or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 271; and

(C) The sum of current plugging and

abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 C.F.R. section 144.63 or to a state implementing agency under a state program authorized by EPA under 40 C.F.R. part 145.

- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10,000,000.
  - (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (d).
  - (4) The owner or operator, and/or guarantor, must either:
    - (A) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or
    - (B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
  - (5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (c) (1) The owner or operator, and/or guarantor, must meet the financial test requirements of 40 C.F.R. section 264.147(f)(1), as incorporated and amended in chapter 11-264.1, substituting the appropriate amounts specified in section 11-280.1-93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.
- (2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified

public accountant and be accompanied by the accountant's report of the examination.

- (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (d).
- (5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
  - (A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
  - (B) In connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:



LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance" or "guarantee" or both] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, or a corresponding financial test under EPA or another authorized state program, by this [insert: "owner or operator" or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a corresponding financial test under EPA or under a state program approved under 40 C.F.R. part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. parts 271 and 145:

	Amount
EPA Regulations:	
Closure (§§261.143, 264.143, and 265.143)	\$
Post-Closure Care (§§264.145 and 265.145)	\$
Liability Coverage (§§261.147, 264.147, and 265.147)	\$
Corrective Action (§264.101(b))	\$
Plugging and Abandonment (\$144.63)	\$
Authorized State Programs:	
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
Plugging and Abandonment	\$
 TOTAL	 \$

This [insert: "owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subsection (b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection (c) are being used to demonstrate compliance with the financial test requirements.]

#### ALTERNATIVE I

	Amount
1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both	\$

- |     |   |     |    |
|-----|---|-----|----|
| 2.  | Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both                      | \$  |    |
| 3.  | Sum of lines 1 and 2  | \$  |    |
| 4.  | Total tangible assets   | \$  |    |
| 5.  | Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]                           | \$  |    |
| 6.  | Tangible net worth [subtract line 5 from line 4]  | \$  |    |
| 7.  | Is line 6 at least \$10,000,000?  | Yes | No |
| 8.  | Is line 6 at least ten times line 3?  | Yes | No |
| 9.  | Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?   | Yes | No |
| 10. | Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration?   | Yes | No |
| 11. | Have financial statements for the latest fiscal year been filed with the federal Rural Utilities Service?   | Yes | No |
| 12. | Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] | Yes | No |

ALTERNATIVE II

- |    |   |        |
|----|---|--------|
|    |   | Amount |
| 1. | Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both | \$     |

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both \$
  3. Sum of lines 1 and 2 \$
  4. Total tangible assets \$
  5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$
  6. Tangible net worth [subtract line 5 from line 4] \$
  7. Total assets in the U.S. [required only if less than ninety per cent of assets are located in the U.S.] \$
  8. Is line 6 at least \$10,000,000? Yes No
  9. Is line 6 at least six times line 3? Yes No
  10. Are at least ninety per cent of assets located in the U.S.? [If "No," complete line 11] Yes No
  11. Is line 7 at least six times line 3? Yes No
- [Fill in either lines 12-15 or lines 16-18:]
12. Current assets \$
  13. Current liabilities \$
  14. Net working capital [subtract line 13 from line 12] \$
  15. Is line 14 at least six times line 3? Yes No
  16. Current bond rating of most recent bond issue
  17. Name of rating service
  18. Date of maturity of bond

19. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission, the federal Energy Information Administration, or the federal Rural Utilities Service? Yes      No

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-95(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]  
[Name]  
[Title]  
[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(f) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-96 Guarantee.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

- (1) A firm that:
  - (A) Possesses a controlling interest in the owner or operator;
  - (B) Possesses a controlling interest in a firm described under subparagraph (A);  
or
  - (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
- (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 11-280.1-95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 11-280.1-95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the

financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that it no longer meets the requirements of the financial test of section 11-280.1-95(b) or (c), and (d), the guarantor must notify the owner or operator within ten days of receiving such notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of [name of state], herein referred to as guarantor, to the Hawaii state department of health and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

#### Recitals.

(1) Guarantor meets or exceeds the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, and agrees to comply with the requirements for guarantors as specified in section 11-280.1-96(b), Hawaii Administrative Rules.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies)]

where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326 and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Hawaii director of health, shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the



coverage limits specified above.

In the event that the Hawaii director of health determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Hawaii director of health, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of section 11-280.1-95(b) or (c) and (d), Hawaii Administrative Rules, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this

guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-96(c), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Hawaii director of health under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-97 Insurance and risk retention group coverage.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as

specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

Name: [name of each covered location]  
Address: [address of each covered location]  
Policy Number:  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental

releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) to (e) of this paragraph are hereby amended to conform with subsections (a) to (e);

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
- .b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not

apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and sections 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.

- c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the Hawaii director of health a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such

policy renewal or termination date.  
Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(1), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii"].

[Signature of authorized representative of Insurer or Risk Retention Group]  
[Name of person signing]  
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]  
[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]  
Address: [address of each covered location]  
Policy Number:  
Endorsement (if applicable):  
Period of Coverage: [current policy period]  
Name of [Insurer or Risk Retention Group]:  
Address of [Insurer or Risk Retention Group]:  
Name of Insured:  
Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as

identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under



the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 11-280.1-95 to 11-280.1-102 and 11-280.1-104 to 11-280.1-107, Hawaii Administrative Rules.
- c. Whenever requested by the Hawaii director of health, the ["Insurer" or "Group"] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only

upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 11-280.1-97(b)(2), Hawaii Administrative Rules, and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Hawaii"].

