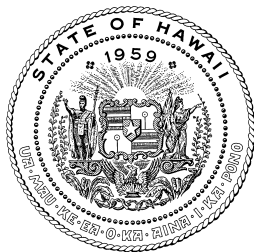


Small Business Regulatory Review Board Meeting

August 18, 2022

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 798-0737

AGENDA

Thursday, August 18, 2022 ★ 10:00 a.m.
No. 1 Capitol District Building
250 S. Hotel Street, Conference Room 436
Honolulu, HI 96813

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under Act 220, Session Laws of Hawaii 2021 and Chapter 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

A. By attending the in-person meeting at:
No. 1 Capitol District Building, 250 S. Hotel Street
Conference Room 436, Honolulu, HI 96813; or

B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEZGZHYmJLM05tMHU5Mm5HQQT09>

C. To Join via Telephone: Dial 1-669-900-6833 with
Meeting ID 883 5814 0200 Passcode 066739

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering * and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing * and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Wednesday, April 20, 2022.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](http://Agendas%20%26%20Minutes%20-%20Small%20Business%20Regulatory%20Review%20Board%20(hawaii.gov).). An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

- I. Call to Order**
- II. Approval of June 17, 2022 Meeting Minutes**

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 12 Chapter 43, **Rules of Practice and Procedure Before the Hawaii Labor Relations Board**, promulgated by Hawaii Labor Relations Board, Department of Labor and Industrial Relations – **Discussion Leader – Mary Albitz**
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 94.2, **Nursing Facilities**, promulgated by Department of Health (DOH) – **Discussion Leader – Mary Albitz**
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 97.1, **Home Health Agencies**, promulgated by DOH – **Discussion Leader – Mary Albitz**
- D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 103.1, **Licensure and Certification Fees for Health Care Facilities and Agencies**, promulgated by DOH – **Discussion Leader – Mary Albitz**
- E. Re-review and Action on Proposed Amendments to HAR Title 13 Chapter 256, **Ocean Recreation Management Rules and Areas**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Jonathan Shick**

IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 55, **Water Pollution Control**, as follows, promulgated by DOH – **Discussion Leader – Nancy Atmospera-Walch**
 - a. Appendix A – Standard General Permit Conditions
 - b. Appendix D – NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
 - c. Appendix H – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
 - d. Appendix I – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
 - e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

V. Administrative Matters

- A. Update on the Status of the Board's Proposed Phase II Website Project
- B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Administrative Rules

VI. Next Meeting: Thursday, September 15, 2022 at 10:00 a.m., held via Zoom and at 250 S. Hotel Street, Conference Room 436, Honolulu, HI 96813

IV. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 798-0737 or email dbedt.sbrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of June 16, 2022 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - DRAFT

June 16, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- William Lydgate
- Taryn Rodighiero
- Sanford Morioka
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF March 10, 2022 MINUTES**

Vice Chair Albitz motioned to accept the March 10, 2022 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 11 Chapter 94.2, Nursing Facilities, promulgated by Department of Health (DOH)

Vice Chair Albitz stated that DOH is repealing three chapters and replacing them to be align mostly with federal regulations.

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that DOH has the responsibility of conducting inspections on all health care facilities within the state from a state licensing standpoint. Inspections are also procured through Medicare for Medicare certification purposes. The facilities under DOH's jurisdiction include hospitals, nursing facilities, adult residential care homes, assisted living facilities, clinical laboratories, hospices, home health agencies, etc.

The subject rules and the two rules noted below are in the process of being repealed and amended and new rules are being created; two of the rules are aligned with Medicare; Chapter 11-103.1 in Section III. A. C. is the only rule not being aligned with Medicare.

Chapter 94.2 Nursing Facilities specifically will allow DOH to accept accreditation or certification of one's facilities by other nationally recognized accreditation and/or certification agencies for purposes of renewing state licensure. It was noted that Medicare requirements are much for stringent than state requirements; as such, DOH is aligning the state rules towards the federal rules. This is very beneficial to DOH on a workload and resource allocation standpoint because it allows DOH to conduct only one inspection rather than two or more.

The rule changes will also update requirements for emergencies including but not limited to natural disasters. Mr. Ridley clarified that only the larger institutions such as hospitals would be governed by both federal Medicare and state laws whereas the home health care facilities are only state operated and governed.

Vice Chair Albitz motioned to send the proposed rules to public hearing. Ms. Rodighiero seconded the motion, Dr. Atmospha-Walch recused herself, and the remaining Board members voted in support of the motion.

B. Discussion and Action on Proposed New HAR Title 11 Chapter 97.1, Home Health Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that these rules are similar to the nursing home rules (above) in terms of being aligned with the federal Medicare. However, there is one difference. Congress recently passed a law that for the Veteran's Administration (VA) doctors who are in the VA system, regardless as to what state he or she is licensed in, can continue to do work in his or her host state and provide services to VA beneficiaries even when it relates to services being referred to the private sector.

For example, under the current rules a physician or an APRN has to be licensed in the state of Hawaii in order to provide referrals to home health agencies. Licensed home health agencies can only accept referrals from physicians or APRNs who are licensed in Hawaii. This, of course, becomes a problem for the VA when they treat a patient in Hawaii and send them into the community as the VA does not have a robust home health agency system statewide. Thus, it becomes an issue for Hawaii licensed home health agencies to accept these VA beneficiaries.

Thus, the law that Congress recently passed is being incorporated into the rules that would allow a home health agency to accept a referral from a VA physician who is licensed in another state for the VA patient who is being referred for home health services.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, Dr. Atmospha-Walsh recused herself, and the remaining members voted in support of the motion.

C. Discussion and Action on Proposed New HAR Title 11 Chapter 103.1, Licensure and Certification Fees for Health Care Facilities and Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, indicated that these rules relate to state licensing fees only; there is no alignment with federal fees as the federal government does not charge a fee for certification. The proposed rule changes reflect updating and increasing the fees only; the fees are for providers that DOH license and certify. There are a number of facilities that would be considered small businesses such as adult residential care homes and community care foster family homes.

The fee increase will be for the initial or brand-new licenses as well as for renewals. The fee changes, which hadn't been increased since 2017, depends on the term of license. While most facilities are licensed and renewed every year, there are also a few facilities that are licensed every two years. The percentage increase for these facilities mostly ranges between 10 to 25 percent.

The Bureau of Labor Statistics and the Consumer Price Index over the past few years were reviewed and used as guides for establishing the proposed fees. DOH is expecting a lot of testimony at the public hearing from operators of adult residential care homes where the change in the fees will be 13 percent; this equates to \$225 per year from \$200 per year. Assisted living facilities will be imposed a 25 percent increase, hospitals will be imposed a 20 percent increase, and clinical laboratories a 33 percent increase.

The fee schedule has not yet been discussed with the impacted businesses despite being a major concern. Overall, there is no indication that fees will be raised next year or in the foreseeable future. Vice Chair Albitz requested a list of comments made by the small businesses that attend the public hearing, and noted that it will be helpful to see a chart outlining both the current and proposed fee rates.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Second Vice Chair Shick seconded the motion, Dr. Atmospera-Walch recused herself, and the remaining Board members voted in support of the motion.

IV. LEGISLATIVE MATTERS

A. Update on the following:

1. Governor's Message 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2026
2. Governor's Messages 862 and 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board terms to expire June 30, 2022 and June 30, 2026, respectively

3. Governor's Message 725 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. James Lee, for a term to expire June 30, 2024
4. Governor's Message 726 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Sanford Morioka, for a term to expire June 30, 2023
5. Governor's Message 730 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. William Lydgate, for a term to expire June 30, 2026

Chair Cundiff announced that this Board is now at full capacity. He introduced the most current member Sanford Morioka and he thanked all the members for their participation and all that they do.

V. ADMINISTRATIVE MATTERS

A. Update on the Status of the Board's Phase II Website Project

Mr. Ritchie indicated that the website taskforce is working with NIC on a weekly basis to improve upon the Board's website activity and allowing the public to be more engaged with the Board. Some of the changes will include text changes and rearranging some of the existing information on the site.

Ms. Ariola added that the home page is being revamped to draw small businesses and government agencies to spend more time on the website and to become engaged with the new information to be provided.

B. Review and Update Board Members' "Discussion Leader Assignments" for State and County Agencies' Hawaii Administrative Rules

Chair Cundiff offered the following proposed changes to the Board members' discussion leader assignments:

- Public Utilities Commission – assigned to Tessa Gomes
- Department of Commerce and Consumer Affairs – assigned to Tessa Gomes
- Department of Education – assigned to Dr. Nancy Atmospera-Walch
- Department of Health – assigned to Sanford Morioka
- Department of Human Resource Development – assigned to Sanford Morioka
- Department of Transportation – assigned to Sanford Morioka as back-up

Chair Cundiff motioned to adopt the discussion leader re-assignments as presented Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

C. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

Chair Cundiff stated that this item will be kept on the agenda particularly since the State, in general, is opening up, which is positive for Hawaii small businesses. He suggested that the members begin thinking about reaching out to the various agencies and setting up meetings with trade organizations and chambers. Once this Board knows what its budget will be for fiscal 2023, it will be in a better position to determine what expenses are available and how they can be used.

Mr. Ritchie added that while business activities are still in flux at DBEDT, some of the business outreach activities are slowly coming back such as the "small business fair" which may be held at the end of the summer or in September.

VI. ELECTION OF BOARD OFFICERS

A. Discussion and Action on the following:

a. Chairperson, pursuant to Section 201M-5 (c), HRS

Mr. Lydgate motioned to elect Mr. Robert Cundiff as Chair of the Board under Section 201M-5 (c), HRS; Dr. Atmospha-Walch seconded the motion and the Board members unanimously agreed.

b. Vice Chair

Chair Cundiff motioned to elect Ms. Mary Albitz as Vice Chair of the Board; Mr. Lydgate seconded the motion and the Board members unanimously agreed.

c. Second Vice Chair

Chair Cundiff motioned to elect Mr. Jonathan Shick as Second Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

VII. NEXT MEETING – Thursday, July 21, 2022 at 10:00 a.m., to be held remotely and in-person at 250 S. Hotel Street, Conference Room 436, Honolulu, HI.

VIII. ADJOURNMENT – Mr. Ritchie motioned to adjourn the meeting and Dr. Atmospha-Walch seconded the motion; the meeting adjourned at 11:11 a.m.

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 12 Chapter 43, **Rules of Practice and Procedure Before the Hawaii Labor Relations Board**, promulgated by Hawaii Labor Relations Board / DLIR

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Hawaii Labor Relations Board, Department of Labor and Industrial Relations
Administrative Rule Title and Chapter: Title 12, Department of Labor and Industrial Relations, Subtitle 7, Boards, Chapter 43
Chapter Name: Rules of Practice and Procedure Before the Hawaii Labor Relations Board
Contact Person/Title: Marcus R. Oshiro, Chairperson
Phone Number: (808) 586-8616
E-mail Address: dlir.laborboard@hawaii.gov **Date:** August 10, 2022

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. Please see Attachment "A," part A.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Please see Attachment "A," part B.

☒ 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.)

V. Please explain how the agency involved small business in the development of the proposed rules.

Please see Attachment "A," part V.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. Please see Attachment "A," part V.a and Attachment "C."

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Please see Attachment "A," part VI, 1 and Attachment "B."

2. A summary of the public's and small businesses' comments.

Please see Attachment "C".

3. A summary of the agency's response to those comments.

Please see Attachment "C."

4. The number of persons who:

(i) Attended the public hearing: None.

(ii) Testified at the hearing: None.

(iii) Submitted written comments: One

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

(i) If "Yes," was the change adopted? ☐ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

There was no request made at the hearing for such a change.

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

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

SMALL BUSINESS STATEMENT “AFTER” PUBLIC HEARING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD—ADDITIONAL INFORMATION

- 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.**

The main purpose of the proposed adoption of Hawaii Administrative Rules (HAR) Chapter 43 is to streamline the procedure for contested case hearings before the HRLB. Combining the rules of practice and procedure in HAR Chapters 41 and 42 into one coherent and internally consistent new HAR Chapter 43 has been an ongoing effort by the Hawaii Labor Relations Board (HLRB) and its staff members over a number of years. The proposed draft is designed to provide all parties appearing before HLRB a clear understanding of how to navigate the process of contested case hearings.

Please see the attached copy of the Public Hearing Notice published in the Honolulu Star Advertiser, The Garden Island, West Hawaii Today, Hawaii Tribune Herald, and The Maui News on May 4, 2022. (Attachment “B”)

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor’s Website pursuant to HRS §92-7?**

Yes and no. The proposed HAR Chapter 43 is currently available for viewing on the *Sharepoint* website at <https://hawaiioint.sharepoint.com/sites/gov/adminrules/>, on HLRB’s website at dlir.laborboard@hawaii.gov, and for viewing in person at HLRB’s office.

Pursuant to Administrative Directive No.18-02, issued by Governor Ige on January 1, 2018, “[a]ll requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS),” the *Sharepoint* site listed above. HLRB filed its draft rules and Request for Governor’s Approval to Hold a Public Hearing in March of 2022, on the *Sharepoint* site. HLRB understood that these filings would satisfy the requirements for making the proposed rulemaking actions and the draft rules available for viewing and that HLRB was not required to also post these documents on the Lieutenant Governor’s website. Please see Attachment “D,” Administrative Directive No. 18-02, issued on January 1, 2018.

V. Please explain how the agency involved small business in the development of the proposed rules.

In October of 2021, seven months prior to the public hearing, HLRB involved small business in the development of the proposed HAR Chapter 43 draft by posting the draft on its website and inviting comment from the public and private sectors. HLRB also wrote to the following entities that may be covered under HRS Chapters 89, 377, or 396 and thus may be considered “stakeholders”:

The Chamber of Commerce of Hawaii, Hawaii Restaurant Association, Retail Merchants of Hawaii, Hawaii Small Business Development Center (UH-Hilo), Hawaii Business Roundtable, Hawaii Building & Construction Trades Council, HGEA, UPW, HSTA, UHPA, SHOPO, HFFA, ILWU. Hawaii Nurses’ Association, Hawaii Employers Council, Hawaii Regional Council of Carpenters, Drywall Tapers, Finishers Local Union, International Brotherhood of Boilermakers, Local 627, Hawaii Association of Electrical Workers, International Brotherhood of Electrical Workers, Local 1186, International Brotherhood of Electrical Workers, Local 1260, International Brotherhood of Electrical Workers, Local 1357, Iron Workers, Local 625, United Food and Commercial Workers International Union, Local 480, Glaziers, Architectural Metal & Glass Workers Local 1886, UNITE HERE, Local 5, Laborers’ International Union of North America, Local 368, Operating Engineers, Local 3, International Union of Painters and Allied Trades (IUPAT), AFL-CIO, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 675, Hawaii Printing & Graphic Communications Union, Local 413-N, Roofers, Waterproofers & Allied Workers, Local 221, Screen Actors Guild – American Federation of Television & Radio Artists, International Association of Sheet Metal, Air, Rail, & Transportation Workers, Local 239, Hawaii Teamsters and Allied Workers, Local 996, General Contractors Association of Hawaii, Building Industry Association of Hawaii, Kauai Chamber of Commerce, Maui Chamber of Commerce, Hawaii Island Chamber of Commerce, Hawaii State Bar Association, Small Business Administration, American Society of Safety Professionals, Hawaii Chapter, International Union of Bricklayers & Allied Craftsmen, Local 1, District Council 50, International Association Sheet Metal Workers, Local 293, International Union of Elevator Constructors, Local 126, Roofers, Waterproofers and Allied United Union of Roofers, Waterproofers and Allied Workers, Local 221, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 996, Masons’ Local 630, International Alliance of Theatrical Stage Employees, Local 665, Musicians’ Association of Hawaii, AFM Local 677, Lanai Chamber of Commerce, Kona-Kohala Chamber of Commerce, Molokai Chamber of Commerce, Hawaii Printing & Graphic Local 413, and the International Union of Painters and Allied Trades.

In November of 2021, HLRB received comments from six public sector stakeholders: United Public Workers, Hawaii Government Employees Association, Hawaii State Teachers Association, University of Hawaii

Professional Assembly, Hawaii Fire Fighters Association, and State of Hawaii Organization of Police Officers.

In December of 2021, HLRB received comments from a public sector employer, the University of Hawaii (UH). No other stakeholders, public or private, submitted comments.

HLRB reviewed the comments received and, in January of 2021, responded to each stakeholder who submitted comments, indicating HLRB's preliminary responses to their comments.

HLRB complied with the procedures set forth in HRS §§ 201M-3 and 91-3 to hold a statewide public hearing on the proposed rules and to request public comment.

After receiving formal approval to proceed to public hearing from the SBRRB on March 2, 2022, and the Office of the Governor on April 14, 2022, HLRB published the Public Hearing Notice in the statewide newspapers on May 4, 2022. The public hearing was held on June 13, 2022, at HLRB's office and via Zoom.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. After the Public Hearing Notice was published on May 4, 2022, HLRB received no testimony or comment from any public or private sector stakeholders, small businesses, or private sector employers. One week prior to the public hearing, HLRB received one comment from UH, adding to its comments previously submitted in December of 2021.

At the public hearing held on June 13, 2022, there were no testifiers or written comments submitted.

After the public hearing, HLRB reviewed its earlier responses to the comments received in November and December of 2021, and the sole comment received from UH.

HLRB incorporated some, but not all, recommendations into the proposed rules from stakeholders who submitted comments.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

In addition to the preliminary request for comment in October of 2021 to stakeholders, the formal Public Hearing Notice was published in the Honolulu Star Advertiser, The Garden Island, West Hawaii Today, Hawaii Tribune Herald, and The Maui News on May 4, 2022. (Attachment "B")

2. A summary of the public's and small businesses' comments.

A summary of all comments received and HLRB's responses is set forth in Attachment "C."

3. A summary of the agency's response to those comments.

A summary of all comments received and HLRB's responses is set forth in Attachment "C."

Small businesses will not be adversely affected by the proposed rules as revised, but instead will have rules of practice and procedure drafted with the inclusion of the statutory requirements of HRS Chapter 396, the HIOSH laws. Many of the provisions within HAR Chapter 43 will assist self-represented small business owners with navigating HLRB's proceedings and litigating cases. HLRB recognizes that these individuals often do not have the resources to hire attorneys to litigate their cases which may span weeks or months. By providing them with clear and detailed procedural rules, they will be better prepared to present their cases and to be afforded a fair and just hearing.

AFFIDAVIT OF PUBLICATION

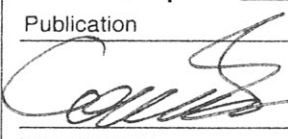
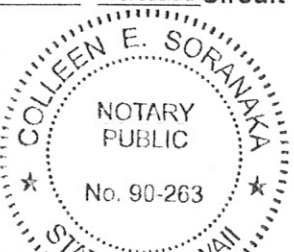
IN THE MATTER OF
LEGAL NOTICE

STATE OF HAWAII

}
} SS.

City and County of Honolulu

}

Doc. Date:	MAY 04 2022	# Pages:	1
Notary Name:	COLLEEN E. SORANAKA	First Judicial Circuit	
Doc. Description:	Affidavit of Publication		
Notary Signature		Date	MAY 04 2022
			

Lisa Sakakida being duly sworn, deposes and says that she is a clerk, duly authorized to execute this affidavit of Oahu Publications, Inc. publisher of The Honolulu Star-Advertiser, MidWeek, The Garden Island, West Hawaii Today, and Hawaii Tribune-Herald, that said newspapers are newspapers of general circulation in the State of Hawaii, and that the attached notice is true notice as was published in the

Honolulu Star-Advertiser 1 times on:

05/04/2022

MidWeek 0 times on:

The Garden Island 1 times on:

05/04/2022

Hawaii Tribune-Herald 1 times on:

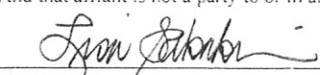
05/04/2022

West Hawaii Today 1 times on:

05/04/2022

Other Publications: 0 times on:

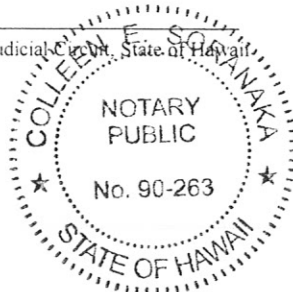
And that affiant is not a party to or in any way interested in the above entitled matter


Lisa Sakakida

Subscribed to and sworn before me this 4th day of May A.D. 2022

Colleen E. Soranaka, Notary Public of the First Judicial Circuit, State of Hawaii
My commission expires: Jan 06 2024

Ad # 0001370897



ATTACHMENT "B"

NOTICE IS HEREBY GIVEN that the Hawai'i Labor Relations Board (HLRB), Department of Labor and Industrial Relations, will hold a public hearing in person and via Zoom on June 13, 2022 at 9:00 a.m. to 12:00 p.m. pursuant to Hawai'i Revised Statutes Chapters 89, 91, 377, and 396.

The public hearing will consider the adoption of Hawai'i Administrative Rules (HAR) Chapter 43, Title 12, Subtitle 7, entitled "Rules of Practice and Procedure before the Hawaii Labor Relations Board," and the repeal of HAR Chapters 41 and 42, which previously governed such procedures. The purpose of adopting HAR Chapter 43 and repealing Chapters 41 and 42 is to streamline practice and procedure for proceedings before HLRB.

Individuals may participate in the public hearing in any one of the following ways:

Zoom Video Hearing, Join from a computer: (Please mute your devices except to testify)

Join Zoom Meeting

<https://zoom.us/j/93465075004?pwd=ZmhPdVBDd0VCeEZlbnlwZWl2cFluUT09>

When prompted, enter:

Meeting ID: 934 6507 5004

Passcode: 2022-43

To join from a computer, participants will need a computer with internet access, video camera, and microphone. Participants' first and last names should be displayed.

Zoom Hearing, AUDIO ONLY, join by telephone:

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Other dial-in numbers by location:

+1 346 248 7799 US (Houston)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

When prompted, enter:

Meeting ID: 934 6507 5004

Join in person:

The Office of the Hawai'i Labor Relations Board

Ke'elikolani Building

830 Punchbowl Street, Room 434

Honolulu, Hawai'i 96813

Individuals may testify as to any data, opinions, arguments, comments, and objections, orally at the public hearing or in writing to HLRB, concerning the proposed adoption of HAR Chapter 43 and repeal of HAR Chapters 41 and 42. During the public hearing, oral testimony will be limited to two minutes per individual. Written testimony can be mailed or delivered to HLRB's office located at 830 Punchbowl Street, Room 434, Honolulu, HI 96813, and must be received at least forty-eight (48) hours prior to the scheduled public hearing.

To ensure an efficient hearing, HLRB requests that all parties and individuals who wish to testify register with HLRB prior to the scheduled public hearing via email at DLIR.laborboard@hawaii.gov or phone at (808) 586-8616. HLRB will recognize testifiers at the scheduled hearing in the order in which they registered with HLRB.