[Signature of authorized representative of Insurer]

[Type Name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

- (c) Each insurance policy must be issued by an

insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Hawaii. [Eff  
] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-98 Surety bond.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert: "individual", "joint venture", "partnership", or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the

name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$

Annual aggregate \$

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Hawaii department of health, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used

to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "sudden and nonsudden accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, within one hundred twenty days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the

requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Hawaii director of health that the Principal has failed to ["take corrective action, in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with chapter 11-280.1, Hawaii Administrative Rules, and the Hawaii director of health's instructions," and/or "third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

Upon notification by the Hawaii director of health that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Hawaii director of health has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Hawaii director of health under section 11-280.1-112, Hawaii Administrative Rules.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 11-280.1-98(b), Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

Corporate Surety(ies)  
[Name and address]  
State of Incorporation:  
Liability limit: \$  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 11-280.1-93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-99 Letter of credit.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in the State of Hawaii and whose letter-of-credit operations are regulated and examined by a federal or State of Hawaii agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Hawaii director of health]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_, and



(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342L, Hawaii Revised Statutes."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a

- petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 11-280.1-99(b), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert: "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform

Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 11-280.1-93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under section 11-280.1-112. This standby trust fund must meet the requirements specified in section 11-280.1-103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. [Eff

] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§§11-280.1-100 to 11-280.1-101 (Reserved.)**

**§11-280.1-102 Trust fund.** (a) An owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be

identical to the wording specified in section 11-280.1-103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 11-280.1-103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(f) Within sixty days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-103 Standby trust fund.** (a) An owner or operator using any one of the mechanisms authorized by section 11-280.1-96, 11-280.1-98, or 11-280.1-99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert: "corporation", "partnership", "association", or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert: "Incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee[.]".

Whereas, the Hawaii state department of health has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert "standby" where trust agreement is standby trust agreement] trust agreement;

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act

as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Hawaii state department of health. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Hawaii director of health's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to

collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Hawaii state department of health.

Section 4. Payment for ["Corrective Action" or "Third-Party Liability Claims" or both]. The Trustee shall make payments from the Fund as the Hawaii director of health shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for

which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

The Trustee shall reimburse the Grantor, or other persons as specified by the Hawaii director of health, from the Fund for corrective action expenditures and/or third-party liability claims, in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the



conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show

that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may

replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Hawaii director of health to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee

shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Hawaii director of health, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Hawaii director of health if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Hawaii director of health, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Hawaii director of health issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including

all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in section 11-280.1-103(b)(1), Hawaii Administrative Rules, as such regulations were constituted on the date written above.

[Signature of Grantor]  
[Name of the Grantor]  
[Title]

Attest:  
[Signature of Trustee]  
[Name of the Trustee]  
[Title]  
[Seal]

[Signature of Witness]  
[Name of the Witness]  
[Title]

[Seal]

- (2) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

State of \_\_\_\_  
County of \_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]  
[Name of Notary Public]

(c) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-104 Local government bond rating test.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 11-280.1-93 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded



exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated

as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(d), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM THE CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal

authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-104(e), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(f) The director may require reports of financial condition at any time from the local government owner or operator and/or local government guarantor. If the director finds, on the basis of such reports or other information, that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternative coverage within thirty days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within one hundred fifty days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty days of notification by the director that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within ten days. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-105 Local government financial test.**

(a) A local government owner or operator may satisfy the requirements of section 11-280.1-93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local

government financial test, the owner or operator must meet the criteria of subsection (b)(2) and (3) based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(A) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(B) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total

expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

- (C) Local Revenues: Consists of total revenues (as defined in subparagraph (A)) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
- (E) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds,

notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

- (F) Population consists of the number of people in the area served by the local government.
- (2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.
- (3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of

at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

## WORKSHEET FOR MUNICIPAL FINANCIAL TEST

### PART I: BASIC INFORMATION

1. Total Revenues
  - a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
  - b. Subtract interfund transfers (dollars)



- c. Total Revenues (dollars)
- 2. Total Expenditures
  - a. Expenditures (dollars)
 

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
  - b. Subtract interfund transfers (dollars)
  - c. Total Expenditures (dollars)
- 3. Local Revenues
  - a. Total Revenues (from 1c) (dollars)
  - b. Subtract total intergovernmental transfers (dollars)
  - c. Local Revenues (dollars)
- 4. Debt Service
  - a. Interest and fiscal charges (dollars)
  - b. Add debt retirement (dollars)
  - c. Total Debt Service (dollars)
- 5. Total Funds (Dollars)
 

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)
- 6. Population (Persons)

PART II: APPLICATION OF TEST

- 7. Total Revenues to Population
  - a. Total Revenues (from 1c)
  - b. Population (from 6)
  - c. Divide 7a by 7b
  - d. Subtract 417
  - e. Divide by 5,212
  - f. Multiply by 4.095
- 8. Total Expenses to Population
  - a. Total Expenses (from 2c)
  - b. Population (from 6)
  - c. Divide 8a by 8b
  - d. Subtract 524

- e. Divide by 5,401
- f. Multiply by 4.095
- 9. Local Revenues to Total Revenues
  - a. Local Revenues (from 3c)
  - b. Total Revenues (from 1c)
  - c. Divide 9a by 9b
  - d. Subtract 0.695
  - e. Divide by 0.205
  - f. Multiply by 2.840
- 10. Debt Service to Population
  - a. Debt Service (from 4c)
  - b. Population (from 6)
  - c. Divide 10a by 10b
  - d. Subtract 51
  - e. Divide by 1,038
  - f. Multiply by -1.866
- 11. Debt Service to Total Revenues
  - a. Debt Service (from 4c)
  - b. Total Revenues (from 1c)
  - c. Divide 11a by 11b
  - d. Subtract 0.068
  - e. Divide by 0.259
  - f. Multiply by -3.533
- 12. Total Revenues to Total Expenses
  - a. Total Revenues (from 1c)
  - b. Total Expenses (from 2c)
  - c. Divide 12a by 12b
  - d. Subtract 0.910
  - e. Divide by 0.899
  - f. Multiply by 3.458
- 13. Funds Balance to Total Revenues
  - a. Total Funds (from 5)
  - b. Total Revenues (from 1c)
  - c. Divide 13a by 13b
  - d. Subtract 0.891
  - e. Divide by 9.156
  - f. Multiply by 3.270
- 14. Funds Balance to Total Expenses
  - a. Total Funds (from 5)
  - b. Total Expenses (from 2c)
  - c. Divide 14a by 14b
  - d. Subtract 0.866

- e. Divide by 6.409
- f. Multiply by 3.270
- 15. Total Funds to Population
  - a. Total Funds (from 5)
  - b. Population (from 6)
  - c. Divide 15a by 15b
  - d. Subtract 270
  - e. Divide by 4,548
  - f. Multiply by 1.866
- 16. Add  $7f+8f+9f+10f+11f+12f+13f+14f+15f+4.937$

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in section 11-280.1-105(c), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]  
[Signature]  
[Name]  
[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

(e) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within one hundred

fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the director that it no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days. [Eff ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-106 Local government guarantee. (a)**

A local government owner or operator may satisfy the requirements of section 11-280.1-93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

- (1) Demonstrate that it meets the bond rating test requirement of section 11-280.1-104 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-104(d) and (e) to the local government owner or operator;
- (2) Demonstrate that it meets the worksheet test requirements of section 11-280.1-105 and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-105(c) to the local government owner or operator; or
- (3) Demonstrate that it meets the local government fund requirements of section 11-280.1-107(1), (2), or (3), and deliver a copy of the chief financial officer's letter as contained in section 11-280.1-107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 11-280.1-104, 11-280.1-105, or 11-280.1-107(1), (2), or (3), at the end of the financial reporting year,

the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 11-280.1-114(e).

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director, the guarantee shall be worded as specified in subsection (d).
- (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).

(d) The local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY  
A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

- (1) Guarantor meets or exceeds [select one: the

local government bond rating test requirements of section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules.]

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the director of the Hawaii

department of health has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall fund a standby trust fund in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of section 11-280.1-112, Hawaii Administrative Rules, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or

operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay



damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(d), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(e) The local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Hawaii, herein referred to as guarantor, to the Hawaii department of health and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of

section 11-280.1-104, Hawaii Administrative Rules, the local government financial test requirements of section 11-280.1-105, Hawaii Administrative Rules, or the local government fund under section 11-280.1-107(1), (2), or (3), Hawaii Administrative Rules].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 342L-30, Hawaii Revised Statutes, or 40 C.F.R. section 280.22, or in the permit applications submitted under sections 11-280.1-324 and 11-280.1-326, Hawaii Administrative Rules, and the name and address of the facility.] This guarantee satisfies subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Hawaii department of health and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Hawaii director of health

has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the director shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with subchapter 6 of chapter 11-280.1, Hawaii Administrative Rules, the guarantor upon written instructions from the director shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten days

after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 11-280.1, Hawaii Administrative Rules.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of, employment by [insert: local government owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 11-280.1-93, Hawaii Administrative Rules.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in section 11-280.1-106(e), Hawaii Administrative Rules, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Eff ] (Auth: HRS §§342L-3, 342L-36)  
(Imp: HRS §§342L-3, 342L-36)

**§11-280.1-107 Local government fund.** A local government owner or operator may satisfy the requirements of section 11-280.1-93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (2), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

- (1) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or

- order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or
- (2) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under section 11-280.1-93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 11-280.1-93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or
- (3) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years

until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

- (A) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks or tank systems, or
  - (B) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.
- (4) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in

brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor.] This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under section 11-280.1-93, Hawaii Administrative Rules, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "A payment is made to the fund once every year for seven years until the fund is fully-



funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year):

[If fund balance is incrementally funded as specified in section 11-280.1-107(3), Hawaii Administrative Rules, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period: ]

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in section 11-280.1-107(4), Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]  
[Title]

[Eff ] (Auth: HRS §§342L-3,  
342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-108 Substitution of financial assurance mechanisms by owner or operator.** (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 11-280.1-93.

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. [Eff ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-109 Cancellation or nonrenewal by a provider of financial assurance.** (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

- (1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until sixty days after the date on

which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 11-280.1-114, the owner or operator must obtain alternate coverage as specified in this subchapter within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

- (1) The name and address of the provider of financial assurance;
- (2) The effective date of termination; and
- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 11-280.1-111(b). [Eff ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-110 Reporting by owner or operator.**

(a) An owner or operator must submit the appropriate forms listed in section 11-280.1-111(b) documenting current evidence of financial responsibility to the director:

- (1) Within thirty days after the owner or operator identifies a release from an underground storage tank or tank system required to be reported under section 11-280.1-53 or 11-280.1-61;
- (2) If the owner or operator fails to obtain alternate coverage as required by this

subchapter, within thirty days after the owner or operator receives notice of:

- (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
  - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
  - (C) Failure of a guarantor to meet the requirements of the financial test; or
  - (D) Other incapacity of a provider of financial assurance; or
- (3) As required by sections 11-280.1-95(g) and 11-280.1-109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form submitted pursuant to section 342L-30, Hawaii Revised Statutes, section 11-280.1-22, or the permit applications under sections 11-280.1-324 and 11-280.1-326.