If a party or individual does not register with HLRB to testify but appears at the scheduled hearing, that party or individual will be allowed to testify after all pre-registered parties and individuals testify.

The proposed HAR Chapter 43 will be made available for public viewing from the first working day that the legal notice appears in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island, through the day the public hearing is held. The proposed HAR Chapter 43 may be viewed:

- On the internet at: <http://labor.hawaii.gov/hlr/files/2022/04/RULES-DRAFT-Ramseyer.pdf>

- Via email, without charge, by making a request to HLRB at: DLIR.laborboard@hawaii.gov;

- In person viewing, without charge, at HLRB's office located at 830 Punchbowl Street, Room 434, Honolulu, HI 96813, between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays;

- By requesting a hard copy from HLRB, by phone at (808) 586-8616, email, or mail. If a hard copy is to be mailed, the cost is \$10.20 (102 pages at ten cents per page) plus postage;

- Auxiliary aids and services are available upon request. Please call HLRB at (808) 586-8616 (voice), or dial 711 and then ask for (808) 586-8616. A request for reasonable accommodations should be made no later than ten (10) working days prior to the needed accommodations.

Dated: May 2, 2022

Marcus R. Oshiro, Chairperson

Hawai'i Labor Relations Board

(SA/HTH/WHT/TGI1370897

5/4/22)

AFFIDAVIT OF PUBLICATION

STATE OF HAWAII, } ss.
County of Maui.

Kamery A. Lee III

being duly sworn

deposes and says, that he is in Advertising Sales of
the Maui Publishing Co., Ltd., publishers of THE MAUI NEWS, a
newspaper published in Wailuku, County of Maui, State of Hawaii;
that the ordered publication as to LEGAL NOTICE

NOTICE OF PROPOSED ADOPTION AND REPEAL

OF RULES PUBLIC HEARING

of which the annexed is a true and correct printed notice, was
published 1 time in THE MAUI NEWS, aforesaid, commencing
on the 4th day of May, 2022, and ending
on the 4th day of May, 2022, one day
(inclusive), to-wit: on May 4, 2022

and that affiant is not a party to or in any way interested in the above
entitled matter.

Kamery A. Lee III

This 1 page LEGAL NOTICE, dated
May 4, 2022,

was subscribed and sworn to before me this 4th day of
May, 2022, in the Second Circuit of the State of Hawaii,
by Kamery A. Lee III

Kimberly Uradomo
Notary Public, Second Judicial
Circuit, State of Hawaii

Kimberly Uradomo
Commission expires: 7/2/2022



LEGAL NOTICE

Notice of Proposed Adoption and Repeal of Rules Public Hearing

NOTICE IS HEREBY GIVEN that the Hawai'i
Labor Relations Board (HLRB), Department of
Labor and Industrial Relations, will hold a public
hearing in person and via Zoom on June 13, 2022
at 9:00 a.m. to 12:00 p.m. pursuant to Hawai'i
Revised Statutes Chapters 89, 91, 377, and 396.

The public hearing will consider the adoption of
Hawai'i Administrative Rules (HAR) Chapter 43,
Title 12, Subtitle 7, entitled "Rules of Practice and
Procedure before the Hawai'i Labor Relations
Board," and the repeal of HAR Chapters 41 and
42, which previously governed such procedures.
The purpose of adopting HAR Chapter 43 and
repealing Chapters 41 and 42 is to streamline practice
and procedure for proceedings before HLRB.

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in any one of the following ways:

Zoom Video Hearing, join from a computer:
(Please mute your devices except to testify)

Join Zoom Meeting
<https://zoom.us/j/93465075004?pwd=ZmhPdVBDd0VCCFZlYnlwcWJ2cFluU109>

When prompted, enter:
Meeting ID: 934 6507 5004
Passcode: 2022-43

To join from a computer, participants will need a
computer with internet access, video camera, and
microphone. Participants' first and last names
should be displayed.

Zoom Hearing, AUDIO ONLY, join by telephone:

+1 609 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)

Other dial-in numbers by location:

+1 346 248 7799 US (Houston)
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)

When prompted, enter:
Meeting ID: 934 6507 5004

Join in person:

The Office of the Hawai'i Labor Relations Board
Ke'elikōlani Building
830 Punchbowl Street, Room 434
Honolulu, Hawai'i 96813

Individuals may testify as to any data, opinions,
arguments, comments, and objections, orally at the
public hearing or in writing to HLRB, concerning
the proposed adoption of HAR Chapter 43 and
repeal of HAR Chapters 41 and 42. During the
public hearing, oral testimony will be limited to
two minutes per individual. Written testimony can
be mailed or delivered to HLRB's office located at
830 Punchbowl Street, Room 434, Honolulu, HI
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(48) hours prior to the scheduled public hearing.

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- Auxiliary aids and services are available upon request. Please call HLRB at (808) 586-8616 (voice), or dial 711 and then ask for (808) 586-8616. A request for reasonable accommodations should be made no later than ten (10) working days prior to the needed accommodations.

Dated: May 2, 2022

Marcus R. Oshiro, Chairperson
Hawai'i Labor Relations Board

(MN: May 4, 2022)

SUMMARY OF COMMENTS AND HLRB RESPONSES*

A. COMMENTS AND HLRB RESPONSES—CHANGES/DELETIONS

Subchapter 1 General Provisions

§12-43-3(d)(4) Mediation

(d) The administration of the board shall be as follows:

(4) The board may order mediation in any contested case and appoint a mediator. All costs of the mediation shall be borne equally by the parties unless otherwise ordered by the board.

Comment: §12-43-3(d)(4) is not necessary in light of §12-43-25 which provides for mediation in HRS Chapter 91 contested cases; mandatory mediation is not required by statute, and mediation should proceed where there is mutual consent between the parties.

Response: HLRB deleted §12-43-3(d)(4) concerning mediation.

§12-43-3(f) Recusal

(f) Any board member or hearings officer may recuse the person's self by filing with the board a statement that the board member is unable for any reason to participate in the pending hearing.

Comment: Recusal should not be allowed "for any reason" but only for genuine issues of conflict affecting impartiality; the reasons for recusal should be stated on the record, and recusal should be for the entire case, not just the pending hearing.

Response: HLRB deleted §12-43-3(f) concerning recusal.

§12-43-10 List of mediators and arbitrators

§12-43-10 List of mediators and arbitrators. (a) The board shall maintain lists of qualified persons, broadly representative of the public, to serve as mediators or arbitrators, as required by chapter 89, HRS.

Comment: When referring to mediators and arbitrators, should this include mediators, arbitrators, and conciliators involved in labor disputes such as impasses, within the scope of §12-43-10?

Response: HLRB revised §12-43-10 to add “lists” and “as required by chapter 89, HRS,” as reflected above. This rule pertains to HRS Chapter 89, not HRS Chapter 377. HRS §89-5(h)(6) requires that HLRB maintain a list of qualified mediators and grievance arbitrators. HRS §§89-11(d)(1) and (2) and 89-11(e)(1) require HLRB to maintain a list of arbitrators and mediators. HRS §89-11(d)(2) requires that HLRB maintain a list from which mediators can be appointed for impasse resolution.

Subchapter 2 Practice and Procedure in Contested Cases

§12-43-21(i)(3) Motions

(i)(3) A hearing on a dispositive motion in a prohibited practice or unfair labor practice case that occurs before the hearing on the merits shall be deemed to satisfy the section 377-9(b), HRS, requirement that the hearing on the complaint be held not less than ten nor more than forty days after filing of the complaint or amendment thereto.

Comment: Clarification is needed that when a dispositive motion is held, it satisfies the statutory requirement in HRS §377-9(b) that a hearing be held no more than 40 days after the complaint is filed.

Response: HLRB clarified §12-43-21(i)(3) by adding the underscored language, as reflected above.

§12-43-27(c)(7) Hearings, in general

7) Regulate the scheduling, course, manner, and conduct of the hearing, and the continuance of any proceeding or hearing;

Comment: The term “bifurcation” should be deleted because in prohibited practice cases, evidence of wilfulness is intertwined with proof of a prohibited practice, and bifurcation of these component parts is prejudicial and causes delay.

Response: HLRB deleted the portion of §12-43-27(c)(7) referring to “bifurcation,” as reflected above.

§12-43-37(a) Proposed decision or order, exceptions

Comment: The original title and §12-43-37(a) referenced proposed decisions which were not subject to judicial review under HRS §91-14.

Response: HLRB redrafted the title of the proposed rule in §12-43-37, as reflected above, and deleted §12-43-37(a).

§12-43-37(c) Proposed decision or order, exceptions

(c) Within the time specified by the board, an adversely affected party may file exceptions to the whole or part of the proposed decision, order, or preliminary ruling and may include a request for an opportunity to present oral argument before the hearings officer or the board.

Comment: Concerns were raised regarding the lack of a stated deadline in §12-43-37(c).

Response: HLRB added language to allow the board to set a deadline, as reflected above.

§12-43-45 Application of Hawaii Rules of Civil Procedure

Where the board's rules are silent on a practice and procedure, including a motion or aspect of a motion, the board may apply the Hawaii Rules of Civil Procedure and case law governing the practice and procedure to the extent that the board's rules are silent and not in conflict.

Comment: Consider adding a "catch all" rule that would apply when HLRB's own rules are silent. This could provide for orderly and consistent proceedings before the HLRB, and provide participants and the public notice of how HLRB may address a situation that is not expressly provided for in the HLRB's rules.

Response: HLRB added the above "catch all" provision, §12-43-45, that will cover situations where the HLRB may apply the HRCPP and case law.

Subchapter 4 Prohibited Practices and Unfair Labor Practices

§12-43-62 Amendment of complaint

The board may permit a complaint to be amended, upon proper motion and for good cause shown, at any time before the issuance of a final order based thereon. An amended complaint replaces the original complaint in its entirety. However, for purposes of timeliness, the amended complaint relates back to the date of filing of the original complaint.

Change: HLRB added the underscored language based on the comment and response in §12-43-21(i)(3), above. For purposes of timeliness, the amended complaint relates back to the date of filing of the original complaint and thus satisfies the 90-day limitations period.

§12-43-66 Decision and order

(b) An employer or an employee who wilfully or repeatedly commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees, or discriminates against an employer or employees for the exercise of protected conduct, is subject to a civil penalty of up to \$10,000 for each violation.

Change: HLRB changed the language, "A party", to "An employer or an employee." This change tracks the language of HRS §377-9, which does not allow for civil penalties to be assessed against exclusive representatives. This change is also based on the response in §12-43-10, above, that the language of a subsection conform to statutory requirements.

Subchapter 7 Resolution of Disputes and Impasses Pursuant to Section 89-11, HRS

§12-43-120 Findings and decision of interest arbitration panel.

Within thirty days after the conclusion of the hearing, the interest arbitration panel shall transmit a preliminary draft of its decision to the parties. Within fifteen days after the transmittal of the preliminary draft, a majority of the interest arbitration panel shall issue the arbitration decision which shall be served upon all parties.

Change: HLRB removed the language requiring the interest arbitration panel to "file with the board all final findings and decisions of the panel, with proof of

service” as this is not required under HRS §§ 89-11 or 377-4.7. The only requirement is that the parties shall receive a copy. This change is based on the response in §12-43-10, above, that the language conform to statutory requirements.

Subchapter 16 Facilitating Initial Collective Bargaining Agreements, and Conciliation

§12-43-240 Findings and decision of arbitration panel. The arbitration panel shall issue all findings and a decision settling the dispute, which shall be binding upon the parties for a two-year period, unless amended during that period by written consent of the parties, which shall be served upon all parties.

Change: HLRB removed the language requiring the interest arbitration panel to “file with the board all final findings and decisions of the panel, with proof of service” as this is not required under HRS §§ 89-11 or 377-4.7. The only requirement is that the parties shall receive a copy. This change is based on the response in §12-43-10, above, that the language conform to statutory requirements.

B. COMMENTS AND BOARD RESPONSES—NO CHANGES

In response to comments regarding other subsections in the proposed HAR Chapter 43, HLRB determined that there would be no substantive changes as explained below:

§12-43-3(c)(4) Private deliberations

Comment: Concerns were raised over who will have access to private records and whether private deliberations are violative of due process or of §12-42-50.

Response: HLRB retained §12-43-3(c)(4) which expressly states that “the board may deliberate in private, and any order, ruling, deliberation, or decision by the board in such proceeding may be made in private, as provided in chapter 92, HRS.” HLRB is subject to other applicable laws in determining what sessions will be public and private and subject to disclosure. HLRB continually assesses compliance with HRS Chapters 92 and 92F with its proceedings and records.

§12-43-5(b)(2) Declarations

Comment: The rule appears to require a certified signature and is duplicative of §12-43-5(b)(4). HLRB can clarify if it wants written statements of witnesses to conform as a declaration or affidavit.

Response: HLRB retained the language in §§12-43-5(b)(2) and 12-43-5(b)(4). Both subsections complement each other and set forth the requirements for a declaration and all filed documents.

§12-43-18 Contemptuous conduct

Comment: Concerns were raised that the substantive language gives HLRB the power of summary exclusion without due process and that HLRB should issue findings setting forth the basis for contempt. A concern was also raised that §12-43-18 could be moved to Subchapter 1, General Provisions, as the subject matter was generally applicable to board proceedings.

Response: HLRB retained the present language as it is substantially similar to the current provisions regarding contemptuous conduct in HAR Chapters 41 (enacted in 1983) and 42 (enacted in 1981) and will leave §12-43-18 within Subchapter 2. The provisions in Subchapter 2 govern proceedings in Subchapters 3, 4, 5, 9, 10, 14, 15.

§12-43-22 Amendment of documents

Comment: A concern was raised that §12-43-22 could be moved to Subchapter 1, General Provisions, as the subject matter was generally applicable to board proceedings.

Response: HLRB will leave §12-43-22 within Subchapter 2. The provisions in Subchapter 2 govern proceedings in Subchapters 3, 4, 5, 9, 10, 14, 15.

§12-43-23(d) Discovery, depositions, and interrogatories

(d) Witness fees and mileage shall be paid by the party naming and calling the witness and shall be the same as fees paid to witnesses in circuit court.

Comment: The board could consider more specific references to HRS §607-12 or HRCF Rule 45(c) regarding witness fees.

Response: HLRB retained the language in §12-43-23(d). The “catch all” provision in §12-43-45 can be applied to determine which HRCP rules apply.

§12-43-30(a) and (d) Subpoenas

Comment: §12-43-30(a) (issuance of subpoenas) and (d) (revocation of subpoenas) do not specify which HRCP rules apply and there is no procedure allowing the parties to move to quash a subpoena issued by the board.

Response: HLRB retained the substantive language in §§12-43-30(a) and (d) as it is substantially similar to the current provisions in HAR Chapters 41 and 42 relating to “subpoenas.” HLRB revised §12-43-30(a) by deleting, “as provided by the Hawaii Rules of Civil Procedure” and replacing it with, “at a hearing held under the provisions of this chapter,” as this language was originally in HAR Chapter 42 regarding “subpoenas.” The “catch all” provision in §12-43-45 can be applied to determine which HRCP rules apply.

§12-43-42 Ex parte communications

Comment: §12-43-42 repeals and replaces the ex parte communication ban in §12-41-33.

Response: HLRB retained most of the substantive language of §12-43-42 as it is substantially similar to the current provisions in HAR Chapter 42 regarding “ex parte communications.”

§12-43-44 Assistance of employers and employee organizations

Comment: §12-43-44 conflicts with §12-41-33 and allows HLRB to communicate on an ex parte basis with any organization.

Response: HLRB will retain the substance of §12-43-44 as it is substantially similar to the current provision in HAR Chapter 42. In the title of §12-43-44, HLRB changed the word “Cooperation” to “Assistance” as this language is used in the related provision in HAR Chapter 42.

C. NO COMMENTS--NO CHANGES

There were no comments and no substantive changes to the following subchapters:

Subchapter 3	Declaratory Rulings under Chapters 89 and 377, HRS
Subchapter 5	Election of Bargaining Representatives in Public Employment
Subchapter 6	Clarification of Bargaining Unit
Subchapter 8	Procedures Relating to Strikes – Rights and Prohibitions
Subchapter 9	Review of Dues Refund
Subchapter 10	Financial Reports of Employee Organizations
Subchapter 11	Resolution of Disputes Concerning Cost Items
Subchapter 12	Reference Material
Subchapter 13	Streamlining Union Certification
Subchapter 14	Election of Bargaining Representatives in Private Employment
Subchapter 15	Referendum Concerning All-Union Agreement
Subchapter 17	Petition for Temporary Restraining Order or Temporary Injunction During Unfair Labor Practice Proceedings
Subchapter 18	Procedure for Adoption, Amendment, or Repeal of Rules

***Technical, nonsubstantive changes made for purposes of clarity and consistency are not summarized in this document.**



DAVID IGE
GOVERNOR

EXECUTIVE CHAMBERS
HONOLULU
January 1, 2018

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of
Hawaii Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

Legal References:

1. Hawaii Revised Statutes Chapter 91
2. Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiiioimt.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. **Small Business Regulatory Flexibility Act**

In accordance with Chapter 201M, the department must complete the following

steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
 - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

3. Public Hearing Approval

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
 - i. Why is this section of Hawaii Administrative Rules being amended?
 - ii. What problem is the rule change meant to solve?
 - iii. List all changes that are being made.
- b. Impact of changes
 - i. How does this rule change address the problem?
 - ii. Who are the stakeholders? Positive and negative.
 - iii. What are the potential problems with the rule change?
 - iv. What is the fiscal impact?
 - v. What is the economic impact to the State?
- c. Consequences if changes are not made
 - i. What are the consequences if the rule change does not get adopted, amended or repealed?

4. Public Hearings

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

5. Final Rule

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
 - i. What changes were made in the Final Rule?
 - ii. Why were these changes made?
- b. Other
 - i. Describe how the department has worked with stakeholders to gain support for the rule?
 - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
 - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. Filing of Final Rule

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.

Procedure:

1. See attached PowerPoint

Small Business Regulatory Review Board

MEETING MINUTES

February 17, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:05 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF January 20, 2022 MINUTES**

Vice Chair Albitz motioned to accept the January 20, 2022 meeting minutes, as presented. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) to Title 12 Chapter 43, Rules of Practice and Procedure Before the Hawaii Labor Relations Board, promulgated by Hawaii Labor Relations Board, Department of Labor and Industrial Relations (DLIR)

Discussion leader and Vice Chair Albitz explained that the Hawaii Labor Relations Board (HLRB) is submitting proposed Chapter 43 which streamlines the practice and procedures that are currently in Chapters 41 and 42. There does not appear to be anything that adversely impacts small business; in fact, small businesses will benefit from the procedures such as the self-representing processes.

Mr. Marcus Oshiro, Chairperson of HLRB introduced some of his HLRB colleagues in the event specific information may be asked by this Board. He explained the background of HLRB and that it is administratively attached and operates independently from DLIR and the executive and legislative branches.

HLRB is a quasi-judicial three-member body and functions as an appellate board; the HLRB adjudicates complaints between public employers, unions and employees involving prohibited practices. The current rules in chapter 41 and 42 have not been amended since 1981 and 1983, respectively.

In 2002, the Hawaii legislature transferred cases from Hawaii Occupational, Safety and Health (HIOSH) under Chapter 396 from the Labor and Industrial Appeals Board to HLRB; however, the legislature did not direct the promulgation of any rules. Since that time, HLRB has reviewed hundreds of HIOSH cases under the existing Chapters 41 and 42. Thus, the main purpose of proposed Chapter 43 is to streamline the procedure of contested case hearings in front of HLRB by incorporating Chapters 41 and 42 which has been an on-going process over the past several years.

Mr. Oshiro also explained that there is no apparent small business impact based on the proposed rules nor are there any imposed fees or indirect costs that would impact small businesses.

Vice Chair Albitz noted that she was impressed with HLRB's stakeholder outreach efforts where numerous organizations were contacted. Chair Cundiff echoed Vice Chair Albitz's comments and commended Mr. Oshiro's due diligence for attending prior meetings of this Board as well as the level of outreach into the community to the stakeholders for input, which was very extensive. These actions clearly allow for a much smoother and easier process.

In response to Mr. Ritchie's question regarding the expressed positive impact on small businesses, HLRB member Ms. Sesnita Moepono, explained that HLRB created an electronic filing system in the proposed rules that come before HLRB, which is free to all the parties. The system allows individuals, attorneys and small businesses to maneuver a file on-line anywhere in the world and retrieve all of the filings connected to the initial filing anywhere in the world as long as Internet is service accessible.

In addition, Ms. Moepono, explained that all the processes for the self-contested case hearings were combined into one chapter; this process has proven to be easier to refer to one set of rules rather than two separate chapters.

Vice Chair Albitz motioned to send the proposed new chapter to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Update on the Board's Proposed Phase II Website Project

B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

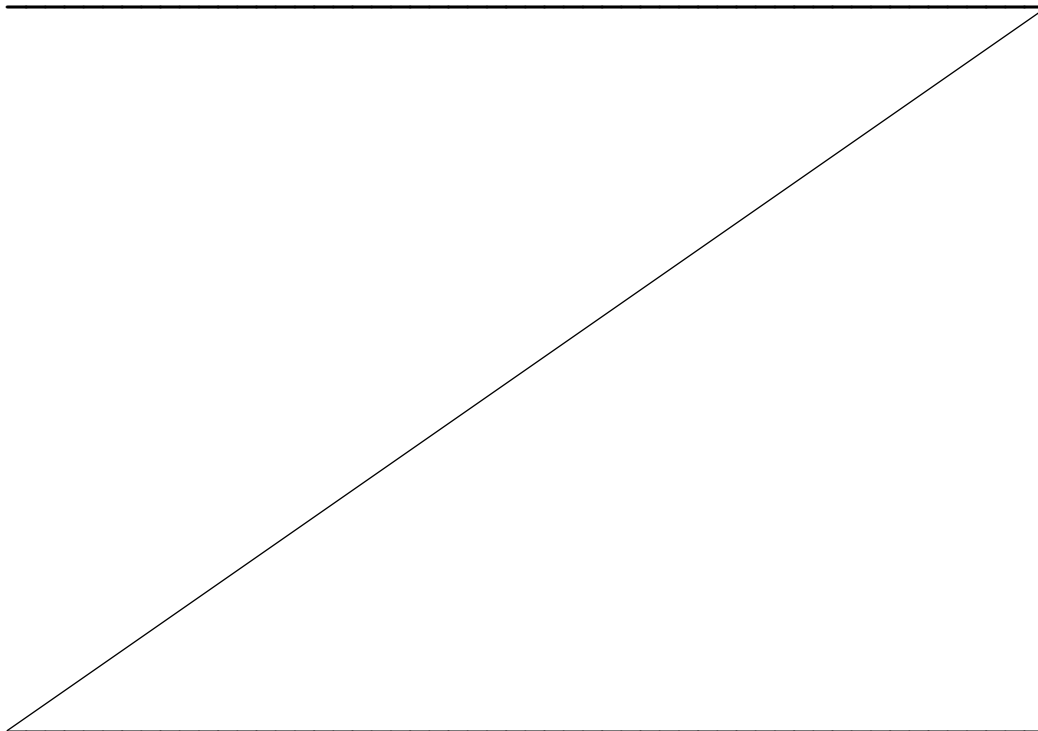
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Repeal of Chapters 12-41 and 12-42
and Adoption of Chapter 12-43,
Hawaii Administrative Rules

[date]

1. Chapters 41 and 42, Hawaii Administrative Rules, entitled "Hawaii Employment Relations Board Rules of Practice and Procedure", are repealed.