(c) The director may require an owner or operator to submit evidence of financial assurance as described in section 11-280.1-111(b) or other information relevant to compliance with this subchapter at any time. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-111 Recordkeeping.** (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank or tank system until released from the requirements of this subchapter under section 11-280.1-113. An owner or operator must maintain such evidence at the underground storage tank or tank system site or the owner's or operator's place of

work. Records maintained off-site must be made available upon request of the director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

- (1) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-99 or section 11-280.1-102 or sections 11-280.1-104 to 11-280.1-107 must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than one hundred twenty days after the close of the financial reporting year.
- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) A local government owner or operator using a local government guarantee under section 11-280.1-106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (5) A local government owner or operator using the local government bond rating test under section 11-280.1-104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (6) A local government owner or operator using the local government guarantee under section 11-280.1-106, where the guarantor's demonstration of financial responsibility

relies on the bond rating test under section 11-280.1-104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

- (7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (8) An owner or operator using a local government fund under section 11-280.1-107 must maintain the following documents:
  - (A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;
  - (B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and
  - (C) If the fund is established under section 11-280.1-107(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 11-280.1-107(3)(A), or attestation by the state attorney general as specified under section 11-280.1-107(3)(B)).
- (9) A local government owner or operator using

the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

- (10) (A) An owner or operator using an assurance mechanism specified in sections 11-280.1-95 to 11-280.1-107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL  
RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 8 of chapter 11-280.1, Hawaii Administrative Rules, is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]  
[Name of owner or operator]  
[Title]  
[Date]  
[Signature of witness or notary]  
[Name of witness or notary]  
[Date]

- (B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). [Eff \_\_\_\_\_ ]  
(Auth: HRS §§342L-3, 342L-7.5, 342L-36)  
(Imp: HRS §§342L-3, 342L-7.5, 342L-36)

**§11-280.1-112 Drawing on financial assurance mechanisms.** (a) Except as specified in subsection (d), the director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1) (A) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and  
(B) The director determines or suspects that a release from an underground storage tank or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapter 5 or 6 of a release from an underground storage tank or tank system covered by the mechanism; or



- (2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The director may draw on a standby trust fund when:

- (1) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 6; or
- (2) The director has received either:
  - (A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF A VALID CLAIM

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date

[Signatures]  
Claimant(s)  
Attorney(s) for Claimant(s)  
(Notary)  
Date

or;

- (B) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank or tank system covered by financial assurance under this subchapter and the director determines that the owner or operator has not satisfied the judgment.

(c) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (b)(2)(A), and valid court orders under subsection (b)(2)(B).

(d) A governmental entity acting as guarantor under section 11-280.1-106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in subsections (a), (b), and (c). [Eff  
] (Auth: HRS §§342L-3, 342L-36) (Imp:  
HRS §§342L-3, 342L-36)

**§11-280.1-113 Release from the requirements.** An owner or operator is no longer required to maintain financial responsibility under this subchapter for an

underground storage tank or tank system after the tank or tank system has been permanently closed or undergoes a change-in-service or, if release response action is required, after release response action has been completed and the tank or tank system has been permanently closed or undergoes a change-in-service as required by subchapter 7. [Eff ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

(a) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(b) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 11-280.1-96.

(c) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in section 11-280.1-111(b) documenting current financial responsibility.

(d) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as

required under the terms of the guarantee specified in section 11-280.1-106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, the owner or operator must notify the director. [Eff \_\_\_\_\_] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

**§11-280.1-115 Replenishment of guarantees, letters of credit, or surety bonds.** (a) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 11-280.1-93. If a combination of mechanisms was used to provide the

assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-116 to 11-280.1-199 (Reserved.)

## SUBCHAPTER 9

### LENDER LIABILITY

**§11-280.1-200 Definitions.** (a) UST technical standards, as used in this subchapter, refers to the UST preventative and operating requirements under subchapters 2, 3, 4, 7, 10, and 11 and section 11-280.1-50.

(b) Petroleum production, refining, and marketing.

(1) "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in section 11-280.1-12) as well as the production of petroleum products from purchased materials.

(2) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) "Indicia of ownership" means evidence of a

secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A "holder" is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in subsection (c)) primarily to protect a security interest (as defined in subsection (f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A "borrower, debtor, or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or

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performance of an obligation.

- (1) "Security interest" means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.
- (2) "Primarily to protect a security interest", as used in this subchapter, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.
- (g) "Operation" means, for purposes of this subchapter, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system. [Eff ] (Auth: HRS §§342L-3, 342L-36)  
(Imp: HRS §§342L-3, 342L-36)

§§11-280.1-201 to 11-280.1-209 (Reserved.)

**§11-280.1-210 Participation in management. (a)**

The term "participating in the management of an UST or UST system" means that the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined in this section. Actions that are participation in management:

- (1) Participation in the management of an UST or UST system means, for purposes of this subchapter, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:
  - (A) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or
  - (B) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.
- (2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief

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executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in this chapter.

(b) Actions that are not participation in management pre-foreclosure:

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subchapter. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do

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not constitute participation in management for purposes of this subchapter. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(A) Policing the security interest or loan.

- (i) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security

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interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

- (ii) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11-280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

- (B) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does

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not together with other actions participate in the management of the UST or UST system as provided in section 11-280.1-210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(A) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subchapter, the term "foreclosure" means that legal, marketable or equitable title or deed has been

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issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 11-280.1-210(a)) prior to or after foreclosure.

- (B) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on

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which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 11-280.1-210(c)(2). A holder that outbids, rejects, or fails to act upon a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 11-280.1-210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

- (2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subchapter.

- (A) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within twelve months following foreclosure,

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listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the twelve-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the twelve-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or

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UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (B) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

- (i) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid

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interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and release response and corrective action costs incurred under sections 11-280.1-51 to 11-280.1-67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title

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(or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this subsection.

- (ii) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within ninety days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 11-280.1-210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to

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the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

- (3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under this chapter, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in sections 11- 280.1-210(a) and 11-280.1-230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in this chapter. A holder may directly oversee these

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environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system. [Eff ]  
(Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-211 to 11-280.1-219 (Reserved.)

**§11-280.1-220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.**  
Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST release response and corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided the person:

- (1) Does not participate in the management of the UST or UST system as defined in section 11-280.1-210; and
- (2) Does not engage in petroleum production, refining, and marketing as defined in section 11-280.1-200(b). [Eff ] (Auth: HRS §§342L-3, 342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-221 to 11-280.1-229 (Reserved.)

**§11-280.1-230 Operating an underground storage tank or underground storage tank system. (a)**

Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 11-280.1-210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 11-280.1-210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

- (1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with this chapter if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of this chapter.
- (2) If another operator does not exist, as provided for under paragraph (1), a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 11-280.1-200(a), the UST corrective action requirements under sections 11-280.1-51 to 11-280.1-67, and the UST financial responsibility requirements under sections 11-280.1-90 to 11-280.1-111, provided that the holder:
  - (A) Empties all of its known USTs and UST systems within sixty calendar days

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- after foreclosure, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and
- (B) Empties those USTs and UST systems that are discovered after foreclosure within sixty calendar days after discovery, or another reasonable time period specified by the department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.
- (3) If another operator does not exist, as provided for under paragraph (1), in addition to satisfying the conditions under paragraph (2), the holder must either:
- (A) Permanently close the UST or UST system in accordance with sections 11-280.1-71 to 11-280.1-74, except section 11-280.1-72(b); or
  - (B) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 11-280.1-70:
    - (i) Continue operation and maintenance of corrosion protection in accordance with section 11-280.1-31;
    - (ii) Report suspected releases to the department; and
    - (iii) Conduct a site assessment in accordance with section 11-280.1-72(a) if the UST system

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is temporarily closed for more than twelve months and the UST system does not meet the applicable performance standards for UST systems in section 11-280.1-20 and upgrading requirements in section 11-280.1-21, except that the spill and overflow equipment requirements do not have to be met. The holder must report any suspected releases to the department. For purposes of this provision, the twelve-month period begins to run from the date on which the UST system is emptied and secured under paragraph (2).

- (4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in this chapter. [Eff  
] (Auth: HRS §§342L-3,  
342L-36) (Imp: HRS §§342L-3, 342L-36)

§§11-280.1-231 to 11-280.1-239 (Reserved.)

#### SUBCHAPTER 10

#### OPERATOR TRAINING

**§11-280.1-240 General requirement for all UST systems.** All owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subchapter. [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-241 Designation of Class A, B, and C operators.** (a) UST system owners and operators must designate:

- (1) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and
- (2) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

(b) Separate individuals may be designated for each class of operator or an individual may be designated for more than one of the operator classes.

(c) Owners and operators shall submit written notice to the department identifying the Class A and Class B operators for each UST or tank system in use or temporarily out of use no later than thirty days after an operator assumes the operator's responsibilities as a Class A or Class B operator. The notification must include the name of each operator, the date training was completed, the name and address of each facility where the USTs or tank systems for which the operator has been designated is located, and written verification from a training program approved or administered by the department that the Class A and Class B operator for each UST or tank system has successfully completed operator training in the operator's class. [Eff

] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-242 Requirements for operator training.**  
UST system owners and operators must ensure Class A,  
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Class B, and Class C operators meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination according to the operator classes in which the individual is designated.

(1) Class A operators. Each designated Class A operator must either be trained in accordance with subparagraphs (A) and (B) or pass a comparable examination in accordance with paragraph (5).

(A) At a minimum, the training must teach the Class A operators about the purpose, methods, and function of:

- (i) Spill and overfill prevention;
- (ii) Release detection;
- (iii) Corrosion protection;
- (iv) Emergency response;
- (v) Product and equipment compatibility and demonstration;
- (vi) Financial responsibility;
- (vii) Notification and permitting;
- (viii) Temporary and permanent closure;
- (ix) Reporting, recordkeeping, testing, and inspections;
- (x) Environmental and regulatory consequences of releases; and
- (xi) Training requirements for Class B and Class C operators.

(B) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with subparagraph (A).

(2) Class B operators. Each designated Class B operator must either receive training in accordance with subparagraphs (A) and (B) or pass a comparable examination, in accordance

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with paragraph (5).

- (A) At a minimum, the training program for Class B operators must teach the Class B operator about the purpose, methods, and function of:
    - (i) Operation and maintenance, including components of UST systems, materials of UST system components, and methods of release detection and release prevention applied to UST components;
    - (ii) Spill and overfill prevention;
    - (iii) Release detection and related reporting;
    - (iv) Corrosion protection;
    - (v) Emergency response;
    - (vi) Product and equipment compatibility and demonstration;
    - (vii) Reporting, recordkeeping, testing, and inspections;
    - (viii) Environmental and regulatory consequences of releases; and
    - (ix) Training requirements for Class C operators.
  - (B) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable UST regulatory requirements in the field on the components of typical UST systems in accordance with subparagraph (A).
- (3) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with subparagraphs (A) and (B); complete a training program in accordance with subparagraphs (A) and (B); or pass a comparable examination, in accordance with paragraph (5).
- (A) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying

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appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

- (B) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.
- (4) Training program requirements. Any training program must meet the minimum requirements of this section, must incorporate an evaluation of operator knowledge through written examination, a practical demonstration, or other reasonable testing methods acceptable to the department, and must be approved or administered by the department. An operator training program may consist of in-class or on-line instruction and may include practical exercises.
- (5) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraph (1), (2), or (3), as applicable. The acceptability of a comparable examination to meet the requirements of this section is determined by the department. The department may accept operator training verification from other states if the operator training is deemed by the department to be equivalent to the requirements of this section. [Eff  
] (Auth: HRS §§342L-3,  
342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-243 Timing of operator training.** (a)

An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in section 11-280.1-242.

(b) Class A and Class B operators designated on or after the effective date of these rules must meet requirements in section 11-280.1-242 within thirty days of assuming duties.

(c) Class C operators designated after the effective date of these rules must be trained before assuming duties of a Class C operator. [Eff

] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-244 Retraining.** (a) Class A and class B operators shall be retrained every five years. Class C operators shall be retrained every three hundred sixty-five days.

(b) Class A and Class B operators of UST systems determined by the department to be out of compliance must complete a training program or comparable examination in accordance with requirements in section 11-280.1-242. The training program or comparable examination must be developed or administered by the department or an independent organization. An UST or tank system is out of compliance if the system:

- (1) Meets any of the delivery prohibition criteria outlined in section 11-280.1-429;  
or
- (2) Is in significant violation of other requirements, such as temporary or permanent closure, tank registration, or financial responsibility, as determined by the director.