2. Chapter 12-43, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure before the Hawaii Labor Relations Board", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7 BOARDS

CHAPTER 43

RULES OF PRACTICE AND PROCEDURE
BEFORE THE HAWAII LABOR RELATIONS BOARD

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Historical note: Chapter 12-43 is based substantially upon repealed chapters 12-41 [Eff 11/10/83; R] and 12-42 [Eff 2/6/81; am 4/12/82; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§12-43-1 Scope. As used in these administrative rules, "the board" refers to the Hawaii labor relations board and is created by section 89-5, HRS. This chapter governs procedures before the board under

chapters 89, 377, and 396, HRS, and other statutes as may be administered by the board. The board may also issue protocols to govern matters such as attire, order of presentation, seating, and decorum before the board. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 377-16, 396-11.5)

§12-43-2 Subchapters. (a) Each subchapter sets forth special rules applicable to the type of proceeding described in the caption of the subchapter.

(b) This subchapter sets forth general rules applicable to all proceedings conducted by the board, and shall be read in conjunction with the subchapter governing the particular proceeding.

(c) In any conflict between a general rule in this subchapter and a special rule in another subchapter, the special rule shall govern.

(d) All applicable definitions for chapters 89, 377, and 396, HRS, are incorporated herein. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

§12-43-3 The board. (a) The office of the board is at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813, or such other address where the board is located. Unless otherwise specifically directed, all written communications to the board shall be sent to this address.

(b) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each day that is not a Saturday, Sunday, or state holiday, unless otherwise provided by statute, rule, executive order, or order of the board.

(c) Sessions of the board shall be held as follows:

- (1) The board may meet and exercise its powers in any part of the State;

- (2) All rulemaking meetings of the board and other meetings of the board subject to chapter 92, HRS, shall be open to the public;
 - (3) The board may meet in executive session, from which the public may be excluded, as provided in chapter 92, HRS; and
 - (4) For internal management of the board, investigations or studies conducted by the board, and adjudicatory proceedings subject to chapters 89, 91, HRS, and other applicable laws, the board may deliberate in private, and any order, ruling, deliberation, or decision by the board in such proceeding may be made in private, as provided in chapter 92, HRS.
- (d) The administration of the board shall be as follows:
- (1) The board's chair shall be responsible for the administrative functions of the board;
 - (2) The board may appoint an executive officer; such executive officer shall have the duties and functions as may be determined by the board;
 - (3) The board may appoint a hearings officer to conduct a hearing; the board may confer upon such hearings officer the necessary powers, subject to chapter 89, HRS, and subchapter 2, to conduct such hearing and procedural matters related thereto; and
 - (4) The board may order mediation in any contested case and appoint a mediator. All costs of the mediation shall be borne equally by the parties unless otherwise ordered by the board.
- (e) Any party to a hearing may file a motion to disqualify a board member or hearings officer, which must be filed at least ten calendar days before the hearing in question or good cause shall be shown for the failure to file the motion within such time. Such motion shall be supported by a declaration based on the personal knowledge of the declarant and stating

the factual and legal reasons for the declarant's belief that a board member or hearings officer should be disqualified. The board member or hearings officer against whom the motion is filed may respond to the motion or file a notice of recusal with the board.

(f) Any board member or hearings officer may recuse the person's self by filing with the board a statement that the board member is unable for any reason to participate in the pending hearing.

(g) Any action taken by the board shall be by simple majority of the members of the board. Two members of the board shall constitute a quorum.

[Eff] (Auth: HRS §§89-5, 396-11.5)
(Imp: HRS §§89-5, 92-3, 92-4, 92-5, 92-6, 377-11, 396-11.5)

§12-43-4 Government records. (a) The term "government record," as used in this chapter, shall be as defined in section 92F-3, HRS.

(b) All of the board's government records shall be available for inspection in the office of the board during established office hours, in accordance with and subject to the limitations and exceptions set forth in chapter 92F, HRS.

(c) Government records printed or reproduced by the board shall be made available to any person requesting the same and upon making such arrangements as may be acceptable to the board for paying the required costs thereof, all in accordance with chapter 92F, HRS, and any applicable circuit court and administrative rules. [Eff] (Auth: HRS §§89-5, 92F-11, 377-13, 396-11.5) (Imp: HRS §§89-5, 91-2.5, 92-21, 92F-11, 92F-13, 377-13, 396-11.5)

§12-43-5 Filing and service of documents. (a) All documents submitted to be filed with the board for a case are subject to the following requirements.

- (b) General provisions applicable to all parties.
- (1) Form of documents.
 - (A) All documents filed with the board shall be legible when printed on letter-size or A4 paper measuring eight and one-half inches by eleven inches in size, with twenty-pound weight or higher, written in ink or typewritten, one and one-half spaced between the lines, in twelve-point type or equivalent type size using Times New Roman or Courier or equivalent font, except that any document or exhibit on paper larger than letter-size shall be resized to fit on a letter-size paper. Any document or exhibit that cannot be resized or any video or audio recording shall be filed pursuant to the board's directions.
 - (B) The first page of every pleading shall set forth the name, current mailing address, email address, and telephone number of the party or party's representative who may be served with any document filed in the proceeding, the title of the pleading, the case number, and the name of the proceeding. All declarations shall conform to this section.
- (2) Declaration. A declaration shall accompany all complaints or petitions in writing, signed by the declarant with an electronic or handwritten signature, certified by the declarant that the declaration was signed under penalty of law and its contents are true and correct, and dated. All declarations shall conform to this section.
- (3) Certificate of service. All pleadings filed with the board after the filing of the initial petition, complaint, transmittal of a notice of contest or other pleading

initiating the proceeding at the board, must be accompanied by a certificate of service upon all other parties, certifying that service was made electronically, by first class mail, or by hand-delivery. All correspondence or other communication submitted to the attention of the board must also be sent to all other parties or their representatives.

- (4) Signing a document. All documents filed with the board must be signed, either in black ink or electronically. A person's signature on a document constitutes a certification by the person that:
 - (A) The person has read the document;
 - (B) To the best of the person's knowledge, information, and belief, every statement contained in the document is true and correct and no statements are misleading;
 - (C) The person has complied with all applicable rules; and
 - (D) The document is not filed to hinder or delay the proceeding or for the purpose of harassing any party.
- (5) Service of documents. All documents filed with the board must be served on the other parties or the parties' representatives. Service of a document is complete upon mailing, hand-delivery, or electronic delivery; however, whenever a party has the right, or is required, to perform some act or take some action within a prescribed period after service of a document, and the document is served by mail, two days shall be added to the prescribed period.

(c) Electronic filing and service. All documents shall be filed using the board's electronic filing system ("EFS"), except as specifically provided herein. Information on registering for the board's EFS shall be available on the board's webpage or at

the board's office. Only "users", as defined in paragraph (1), may use the board's EFS.

- (1) As used herein, "user" or "users" means a party or a party's representative in a case before the board and registered with the EFS. All attorneys or law firms representing a party appearing before the board shall register as a user. An employee of a user may register as a user in the employee's own name to file documents on behalf of the employee's employer, provided that such employer shall be responsible for the employee's actions and documents electronically filed by the employee. Each user shall follow the requirements of the EFS, including keeping the user's registration information current with the EFS.
- (2) As used herein, "electronic signature" means the name of the user typed in the space usually reserved for a handwritten signature preceded by "/s/" or the image of the user's handwritten signature or any other mark or symbol acceptable to the board. Subject to the board adopting alternative verification methodology, once a document is filed with the EFS, the electronic signature shall carry the same weight and legal effect as a handwritten signature. The user is responsible for all acts and documents filed with the EFS.
- (3) An electronically filed document shall have the same legal effect as a document filed at the board's office and is deemed to be filed as of the date and time affixed on the document by the board's EFS provided that any document filed with the EFS on a day or at a time when the board is not open for business is deemed filed on the next date or time the board is open for business.
- (4) If an electronic filing or an electronic service of a document does not occur because

of the EFS' failure to process the document, inaccessibility to the EFS, or an EFS error and it was not due to the user's fault, the board may extend any deadline.

- (5) An employer, exclusive representative, or labor organization who is a party to a case before the board may be permitted access to their case file by the board upon request.

(d) Exemption from electronic filing. A self-represented litigant (SRL) may file a signed written request with the board for an exemption from subsection (c) stating the reasons for the request. The signed request shall automatically be granted. The SRL shall agree to file all documents by first class mail or hand-delivery at the board's office and serve all documents to the other parties in the case by first class mail or hand-delivery at the party's last known address.

- (1) All documents submitted to the board for filing under this subsection must contain the SRL's handwritten signature in black ink.
- (2) Upon receiving a document, the board shall affix a date and time on the document, signifying when the document was filed, which will be deemed as the original filing date. The filed document will be uploaded by the board to the EFS. The original filed document will be discarded. Any date and time affixed by the EFS will not change the original filing date.

(e) Board documents. The board may electronically serve board-issued documents upon parties, counsel, or representatives who are users. If an SRL is not a user, the board shall serve such party by mail or hand-delivery at the party's last known address, unless otherwise required by law.

- (1) Unless otherwise required by law, the board shall give written notice of any hearing by first class mail or by electronic service through the EFS at least fifteen days before the scheduled date of the hearing.

- (2) If electronically filed, all documents issued by the board may be signed using electronic signatures by a board member, hearing officer, executive officer, or staff member. [Eff: _____] (Auth: HRS §§89-5, 89-5.1, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-5.1, 89-14, 377-9, 396-11.5)

§12-43-6 Retention of documents. (a) All documents filed with or submitted to and accepted by the board shall be retained in the files of the board in such form or format as allowed in section 92-29, HRS, which copy, whether a photograph, microphotograph, reproduction on film or electronic copy, shall be an original record pursuant to section 92-30, HRS. The board's documents may be destroyed as provided in section 92-31, HRS.

(b) The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff: _____] (Auth: HRS §§89-5, 377-1, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

§12-43-7 Confidential information. (a) Notwithstanding any other rule to the contrary, a party shall not include: (1) confidential information, including the information enumerated in section 92F-14, HRS, in which an individual may have a significant privacy interest; and (2) any personal information, as defined in section 487N-1, HRS, in any document submitted to, or filed with, the board.

(b) All confidential or personal information that is not relevant to a proceeding shall be redacted from documents before filing or submitting the documents to the board. If the confidential or personal information is relevant to a proceeding, the confidential or personal information shall be removed

from documents and shall be filed with or submitted to the board in a format that substantially conforms to Forms 1 and 2 of the Hawaii Court Records Rules.

"Confidential or personal information" includes social security numbers, birth dates, home addresses, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest.

(c) If the party submitting or filing a document containing confidential or personal information believes that the information is relevant to the proceeding and that the use of a form substantially similar to Form 2 of the Hawaii Court Records Rules is not adequate to protect the confidentiality or personal interest, the party may request by motion that the board accept the confidential or personal information under seal.

(d) To the extent that any confidential or personal information is not redacted and is or may be part of a record on appeal of a contested case which is subject to judicial review pursuant to chapters 89, 377, 396, or 91, HRS, if the party submitting or filing the document without redaction is an individual or entity with the confidentiality or personal interest, then such interest is waived and such document shall not be altered (whether by redaction or otherwise) unless permitted by the board in its discretion upon motion duly made.

(e) Upon motion or upon the board's own initiative, the board may permit or order redaction of confidential or personal information contained in documents previously filed with or submitted to the board. In such event, the redacted version shall replace the unredacted version in the board's files.

(f) The board may impose sanctions and penalties upon parties or the parties' attorneys or representatives who do not comply with this section, where the parties or the parties' attorneys or representatives have not shown good cause for failure to comply. Penalties may include monetary penalties not to exceed \$1,000 per page. [Eff]

(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-8 Time. In computing any period of time prescribed or allowed by these rules or by order of the board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, intermediate, Saturdays, Sundays, and state holidays shall be excluded in the computation. [Eff]
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-9 Extensions. Unless otherwise provided by statute or law, the board may upon its own initiative, or upon motion by a party showing good cause, extend the time within which any action shall be taken at the request of any party. A party requesting an extension of time shall file a motion with an accompanying declaration stating the reasons for the request. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-10 List of mediators and arbitrators.
(a) The board shall maintain a list of qualified persons, broadly representative of the public, to serve as mediators or arbitrators.

(b) The public employers and employee organizations may submit in writing the names of proposed mediators and arbitrators to the board.

(c) The board may, by written order, establish reasonable hourly and daily rates of mediators and arbitrators. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

SUBCHAPTER 2

PRACTICE AND PROCEDURE IN CONTESTED CASES

§12-43-16 Scope. This subchapter governs the general practice and procedure relating to contested case proceedings before the board, pursuant to chapters 89, 91, 377, and 396, HRS. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

§12-43-17 Appearance and practice before the board. (a) An employee, public employee, or other individual who is a party to a proceeding may appear on the person's own behalf; an employee organization may be represented by a person or persons duly designated and authorized by the employee organization; and an employer or public employer may appear on its own behalf or through a person or persons duly designated and authorized by such employer.

(b) When a person acting in a representative capacity appears in a proceeding or signs a document submitted to the board, that appearance or signature shall constitute a representation to the board that such individual is lawfully authorized to act as a representative. The board may at any time require any

person transacting business before the board in a representative capacity to furnish proof of authorization to act in that capacity.

(c) In any proceeding under chapters 89, 377, or 396, HRS, any employee, public employee, employee organization, employer, public employer, or any other party to a proceeding may be represented by legal counsel at that party or individual's own expense.

(1) Substitution of legal counsel shall be effective upon filing of notice of the substitution by the party represented. Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the board and is subject to the guidelines of the Hawaii Rules of Professional Conduct. No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before a hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

(2) At the discretion of the board, an attorney who is not authorized to practice law in the state and who associates with a member in good standing of the Hawaii state bar may appear in a representative capacity.

(d) Any ethical bar to appearing before the board is governed by chapter 84, HRS.

(e) Any employee, public employee, or other individual who is a party to a proceeding appearing on the person's behalf, employee organization representative, person acting in a representative capacity, or legal counsel representing a party shall be responsible for notifying and keeping the board informed of their current information, including a mailing address, contact phone number, and email address.

(f) The board may establish additional decorum standards or protocols. [Eff]

(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-18 Contemptuous conduct. (a)

Contemptuous conduct during any hearing or proceeding shall be grounds for summary exclusion from the hearing or proceeding.

(b) Contemptuous conduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or exclusion from further practice before the board after due notice and opportunity for hearing.

(c) The refusal of a witness at any proceeding or hearing to answer any question which has been ruled to be proper may, in the discretion of the board, be grounds for disregarding all testimony previously given by such witness on related matters.

(d) Any person who wilfully assaults, resists, prevents, impedes, or interferes with any member of the board, or any of the board's agents or employees, in performance of duties under chapter 89 or 377, and 396, HRS, shall be fined not more than \$500 or imprisoned not more than one year, or both. [Eff

] (Auth: HRS §§89-5, 89-18, 377-11, 377-15, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-19 Intervention. (a)

A petition to intervene in a proceeding and become a party thereto shall be filed with the board within ten days after notice of the proceeding in which intervention is sought, or as otherwise directed by the board.

(b) The petition shall contain the following:

- (1) Nature and extent of the petitioner's rights or interest;
- (2) Effect of any decision in the proceeding on the petitioner's rights or interest;

- (3) Extent to which the petitioner's interest may be represented by existing parties;
- (4) Extent to which the petitioner's participation will broaden the issue or delay the proceeding; and
- (5) Any other relevant facts.

(c) Intervention is discretionary, and may only be granted on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them. If intervention is granted, the petitioner thereby becomes an intervenor and a party to the proceeding to the degree indicated by board order allowing the intervention. [Eff

] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-20 Consolidation. The board, upon motion or its own initiative, may consolidate for hearing or other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues or arise out of the same general transaction, if it finds that the consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-21 Motions. (a) An application for relief or order shall be made by motion, which, unless made during a hearing, shall be made in writing, accompanied by declarations and memoranda setting forth with particularity the grounds therefor, and shall set forth the relief or order sought. The board in its discretion may require any oral motion made at hearing to be reduced to writing and served on all parties.

(b) Motions referring to facts not of record shall be accompanied by declarations, and if involving a question of law, shall be accompanied by a memorandum of legal authorities.

(c) Unless otherwise allowed by the board, answering memoranda, including but not limited to memoranda in opposition, memoranda in support, and memoranda of no position, shall be filed with the board within five days after service of the motion papers, unless otherwise directed by the board. Reply memoranda, if permitted by the board, shall be filed within three days after service of answering memoranda, unless otherwise directed by the board.

(d) The board in its discretion may decide to hear oral argument or testimony thereon, in which case the board shall notify the parties of the time and place of the argument or the taking of testimony.

(e) An exhibit or declaration attached to a motion is not in evidence at the hearing on the merits unless resubmitted by a party as an exhibit at the hearing.

(f) All motions made during a hearing shall be made a part of the record of the proceedings.

(g) Motions for preliminary injunction may be made where immediate and irreparable injury will result to the movant before the hearing on the merits of the case. Hearing on a motion for preliminary injunction shall be scheduled as expeditiously as possible, following notice to the other parties and opportunity for the other parties to respond to the motion. The board's official record and any evidence admitted in a hearing on a motion for preliminary injunction will be incorporated into the record of the hearing on the merits or de novo hearing and need not be resubmitted. Orders of preliminary injunction may be enforced as final orders of the board.

(h) Memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length, exclusive of table of contents, table of authorities, declarations, exhibits, concise statement and other attachments (collectively, attachments). Reply memoranda shall not exceed ten pages in length

(exclusive of attachments). Memoranda more than ten pages in length shall include a table of contents and a table of authorities.

(i) Dispositive motions, such as motions to dismiss (except for those based on jurisdiction and a motion to dismiss in lieu of answer), motions for judgment on the pleadings, or motions for summary judgment, shall be filed before the hearing on the merits or within the time otherwise ordered by the board.

- (1) A motion to dismiss in lieu of answer shall be filed before the time to file an answer to a complaint has run; if denied in whole or in part, an answer to a complaint shall be filed within ten days after the board's denial whether the denial is made orally or in writing, or as otherwise directed by the board. Any other dispositive motion shall be filed after an answer has been filed or after the time to file an answer has run.
- (2) A motion for summary judgment shall be accompanied by a supporting memorandum and a separate concise statement detailing each material fact which the moving party contends has no genuine issues to be tried and is essential for the board's determination of the motion.
 - (A) Any opposition to a summary judgment motion shall contain a separate concise statement that admits or disputes each material fact set forth in the moving party's concise statement, as well as setting forth any other material facts that the non-moving party contends are relevant.
 - (B) The concise statements of moving and non-moving parties shall be no more than five pages or one thousand five hundred words, whichever is less, and may use a single-space format for the

presentation of facts and evidentiary support.

- (C) In preparing a concise statement, the party shall reference only the material facts necessary for the board to determine the limited issues presented in the motion. The party shall include a citation to a particular declaration, exhibit, or other document supporting the party's interpretation of the material fact for each reference. The concise statement shall further specifically identify the page and portion of the page of the document referenced, with relevant portions of the attached exhibits, declaration, or exhibit highlighted or otherwise emphasized. Documents referenced in the concise statement may be filed in their entirety if the full context would be helpful to the board. If the referenced document is extracted, sufficient portion of the document shall be attached to put the matter in context.
- (D) In resolving a motion for summary judgment, the board shall have no independent duty to search and consider any part of the record not otherwise referenced in the concise statements of the parties, or to review exhibits in their entirety; rather, the board may in its discretion review only those portions of the exhibits specifically identified in the concise statements.
- (E) Material facts set forth in a moving party's concise statement and supported by references shall be admitted unless controverted by the concise statement of the non-moving party and supported by references.
- (F) In the board's consideration of a

motion for summary judgment, if the record establishes that a non-moving party is entitled to summary judgment or other relief against the moving party, the board may enter an order granting summary judgment or other relief to the non-moving party, provided the parties have been given a fair opportunity to be heard on the relevant issues.

- (3) A hearing on a dispositive motion in a prohibited practice or unfair labor practice case before the hearing on the merits shall meet the section 377-9(b), HRS, requirement that the hearing on the complaint shall be not less than ten nor more than forty days after filing of the complaint or amendment thereto. [Eff _____] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-22 Amendment of documents. (a) A pleading or document filed in a proceeding may be amended, at the discretion of the board, at any time before the board's disposition of that pleading or document.

(b) If a document is not in substantial conformity with the applicable rules of the board as to the format or contents thereof, or is otherwise insufficient, the board, on its own initiative or upon motion of a party, may strike or dismiss the document, or require its amendment.

(c) A party moving to amend a document shall file a motion for leave to amend, together with the proposed amended document, and a declaration stating why the amendment should be granted.

(d) If amended, the document shall be effective as of the date of the original filing, if it relates in all material respects to the original document.

[Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-23 Discovery, depositions, and interrogatories. (a) In proceedings pursuant to chapter 396, HRS, the nature and extent of discovery will be controlled by the Hawaii Rules of Civil Procedure applicable to that form of discovery and may commence upon the filing of the notice of contest.

(b) In proceedings other than appeals pursuant to chapter 396, HRS, upon written application and for good cause shown, the board may permit the parties to take depositions upon oral examination or written interrogatories in the manner prescribed under the Hawaii Rules of Civil Procedure.

(c) In proceedings involving prohibited practice complaints and unfair labor practice complaints, discovery is disfavored. If discovery is requested by a party and allowed by the board, it shall extend the requirement of section 377-9(b), HRS, that a hearing on a complaint shall be fixed not more than forty days after the filing of the complaint or amendment thereof.

(d) Witness fees and mileage shall be paid by the party naming and calling the witness and shall be the same as fees paid to witnesses in circuit court.

[Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-24 Prehearing, pretrial, and status conferences. (a) The board may order that a prehearing or status conference be conducted and attended by all parties to the proceeding, either in person or by remote access, as determined by the board.

- (1) The purpose of a prehearing or status conference is to discuss the case, in whole or in part, including but not limited to

clarifying or limiting the issues and scheduling of proceedings and deadlines.

- (2) The purpose of a pretrial conference is to identify, exchange, and to the extent possible, reach agreement or resolve issues regarding the admissibility of witness testimony, exhibits, facts, matters, or procedures to facilitate and expedite the hearing or adjudication of the issues presented; and address other prehearing, scheduling, or administrative matters.

(b) Before the pretrial conference, the board may require each party to submit a pretrial conference statement disclosing and identifying all witnesses to be called at the hearing, the order of their appearance, all exhibits to be used, and other matters to simplify the issues and facilitate the orderly progress of the hearing. A pretrial conference statement shall be filed at least three days before the conference or as otherwise ordered by the board and each party may be required to submit copies of each of the exhibits with the pretrial conference statement.

(c) Stipulation to settle. If the parties enter into a stipulation to settle a case, either party initiating the settlement shall file with the board the stipulation to settle signed by all of the parties or notice of withdrawal of the case with the board. Upon receipt of a filed stipulation to settle or notice of withdrawal of the case, the board will issue and file its own order dismissing and closing the case. [Eff _____] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-25 Mediation in chapter 91, HRS, contested cases. (a) To the extent provided by law, the board may encourage parties to a contested case hearing under chapter 91, HRS, to participate in mediation before the hearing. The board may suspend

all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the board.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the board shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the board, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under section 92-2, HRS. Any mediator notes under this section shall be exempt from section 92-21, HRS and chapter 92F, HRS. Section 91-10, HRS, shall not apply to these mediation proceedings. [Eff

] (Auth: HRS §§89-5, 396-11.5) (Imp: HRS §§91-8.5, 396-11.5)

§12-43-26 Agreed statement of facts. In any proceeding, the parties may agree to a statement of facts to be introduced into the record with respect to any issue. The board may accept an agreed statement of facts without a hearing on the merits. The parties to an agreed statement of facts may stipulate to waive the holding of a hearing on the merits. [Eff

] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-27 Hearings, in general. (a) All hearings shall be conducted by the board or a duly appointed hearings officer.

(b) Hearings shall be open to the public, except for hearings under chapter 396, HRS, unless otherwise provided by this chapter, or order, for good cause, by the board. Unless otherwise provided by law, any hearing may be conducted by remote access, as determined by and at the discretion of the board.

(c) Unless otherwise provided by law, the board, in conducting a hearing, shall have the powers, without limitation, to:

- (1) Hold hearings and issue notices;
- (2) Administer oaths and affirmations;
- (3) Consolidate hearings or several proceedings, provided that those actions shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) Subpoena and examine witnesses;
- (5) Issue subpoenas;
- (6) Rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, privileged, or unduly repetitious, and accordingly may restrict lines of questioning or testimony;
- (7) Regulate the scheduling, course, manner, and conduct of the hearing, including but not limited to the bifurcation of the proceedings, and the continuance of any proceeding or hearing;
- (8) Regulate the manner of any examination so as to prevent needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) Regulate the amount of time for presentation of opening statements, closing statements, and oral arguments;
- (10) Remove and hold in contempt disruptive individuals including any party, legal counsel, representative, witness, or observer;

- (11) Hold conferences before or during the hearing, for the settlement or simplification of issues;
- (12) Rule on motions and dispose of procedural matters;
- (13) Issue oral and minute rulings and orders to dispose of procedural or substantive matters, the basis for which will be incorporated or addressed in a final decision or order;
- (14) Examine, after notice to all parties, any site or tangible evidence relevant to the case; and
- (15) Dispose of any other matter that normally and properly arises during the proceedings and to take any action authorized by this chapter, chapters 89, 377, or 396, HRS, or any other related laws.

(d) Unless requested for purposes of rehearing or court review or otherwise required by law, the board is not required to transcribe the record of any proceeding. However, the parties may agree to have the proceedings transcribed at their own cost and to stipulate that the transcript be deemed the official record of the proceeding.

- (1) Anytime a party references a portion of a transcript not deemed the official record during the proceedings, including but not limited to at the hearing, or in a post-hearing brief or other filed document, the party is required to file with the board a copy of the entire transcript to which the reference is made simultaneously or before the reference being made.
- (2) Anytime a party makes reference to an audio or videotape, including but not limited to during the hearing, or in the party's post-hearing argument or brief or other filed document, the party shall cite the date of the recording and the counter number or time at which the cited material is located on the audio or videotape. [Eff

] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-9, 377-9, 396-11.5)

§12-43-28 Notice of hearing. Unless otherwise provided by statute or these rules, all parties shall be given written notice of the hearing on the merits electronically or by first class mail at least fifteen days before the hearing. [Eff]
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-9, 377-9, 396-11.5)

§12-43-29 Hearing procedure. Unless otherwise ordered by the board, or stipulated to by the parties with the board's approval, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive that opportunity. The board may limit the time for, and control the order of, opening statements;
- (2) The board may decide the order of presentation by the parties. However, the order of presentation will not determine the burden of proof;
- (3) After presentation of evidence in support of their respective cases, the party with the burden of proof shall have the opportunity to introduce rebuttal evidence;
- (4) Each witness shall be examined first by the party calling the witness, before cross-examination by the opposing party or parties;
- (5) The board may also question any party or witness appearing before it in any matter, or a party's attorney or other

- representative appearing before the board, with respect to the matter;
- (6) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final oral argument or submit a post-hearing brief; and
 - (7) The hearing shall be closed for the purposes of taking evidence after completion of all final oral arguments, if any, or when the parties have rested their case, whichever occurs later. [Eff]
(Auth: HRS §§89-5, 377-9, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-30 Subpoenas. (a) The board may issue subpoenas or subpoenas duces tecum to require the attendance of witnesses in the State and the production of books and papers before or at the hearing as provided by the Hawaii Rules of Civil Procedure.

(b) Any party may file an application for subpoena with the board before the hearing. The subpoena must be served on the witness at least seven business days before the hearing or attendance or production date.

(c) A motion to revoke or quash a subpoena may be filed with the board no later than three business days from the date of service of the subpoena; and

(d) The board may revoke, quash, or otherwise limit a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law; that the subpoena is harassing; or for other good cause shown. [Eff] (Auth: HRS §§ 89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-31 Witnesses. (a) All witnesses shall appear in person or by remote access, as determined by and at the discretion of the board, and shall be examined under oath or affirmation. All witnesses subpoenaed by a party shall be paid by that party the same witness and mileage fees as witnesses in the civil courts of the State. Travel costs for subpoenaed witnesses shall be paid by the party requesting the witness's appearance.

(b) No person served with a subpoena issued by the board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena with the board.

(c) A failure to comply with, or neglect of, a subpoena issued by the board may be certified by the board to a court of competent jurisdiction for an order of compliance. Any person who fails or neglects to appear or to testify or to produce books, papers, or records as required, may, upon application to a court of competent jurisdiction, be ordered to appear before the board to testify or produce evidence if so ordered, and the failure to obey the order may be punished as contempt of court. In the discretion of the board, failure to comply with a subpoena issued by the board may be grounds for striking all testimony or other evidence previously given by the witness on related matters. [Eff] (Auth: HRS §§89-5, 377-9, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-32 Evidence. (a) In any proceeding before the board, the board shall not be bound by the technical rules of evidence, and all relevant oral or documentary evidence shall be admitted.

(b) All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) The board shall give effect to the rules of privilege recognized by law.

(d) Documentary evidence shall be submitted in the format as specifically ordered by the board. The board may require any document that can be reduced to electronic format be reduced. A hard copy of the documentary evidence shall be provided to the board at any hearing.

(e) The board may take notice of judicially recognizable facts. In addition, the board may take notice of generally recognized technical or scientific facts, and the parties shall be afforded an opportunity to contest such facts so noticed.

(f) The board may take notice of any proceeding in its records, pertinent collective bargaining agreements, case law and other judicial and administrative proceedings, and the legislative history of statutes. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-33 Substitution of parties. (a) Upon motion and for good cause shown, such as death or legal incapacity, the board may order substitution of parties; provided that the substitution:

- (1) Is conducive to effectuating the ends of justice;
- (2) Will not unduly delay the proceeding; and
- (3) Will not otherwise unduly harass, hinder, or prejudice the rights of any party.

(b) When a public officer is a party to any proceeding and the officer dies, resigns, or otherwise ceases to hold office, the officer's successor is automatically substituted as a party.

(c) Proceedings following a substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties may be disregarded in the discretion of the board.

(d) Proceedings against a public employer or a union may proceed even though the petitioner incorrectly

names the public employer or union, if the board is able to ascertain the true public employer or union. Any public employee of a public employer or union specifically named shall be named in their official capacity as an employee of the public employer or union. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-34 Burden of proof. Unless otherwise ordered or provided by statute, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-10, 377-9, 396-11.5)

§12-43-35 Post-hearing briefs. (a) After all parties have rested their cases at the hearing, a party may file a post-hearing brief in lieu of final oral argument made before the close of hearing. Such party shall be entitled to file a brief within the time as may be fixed by the board, except that the board may order that proposed findings of fact and conclusions of law be submitted in lieu of or in addition to the parties' post-hearing briefs. Post-hearing briefs and proposed findings and conclusions may not exceed twenty-five pages in length, exclusive of transcripts. Upon motion and for good cause shown, the board may grant permission to exceed these page limits.

(b) The board may, on its own initiative, order the filing of briefs or proposed findings of fact and conclusions of law, or both, when it deems such filing is warranted by the nature of the proceedings or the issues therein.

(c) A request for extension of time within which to file a brief or proposed findings of fact and conclusions of law shall be filed at least ten days before the expiration of the required time for filing, and shall be accompanied by a declaration setting forth the grounds upon which it is based and indicating the position of the other parties with regard to the request. [Eff]
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-36 Taking of further evidence or request for further briefs. At any time before the issuance of a decision by the board or recommended decision by a hearings officer, the board or hearings officer may, upon its own initiative or upon motion and for good cause shown, reopen the hearing for the purpose of taking further evidence, or further briefing and shall do so in a written decision or order. Further evidence or briefing may be obtained through oral hearing or by certification of questions to the parties. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-37 Proposed decision, order, or preliminary ruling and exceptions. (a) This section applies to a decision, order, or preliminary ruling that would entitle an aggrieved person judicial review under section 91-14, HRS.

(b) When a hearings officer or a board member rendering a final decision has not heard and examined all of the evidence, a final decision shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties.

(c) An adversely affected party may file exceptions to the whole or part of the proposed decision, order, or preliminary ruling and may include a request for an opportunity to present oral argument before the hearings officer or the board. A copy of the exceptions shall be served by the party so excepting upon each party to the proceeding.

(d) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
- (2) Identify that part of the proposed decision, order, or preliminary ruling to which exceptions are made;
- (3) Designate by citation the portions of the record relied upon;
- (4) Cite any authorities relied upon; and
- (5) State all grounds and reasons for exceptions to a ruling, finding, conclusion, or proposal. Grounds not cited or specifically urged are waived.

(e) Any party may file with the hearings officer or board a statement in support of the proposed decision, order, or preliminary ruling within five days after service of another party's exceptions. A statement in support shall be served on each party.

(f) When exceptions have been timely filed and a party has requested the opportunity to present oral argument, all parties to the proceeding shall be afforded the opportunity to present oral argument to the board concerning the proposed decision, order, or preliminary ruling. All parties shall be served with notice of the time and place of the argument at least five days before the argument. Within a reasonable time after the argument has been heard, the board shall issue a final decision or order, either adopting, modifying, or reversing, in whole or in part, the proposed decision or order.

(g) When no written exceptions have been filed within the time limitation set forth above, the board shall issue a final decision or order, either adopting, modifying, or reversing, in whole or in

part, the proposed decision or order. The board shall state specifically in the final decision and order the reasons for any modification or reversal of the recommended decision or order.

(h) This section shall not apply to the board's rulemaking functions. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-11, 377-9, 396-11.5)

§12-43-38 Decisions or orders and dispositive orders of the board. (a) Every final decision or order rendered by the board that is adverse to a party to the proceeding and appealable pursuant to section 91-14, HRS, shall be in writing, or stated in the record, and shall be accompanied by separate findings of fact and conclusions of law. Interlocutory orders may be in writing or stated in the record, and shall be enforceable by the board as if a final order.

(b) Copies of final decisions and orders shall be available for public inspection in the office of the board or the board website or may be obtained upon request and the payment of appropriate costs, all in accordance with applicable law.

(c) In a contested case where notice of the hearing has been served by publication and the party so served has failed to appear at the hearing, service of the board's decision is complete upon mailing to the party's last known address.

(d) Subject to any specific provisions set forth in any other subchapters, a final decision or order, withdrawal, or dismissal of a complaint, petition, contest or other pleading initiating a case before the board, shall close the case before the board. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-39 Motions to stay or enforce board decisions and orders. (a) A party may move the board

to enforce or stay a final or interlocutory order or decision by the board.

(b) A motion to enforce a board decision or order shall be made within thirty days after another party's refusal to comply with the order. Following notice to the other parties and opportunity for other parties to respond, the board in its discretion may schedule the motion for hearing or may decide the motion without hearing. If it appears that a party failed to obey an order of the board while the same is in effect, the board may petition the circuit judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order. The board shall certify the file in the court as the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party's last known address, and thereupon the judge shall have jurisdiction in the premises.

(c) The board may on its own initiative petition the circuit court for appropriate relief. [Eff

] (Auth: HRS §89-5, 396-11.5 (Imp: HRS §§89-13, 89-14, 377-9, 396-11.5)

§12-43-40 Judicial review of contested cases.

Appeals may be taken in accordance with statutory provisions. A motion to enforce a final decision or order, motion for stay, motion for attorney's fees and costs, or motion for reconsideration shall not affect the time in which an aggrieved party may appeal a final decision or order. [Eff]

(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-14, 377-9, 396-12).

§12-43-41 Record on appeal from board decisions.

(a) The designation and certification of the record on appeal shall be controlled by the applicable Hawaii Rules of Civil Procedure.

(b) Where the transcripts are not already part of the board's records in a case, a party requesting transcripts for purposes of appeal shall arrange with the court reporter for the payment of the transcripts and for filing of the transcripts with the board, unless otherwise ordered by the board.

(c) As required by law, the appealing party or parties shall be responsible for all costs of preparing and transmitting a record on appeal, including the costs of copying and mailing documents. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§91-9, 91-14, 396-11.5).

§12-43-42 Ex parte communications.

(a) No employee, public employee, exclusive representative, employer, public employer, or any other person or organization, whether or not a party to a proceeding before the board, shall engage in any unauthorized ex parte communications, either orally, in writing or electronically, about any proceeding or matter pending before the board with any member of the board.

(b) The following classes of communications shall not be prohibited:

- (1) Those which relate solely to matters which a board member or hearings officer is authorized to dispose of on an ex parte basis;
- (2) Requests for information with respect to the status or scheduling of a proceeding;
- (3) Those which all parties to the proceeding agree, or which the board has formally ruled, may be made on an ex parte basis; and
- (4) Those with representatives of any news media on matters intended to inform the general public. [Eff] (Auth: HRS

§§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

§12-43-43 Board investigations under chapters 89 and 377, HRS. Pursuant to chapter 89 or 377, HRS, the board may at any time institute investigations on its own initiative into any matter governed by chapter 89 or 377, HRS. The board shall serve its notice of investigation upon the employee, public employee, employee organization, employer, or public employer being investigated or having a direct interest or concern in the matter under investigation and shall designate the time and place for the investigation. In conducting an investigation or inquiry, the board may request or subpoena information from an employee, employee organization, or employer that is subject to chapter 89 or 377, HRS, or question a party, witness, a party's attorney, or other representative appearing before the board, with respect to any matter. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

§12-43-44 Cooperation of employers and employee organizations. In proceedings pursuant to chapter 89 or 377, HRS, the board may obtain the assistance or solicit the views of other governmental agencies, employee organizations, public employers, or private organizations where necessary or desirable to effectuate the purposes of chapters 89 and 377, HRS. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-5).

SUBCHAPTER 3

DECLARATORY RULINGS UNDER CHAPTERS 89 AND 377, HRS

§12-43-50 In general. (a) Any employee, public employee, employer, public employer, exclusive representative, or interested person, who has standing under this chapter, may petition the board for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the board subject to its jurisdiction.

(b) The provisions of subchapter 2 shall govern declaratory ruling proceedings except as otherwise provided in this subchapter. [Eff]
(Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

§12-43-51 Petition. (a) The petition shall be prepared on a form furnished by the board.

(b) The petition shall contain the following:

- (1) The name, mailing address, email address, and telephone number of the petitioner, and sufficient information to allow electronic filing by, and electronic service upon, the petitioner;
- (2) A statement of the nature of the petitioner's interest, including reasons for submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A clear and concise statement of the position or contention of the petitioner;
- (5) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention; and
- (6) The signature of each petitioner or petitioner's representative.

(c) Any petition that does not conform to the foregoing requirements may be rejected. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

§12-43-52 Disposition. (a) The board shall consider each petition submitted and, within a reasonable time after the submission thereof, either deny the petition, stating its reason for the denial; issue a declaratory ruling on the matters contained in the petition; or set the matter for hearing or argument.

(b) The board may in its discretion refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or hypothetical and does not involve existing facts or facts which are expected to exist in the near future;
 - (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
 - (3) The issuance of the declaratory ruling may adversely affect the interests of the board or any of its officers or employees in litigation which is pending or may reasonably be expected to arise;
 - (4) The matter is not within the jurisdiction of the board; or
 - (5) There is a genuine controversy of material fact, the resolution of which is necessary before any declaratory ruling may be issued.
- [Eff _____] (Auth: HRS §89-5)
(Imp: HRS §§89-5, 91-8)

§12-43-53 Hearing. (a) The board may order a hearing on the petition.

(b) The board may request the petitioner or any party to submit a statement of additional facts or memoranda to clarify a specific factual issue,

position, or contention. [Eff]
(Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

§12-43-54 Declaratory ruling. (a) The board shall issue and serve upon the petitioner and each other party to the proceeding, if any, a decision and order, which shall include appropriate findings of fact and conclusions of law.

(b) All declaratory rulings issued by the board shall be based upon the whole record and supported by substantial evidence, including those matters which the board took notice of pursuant to section 12-43-32(e).

(c) A declaratory ruling or an order disposing of a petition shall be applicable only to the factual situation alleged in the petition or set forth in the declaratory ruling or order disposing of the petition. The declaratory ruling or order disposing of the petition shall not be applicable to different factual situations or where additional facts not considered in the declaratory ruling or order disposing of the petition exist. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

SUBCHAPTER 4

PROHIBITED PRACTICES AND UNFAIR LABOR PRACTICES

§12-43-60 Scope. (a) This subchapter governs the procedures specific to prohibited practices pursuant to sections 89-13, 89-14, and 377-9, HRS, and unfair labor practices pursuant to sections 377-6, 377-7, 377-8, and 377-9, HRS.

(b) The provisions of subchapter 2 shall govern prohibited practice and unfair labor practice

proceedings except as otherwise modified in this subchapter. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-13, 89-14, 377-9)

§12-43-61 Complaint; service of complaint. (a)

Any complaint alleging that a person, employee, public employee, exclusive representative, employer, or public employer has engaged in a prohibited practice pursuant to section 89-13, HRS, or an unfair labor practice pursuant to sections 377-6, 377-7, or 377-8, HRS, shall be filed within ninety days of the date the complainant knew or should have known of the alleged violation, prohibited practice or unfair labor practice.

(b) A claim of prohibited or unfair labor practice based upon alleged violation of a collective bargaining agreement shall not be brought unless the complainant has exhausted all available remedies provided by the collective bargaining agreement, or can show that attempting to exhaust would be futile.

(c) A prohibited practice or an unfair labor practice complaint shall be prepared on a form furnished by the board, and filed with the board. The board shall serve a copy of the complaint upon each respondent charged.

(d) The complaint shall include the following:

- (1) The complainant's name, mailing address, email address, and telephone number of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the complainant or complainant's representative;
- (2) The name, address, email address, and telephone number, if known, of each respondent;
- (3) Designation of the appropriate bargaining unit, if applicable;
- (4) Allegations supporting the complaint, including specific facts regarding the statutory violations; and

(5) A clear and concise statement of any other relevant facts.

(e) If the board has reasonable cause to believe that a respondent is an exclusive representative or an officer, employee, or representative of an exclusive representative, then service upon an officer of the exclusive representative shall be service upon the respondent.

(f) Service upon a respondent shall be completed pursuant to section 12-43-5.

(g) Any other person claiming interest in the dispute or controversy, such as an employer, public employer, employee, public employee, employee organization, or other party in interest may be made a party upon proof of interest.

(h) The board may bring in additional parties by service of the complaint upon them.

(i) Only one complaint shall be issued with respect to a single controversy. [Eff]
(Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9).

§12-43-62 Amendment of complaint. The board may permit a complaint to be amended, upon proper motion and for good cause shown, at any time before the issuance of a final order based thereon. An amended complaint replaces the original complaint in its entirety. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

§12-43-63 Withdrawal of complaint. A complaint may be withdrawn at any time before the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of the complaint, the case shall be closed. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

§12-43-64 Answer. (a) A respondent shall file an answer to a complaint, amended complaint or a motion to dismiss in lieu of answer within ten days after service of the complaint, unless otherwise directed by the board, and shall serve the answer or motion upon all other parties as reflected on an attached certificate of service.

(b) If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, the respondent may, within five days after service of the complaint, file a motion for particularization of the complaint with the board, requesting that the complainant file a statement supplying specific information. If the board grants the motion, the complainant shall file with the board, and serve the respondent with, the requested particularization within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board may dismiss the complaint. Within five days after service of the complainant's particularization, the respondent shall file with the board an answer, with certificate of service on all parties, unless the board directs otherwise.

(c) The answer shall contain the following:

- (1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, the respondent shall so state and the statement shall constitute a denial;
- (2) A specific detailed statement of any affirmative defense; and
- (3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds of defense.

(d) In circumstances involving excusable neglect, the board may, upon motion, extend the time within which the answer shall be filed.

(e) All allegations of new matters in the answer shall be deemed denied without the necessity of a reply.