(c) UST system owners and operators must ensure Class A and Class B operators are retrained as required in subsection (b) no later than thirty days from the date the department determines the facility is out of compliance except in one of the following situations:

- (1) Class A and Class B operators take annual  
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refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in section 11-280.1-242;

- (2) The department, at its discretion, waives this retraining requirement for either the Class A or Class B operator or both. [Eff ] (Auth: HRS §§342L-3, 342L-32) (Imp: HRS §§342L-3, 342L-32)

**§11-280.1-245 Documentation.** Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with section 11-280.1-34 as follows:

- (1) The list must:
  - (A) Identify all Class A, Class B, and Class C operators currently designated for the facility; and
  - (B) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.
- (2) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:
  - (A) Records from classroom or field training programs (including Class C operator training provided by the Class

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- A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;
- (B) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and
  - (C) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.
- [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-32) (Imp: HRS §§342L-3, 342L-7.5, 342L-32)

§§11-280.1-246 to 11-280.1-249 (Reserved.)

#### SUBCHAPTER 11

(RESERVED.)

§§11-280.1-250 to 11-280.1-299 (Reserved.)

#### SUBCHAPTER 12

##### PERMITS AND VARIANCES

§§11-280.1-300 to 11-280.1-322 (Reserved.)

**§11-280.1-323 Permit required.** (a) No person shall install or operate an UST or tank system without first obtaining a permit from the director.

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(b) The director shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the director that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST or tank system will be done in a manner that is protective of human health and the environment.

(c) A permit shall be issued only in accordance with chapter 342L, Hawaii Revised Statutes, and this chapter, and it shall be the duty of the permittee to ensure compliance with the law in the installation and operation of the UST or tank system.

(d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §§342L-3, 342L-31)

**§11-280.1-324 Application for a permit. (a)**

Every application for a permit shall be submitted to the department on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(b) A permit fee in accordance with section 11-280.1-335 shall accompany each application for a permit.

(c) The applicant shall submit sufficient information to enable the director to make a decision on the application. Information submitted shall include but not be limited to the following:

- (1) General information on involved parties, including the landowner, UST owner, and UST operator; identification of location of the UST or tank system; and basic description of the UST or tank system;
- (2) Age, size, location, and uses of the UST or tank system;
- (3) Other information required in the form prescribed by the director; and
- (4) Other information as the department may require.

(d) Every application shall be signed by the  
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owner and the operator and shall constitute an acknowledgment that the applicants assume responsibility for the installation and operation of the UST or tank system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:

- (1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, a general partner;
- (3) In the case of a sole proprietorship, the proprietor; or
- (4) In the case of a county, state, or federal entity, either a principal executive officer, ranking elected official, or other duly authorized employee. [Eff  
] (Auth: HRS §§342L-3,  
342L-7.5, 342L-14) (Imp: HRS §§342L-4,  
342L-31)

**§11-280.1-325 Permit.** (a) Upon approval of an application for a permit to install and operate an UST or tank system, the director shall issue a permit for a term of five years except as noted in subsection (b).

(b) The owner or operator shall have one year from the issuance of the permit to install an UST or tank system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.

(c) The owner or operator must inform the department at least seven days prior to performing the actual installation. The information shall include the permit number, name and address of the UST or tank system, the contact person, the contact person's phone number, and date and time of actual installation.

(d) The owner or operator must notify the



department within thirty days after the installation of the UST or tank system. The notification shall be submitted on the "Certification of Underground Storage Tank Installation" form prescribed by the director. If information submitted on the "Application for an Underground Storage Tank Permit" form has changed since the original application, the section of the certification form entitled "Changes to Original Installations Plans" must be completed and submitted. The certification of installation must certify compliance with the following requirements:

- (1) Installation of tanks and piping under section 11-280.1-20(f);
- (2) Cathodic protection of steel tanks and piping under section 11-280.1-20(b) and (c);
- (3) Financial responsibility under subchapter 8; and
- (4) Release detection under sections 11-280.1-41 and 11-280.1-42.

(e) The department, where practicable and appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably contiguous physical location. [Eff ]  
(Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-326 Permit renewals.** (a) On application, a permit may be renewed for a term of five years.

(b) A renewal fee in accordance with section 11-280.1-335 shall accompany each application for renewal of a permit.

(c) An application for a renewal shall be received by the department at least one hundred eighty days prior to the expiration of the existing permit and shall be submitted on the "Application for Renewal of an Underground Storage Tank Permit" form prescribed

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by the director. [Eff \_\_\_\_\_ ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-327 Action on and timely approval of an application for a permit.** (a) The director need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:

- (1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
- (2) All fees have been paid as prescribed in section 11-280.1-335; and
- (3) The director determines that the application is complete.

(b) The director shall approve, approve with conditions, or deny a complete application for a permit to install or operate an UST or tank system or a permit renewal, modification, or transfer, required under this chapter. The director shall notify the applicant of the director's decision within one hundred eighty days of receipt of a complete application, as defined in subsection (a). Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff \_\_\_\_\_ ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-328 Permit conditions.** The director may impose conditions on a permit that the director deems reasonably necessary to ensure compliance with this chapter and any other relevant state requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but shall not be limited to, the requirement that devices for measurement or monitoring of regulated substances

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be installed and maintained and the results reported to the director, all costs and expenses to be borne by the applicant. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-329 Modification of permit.** (a) The director may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a permit modification shall include but not be limited to:

- (1) The addition or removal of an UST from an UST system; and
- (2) Any change to or modification of an UST or UST system which would otherwise place the existing UST or UST system out of compliance with this chapter or an existing permit.

(b) An application for modification of a permit shall be made in writing to the department and shall be accompanied by sufficient information on the planned renovation or modification to the UST or tank system to assist the director in making a determination as to whether the application for modification should be denied or granted.

(c) Applications for a permit modification shall be received by the department no later than sixty days prior to the occurrence of the event that prompted the application except that applications for change-in-service must be received by the department at least thirty days before the owner or operator begins the change-in-service. Applications shall be submitted on the "Application for an Underground Storage Tank Permit" form prescribed by the director.