(f) If the respondent fails to file a timely answer, such failure may constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

(g) The respondent may file a motion to dismiss in lieu of a timely answer. If such motion is denied, the respondent shall file an answer within the time specified in the board's decision. [Eff
] (Auth HRS §§89-5, 377-11) (Imp:
HRS §§89-5, 89-14, 377-9)

§12-43-65 Hearing. The hearing on the merits of a case or a hearing on a dispositive motion shall be held not less than ten nor more than forty days after the filing of a complaint or amended complaint; except that the board may continue the scheduled hearing date to accommodate settlement discussions, discovery, mediation of the dispute, scheduling conflicts, hearings on motions, or other situations that may arise. [Eff
] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

§12-43-66 Decision and order. (a) The board shall prepare a final decision setting forth findings of fact, conclusions of law, and order dismissing or sustaining the complaint, in whole or in part. Without limiting the board's authority to order other appropriate remedies, the board may also require the respondent to do any or all of the following: cease and desist from the prohibited practice or unfair labor practice found to have been committed; suspend the respondent's rights, immunities, privileges, or remedies granted or afforded by chapters 89 and 377, HRS, for a period of time to be determined by the board but not to exceed one year; require the

respondent to take such affirmative action as will effectuate the purpose of chapters 89 and 377, HRS, including reinstatement of an employee with or without pay as may be deemed proper; and award interest, attorney's fees, and costs. The order may further require the respondent to make reports to the board showing the extent of compliance.

(b) A party who wilfully or repeatedly commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees, or discriminates against an employer or employees for the exercise of protected conduct, is subject to a civil penalty of up to \$10,000 for each violation.

(c) In determining the amount of any penalty under this section, the board shall consider the gravity of the unfair or prohibited practice and the impact of the practice on the charging party, on other persons seeking to exercise rights guaranteed by section 377-9, HRS, or on public interest. [Eff

] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

SUBCHAPTER 5

ELECTION OF BARGAINING REPRESENTATIVES IN PUBLIC EMPLOYMENT

§12-43-70 Scope. (a) This subchapter governs procedure relating to elections of an exclusive bargaining representative in public employment pursuant to sections 89-6 and 89-7, HRS.

(b) The provisions of subchapter 2 shall govern elections of bargaining representatives in public employment, except as otherwise modified in this subchapter. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-71 Petition for initial selection of exclusive bargaining representative. (a) A petition to initially select an exclusive bargaining representative for an appropriate bargaining unit may be filed by an employee organization or anyone authorized to act on its behalf.

(b) The petition shall be prepared on a form furnished by the board.

(c) The petition shall include the following:

- (1) The name, mailing address, telephone number and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and address of the public employer involved;
- (3) The approximate number of employees in the bargaining unit;
- (4) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
- (5) The name and mailing address of any known employee organization that claims to represent any of the public employees in the claimed appropriate bargaining unit; and
- (6) A clear and concise statement of any other relevant facts.

(d) The petition shall be supported by a showing of interest of at least thirty per cent of the appropriate bargaining unit.

(e) A timely petition to intervene in a selection proceeding shall be supported by a showing of interest of at least ten per cent of the employees in the appropriate bargaining unit.

(f) The board shall not entertain a petition for initial selection of an exclusive bargaining representative in any appropriate bargaining unit within which:

- (1) A valid election has been held in the preceding twelve months;

- (2) A valid collective bargaining agreement is in force and effect; or
- (3) Any new bargaining unit is created when the created unit is composed of employees currently covered by a valid collective bargaining agreement and represented by the same exclusive representative. [Eff _____] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-72 Petition for decertification or change in exclusive bargaining representative. (a) A petition for decertification or to change an exclusive bargaining representative may be filed by an employee, an employee organization, or anyone authorized to act in its behalf.

- (b) The petition shall include the following:
 - (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
 - (2) The name and address of the public employer involved;
 - (3) The approximate number of employees in the bargaining unit;
 - (4) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
 - (5) The name and mailing address of any known employee organization that claims to represent any of the public employees in the claimed appropriate bargaining unit; and
 - (6) A clear and concise statement of any other relevant facts.
- (c) The petition shall be supported by a showing of interest of at least fifty per cent of the appropriate bargaining unit.
- (d) A timely petition to intervene in a change or decertification proceeding shall be supported by a showing of interest of at least ten per cent of the employees in the appropriate bargaining unit.

(e) The board shall not entertain a petition of change or decertification in any appropriate bargaining unit within which:

- (1) A valid election has been held in the preceding twelve months;
- (2) A valid collective bargaining agreement is in force and effect; or
- (3) Any new bargaining unit is created when the created unit is composed of employees currently covered by a valid collective bargaining agreement and represented by the same exclusive representative. [Eff
] (Auth: HRS §89-5) (Imp:
HRS §§89-6, 89-7)

§12-43-73 Showing of interest. (a) A showing of interest shall be established through verifiable written proof of the names and signatures of employees.

(b) A showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of a petition under this subchapter. For petitions for change or decertification, signatures of employees supporting the petition must be obtained within two months of the date of the petition to be valid.

(c) Upon request, the board shall afford interested parties a contested case hearing in its investigation of the showing of interest.

(d) An employee organization shall be regarded as satisfying the showing of interest requirement as an intervenor if it is the exclusive bargaining representative, or if it is a party to the most recently expired collective bargaining agreement covering the employees in the petitioned bargaining unit. [Eff
] (Auth: HRS §89-5)
(Imp: HRS §§89-6, 89-7)

§12-43-74 Withdrawal of petition. A petition may be withdrawn with the approval of the board under the conditions as the board may impose to effectuate the policies of chapter 89, HRS. Whenever the board approves withdrawal of any petition, the case shall be closed. [Eff] (Auth: HRS §89-5)
(Imp: HRS §§89-6, 89-7)

§12-43-75 Notice of pending petition. Upon the filing of a petition under this subchapter, notice thereof, including the date when the petition was filed, the name and mailing address of the petitioner, the name and address of the public employer involved, and the appropriate bargaining unit shall be posted on a public docket to be maintained by the board at its office. Written notice of the petition shall be sent to the public employer and exclusive bargaining representative, if any, of the bargaining unit.
[Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-76 Investigation. (a) After the filing of a petition, the board shall conduct an investigation.

(b) The purpose of the investigation shall be to resolve the following:

- (1) Whether the showing of interest requirement under this subchapter has been satisfied;
- (2) Whether more than one employee organization seeks to represent the employees in the appropriate bargaining unit;
- (3) Whether there is agreement among the parties as to the composition of the appropriate bargaining unit; and
- (4) Whether the parties desire to enter into a stipulation for a consent election. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-77 Stipulation for consent election. The stipulation for consent election shall be prepared and signed by the parties subject to the approval of the board. [Eff] (Auth: HRS §89-5)
(Imp: HRS §§89-6, 89-7)

§12-43-78 List of eligible voters. Upon request from the board, the public employer shall submit to the board a list of names and mailing addresses of all employees in the appropriate bargaining unit who are eligible to vote, not less than ten days before the scheduled date of election. Subject to chapter 92F, HRS, as the same may be amended, the board shall treat the addresses of employees as confidential. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-79 Notice of hearing. Subject to section 89-7(a), HRS, regarding a showing of interest hearing requirement, if it appears to the board after an investigation that a hearing is warranted, the board shall issue written notice of hearing upon the parties. The initial notice of hearing may be served electronically, personally or by first class mail, and shall conform to section 12-43-27. The board may notice and hold a prehearing conference. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-80 Hearing. The procedures for hearing shall be governed by the provisions of subchapter 2. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-81 Notice of election. (a) The public employer shall post notices of election, on forms furnished by the board, where notices are normally posted affecting all employees in the appropriate bargaining unit not less than seven days before the scheduled date of election.

(b) The public employer shall certify to the board that the notices of election have been posted as required.

(c) The reproduction of any document purporting to be a copy of the board's official ballot, other than one completely unaltered in form and content and clearly marked "Sample" on its face, which suggests either directly or indirectly to public employees that the board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-6)

§12-43-82 Election procedure. (a) All elections shall be by secret ballot.

(b) Any party may be represented at the polling places by observers selected in accordance with the conditions as the board may prescribe.

(c) Any authorized observer or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election.

(d) The ballots of the challenged persons shall be impounded.

(e) If the challenged ballots are insufficient in number to affect the result of the election, the challenged ballots shall not be counted.

(f) If the challenged ballots are sufficient in number to affect the results of the election, the board shall conduct an investigation and, if appropriate and as may be required by chapter 91, HRS,

conduct a hearing. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-7)

§12-43-83 Objections to the conduct of election.

(a) Within five days after the tally of ballots has been furnished, any party may file with the board a statement of objections to the conduct of the election or conduct affecting the results of the election, with proof of service on all parties. The statement shall be timely filed whether or not challenged ballots, if any, are sufficient in number to affect the results of the election.

(b) Upon the filing of a statement of objections, the board shall conduct an investigation and, if appropriate and as may be required by chapter 91, HRS, conduct a hearing.

(c) An answer shall be filed with the board, and served upon all other parties, within five days after service of the statement of objections. The answer shall contain a brief statement of facts refuting the objections. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-84 Runoff election. (a) In any election where none of the choices on the ballot receives a majority of the votes cast, and no objections have been timely filed, the board shall conduct a runoff election.

(b) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest number of valid ballots cast.

(c) The board may, in its discretion, maintain the same eligibility date or establish a new eligibility date. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-85 Hearing on challenges or objections.

Except as otherwise provided in this subchapter, the procedure for hearing on challenges or objections shall be governed by the provisions of subchapter 2.

[Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-86 Certification of new election results.

(a) If the board overrules a challenge, each challenged ballot shall be opened and counted, and the board shall issue a revised tally of votes and issue a certification of the results of the election and a certification of exclusive bargaining representative.

(b) If the board overrules the objections to the conduct of the election or the conduct affecting the results of the election, the board shall issue a certification of the results of the election and a certification of exclusive representative.

(c) If the board sustains the challenge or objections, the board shall direct a new election to be held when it deems appropriate. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-43-87 Conclusive determination. Decisions and orders of the board relating to determinations on any controversy concerning the eligibility of an employee to vote or concerning the designated dates, times, and places for the election shall be conclusive. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

SUBCHAPTER 6

CLARIFICATION OF BARGAINING UNIT

§12-43-100 Scope. This subchapter governs the procedure relating to the clarification of bargaining units pursuant to section 89-6, HRS. [Eff
] (Auth: HRS §§89-5, 89-6) (Imp:
HRS §89-6)

§12-43-101 Petition. (a) A petition for clarification of an appropriate bargaining unit or amendment of certification may be filed by the affected exclusive bargaining representative, public employer, or public employee at any time.

(b) The exclusive bargaining representative, public employer, or public employee shall file a petition where a position is to be excluded from collective bargaining on the basis that it is a top-level managerial and administrative position or involved with confidential matters affecting employee-employer relations; where a new class is established and assigned to a bargaining unit; where a new bargaining unit is established by law; or where there is controversy as to the appropriate bargaining unit status of a position.

(c) The petition shall be prepared on a form furnished by the board.

(d) The petition shall include the following:

- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and mailing address of the public employer and exclusive bargaining representative involved, and the name and telephone number of their principal representatives to be contacted, if known;
- (3) A description of the appropriate bargaining unit;

§12-43-111 Policy. It is the policy of the board to encourage parties to any labor dispute to voluntarily settle their differences; however, if the parties are unable to resolve their differences, the board shall assist the parties as required by law in resolving any labor dispute through mediation or arbitration to promote cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-1, 89-11)

§12-43-112 Notice of impasse. (a) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists by filing with the board a notice of impasse, with proof of service upon all parties. The notice of impasse shall contain the following:

- (1) A description of the appropriate bargaining unit and the approximate number of employees in the unit;
- (2) The dates and duration of negotiation sessions;
- (3) The termination date of the current agreement, if any;
- (4) Whether the request is a joint request;
- (5) Whether the parties have agreed on an alternate impasse procedure; and
- (6) A clear and concise statement of any other relevant facts.

(b) The date on which the board receives notice shall be the date of impasse.

(c) If neither party gives written notice of impasse and there are unresolved issues on January 31 of a year in which the agreement is due to expire, the board shall declare on January 31 that an impasse

exists and February 1 shall be the date of impasse.
[Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-113 Alternate impasse procedure. When an impasse exists, the parties shall notify the board if they have agreed on an alternate impasse procedure, and shall file with the board a copy of the alternate impasse procedure and any amendments thereto. The board shall permit the parties to proceed with their procedure and assist at times and to the extent requested by the parties in their procedure. In the absence of an alternate impasse procedure, the board shall assist in the resolution of impasse in the manner prescribed by this subchapter. If the parties subsequently agree on an alternate impasse procedure, the parties shall immediately notify the board and file a copy with the board, and the board shall discontinue with the procedures initiated pursuant to this subchapter and allow the parties to proceed with the parties' procedure. [Eff]
(Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-114 Appointment of mediator. (a) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the department of education; or bargaining unit (7), faculty of the University of Hawaii system, the board shall assist as provided for in section 89-11(d), HRS.

(b) If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions;

bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific employees; or bargaining unit (14), state law enforcement officers and state and county ocean safety and water safety officers, the board shall assist as provided for in section 89-11(e), HRS. [Eff
] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-115 Duties of mediator. (a) The mediator shall perform mediation duties under the guidance of the board and shall report any findings to the board.

(b) The mediator's function shall be to assist the parties in arriving at a voluntary agreement.

(c) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic in nature.

(d) Mediation meetings shall be conducted at such time and place as may be designated by the mediator. [Eff
] (Auth: HRS §89-5)
(Imp: HRS §89-11)

§12-43-116 Confidential information. Any information disclosed by the parties to the mediator in the performance of the mediator's duties shall not be divulged voluntarily or by compulsion, unless otherwise required by law. All files, records, reports, or other papers received or prepared by a mediator while serving in such capacity shall be

treated as confidential, and the mediator shall not produce confidential records or testify in regard to mediation conducted by the mediator, on behalf of any party to a cause pending in any type of proceeding unless otherwise required by law. [Eff
] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-117 Report of mediator and parties. (a) The mediator shall, either orally or in writing, report the progress of mediation efforts, as well as the terms of the settlement of the dispute, if any, if so requested by the board.

(b) The parties shall immediately report to the board the following circumstances as each occurs:

- (1) The date of a tentative agreement and whether the terms thereof are confidential between the parties, including the basis for a claim of confidentiality;
- (2) The ratification or failure of ratification of a tentative agreement;
- (3) The signing of a tentative agreement;
- (4) The terms of a tentative agreement; or
- (5) On or about the fiftieth day of impasse, the failure of mediation. [Eff

] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-118 Notification of arbitration. If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii system, other than faculty;

bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific employees; or bargaining unit (14), state law enforcement officers and state and county ocean safety and water safety officers, and the impasse continues twenty days after the date of impasse, the board shall immediately notify the public employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel. [Eff
] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-119 Selection, qualification, and certification of interest arbitration panel pursuant to section 89-11(e) (2), HRS.

(a) Two members of the arbitration panel shall be selected by the parties; one shall be selected by the public employer and one shall be selected by the exclusive representative.

(b) The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. If the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified and experienced interest arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel.

(c) Within five days of the selection of the neutral third member, the parties shall notify the board in writing of the selection and the names of the members, who shall be immediately appointed by the board as a member of the interest arbitration panel.

Upon appointment of all three members of the interest arbitration panel, the board shall serve a copy of its certification of appointment of such panel upon all parties and interest arbitration panel members.

(d) Any party may challenge the qualifications of a qualified interest arbitrator from the list by motion pursuant to section 12-43-21 filed electronically in the applicable case.

(e) Within one hundred twenty days of its appointment, the interest arbitration panel shall commence a hearing at which time the parties may submit, either in writing or through oral testimony, all information or data supporting their respective positions to the panel. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-120 Findings and decision of interest arbitration panel. Within thirty days after the conclusion of the hearing, the interest arbitration panel shall transmit a preliminary draft of its decision to the parties. Within fifteen days after the transmittal of the preliminary draft, a majority of the interest arbitration panel shall issue the arbitration decision. The interest arbitration panel shall file with the board all final findings and decisions of the panel, with proof of service upon all parties. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-121 Costs and expenses. (a) Costs and expenses for mediation provided for under this subchapter shall be borne by the board.

(b) The costs and expenses for any other services performed by neutrals pursuant to mutual agreement by the parties, including the costs for the neutral arbitrator, shall be borne equally by the parties. All other costs incurred by either party, including the costs of its selected member of the

arbitration panel, shall be borne by the party incurring them. [Eff] (Auth: HRS §§89-5, 89-11) (Imp: HRS §89-11)

§12-43-122 Time frames. Any time frame provided for in an impasse procedure, whether an alternate procedure or the procedures set forth in section 89-11, HRS, as the same may be amended, may be modified by mutual agreement of the parties with written notice to the board. In the absence of a mutual agreement to modify time frames, any delay, failure, or refusal by either party to participate in the impasse procedure shall not be permitted to halt or otherwise delay the process, unless the board so orders due to an unforeseeable circumstance. The process shall commence or continue as though all parties were participating. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-43-123 Closing of impasse cases. (a) The parties are required to notify the board of the execution of any collective bargaining agreement arising out of an impasse case filed with the board. The board shall then issue a "Notice of Intent to Dismiss Impasse Case Because of Mootness" stating that the board will dismiss such impasse case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing the case. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-11)

SUBCHAPTER 8

PROCEDURES RELATING TO STRIKES - RIGHTS AND PROHIBITIONS

§12-43-130 Scope. (a) This subchapter governs the general procedures relating to employee participation in a strike or to a strike about to occur or in progress, declared or authorized by an exclusive representative pursuant to section 89-12, HRS. Section 12-43-131 shall also be applicable to employees or representatives subject to the provisions of section 377-12, HRS.

(b) This subchapter shall not infringe on any party's right to institute appropriate proceedings in the circuit court. [Eff] (Auth: HRS §89-5) (Imp: HRS §§89-12, 89-14, 377-12)

§12-43-131 Notice of intent to strike. (a) The exclusive representative, or the employees or representative subject to section 377-12, HRS, shall give a ten-day notice of intent to strike to the employer and the board, including a statement of its position on all remaining issues in dispute.

(b) Within three days of receipt of the notice of intent to strike, the employer shall submit its own position on remaining issues in dispute.

(c) The board shall release information on the parties' respective positions to the public by posting to the board's website. [Eff]
(Auth: HRS §89-5) (Imp: HRS §§89-12, 377-12)

SUBCHAPTER 9

REVIEW OF DUES REFUND

§12-43-140 Scope. (a) This subchapter governs the procedures for the review of the amount to be refunded to a nonmember employee by an exclusive representative pursuant to section 89-4, HRS.

(b) The provisions of subchapter 2 shall govern review of dues refund proceedings, except as otherwise modified in this subchapter. [Eff]
(Auth: HRS §89-5) (Imp: HRS §89-4)

§12-43-141 Petition for review. (a) A nonmember employee who objects to the amount to be refunded by an exclusive representative may petition the board for a review thereof within fifteen days after receiving notice of the amount of refund from the exclusive representative.

(b) At hearing, the exclusive representative shall bear the burden of production of evidence and the burden of proof of the validity of its proposed refund.

(c) The petition shall be prepared on a form furnished by the board.

(d) The petition shall contain the following:

- (1) The name, address, telephone number, and e-mail address of the petitioner;
- (2) The bargaining unit of the petitioner;
- (3) The name, mailing address, and telephone number of the exclusive representative against whom the petition is filed;
- (4) The name, mailing address, and telephone number of the public employer;
- (5) A statement of the amount deducted from the payroll of the nonmember employee which is equivalent to regular dues;
- (6) A statement of the amount to be refunded by the exclusive representative;
- (7) The date the notice of refund was received

- by the nonmember employee;
- (8) A complete statement of the reasons for objections to the amount of refund and any relevant underlying facts; and
 - (9) The signature of the petitioner or the petitioner's representative.
- (e) Any person claiming an interest in the review as a public employee, employee organization, or party in interest may intervene pursuant to section 12-43-19.
- (f) Upon the filing of a petition under this subchapter, the board shall serve a copy of the petition upon the respondent. [Eff]
(Auth: HRS §89-5) (Imp: HRS §89-4)

§12-43-142 Answer. (a) The respondent shall file a written answer with the board within ten days after service of a copy of the petition, along with certificate of service on all parties.

- (b) The answer shall contain the following:
- (1) A specific admission, denial, or explanation of each allegation of the petition, or, if the respondent is without knowledge thereof, the respondent shall so state and the statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation;
 - (2) A specific detailed statement of any affirmative defense; and
 - (3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds for defense.
- (c) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed upon motion filed by the respondent with an accompanying declaration setting forth the grounds upon which the motion is based and indicating the position of the other parties with regard to the extension. Any motion for

extension shall be filed before the expiration of the required period for filing an answer.

(d) If an exclusive representative is named as a respondent and fails to timely file an answer, that failure shall constitute an admission of the material facts alleged in the petition and a waiver of a hearing thereon.

(e) If a nonmember employee is named as a respondent and fails to timely file an answer, the board shall grant an exclusive representative's petition if there has been a prima facie showing that its assessments are correct and permitted by law.

[Eff] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-43-143 Decision and order. In the disposition of petitions filed under this subchapter, the board may:

- (1) Dismiss the petition; or
- (2) Find that the exclusive representative has not returned to the nonmember employee, a pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment, and issue an order directing the exclusive representative to appropriately adjust the amounts to be refunded; and
- (3) Award such other relief as the board deems just. [Eff] (Auth: HRS §89-5) (Imp: HRS §89-4)

SUBCHAPTER 10

FINANCIAL REPORTS OF EMPLOYEE ORGANIZATIONS

§12-43-150 Scope. (a) This subchapter governs the general procedures relating to an employee organization's and representative's (any representative of employees for collective bargaining subject to chapter 377, HRS) financial reports to its members pursuant to sections 89-15 and 377-10, HRS, respectively.

(b) The provisions of subchapter 2 shall govern financial reports of employee organization and representative proceedings, except as otherwise modified in this subchapter. [Eff]
(Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

§12-43-151 Petition. (a) If an employee organization fails to comply with section 89-15, HRS, any employee included in the bargaining unit may petition the board for an order compelling compliance.

(b) If a representative fails to comply with section 377-10, HRS, any employee who is a member of the association with which the representative is associated may petition the board for an order compelling compliance. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

§12-43-152 Answer. (a) Within ten days after service of the petition, the employee organization or representative shall file with the board a written answer and serve the petitioner with its answer and certify the same in an attached certificate of service.

(b) The answer shall include specific admissions, denials, or explanations of each allegation contained in the petition.

(c) If the employee organization or representative fails to timely file an answer, such failure shall constitute an admission of the material

facts alleged in the petition and a waiver of hearing.
[Eff] (Auth: HRS §§89-5, 377-11)
(Imp: HRS §§89-15, 377-10)

§12-43-153 Decision and order. The board may dismiss the petition, or order the employee organization or representative to make available to its members a certified written financial statement.
[Eff] (Auth: HRS §§89-5, 377-11)
(Imp: HRS §§89-15, 377-10)

SUBCHAPTER 11

RESOLUTION OF DISPUTES CONCERNING COST ITEMS

§12-43-160 Scope. This subchapter governs the general procedures for the resolution of any dispute concerning cost items pursuant to section 89-5, HRS.
[Eff] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-43-161 Jurisdiction of the board. Jurisdiction of the board to resolve any dispute concerning cost items shall be limited to the determination of whether the matter in dispute is or is not a cost item and shall be processed upon petition by any exclusive bargaining representative or public employer pursuant to the provisions set forth in the subchapter relating to declaratory rulings.
[Eff] (Auth: HRS §89-5) (Imp: HRS §89-5)

SUBCHAPTER 12

REFERENCE MATERIALS

§12-43-170 Scope. This subchapter governs the filing of all reference materials pertaining to public employee-management relations pursuant to section 89-5, HRS. [Eff] (Auth: HRS §89-5)
(Imp: HRS §89-5)

§12-43-171 Collective bargaining agreement. Public employers and employee organizations shall file with the board a copy of all collective bargaining agreements applicable to their respective employees and members, including supplemental agreements, memoranda of agreement, and memoranda of understanding, where such agreements concern wages, hours, or other terms and conditions of employment which are subject to collective bargaining, within thirty days after the agreement is executed by the parties. Agreements on reopened items and agreements to extend a collective bargaining agreement shall be included as documents required to be filed by this section. [Eff] (Auth: HRS §89-5)
(Imp: HRS §89-5)

§12-43-172 Statutes, ordinances, rules, regulations, orders, and policies. Upon request from the board, a public employer and an employee organization shall file with the board a copy of statutes, ordinances, rules, regulations, orders, or policy statements affecting public employee-management relations applicable to all employees of such public

employer. [Eff] (Auth: HRS §89-5)
(Imp: HRS §89-5)

§12-43-173 Information and data. Upon request from the board, a public employer or employee organization shall file with the board information and data pertaining to public employee-management relations necessary for the board to carry out its functions and responsibilities pursuant to chapter 89, HRS. [Eff] (Auth: HRS §89-5)
(Imp: HRS §89-5)

§12-43-174 Statistical data. Upon request from the board, a public employer or an employee organization shall file with the board, no later than July 1 of every year, statistical data relating to the number of collective bargaining unit employees employed by that employer or a member of that employee organization, and wages, benefits, and employment practices in public employment. [Eff]
(Auth: HRS §89-5) (Imp: HRS §89-5)

§12-43-175 Penalties. The failure, without good cause shown, to comply with any section of this subchapter may result in the imposition of monetary penalties and the imposition of other sanctions. [Eff]
(Auth: HRS §89-5) (Imp: HRS §89-5)

SUBCHAPTER 13

STREAMLINING UNION CERTIFICATION

§12-43-180 Scope of streamlining union certification. This subchapter governs the general procedure relating to selection and certification of an exclusive representative for the purposes of collective bargaining pursuant to section 377-4.6, HRS. [Eff] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-181 Definitions. As used in this subchapter:

"Appropriate unit" means a unit that is appropriate for the purposes of collective bargaining and that is the subject of a petition filed pursuant to this subchapter.

"Exclusive representative" means an individual or labor organization certified by the board under section 377-4.6, HRS, as the exclusive collective bargaining agent to represent all employees in an appropriate unit without discrimination and without regard to employee organization membership.

"Petition" means a petition that is filed pursuant to this subchapter. [Eff] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-182 Streamlining union certification.

(a) An employee, group of employees, or any individual or labor organization acting on their behalf may collect signed valid authorization cards from employees as defined in section 377-4.6(c), HRS, designating the individual or labor organization as their exclusive representative.

(b) The authorizations shall include the following:

- (1) The full name, address, and job title of the employee;
- (2) The name and address of the employer;

- (3) The identification of the individual or labor organization that is collecting authorization cards as the exclusive representative;
- (4) An indication that the employee designates the individual or labor organization as his or her exclusive representative;
- (5) A statement that by signing the card, the employee is acknowledging that if a majority of the employee's co-workers in an appropriate unit sign similar cards showing majority support, the card may be used by the individual or labor organization to obtain certification as the employees' exclusive representative without an election similar to that under section 377-1, HRS;
- (6) An acknowledgement by the employee that the information given to the employee is in a language understandable to the employee;
- (7) The declaration of the employee that the information contained in the authorization cards is true and correct; and
- (8) The legible signature or mark of the employee, and if using a mark a signature of a witness, and the date of the signature or mark. [Eff _____] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-183 Application of streamlining union certification. Streamlining union certification under section 377-4.6, HRS, shall apply to an employee as defined under section 377-1, HRS, provided that the employee is employed by an employer with annual gross revenue of more than \$5,000,000. The annual gross revenue of an employer shall mean revenue derived by the employer from all sources, including parents, subsidiaries, and other affiliates wherever located based upon financial statements in the preceding fiscal year or, if the employer has operated for less than one year, based upon the actual or projected

annual gross revenue reasonably projected by the board of that employer. [Eff] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-184 Filing of petition. An employee, group of employees, or any individual or labor organization acting on their behalf seeking certification as the exclusive representative shall file a petition on a form furnished by the board, and include the following:

- (1) The full names, addresses, email addresses, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted;
- (2) The name and address of the employer, the general nature of the business, the number of employees constituting the appropriate unit, and annual gross revenue of the employer;
- (3) A full description of the appropriate unit, including the job classifications or positions of employees sought to be included and excluded and the approximate number of employees in the appropriate unit;
- (4) The name and address of any known persons or organizations that claim to represent any of the employees in the appropriate unit;
- (5) An allegation that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the appropriate unit;
- (6) An allegation that more than fifty per cent of the employees within the appropriate unit have designated the petitioner as their exclusive representative;
- (7) An allegation that the employer of the appropriate unit has an annual gross revenue of more than \$5,000,000; and

- (8) Any other relevant facts pertinent to the petition.

A petition may be withdrawn at any time before the issuance of a final order of the board. [Eff
] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-185 Notice of petition. (a) Upon the filing of the petition, written notice thereof with a copy of the petition shall be sent by the board to the employer and other interested parties. The notice shall include the date when the petition was filed, the name and address of the petitioner, the name and address of the employer involved, a description of the appropriate unit, and a statement that parties and interested persons shall have fourteen days from the date of the notice to file:

- (1) Objections to the allegation that the employer has annual gross revenues of more than \$5,000,000;
- (2) Objections to the description of the appropriate unit, including the job classifications or positions to be included or excluded from the appropriate unit and the approximate number of employees in the appropriate unit;
- (3) Objections to the petitioner's designation of the question regarding representation that has arisen; or
- (4) A petition to intervene pursuant to the provisions of subchapter 2 of these rules, in so far as it applies.

(b) The employer shall post the notice where notices are normally posted affecting all employees in the appropriate unit not less than three days after receipt of the notice. [Eff
] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-186 Investigation of petition. (a) Upon the filing of the petition, the board or the hearings officer shall investigate whether:

- (1) Petitioner has collected valid authorization cards from more than fifty per cent of the employees in an appropriate unit designating petitioner as their exclusive representative for collective bargaining purposes;
- (2) There is agreement among the parties regarding the composition of the appropriate unit;
- (3) The employer earns annual gross revenues of more than \$5,000,000; and
- (4) There is no other individual or labor organization that is certified or recognized as the exclusive representative of any of the employees in the appropriate unit.

(b) Pursuant to the investigation, the board or the hearings officer may ask the employer to submit:

- (1) Information showing the nature of the employer's business and its revenues;
- (2) Existing or recently expired collective bargaining agreements, if any;
- (3) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who are or were employed by the employer within the six months immediately preceding the petition's filing date;
- (4) Copies of the W-4 forms for each employee included on the alphabetized list above;
- (5) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who were employed as of the petition's filing date; and
- (6) Any other information relevant to the investigation.

(c) Pursuant to the investigation, the board or the hearings officer shall request that the petitioner submit:

§12-43-187 Notice of hearing. After the investigation, if it appears to the board or hearings officer that a hearing is warranted, the board or hearings officer shall issue notice of hearing upon the parties, electronically or via first class mail, at least fifteen days before the hearing and shall set the time and place of such hearing. The board or hearings officer may notice and hold a prehearing conference. [Eff] (Auth: HRS §§89-5.1, 377-4.6) (Imp: HRS §377-4.6)

§12-43-188 Eligibility and validity of authorization. (a) The validity of the signatures appearing on the authorization cards shall be determined administratively by the board or hearings officer. A signature appearing on an authorization card filed in compliance with these rules shall be presumed valid.

(b) The board and hearings officer shall maintain the confidentiality of all signatures and identities appearing on authorization cards. The authorization cards shall not be shown or furnished to any of the parties after acceptance by the board or hearings officer and shall be destroyed when the file is closed notwithstanding any other rule to the contrary.

(c) A board or hearings officer's finding of the eligibility of an employee to sign an authorization card or of the validity of the signature of the employee on an authorization card, or both, shall be dispositive of the issue and not subject to litigation or collateral attack, except upon sufficient evidence that the signature was obtained improperly through fraud or coercion. If there is a dispositive finding by the board or hearings officer that the employee is eligible to sign an authorization card and that the signature of the employee on an authorization card is valid, the authorization of the employee shall be counted toward the final determination of certification by the board or the hearings officer

conducting the investigation. [Eff]
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-189 Decision and order. (a) Following the hearing, the board or hearings officer shall issue a decision and order determining whether:

- (1) The employer has annual gross revenues of more than \$5,000,000;
- (2) No other individual or labor organization is certified or recognized as the exclusive representative of any of the employees in the unit; and
- (3) A majority of the employees in the appropriate unit have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative.

(b) If the board or hearings officer determines that any of these requirements set forth under subsection (a) are not met, the petition shall be dismissed.

(c) If the hearing is held before a hearings officer, the decision and order rendered thereon shall be a recommended decision subject to the filing of exceptions and board review. [Eff]
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-43-190 Certification of representative.

Upon a finding by the board or hearings officer that all of the requirements for certification by authorization cards have been satisfied, the board shall certify the petitioner as the exclusive representative of the appropriate unit. The board shall issue a copy of the certificate to the employer and so notify the parties. [Eff]
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

SUBCHAPTER 14

ELECTION OF BARGAINING REPRESENTATIVES IN PRIVATE EMPLOYMENT

§12-43-200 Scope. (a) This subchapter governs the general procedure relating to determination of an appropriate bargaining unit, election of an exclusive bargaining representative, and decertification of an exclusive bargaining representative in private employment pursuant to section 377-5, HRS.

(b) The provisions of subchapter 2 shall govern election of bargaining representatives in private employment proceedings insofar as they may be applicable, or as otherwise modified by this subchapter. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-201 Determination of collective bargaining unit and election of collective bargaining representative. A petition for determination of a collective bargaining unit and election of collective bargaining representative pursuant to section 377-5(b) and (c), HRS, may be filed by an employee, group of employees, an individual or labor organization acting in their behalf, or an employer in the case of jurisdictional disputes, or where a union has requested recognition. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-202 Petition. (a) The petition shall be prepared on a form furnished by the board, and filed with the board.

(b) The petition shall include the following:

- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and mailing address of the employer, the general nature of the business, and the approximate number of employees;
- (3) A description of the bargaining unit claimed to be appropriate and the approximate number of employees constituting the unit;
- (4) The names and mailing addresses of any known persons or organizations that claim to represent any of the employees in the alleged bargaining unit;
- (5) A brief statement setting forth the nature of the question that has arisen concerning representation; an appropriate showing that thirty per cent or more of the employees within a bargaining unit claimed to be appropriate have selected the collective bargaining representative to represent them; and
- (6) Any other relevant facts pertinent to the petition. [Eff _____] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-203 Hearing to determine bargaining unit.

If it appears to the board that the petition presents a question concerning the determination of a collective bargaining unit, the board shall hold a hearing upon notice to all parties. The hearing procedure shall be governed by the provisions of subchapter 2. The board shall determine the facts necessary for the determination of the appropriate bargaining unit. Upon completion of the hearing, the board shall issue a decision regarding the appropriate bargaining unit. [Eff _____] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-204 Pre-election conference, stipulation for consent election, hearing, and elections. If the board finds that the petition presents a question concerning representation, a pre-election conference shall be held between the interested parties, and the parties may enter into a stipulation for consent election, as prescribed by the board. The board or its agents shall conduct the election in accordance with the stipulation. If no stipulation is entered into, the board may hold a hearing, after notice of the hearing to all parties. At the hearing, the board shall determine the facts necessary to conduct the election. If, upon completion of the hearing, the board concludes that a secret ballot election shall be held, it may direct that an election be conducted in the appropriate collective bargaining unit upon the terms as it may specify. The form of ballot to be used in any election shall be prepared as prescribed in section 377-5(c), HRS. [Eff]
(Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-205 Certification of election. Immediately following the election, the board shall make findings and certify the results of the election to the employer and the parties to the proceedings (election certification). [Eff]
(Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-206 Election results and objections. Any party to the proceeding may file objections to the conduct of the election or conduct affecting the results of the election within five days after receipt of a copy of the election certification. The objections shall be in writing and contain a brief statement of the facts upon which the objections are

based. The original, with proof of service upon all parties, shall be signed and filed with the board. The board may hold a hearing upon due notice and shall decide the validity of the objections before proceeding to a final determination. [Eff
] (Auth: HRS §377-11) (Imp: HRS
§377-5)

§12-43-207 Challenged ballots. If a dispute arises in an election concerning the eligibility of a particular employee to vote therein, the ballot of the employee may be challenged by the board agent conducting the election or an authorized observer. Each challenged ballot shall be placed in an individually marked envelope. If the challenged ballots are necessary for a final determination, the board may hold a hearing upon due notice, and shall decide the eligibility of the employee. [Eff
] (Auth: HRS §377-11) (Imp: HRS
§377-5)

§12-43-208 Runoff election. (a) The board shall conduct a runoff election in any election where no choice on the ballot receives a majority of valid votes cast. The runoff ballot shall provide for selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election. [Eff
] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-209 Petition for decertification. (a) A petition for decertification may be filed by an

employee, an employee organization, or anyone authorized to act in its behalf.

(b) The petition shall be prepared on a form furnished by the board, and filed with the board.

(c) The petition shall include the following:

- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner and the name and telephone number of its principal representative to be contacted;
- (2) The name, mailing address, telephone number, and affiliation, if any, of the exclusive representative; and the name, address, and telephone number of the principal representative, and the date of certification;
- (3) The name, address, and telephone number of the employer and the name and telephone number of its principal representative to be contacted;
- (4) The approximate number of employees in the bargaining unit;
- (5) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
- (6) Whether the employer is a party to a contract for the affected employees;
- (7) A showing of interest indicating that thirty per cent or more of the employees in the unit support the petition; and
- (8) A clear and concise statement of any other relevant facts.

(d) If the board finds that the petition presents a question of representation, the matter will be processed in accordance with sections 12-43-220 through 12-43-223. [Eff _____] (Auth: HRS §377-11) (Imp: HRS §377-5)

SUBCHAPTER 15

REFERENDUM CONCERNING ALL-UNION AGREEMENT

§12-43-220 Scope. This subchapter governs the procedure relating to all-union agreements defined in section 377-1, HRS. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-221 Authority for all-union agreement. An employer may enter into an all-union agreement with the bargaining representative of the employees in a collective bargaining unit, unless the board has certified that a majority of employees has acted to rescind the authority of the bargaining representative to negotiate an all-union agreement within one year preceding the date of the agreement. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-222 Rescission of authority and petition. (a) A petition to rescind the authority of a labor organization to make an all-union agreement requiring membership in the labor organization as a condition of employment may be filed by an employee or group of employees on behalf of thirty per cent or more of the employees in a bargaining unit covered by an agreement. An original of the petition shall be filed with the board.

- (b) The petition shall include:
- (1) The name, address, telephone number, and email address of the petitioner;
 - (2) The name and address of the employer, the general nature of the business, and the approximate number of employees;

- (3) A description of the appropriate bargaining unit or the bargaining unit claimed to be appropriate, and the approximate number of employees within the unit;
- (4) The name and address of the labor organization whose authority it is desired to rescind;
- (5) An appropriate showing that thirty per cent or more of employees within an appropriate unit desire to rescind the authority of the labor organization involved; and
- (6) Any other facts that are relevant to the petition. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-223 Election to rescind authority and hearing. Where a petition has been filed and the petitioner has made an appropriate showing to the board that thirty per cent or more of the employees within the unit covered by the agreement desire to rescind the authority of the labor organization to make an agreement, the board shall conduct a secret ballot election of the employees involved on their desire to rescind. Where it appears to the board that the proceeding raises a question which cannot be decided without a hearing, the board may issue a notice of hearing upon the parties in conformance with the applicable provisions in subchapter 2. The board shall fix the time and place of the election, eligibility requirement for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the board, fixing such arrangements. In any consent agreements, provisions may be made for final determination of all questions arising with respect to the balloting. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-224 Hearing. The hearing shall be governed pursuant to the applicable provisions in subchapter 2. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-43-225 Balloting and post-balloting procedures. The election shall be governed insofar as applicable by the provisions of subchapters 6 and 14. [Eff] (Auth: HRS §377-11) (Imp: HRS §377-5)

SUBCHAPTER 16

FACILITATING INITIAL COLLECTIVE BARGAINING AGREEMENTS, AND CONCILIATION

§12-43-230 Scope. This subchapter governs conciliation and facilitating initial collective bargaining agreements in private employment pursuant to chapter 377, Hawaii Revised Statutes. [Eff] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-231 Request to bargain. An individual or labor organization that has been newly organized or certified as the exclusive representative may submit to the employer a written request to bargain over an initial collective bargaining agreement. Within ten days after the employer's receipt of the request to bargain, the parties shall meet and commence bargaining collectively in good faith. The parties shall make every reasonable effort to conclude and sign a collective bargaining agreement. [Eff]

] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

§12-43-232 Notice of dispute and request for conciliation. More than ninety days after the date on which bargaining over an initial collective bargaining agreement commenced, or such additional period as the parties agree upon, if the parties have failed to reach an agreement, either party may notify the board of the dispute by filing a written notice of dispute and request for conciliation. The employer or exclusive bargaining representative shall file an original of the notice of dispute, with proof of service upon all parties. [Eff]
(Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-233 Contents of notice. The notice of dispute shall contain the following:

- (1) The names, addresses, telephone numbers, and email addresses of the parties to the dispute and their principal representatives;
- (2) A description of the appropriate unit and the approximate number of employees constituting the unit;
- (3) The dates and duration of negotiation sessions, if any;
- (4) The name of the party or parties requesting conciliation; and
- (5) A clear and concise statement of any other relevant facts. [Eff]
(Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-234 Board determination of jurisdiction and the possibility of settlement and termination of dispute. Upon receiving notice of a labor dispute

regarding the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, or upon receiving information that any other labor dispute within the board's jurisdiction exists, the board shall determine whether the possibility of settlement and termination of the dispute may be increased by conciliation. [Eff] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-235 Appointment of conciliator. If the board determines that the labor dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall notify the governor, who shall immediately appoint a conciliator. The governor shall so notify the board of the appointment of a conciliator. Upon receipt of notice of the appointment, the board shall refer the dispute to the conciliator. [Eff] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-236 Duties of conciliator. (a) The conciliator shall perform conciliation duties under the guidance of the board and shall report any findings to the board.

(b) If the dispute involves the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, the conciliator shall use his or her best efforts to resolve the dispute within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties to the dispute. If the conciliator is not able to resolve the dispute within the required period, the conciliator shall immediately certify such fact to the board, and the board shall refer the dispute to a three-member arbitration panel

established in accordance with section 89-11(e)(2)(A), HRS.

(c) For any other labor dispute, the conciliator shall use his or her best efforts to resolve the dispute within ten days immediately succeeding the reference of the dispute to the conciliator or within such additional time, not to exceed ten days, as is agreed upon by all parties to the dispute. If the conciliator is not able to resolve the dispute within the required period, the conciliator shall immediately certify such fact to the board, and the board shall so notify the governor.

(d) The conciliator may hold separate or joint meetings with the parties or their representatives, which shall be private and nonpublic in nature.

(e) Conciliation meetings shall be conducted at such time and place as may be designated by the conciliator. [Eff] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-237 Confidential information. (a) Any information disclosed by the parties to the conciliator in the performance of such conciliator's duties shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, or other papers received or prepared by a conciliator while serving in such capacity shall be treated as confidential. The conciliator shall not produce any confidential records of or testify regarding any conciliation conducted by such conciliator, on behalf of any party to any cause pending in any type of proceeding, unless otherwise required by law. [Eff] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-43-238 Report of conciliator. The conciliator shall, either orally or in writing, report the progress of conciliation efforts, as well as the

terms of the termination or resolution of the dispute,
if any, when so requested by the board. [Eff
] (Auth: HRS §377-11) (Imp: HRS
§§377-3, 377-4.7)

§12-43-239 Selection and certification of arbitration panel. (a) Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. If the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of the labor dispute, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected.

(b) Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, and that arbitrator named shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel, and the board shall serve a copy of its certification of appointment of the panel upon all parties. [Eff] (Auth: HRS §377-11)
(Imp: HRS §§89-11, 377-4.7)

§12-43-240 Findings and decision of arbitration panel. The arbitration panel shall file with the board the original of all findings and decisions, which shall be binding upon the parties for a two-year period, unless amended during that period by written consent of the parties, with proof of service upon all parties. [Eff] (Auth: HRS §377-11)
(Imp: HRS §§89-11, 377-4.7)

§12-43-241 Payment for conciliation and arbitration. The costs and expenses for services performed by neutrals under this subchapter, including the conciliator and the neutral arbitrator, shall be borne equally by the parties. All other costs incurred by either party, including the costs of its selected member of the arbitration panel, shall be borne by the party incurring them. [Eff
](Auth: HRS §377-11) (Imp: HRS
§377-4.7)

§12-43-242 Closing of dispute in an initial collective bargaining agreement case. (a) Upon written notification to the board by the employer or exclusive representative of the execution of an initial collective bargaining agreement, where a request was made to the board for conciliation, or upon the board's own knowledge and information, the board shall issue a "Notice of Intent to Dismiss Labor Dispute Case Because of Mootness" stating that the board will dismiss such labor dispute case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing such case. [Eff
] (Auth: HRS §377-11) (Imp: HRS
§377-4.7)

SUBCHAPTER 17

PETITION FOR TEMPORARY RESTRAINING ORDER OR TEMPORARY
INJUNCTION DURING UNFAIR LABOR PRACTICE PROCEEDING

§12-43-250 Filing a complaint. When a complaint is filed with the board pursuant to section 380-14(b) and (c), HRS, and after conducting the preliminary investigation provided for in this section, the board may petition any circuit court of the State within any circuit where the unfair labor practice is alleged to have occurred, or where the person or persons reside or transact business for appropriate temporary relief or restraining order. Upon the filing of the complaint, the court shall serve notice upon the respondents. [Eff] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-43-251 Preliminary investigation. Whenever it is charged that a person has engaged in an unfair labor practice within the meaning of section 377-7(5), (6), (7), (8), and (9), HRS, the board shall conduct a preliminary investigation and the investigation shall be given priority over all other cases except cases of like character. [Eff] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-43-252 Procedure in conducting preliminary investigation. The preliminary investigation shall be conducted by the board in the manner and at the places as shall be deemed suitable and appropriate under the circumstances with due regard for the purpose and intent of section 380-14(b) and (c), HRS. The preliminary investigation may be conducted ex parte, and the board may proceed without the presence of all parties concerned. The board shall give notice immediately to all parties concerned regarding the preliminary investigation, and shall afford reasonable opportunity to all parties concerned to present all relevant and material facts pertinent to the inquiry.