(d) Owners and operators shall submit a permit application to add USTs or tank systems to an existing permit. If the director approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional USTs as well as the already-permitted USTs. The term of the new permit shall be for the remaining term of the original permit. [Eff ] (Auth: HRS

§342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-330 Revocation or suspension of permit.** The director may revoke or suspend a permit if the director finds any one of the following:

- (1) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to human health or the environment;
- (2) The permittee violated a condition of the permit; or
- (3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts. [Eff  
] (Auth: HRS §342L-3) (Imp:  
HRS §§342L-4, 342L-31)

**§11-280.1-331 Change in owner or operator for a permit.** (a) No permit to install, own, or operate an UST or tank system shall be transferable unless approved by the department. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the owner.

(b) The transferred permit will be effective for the remaining life of the original permit.

(c) An application for the transfer shall be received by the department at least thirty days prior to the proposed effective date of the transfer and shall be submitted on the "Application for Transfer of an Underground Storage Tank Permit" form prescribed by the director. [Eff  
] (Auth: HRS  
§342L-3) (Imp: HRS §§342L-4, 342L-31)

**§11-280.1-332 Variances allowed.** Provisions of

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chapter 342L, Hawaii Revised Statutes, and this chapter relating to USTs or tank systems which are more stringent than Title 40, part 280 of the Code of Federal Regulations, published by the Office of the Federal Register, as amended as of July 1, 2017, may be varied by the director in accordance with sections 342L-5 and 342L-6, Hawaii Revised Statutes, and this chapter. No variance may be less stringent than the federal requirements. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §342L-5)

**§11-280.1-333 Variance applications.** (a) An application for a variance shall be submitted to the department on the "Application for an Underground Storage Tank Variance" form prescribed by the director.

(b) A variance fee in accordance with section 11-280.1-335 shall accompany each application for a variance.

(c) Every application shall be signed by the owner and operator, and the signature shall be by one of the following:

- (1) In the case of a corporation, by a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST or tank system;
- (2) In the case of a partnership, by a general partner;
- (3) In the case of a sole proprietorship, by the proprietor; or
- (4) In the case of a county, state, or federal entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(d) The director shall approve, approve with conditions, or deny a complete application for a variance or variance renewal or modification as required under this chapter and sections 342L-5 and

342L-6, Hawaii Revised Statutes. The director shall notify the applicant of the director's decision, within one hundred eighty days of receipt of a complete application. Otherwise, a complete application is deemed approved on the one hundred eightieth day after it is received by the department. [Eff ] (Auth: HRS §§342L-3, 342L-7.5, 342L-14) (Imp: HRS §§342L-5, 342L-6)

**§11-280.1-334 Maintenance of permit or variance.**

(a) Permits and variances, including application records, shall be maintained at the location of the UST or tank system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the department.

(b) No person shall wilfully deface, alter, forge, counterfeit, or falsify any permit or variance. [Eff ] (Auth: HRS §§342L-3, 342L-7.5) (Imp: HRS §§342L-4, 342L-7, 342L-31)

**§11-280.1-335 Fees.** (a) Every applicant for a permit or a variance, or applicant for modification or renewal of a permit or variance, or applicant for a transfer of a permit, shall pay the applicable fees as set forth below:

Type of Application	Permit	Variance
Permit or variance application	\$300	\$400
Application to modify	\$200	\$300
Application for renewal	\$100	\$200
Application for transfer	\$50	NA

(b) Fees shall be submitted with the application and are nonrefundable.

(c) Fees shall be made payable to the State of Hawaii.

(d) If more than one type of application is combined, the highest applicable fee will be assessed. However, a permit application and a variance application shall not be combined under one fee. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §342L-14)

§§11-280.1-336 to 11-280.1-399 (Reserved.)

#### SUBCHAPTER 13

#### ENFORCEMENT

§§11-280.1-400 to 11-280.1-420 (Reserved.)

**§11-280.1-421 Purpose.** The purpose of this subchapter is to create an enforcement program that facilitates the effective and expeditious resolution of violations of chapter 342L, Hawaii Revised Statutes, and this chapter. [Eff ] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

**§11-280.1-422 Field citations.** (a) Field citations may be issued for violations of chapter 342L, Hawaii Revised Statutes, and this chapter that the department deems appropriate for resolution through the issuance of a field citation. Nothing in

this section requires the department to elect one enforcement mechanism over another and the decision to proceed with one course of action over, or in conjunction with, another is within the discretion of the director.

(b) The field citation is an offer to settle an allegation of noncompliance with this chapter. If the owner or operator declines to accept the department's offer to settle within the time period set forth in the field citation, the department may bring administrative or civil enforcement action under chapter 342L, Hawaii Revised Statutes.

(c) The field citation shall set forth sufficient facts to notify the recipient of the alleged violations, the applicable law, the proposed settlement amount, and the time period during which to respond.

(d) By returning the signed settlement agreement attached to the field citation and payment of the proposed settlement amount to the department, the owner or operator will be deemed to have accepted the terms and conditions of the settlement offer.

(e) By signing the settlement agreement, the owner or operator waives his or her right to a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff \_\_\_\_\_] (Auth: HRS §342L-3) (Imp: HRS §§342L-7, 342L-8, 342L-10)

§§11-280.1-423 to 11-280.1-428 (Reserved.)

**§11-280.1-429 Delivery, deposit, and acceptance prohibition.** (a) No person shall deliver to, deposit into, or accept a regulated substance into an UST or tank system that has been identified by the department as ineligible for delivery, deposit, or acceptance.

(b) An UST or tank system shall be identified by the department as ineligible for delivery, deposit, or acceptance by placement of a tag or other notice of



ineligibility onto the fill pipe of the ineligible UST or tank system. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, the department may notify an employee at the facility at the time of identification in lieu of the owner or operator.