[Eff] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-43-253 Petition for injunctive relief. If, after investigation, the board has reasonable cause to believe that the charges contained in the complaint are true, it shall petition any circuit court of the State within any circuit where the alleged unfair labor practice in question has occurred, or is alleged to have occurred, or wherein the person or persons reside or transact business, for appropriate relief pending final adjudication of the board with respect to the matter in accordance with and subject to the provisions of section 380-14(c), HRS. [Eff] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-43-254 Hearing on complaint following injunctive relief. Whenever temporary relief or a restraining order has been obtained by the board pursuant to section 380-14(b) and (c), HRS, the complaint which had been the basis for such temporary relief or restraining order shall be given priority by the board over all other cases except cases of like character. [Eff] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-43-255 Disposition of injunctive relief. Upon the hearing on the complaint giving rise to the temporary relief or restraining order pursuant to section 380-14(b) and (c), HRS, if the board dismisses the complaint, in whole or in part, the board shall promptly suggest to the circuit court which issued the temporary relief or restraining order the possible change in circumstances arising out of the findings

and conclusions of the board. [Eff]
(Auth: HRS §377-11) (Imp: HRS §380-14)

SUBCHAPTER 18

PROCEDURE FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

§12-43-260 Scope. This subchapter governs the general procedure relating to rulemaking by the board pursuant to sections 89-5, 91-3, 91-6, 377-11, and 396-11.5, HRS. [Eff] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

§12-43-261 Petition. (a) Any employee, public employee, employee organization, employer, public employer, or interested person or organization may petition the board for adoption, amendment, or repeal of any rule of the board.

(b) The petition need not be in any special form but it shall contain the following:

- (1) The name, mailing address, and telephone number of each petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, each petitioner;
- (2) The signature of each petitioner;
- (3) A statement of the nature of the petitioner's interest;
- (4) The text of the proposed rule which is sought to be adopted, the text of the proposed amendment of the existing rule which is sought to be amended, or the designation or text of the rule which is sought to be repealed;

- (5) A concise statement indicating with particularity the reasons for filing the petition, the necessity for the relief, and the anticipated effect or impact of the relief; and
- (6) Any other information pertinent to the petition.
- (c) If a petitioner is not represented by counsel and is not a registered user of the board's electronic filing system, such petitioner may file hard copies of documents with the board.
- (d) Any petition which does not conform to the requirements specified herein may be rejected and the petitioner shall be so informed. [Eff
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-6, 377-11, 396-11.5)

§12-43-262 Disposition. The board shall, within the time frame set forth in section 91-6, HRS, either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with section 91-3, HRS, and the procedures provided in this subchapter for the adoption, amendment, or repeal of rules. [Eff
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

§12-43-263 Public hearing. (a) The public hearing on the proposed adoption, amendment, or repeal of any rule shall be held at the time and place set forth in the notice of public hearing but that time and place may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement at the hearing. The board shall afford all interested persons a reasonable opportunity to present data and their views or arguments, orally or in writing.

(b) The notice of public hearing shall be made in accordance with the provisions of chapters 91 and 92, HRS. The board may set reasonable time limits on testimony, and any such limits shall be stated in the notice of public hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing, then briefly prescribe the procedures to be followed. The presiding officer shall have the authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(d) Interested persons and agencies offering testimony are subject to questioning by the presiding officer or other person authorized by the board. Questioning by other persons or agencies shall not be permitted except when authorized by the presiding officer. Unless ordered by the presiding officer, testimony given at the hearing shall not be reported verbatim.

(e) Any person or agency unable to attend the public hearing who desires to submit written testimony shall submit the testimony to the board at its office by the date and time specified in the notice of public hearing. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

§12-43-264 Decision. The board may render its decision at the public hearing or at a later time. The board, upon request of any interested person or agency, shall issue a concise statement of the principal reasons for its decision. In making its decision, the board shall consider all written and oral submissions respecting the proposed rule relief. [Eff] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

§12-43-265 Board initiated rulemaking. The board may at any time, on its own initiative, institute proceedings in accordance with section 91-3, HRS, and the procedures provided herein for the adoption, amendment, or repeal of rules. [Eff
] (Auth: HRS §§89-5, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

§12-43-266 Emergency rulemaking. The board may adopt emergency rules pursuant to the requirements of sections 91-3 and 91-4, HRS. The board's determination that there is imminent peril and the reasons therefor shall be stated in, and made part of the emergency rule. The board shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor." [Eff
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 91-4, 377-11, 396-11.5)

3. The repeal of chapters 12-41 and 12-42, and the adoption of chapter 12-43, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that 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 [date] and filed with the Office of the Lieutenant Governor.

Marcus R. Oshiro
Chair
Hawaii Labor Relations Board

Anne Perreira-Eustaquio
Director
Department of Labor and
Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General

III. Old Business

B. Discussion and Action on the Small
Business Statement After Public Hearing
and Proposed New HAR Title 94.2, **Nursing
Facilities**, promulgated by DOH

SMALL BUSINESS STATEMENT
“AFTER” PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Health, Office of Health Care Assurance

Administrative Rule Title and Chapter: 11-94.2

Chapter Name: Nursing Facilities

Contact Person/Title: Keith R. Ridley, Chief

Phone Number: (808) 692-7227

E-mail Address: keith.ridley@doh.hawaii.gov **Date:** 07/14/2022

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.)

*

*

*

V. Please explain how the agency involved small business in the development of the proposed rules.

The agency worked with the Healthcare Association of Hawaii (HAH) whose membership includes all SNFs. HAH worked with their member SNFs to provide input on the proposed regulations.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. One (1) of three (3) recommendations were incorporated.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

The agency worked with the HAH whose membership includes all SNFs. HAH worked with their member SNFs to provide input on the proposed regulations.

2. A summary of the public's and small businesses' comments.

Clarification of a definition, request for agency to create a common form, and requesting additional time for SNFs to comply with the amended rules (9 months from 6 months).

3. A summary of the agency's response to those comments.

Clarification of a definition incorporated into the rules, no common form needed, amended rules align with federal regulations which SNFs are already complying with so no additional time needed.

4. The number of persons who:

(i) Attended the public hearing: 5, including 3 DOH staff.

(ii) Testified at the hearing: 1

(iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ Yes ☐ No

(i) If "Yes," was the change adopted? ☒ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Mix of adoption and non-adoption as explained above.

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

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

Small Business Regulatory Review Board

MEETING MINUTES - DRAFT

June 16, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- James (Kimo) Lee
- William Lydgate
- Taryn Rodighiero
- Sanford Morioka
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF March 10, 2022 MINUTES**

Vice Chair Albitz motioned to accept the March 10, 2022 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

A. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 11 Chapter 94.2, Nursing Facilities, promulgated by Department of Health (DOH)

Vice Chair Albitz stated that DOH is repealing three chapters and replacing them to be align mostly with federal regulations.

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that DOH has the responsibility of conducting inspections on all health care facilities within the state from a state licensing standpoint. Inspections are also procured through Medicare for Medicare certification purposes. The facilities under DOH's jurisdiction include hospitals, nursing facilities, adult residential care homes, assisted living facilities, clinical laboratories, hospices, home health agencies, etc.

The subject rules and the two rules noted below are in the process of being repealed and amended and new rules are being created; two of the rules are aligned with Medicare; Chapter 11-103.1 in Section III. A. C. is the only rule not being aligned with Medicare.

Chapter 94.2 Nursing Facilities specifically will allow DOH to accept accreditation or certification of one's facilities by other nationally recognized accreditation and/or certification agencies for purposes of renewing state licensure. It was noted that Medicare requirements are much for stringent than state requirements; as such, DOH is aligning the state rules towards the federal rules. This is very beneficial to DOH on a workload and resource allocation standpoint because it allows DOH to conduct only one inspection rather than two or more.

The rule changes will also update requirements for emergencies including but not limited to natural disasters. Mr. Ridley clarified that only the larger institutions such as hospitals would be governed by both federal Medicare and state laws whereas the home health care facilities are only state operated and governed.

Vice Chair Albitz motioned to send the proposed rules to public hearing. Ms. Rodighiero seconded the motion, Dr. Atmospha-Walch recused herself, and the remaining Board members voted in support of the motion.

B. Discussion and Action on Proposed New HAR Title 11 Chapter 97.1, Home Health Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that these rules are similar to the nursing home rules (above) in terms of being aligned with the federal Medicare. However, there is one difference. Congress recently passed a law that for the Veteran's Administration (VA) doctors who are in the VA system, regardless as to what state he or she is licensed in, can continue to do work in his or her host state and provide services to VA beneficiaries even when it relates to services being referred to the private sector.

For example, under the current rules a physician or an APRN has to be licensed in the state of Hawaii in order to provide referrals to home health agencies. Licensed home health agencies can only accept referrals from physicians or APRNs who are licensed in Hawaii. This, of course, becomes a problem for the VA when they treat a patient in Hawaii and send them into the community as the VA does not have a robust home health agency system statewide. Thus, it becomes an issue for Hawaii licensed home health agencies to accept these VA beneficiaries.

Thus, the law that Congress recently passed is being incorporated into the rules that would allow a home health agency to accept a referral from a VA physician who is licensed in another state for the VA patient who is being referred for home health services.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, Dr. Atmospha-Walsh recused herself, and the remaining members voted in support of the motion.

DEPARTMENT OF HEALTH

Repeal of Chapter 11-94.1, "Nursing Facilities"
and the
Adoption of Chapter 11-94.2, "Nursing Facilities,"
Hawaii Administrative Rules

(Date)

SUMMARY

1. Chapter 11-94.1, Hawaii Administrative Rules, entitled "Nursing Facilities", is repealed.
2. Chapter 11-94.2, Hawaii Administrative Rules, entitled "Nursing Facilities", is adopted.

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 94.1

NURSING FACILITIES

Repealed

§§11-94.1-1 to 11-94.1-49 Repealed. []

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 94.2

NURSING FACILITIES

Subchapter 1 General Provisions

- §11-94.2-1 Purpose
- §11-94.2-2 Definitions
- §§11-94.2-3 to 11-94.2-5 (Reserved)

Subchapter 2 Licensing Requirements

- §11-94.2-6 Licensing
- §11-94.2-7 Application
- §11-94.2-8 Maximum time period for processing of a
complete license application
- §11-94.2-9 Denial of licensure
- §11-94.2-10 Inspection
- §11-94.2-11 Waiver
- §§11-94.2-12 to 11-94.2-15 (Reserved)

Subchapter 3 Administration Requirements

- §11-94.2-16 Governing body and management
- §11-94.2-17 Administrator
- §11-94.2-18 Medical director
- §11-94.2-19 Ownership and financial capability
- §11-94.2-20 In-service education
- §11-94.2-21 Arrangement for services
- §11-94.2-22 Medical record system
- §11-94.2-23 Quality assurance and performance
improvement
- §§11-94.2-24 to 11-94.2-26 (Reserved)

Subchapter 4 Resident Care Requirements

- §11-94.2-27 Resident rights and facility practices
- §11-94.2-28 Resident accounts
- §11-94.2-29 Resident abuse, neglect, and
misappropriation of resident property
- §11-94.2-30 Resident care
- §§11-94.2-31 to 11-94.2-35 (Reserved)

Subchapter 5 Program Requirements

- §11-94.2-36 Admission, transfer, and discharge
- §11-94.2-37 Social work services
- §11-94.2-38 Activities
- §11-94.2-39 Nursing services
- §11-94.2-40 Dietary services
- §11-94.2-41 Storage and handling of food
- §11-94.2-42 Physician services
- §11-94.2-43 Interdisciplinary care process
- §11-94.2-44 Specialized rehabilitation services
- §11-94.2-45 Dental services
- §11-94.2-46 Pharmaceutical services
- §11-94.2-47 Adult day health services
- §§11-94.2-48 to 11-94.2-52 (Reserved)

Subchapter 6 Environmental Health Standards

- §11-94.2-53 Infection control
- §11-94.2-54 Sanitation
- §11-94.2-55 Housekeeping
- §11-94.2-56 Laundry service
- §11-94.2-57 Life safety
- §11-94.2-58 Emergency preparedness
- §§11-94.2-59 to 11-94.2-63 (Reserved)

Subchapter 7 Physical Facility Standards

- §11-94.2-64 Engineering and maintenance
- §11-94.2-65 Construction requirements
- §§11-94.2-66 to 11-94.2-68 (Reserved)

§11-94.2-1

Subchapter 8 Administrative Enforcement

§11-94.2-69 Enforcement
§11-94.2-70 Penalties and remedies
§§11-94.2-71 to 11-94.2-74 (Reserved)
§11-94.2-75 Severability
§11-94.2-76 Transition

SUBCHAPTER 1

GENERAL PROVISIONS

§11-94.2-1 Purpose. The purpose of this chapter is to establish minimum requirements for the protection of the health, welfare, and safety of residents, personnel, and the public in nursing facilities that provide care and services for residents at the skilled nursing and intermediate care facility level of care. This chapter shall not be construed to lower standards, ordinances, or rules established by other divisions or subdivisions of State government; in all instances, the more stringent rules shall apply. [Eff] (Auth: HRS §§321-9, 321-10, 321-11) (Imp: HRS §§321-9, 321-10, 321-11)

§11-94.2-2 Definitions. As used in this chapter:

"Activities professional" or "qualified therapeutic recreational specialist" means:

- (1) A qualified professional who has two years of experience in a social or recreational program within the last five years, one of which was full-time in a resident activities program in a health care setting;
- (2) An occupational therapist or occupational therapy assistant;
- (3) A person who has completed a training course approved by the department; or

- (4) A person who is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990.

"Advanced directive" means a written or oral declaration made by a competent adult, instructing his or her physician to provide, withhold, or withdraw life-sustaining procedures under certain conditions such as a terminal condition or where the resident has a permanent loss of ability to communicate with others due to irreversible brain injury or coma. (An advanced directive is often referred to as an advanced health care directive or as a living will.)

"Advanced practice registered nurse" or "APRN" means a registered nurse who is licensed pursuant to chapter 457, HRS.

"Bed hold policy" means a written policy that specifies legal readmission rights of a resident who transfers from the facility for a hospitalization or therapeutic leave and a payment schedule to hold the bed during that resident's absence.

"Certified nursing assistant" or "CNA" or "nurse aide" means a person who is currently certified as a nurse aide pursuant to chapter 457A, HRS.

"Comprehensive assessment" means an evaluation completed by the interdisciplinary team to identify a resident's functional capacity, including the resident's strengths, preferences, and needs in the areas including but not limited to activities of daily living (ADLs), cognition, continence, mood, behavior, nutritional status, communication, vision, and psychosocial well-being.

"Controlled drugs" means drugs listed as being subject to high incidences of abuse as defined in chapter 329, HRS.

"Dental services" means an annual inspection of the oral cavity for signs of disease, diagnosis of dental disease, dental radiographs as needed, dental cleaning, fillings (new and repairs), minor dental plate adjustments, smoothing of broken teeth, and limited prosthodontic procedures, e.g., taking impressions for dentures and fitting dentures.

"Dentist" means any person holding a valid license to practice dentistry, pursuant to chapter 448, HRS.

"Department" means the department of health, State of Hawaii.

"Dietary manager" means:

- (1) A dietitian who meets the requirements of section 448B-5, HRS;
- (2) A graduate of a dietetic technician training program approved by the American Dietetic Association;
- (3) An individual certified by the Certifying Board for Dietary Managers of the Dietary Managers Association; or
- (4) An individual who has successfully completed an approved course curriculum in any of the following, and has taken annual continuing education credits to keep up with current food service trends and practices, as set forth by the Dietary Managers Association:
 - (A) State approved course that includes at least ninety or more hours of classroom or correspondence instruction, plus two years of work experience of which at minimum, nineteen months were at the managerial level and the remainder as a nutritionist;
 - (B) A two- or four-year college degree in foodservice management and nutrition; or
 - (C) A United States military training program in foodservice management with the attainment of a grade of E-5 or its equivalent according to the brand of service.

"Dietitian" means a person who:

- (1) Is registered by the Commission on Dietetics Registration; or
- (2) Is eligible for such registration.

"Director of health" or "director" means the director of the department of health, State of Hawaii, or the director's designee.

"Discharge" means movement of a resident from a facility to the resident's home or other location in the community, when return to the facility is not expected or planned.

"Disinfect" means to render inactive virtually all recognizable pathogenic microorganisms but not necessarily all microbial forms, e.g., bacterial endospores.

"Drug administration" means the act in which a single dose of a prescribed drug or biological substance is given to a resident by an authorized person in accordance with all existing laws and rules governing those acts.

"Drug dispensing" means the furnishing of drugs pursuant to a prescription in a suitable container, appropriately labeled for subsequent administration to or use by a resident or other individual entitled to receive the drug.

"Emergency dental service" includes dental services to control bleeding, relieve pain, eliminate acute infection, and treatment of injuries to the teeth or supporting structures, and other medically urgent dental services.

"Evacuation capacity designation" means the designation determined by the current county building and fire codes that indicates whether the physical structure of the facility is safe for residents to remain in the building, or whether they must be evacuated from a facility in an emergency or disaster.

"Governing body" means the policy-making group authority that exercises general direction or fiduciary responsibilities over the affairs of a facility and establishes policies concerning its operation and the welfare of the residents the facility serves.

"Infectious waste" or "regulated waste" or "medical waste" or "pathological waste" means any waste that may contain pathogens capable of causing an infectious disease and shall include but is not limited to wastes categorized in section 11-104.1-4.

"Interdisciplinary" means the integration of two or more professional disciplines working together to provide the greatest benefit to the resident.

"Legal guardian" means a person who has the legal authority (and the corresponding duty) to care for the personal or property interests, or both, of another person, referred to as a ward.

"Licensed practical nurse" or "LPN" means a person who is licensed as a practical nurse pursuant to chapter 457, HRS.

"Licensed social worker" or "social worker" or "LSW" means a person who is licensed to practice social work pursuant to chapter 467E, HRS.

"Nursing facility" means a skilled nursing facility or "SNF", intermediate care facility or "ICF", or a skilled nursing and intermediate care facility or "SNF/ICF".

- (1) "Intermediate care facility" means a health facility to which a physician has referred individuals who do not need twenty-four hour a day skilled nursing care but who do require the following services for appropriate care:

- (A) Twenty-four hours a day assistance with the normal activities of daily living; and
- (B) Care provided by licensed nursing and paramedical personnel on a regular, long-term basis.

- (2) "Skilled nursing facility" means a health facility that provides skilled nursing and related services to residents who require twenty-four hour a day medical or nursing care, or rehabilitation services, including but not limited to physical therapy, occupational therapy, and speech therapy services.

"Nursing home administrator" means a person licensed pursuant to chapter 457B, HRS.

"Nursing plan of care" means an individualized treatment plan developed at the time of admission, based on the initial nursing assessment of the resident in conjunction with the physician's admission physical examination and initial orders.

"Occupational therapist" means a person licensed pursuant to chapter 457G, HRS.

"Occupational therapy assistant" means a person who is currently certified or eligible for certification by the National Board for Certification in occupational therapy.

"Overall plan of care" means an integrated plan of care that includes the interventions and care or services to be provided by nurses, social workers, rehabilitative therapists, physicians, APRNs, physician assistants, dietitians and other professionals as determined by a comprehensive assessment. The overall plan of care shall have measurable goals and objectives with specific timelines directed to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being. The plan shall also include appropriate discharge planning.

"Performance improvement" or "PI" means the continuous study and improvement of processes with the intent to improve services or outcomes, and prevent or decrease the likelihood of problems, by identifying opportunities for improvement, and testing new approaches to fix underlying causes of persistent or systemic problems or barriers to improvement. PI aims to improve facility processes involved in care delivery and enhanced resident quality of life.

"Pharmacist" means a person who is licensed as a registered pharmacist pursuant to chapter 461, HRS.

"Physical therapist" means a person who is licensed as a physical therapist pursuant to chapter 461J, HRS.

"Physical therapy assistant" means a person who has graduated from a two-year college-level program approved by the Section on Education of the American Physical Therapy Association.

"Physician" means a person who is licensed to practice medicine or osteopathy pursuant to chapter 453, HRS.

"Physician assistant" means a person who is licensed pursuant to chapter 453, HRS.

"Plan of correction" means a plan developed by the facility that includes actions that will be taken to address deficiencies cited or detected by the department pursuant to a survey, inspection, or complaint investigation that shall include preventive measures to ensure compliance with this chapter and chapter 321, HRS, and the timeframe in which these corrections shall take place.

"Quality assurance" or "QA" means the specification of standards for quality of care, service and outcomes, and systems throughout the facility for assuring that care is maintained at acceptable levels in relation to those standards. QA is on-going and both anticipatory and retrospective in its efforts to identify how the facility is performing, including where and why facility performance is at risk or has failed to meet standards.

"Quality assurance and performance improvement" or "QAPI" means the coordinated application of mutually-reinforcing aspects of quality management that takes a systematic, interdisciplinary, comprehensive, and data-driven approach to maintaining and improving safety and quality.

"Registered health information administrator" or "RHIA" means a person who successfully passed a national qualifying examination offered by the American Health Information Management Association and is currently certified by the association as a RHIA.

"Registered health information technician" or "RHIT" means a person who successfully passed a national qualifying examination offered by the American Health Information Management Association and is currently certified by the association as a RHIT.

"Registered nurse" or "RN" means a person who is licensed as a registered nurse pursuant to chapter 457, HRS.

"Rehabilitative plan of care" means a treatment plan based on the attending physician's, physician assistant's, or APRN's orders and assessment of a resident's needs in regard to specialized rehabilitative procedures.

"Reputable and responsible character" means the character of an individual who has not been:

- (1) Convicted of a relevant crime as defined in section 321-15.2(a), HRS; or
- (2) Confirmed by the State as a perpetrator of adult or child abuse, neglect, financial exploitation, or domestic violence.

"Social work plan of care" means a plan of services based on an assessment completed by the social worker or designee to address social, behavioral, or treatment interventions required to assist the resident to maintain his or her highest practicable physical, mental, or psychosocial well-being, with plans for appropriate and timely discharge as practical.

"Social worker designee" means a person who is supervised by a licensed social worker.

"Special diet" or "therapeutic diet" means a diet ordered by a physician or APRN that is prescribed as part of the medical nutrition therapy of a nursing facility resident.