(c) No person shall remove, tamper with, destroy, or damage a tag or other notice of ineligibility affixed to any UST or tank system unless authorized to do so by the department. Removal of a tag or other notice of ineligibility by the department or person authorized by the department shall occur only after the department confirms that the conditions giving rise to the delivery prohibition have been corrected to the department's satisfaction. The department shall make this determination either at a hearing, if one is requested in accordance with this section, or as soon as practicable.

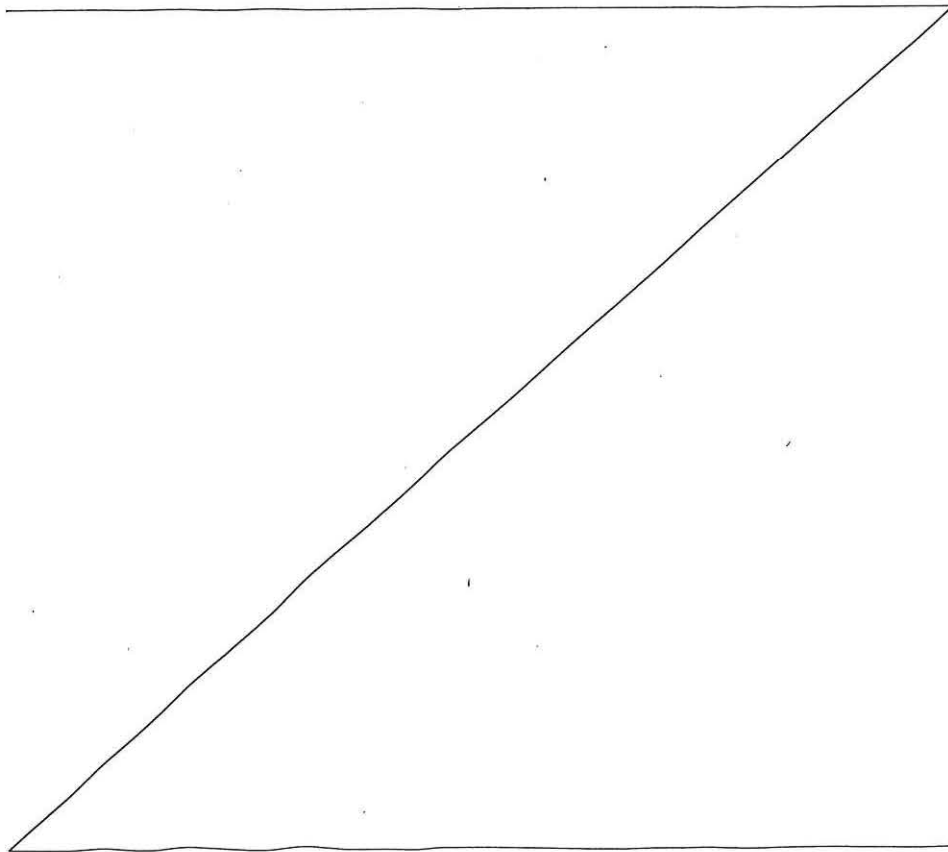
(d) Pursuant to this section, a tag or other notice of ineligibility may immediately be affixed to the fill pipe of an UST or tank system upon finding by the department of any of the following:

- (1) Operating without a permit issued by the department;
- (2) Operating inconsistently with one or more conditions of a permit issued by the department;
- (3) Required spill prevention equipment is not installed or properly functioning or maintained;
- (4) Required overfill protection equipment is not installed or properly functioning or maintained;
- (5) Required release detection equipment is not installed or properly functioning or maintained;
- (6) Required corrosion protection equipment is not installed or properly functioning or maintained;
- (7) Failure to maintain financial responsibility; or

(8) Failure to protect a buried metal flexible connector from corrosion.

(e) An owner or operator of an UST or tank system designated by the department to be ineligible shall be provided a hearing to contest the department's determination of ineligibility within forty-eight hours of the department's receipt of a written request for a hearing by the owner or operator of the ineligible UST or tank system. The hearing shall modify or affirm the department's determination of ineligibility and shall be conducted in accordance with chapter 91, Hawaii Revised Statutes, and the department's rules of practice and procedure." [Eff

] (Auth: HRS §342L-3) (Imp: HRS §342L-32.5)



3. The repeal of chapter 11-281 and the adoption of chapter 11-280.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [ADOPTION DATE], and filed with the Office of the Lieutenant Governor.

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VIRGINIA PRESSLER, M.D.  
Director of Health

APPROVED AS TO FORM:

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Wade H. Hargrove III  
Deputy Attorney General

#### **IV. Legislative Matters**

A. Update on HB2753 “Relating to the Small Business  
Regulatory Review Board”

*Any handouts will be distributed at the Board Meeting*

## **IV. Legislative Matters**

- B. Update on Governor's Message for Consideration of the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 20, 2020

*Any handouts will be distributed at the Board Meeting*

#### **IV. Legislative Matters**

- C. Update on Governor's Message 673 and 674 for Consideration of the Gubernatorial Nomination of Will Lydgate to the Small Business Regulatory Review Board, to expire June 30, 2018 and 2022, respectively

*Any handouts will be distributed at the Board Meeting*

#### **IV. Legislative Matters**

D.Update on Governor's Message 513 and 514 for Consideration of the Gubernatorial Nomination of Reg Baker to the Small Regulatory Review Board to expire June 30, 2018 and June 30, 2022, respectively

*Any handouts will be distributed at the Board Meeting*

## **IV. Legislative Matters**

E. Discussion and Action on Senate Bill 2059,  
“Relating to Public Accountancy”

*Any handouts will be distributed at the Board Meeting*



## **V. Administrative Matters**

A. Discussion and Action on the Board's  
Investigative Taskforce's Recommendation for  
the Redesign of the existing Website

*Any handouts will be distributed at the Board Meeting*

## **V. Administrative Matters**

B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

*Any handouts will be distributed at the Board Meeting*