"Speech pathologist" or "speech therapist" or "audiologist" means a person who is licensed pursuant to chapter 468E, HRS, and:

- (1) Is eligible for a certificate of clinical competence granted by the American Speech-Language-Hearing Association in speech therapy, pathology, or audiology; or
- (2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required to take the examination for certification.

"Statement of deficiencies" means a listing of citations given to the facility that describes the extent to which the facility is not compliant with the requirements of this chapter, and that is issued to the facility at the completion of a survey or licensing inspection or complaint investigation.

"Surrogate" means an individual other than the nursing facility's agent or legal guardian who is authorized under chapter 327E, HRS, to make a healthcare decision for the resident.

"Transfer" means the movement of a resident from one facility to another facility for continued care regardless of whether the resident is expected or planned to return to the original facility. It does not refer to movement between beds within the same licensed facility.

"Waiver" means an exemption to a rule.

[Eff (Auth: HRS §§321-9, 321-11)
(Imp: HRS §§321-9, 321-11)]

§§11-94.2-3 to 11-94.2-5 (Reserved).

SUBCHAPTER 2

LICENSING REQUIREMENTS

§11-94.2-6 Licensing. (a) No person or group of persons may operate a nursing facility unless the facility is licensed by the department.

(b) All nursing facilities shall be licensed pursuant to this chapter and meet all requirements for licensure under state law prior to admitting any residents, except those operated by the federal government or agency thereof.

(c) The department may accept accreditation by the Joint Commission or other nationally recognized accreditation or certification organizations including, but not limited to, the U.S. Centers for Medicare and Medicaid Services, as demonstrating a

facility's compliance with all relicensing inspections required by the department.

(d) The department shall inspect each nursing facility at least annually, or at a time interval as determined by the department for relicensing. The department, without prior notice, may enter the premises at any time to secure compliance with or to prevent a violation of this chapter.

(e) The department may exempt a facility from a relicensing inspection when the facility is accredited or certified in accordance with this section under the following conditions:

- (1) The facility provides a certified copy of the facility's official accreditation or certification report to the department;
- (2) The facility continuously holds full accreditation or certification by the accreditation or certification organization; and
- (3) The facility holds a current and valid state license.

(f) The most current licensing statement of deficiencies and plan of correction shall be kept on file in the facility, and the facility shall:

- (1) Make the statement of deficiencies and plan of correction available for examination in a place readily accessible to residents; and
- (2) Post a notice of the availability of the statement of deficiencies and plan of correction.

(g) All facilities shall not discriminate against any individual as per all federal and state civil rights and anti-discrimination regulations. Should the facility not be able to provide care and services to individuals based on their age, i.e., infants and youth, or specific disability, the facility will need to indicate so in their policies and procedures and by-laws.

(h) The department shall prescribe the content and form of the license and may authorize a waiver or waivers for a particular facility.

(i) In the event of a change of administration, name, location, ownership, or the number and type of operational beds, the facility shall notify the department fifteen days prior to the change, an inspection at the discretion of the department shall be conducted, and if the provisions of this chapter are met, a new license shall be issued.

(j) Every regular license shall continue in force for a period of one year unless otherwise specified, or unless it is suspended or revoked.

(k) The current license shall be posted in a conspicuous place visible to the public within the facility.

(l) A provisional license may be issued at the discretion of the department to allow sufficient time for correction to deficiencies cited.

(m) When a facility intends to voluntarily close, the following shall apply:

- (1) The licensee shall notify the department in writing at least thirty days prior to an intended closure;
 - (2) All residents, legal guardians, surrogates, and other responsible agencies shall be notified at least thirty days prior to an intended closure;
 - (3) All residents shall be transferred to appropriate licensed facilities prior to closure; and
 - (4) The licensee shall notify the department that all residents have been transferred and provide a listing of residents' names, name of facility transferred to, and date of transfer.
- [Eff _____] (Auth: HRS §§321-9, 321-11; SLH 2021, Act 28) (Imp: HRS §§321-9, 321-11; SLH 2021, Act 28)

§11-94.2-7 Application. The applicant shall submit:

- (1) An application on a form approved by the department with the following supporting documentation or information:
 - (A) Name, address, and contact information of the owner(s);
 - (B) Registration of corporation, articles of incorporation, limited liability company with a list of officers, directors, trustees, members, or advisory board members;
 - (C) Bylaws;
 - (D) Copy of documents recognizing the applicant's ability to do business in the State;
 - (E) An annual budget including all anticipated income and expenses demonstrating the facility's financial capability to ensure the health, safety, and welfare of residents; and
 - (F) Building plans indicating accurate measurements to scale of the entire facility with certificate of occupancy as appropriate;
- (2) Documented compliance with current county building and land use codes;
- (3) Documented compliance with current county fire code requirements;
- (4) Documented clearance by the sanitation branch of the department;
- (5) Documented clearance by the wastewater branch of the department;
- (6) A certificate of need from the state health planning and development agency as determined by the State;
- (7) All prospective applicants, licensees, operators, administrators, and direct resident access employees, and volunteers shall be screened for a history of abuse, neglect, or misappropriation of funds that

includes but is not limited to fingerprint record checks through the Federal Bureau of Investigation and the Hawaii criminal justice data center, obtaining information from previous and current employers, and checking with the appropriate licensing boards and registries. [Eff]
(Auth: HRS §§321-9, 321-11, 321-15.2) (Imp: HRS §§321-9, 321-11, 321-15.2)

§11-94.2-8 Maximum time period for processing of a complete license application. (a) The department shall grant or deny an application and inform the applicant of its decision within ninety days of receipt of a complete application.

(b) If the department does not grant a license or deny an application within ninety days of receipt of the complete application, the application for issuance of a license shall be deemed approved on the ninetieth day. After the expiration of the ninety days, the department shall issue the license within thirty days.

(c) Notwithstanding the requirements of subsections (a) and (b), the maximum period of ninety days shall be extended indefinitely in the event of a national disaster, state emergency, or union strike that would prevent the applicant, the agency, or the department from fulfilling application review in a timely manner. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-9 Denial of licensure. An application for a license may be denied for any of the reasons that include but are not limited to the following:

- (1) Failure of the applicant to comply with this chapter or chapter 321, HRS;
- (2) Failure of the applicant to provide all requirements specified in section 11-94.2-7;

- (3) Failure of the applicant to possess and provide evidence of financial capability to operate the facility pursuant to this chapter;
- (4) The fraudulent representation or misrepresentation of facts by the applicant;
- (5) Failure to comply with and provide criminal history record check information pursuant to section 321-15.2, HRS; and
- (6) Determination by the department that the applicant does not possess a reputable or responsible character. [Eff _____]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-10 Inspection. (a) All inspections and complaint investigations shall be unannounced and may be conducted outside of normal business hours of the State.

(b) The department may conduct inspections and investigations of an exempt facility regarding complaints, adverse accreditation or certification findings, or periodic validation surveys.

(c) Following an inspection, a statement of deficiencies, if any, shall be presented to the facility. The facility shall return a plan of correction to the department within ten days of the receipt of the statement of deficiencies. Receipt of the statement of deficiencies is presumed to be within five days from the date of the notice. Facilities shall be allowed a reasonable time to implement the plan of correction. A follow-up inspection may be made by the department to assess the progress in the plan of correction. If there has not been substantial progress in carrying out the plan of correction, the license shall be revoked or shall not be renewed. A provisional license may be issued should the department determine that good faith efforts are being made by the facility to carry out the plan of correction and the facility requires additional time to meet the requirements.

(d) The department shall charge appropriate fees for the processing of an application, issuance of a new license, and a license renewal. The department shall provide prior notice of the amount of the fee to the licensee. [Eff _____] (Auth: HRS §§321-9, 321-11; SLH 2021, Act 28) (Imp: HRS §§321-9, 321-11; SLH 2021, Act 28)

§11-94.2-11 Waiver. (a) Every request for a waiver from an otherwise applicable licensing requirement shall be set forth in writing and submitted to the department for approval. The licensee shall submit the information required in this subsection to enable the department to make a decision on the request for a waiver.

- (1) The department shall not act upon or consider any incomplete requests for waivers. A waiver request shall be deemed complete only when all required and requested information, including a reason for the waiver and a proposal for an alternate plan to ensure the health, safety, welfare, and civil rights of the resident(s), including resident care and life safety safeguards, is received by the department;
- (2) Every request shall be signed by the licensee and shall constitute an acknowledgment and agreement that the licensee will comply with all terms and conditions of the waiver and this chapter upon approval of the request;
- (3) The department may require the submission of additional information after the request has been submitted;
- (4) A waiver shall not be transferable;
- (5) The failure of the department to act on a completed request for a waiver within

sixty days of receipt of request shall be deemed an approval of the request, provided that the licensee acts in accordance with the request process;

- (6) Notwithstanding the requirements of paragraph (5), the maximum period of time of sixty days shall be extended indefinitely in the event of a national disaster, state emergency, or union strike that would prevent the applicant, the agency, or the department from fulfilling application review in a timely manner; and
- (7) Waivers may be granted on a case-by-case basis and shall not be construed as a precedent for any other circumstances or situations.

(b) The waiver request will be reviewed by the department giving due consideration to the effect or probable effect the waiver would have on the health, safety, and welfare of the residents.

(c) Whenever a request is approved by the department, the department shall issue a waiver authorizing the operation of a nursing facility pursuant to the conditions specified in the request for the waiver, or conditions specified by the department, or both. No waiver shall be granted by the department unless the request and the supporting information clearly show that:

- (1) Granting the waiver will not endanger the health, safety, or welfare of the resident(s);
- (2) Granting the waiver will not affect the requirements of licensure provided in section 11-94.2-6; and
- (3) Granting the waiver will not affect the nursing services provided in section 11-94.2-39.

(d) Any approved waiver shall be granted within the requirements of this section, for time periods and under conditions consistent with this chapter, and with the following limitations:

- (1) The department may issue a waiver for a period not exceeding one year;
- (2) The department may revoke the waiver at any time if the waiver creates a threat to the health, safety, or welfare of the resident(s);
- (3) For every waiver granted under this section, the department shall, on a case-by-case basis, require the licensee to submit to the department additional information as may be necessary or appropriate such as:
 - (A) Resident diagnosis, physician or APRN order, training to be provided to licensee, plan for monitoring, oversight, and evaluation of resident status;
 - (B) Conditions under which any structural changes to the facility will be completed, specific timeframe for construction completion, and plan to ensure the safety of the residents during construction; and
 - (C) Procedure to be undertaken to ensure the health, safety, and welfare of residents as necessitated by staffing changes or training to meet the requirements of this chapter;
- (4) For every waiver granted under this section, the department shall perform a thorough review of known and available means of protecting the health, safety, or welfare of the resident(s) to which the waiver applies.

(e) Renewal of waivers shall be requested in writing and shall be submitted to the department at least sixty days prior to the expiration of the waiver. The department shall act on a request for renewal within sixty days of the receipt of the request.

(f) Any waiver granted pursuant to this section may be renewed on the same terms and conditions on which the waiver was initially granted, for a period not exceeding one year, provided that:

- (1) The request for renewal has met all of the conditions specified in the immediately preceding waiver; and
- (2) The request for renewal and the waiver issued in response to that request shall provide for the protection of the health, safety, and welfare of the resident(s) in a manner that is consistent with the terms of the immediately preceding waiver at its expiration.

(g) No waiver shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§§11-94.2-12 to 11-94.2-15 (Reserved).

SUBCHAPTER 3

ADMINISTRATION REQUIREMENTS

§11-94.2-16 Governing body and management. (a) Each facility shall have an organized governing body, or designated persons functioning as the governing body, that has overall responsibility for the conduct of all activities. The governing body may include the administrator. The facility shall maintain methods of administrative management that assure that the requirements of this section are met.

(b) The facility shall ensure that:

- (1) Staff sufficient in number and qualifications shall be on duty twenty-four hours a day to carry out the policies, responsibilities, assessed care needs of the residents and program of the facility; and

- (2) The numbers and categories of personnel shall be determined by the number, acuity level, and needs of residents.
- (c) The facility shall have written personnel policies available to staff, residents, and the public that govern all services provided by the facility and include but are not limited to:
 - (1) Written job descriptions available for all positions. Each employee shall be informed of the employee's duties and responsibilities at the time of employment;
 - (2) Requirements that all employees have appropriate licenses or certification as required by law, and their licenses or certification shall be readily available for examination by the department;
 - (3) Ethical standards of professional conduct that shall apply in the facility; and
 - (4) An organization chart showing the major operating programs of the facility, with staff division, administrative personnel in charge of programs and divisions, and their lines of authority, responsibility, and communication. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-17 Administrator. All freestanding and hospital-based nursing facilities shall be administered by:

- (1) A person appointed by the governing body and responsible for the management of the facility; and
- (2) Licensed by the State as a nursing home administrator; or
- (3) In the absence of the administrator, an employee who has been designated, in

writing, to act on the administrator's behalf for a determined period of time as approved by the department. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-18 Medical director. The facility must designate a physician to serve as medical director. The medical director is responsible for:

- (1) Development, implementation, and evaluation of resident care policies;
- (2) Coordination of medical care in the facility; and
- (3) Consultation and training to licensed staff as necessary. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-19 Ownership and financial capability.
(a) The facility shall provide the department with current information about ownership of the facility including:

- (1) The name of each person who has an ownership interest of ten per cent or more in the facility;
- (2) The name of each person who is the owner (in whole or in part) of any mortgage, deed or trust, note, or other obligation secured (in whole or in part) by the facility;
- (3) The officers and directors of the corporation, if the facility is organized as a corporation, is incorporated, or is a limited liability company, and any changes in the officers and directors; and
- (4) The name of each partner if the facility is organized as a partnership.

(b) The owner shall provide evidence as deemed necessary by the department to establish that the financial resources of the owner are sufficient to

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operate and maintain the facility according to the standards set forth in this chapter. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-20 In-service education. (a) There shall be a staff in-service education program that includes the following:

- (1) Orientation for all new employees that shall include:
 - (A) Information to acquaint them with the philosophy, organization, program, policies and procedures, practices, and goals of the facility; and
 - (B) Competency evaluation to ensure that staff are able to carry out their respective duties;
- (2) In-service training for employees who have not achieved the desired level of competence, and continuing in-service education to update and improve the skills and competencies of all employees;
- (3) In-service training that shall include annually, at minimum, prevention and control of infections, fire prevention and safety, disaster preparedness for all hazards, accident prevention, resident rights including prevention of resident abuse, neglect and financial exploitation, and problems and needs of the aged, ill, and disabled;
- (4) Competency testing for cardiopulmonary resuscitation to annually certify the nursing staff;
- (5) Training in oral hygiene and denture care, which shall be given to the nursing staff at least annually; and
- (6) Appropriate personal hygiene instructions at regular intervals shall be given to all personnel providing direct care and handling food.

(b) Records shall be maintained and available for departmental review for all orientation and staff in-service and development programs.

(c) The facility shall have in place a system to ensure that all staff receive in-service training.

[Eff] (Auth: HRS §§321-9, 321-11)

(Imp: HRS §§321-9, 321-11)

§11-94.2-21 Arrangement for services. When the facility does not employ a qualified person to render a required or necessary service, it shall have a written agreement or contract with a qualified outside person or provider to provide the needed service.

[Eff] (Auth: HRS §§321-9, 321-11)

(Imp: HRS §§321-9, 321-11)

§11-94.2-22 Medical record system. (a) The facility shall have available sufficient appropriately qualified staff and necessary supporting personnel to facilitate the accurate processing, auditing and analysis, indexing, filing, and prompt retrieval of records, record data, and resident health information.

(b) If the employee who supervises medical records is not a registered health information administrator or registered health information technician, there shall be regularly scheduled visits by a qualified consultant who shall provide reports to the administrator.

(c) The following information shall be obtained and entered in the resident's record at the time of admission to the facility:

- (1) Personal information such as name, date, and time of admission, date and place of birth, citizenship status, marital status, social security number, or an admission number that can be used to identify the resident without use of name when the latter is desirable;

- (2) Name and address of next of kin, legal guardian, surrogate, or representative holding a power of attorney;
 - (3) Sex, height, weight, race, and identifying marks;
 - (4) Reason for admission or referral;
 - (5) Language spoken and understood;
 - (6) Information relevant to religious affiliation, if any;
 - (7) Admission diagnosis, summary of prior medical care with listing of physicians providing care, recent physical examination, tuberculosis status, and physician's orders; and
 - (8) Advanced directives, as applicable.
- (d) Records to be maintained and updated, as necessary, for the duration of each resident's stay shall also include:
- (1) Appropriate authorizations and consents for medical procedures;
 - (2) Records of all periods, with physician orders, of use of physical or chemical restraints with justification and authorization for each and documentation of ongoing assessment of resident during use of restraints;
 - (3) Copies of initial and periodic examinations and evaluations, as well as progress notes at appropriate intervals;
 - (4) Regular review of an overall plan of care setting forth goals to be accomplished through individually designed activities, therapies, and treatments, and indicating which professional services or individual is responsible for providing the care or service;
 - (5) Entries describing all care, treatments, medications, tests, immunizations, and all ancillary services provided; and

- (6) All physician's, physician assistant's, or APRN's orders completed with appropriate documentation (signature, title, and date).

(e) When a resident is transferred to another facility or discharged, there shall be:

- (1) Written documentation of the reason for the transfer or discharge and efforts made by the facility to mitigate any stress that may arise due to the transfer;
- (2) Documentation to indicate that the resident understood the reason for transfer, or that the duly authorized healthcare decision maker and family were notified;
- (3) A complete summary including current status and care, final diagnosis, and prognosis; and
- (4) Documentation of efforts made for effective discharge planning.

(f) The facility shall have available a master alphabetical index that is a permanent record of all residents admitted to the facility. The index shall include but not be limited to name, date of birth, facility medical record number, name of physician, and dates of admission and discharge.

(g) All entries in a resident's record shall be:

- (1) Accurate and complete;
- (2) Legible and typed or written in black or blue ink;
- (3) Dated;
- (4) Authenticated by signature and title of the individual making the entry; and
- (5) Written completely without the use of abbreviations except for those abbreviations approved by a medical consultant or the medical doctor.

(h) All information contained in the resident's record, including any information contained in an automated data bank, shall be considered confidential and adhere to requirements as set forth by the Health Insurance Portability and Accountability Act of 1996.

(i) The record shall be the property of the facility, whose responsibility shall be to secure the information against loss, destruction, defacement, tampering, or use by unauthorized persons.

(j) There shall be written policies and procedures governing the management of resident health information including but not limited to access to, duplication of, and dissemination of information from the record, and the retention of the medical records and disposal methods as appropriate.

(k) Written consent of the resident, if competent, or the duly authorized healthcare decision maker if the resident is not competent, shall be required for the release of information to persons not otherwise authorized to receive it. Consent forms shall include:

- (1) The use for which the information is requested;
- (2) Sections or elements of information to be released and specific period of time during which the information is to be released; and
- (3) Consent of the resident, legal guardian, or surrogate for release of any medical record information.

(l) Records shall be readily accessible and available to authorized department personnel for the purpose of determining compliance with this chapter.

(m) The facility shall retain medical records pursuant to section 622-58, HRS, in the original or reproduced form for a minimum of seven years after the last data entry, except in the case of minors, whose records shall be retained during the period of minority plus seven years after the minor reaches the age of majority. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-23 Quality assurance and performance improvement. (a) The facility shall develop, implement, and maintain an effective, comprehensive, data-driven quality assurance and performance improvement program that focuses on indicators of the outcomes of care and quality of life for the full range of care and services provided by the facility.

(b) The administrator shall be responsible and accountable for ensuring the program is defined, implemented, and maintained, and addresses identified priorities, and is annually approved by the governing body.

(c) The program shall be described in a written plan containing the process that will guide the facility's efforts in assuring care and services are maintained at acceptable levels of performance and continuous improvement. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§§11-94.2-24 to 11-94.2-26 (Reserved).

SUBCHAPTER 4

RESIDENT CARE REQUIREMENTS

§11-94.2-27 Resident rights and facility practices. Written policies regarding the rights and responsibilities of residents during the resident's stay in the facility shall be established and shall be made available to the resident, resident family, legal guardian, surrogate, sponsoring agency or representative payee, and the public upon request. A facility must protect and promote the rights of each resident, including:

- (1) The free exercise of rights as a resident of the facility and as a citizen or resident of the United States;
- (2) The right to be free of interference, coercion, discrimination, and reprisal from

- the facility that shall include the right to be free of chemical or physical restraints not medically indicated;
- (3) The right to be fully informed, both orally and in writing in a language understood by the resident, or in a manner that allows for the resident's understanding, of the resident's rights and all rules and regulations governing resident conduct and responsibilities;
 - (4) The right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility;
 - (5) The right to access all records pertaining to the resident, including current clinical records, and to purchase copies of those records at a cost not to exceed community standards;
 - (6) The right to be informed in a language, or in a manner that the resident understands, of the resident's health status and medical condition;
 - (7) The right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive;
 - (8) The right to be informed of medicaid benefits and requirements and procedures for establishing eligibility;
 - (9) The right to names, addresses, and telephone numbers of pertinent resident advocacy groups;
 - (10) The right to manage the resident's financial affairs to the extent the resident is competent and capable of doing so;
 - (11) The right to choose a personal physician to the extent the resident is competent and capable of doing so;
 - (12) The right to be fully informed in advance about care and treatment and of any changes

in that care and treatment and the right to participate in planning care and treatment, unless adjudged incompetent or incapacitated;

- (13) The right to be fully informed, prior to or at the time of admission and during the resident's stay of services available in or through the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate;
- (14) The right to personal privacy and confidentiality of personal and clinical records; and
- (15) The right to translation or interpretation services or other communication assistance as necessary. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-28 Resident accounts. (a) In the event the resident or family member requests the facility to manage the resident's personal funds, an itemized account shall be made available in writing to the resident or the legal guardian or surrogate, and shall be maintained and kept current for the resident, including:

- (1) Written receipts for all personal possessions and funds received by or deposited with the facility; and
- (2) Written receipts for all disbursements made to, or on behalf of, the resident.

(b) Upon request of each resident or legal guardian or surrogate, articles kept for safekeeping shall be released.

(c) Neither the administrator nor any staff member nor any member of the governing board, nor any owner of a facility shall serve as legal guardian or surrogate for a resident. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-29 Resident abuse, neglect, and misappropriation of resident property. (a) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(b) All alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source or origin, and alleged misappropriation of resident property shall be reported immediately to the administrator of the facility, and to other officials in accordance with state law through established procedures.

(c) The resident involved, and the resident's family, legal guardian, or surrogate shall be informed of the alleged violation and the investigation that is being conducted.

(d) The facility shall maintain a record that all alleged violations were thoroughly investigated and shall take all reasonable steps to prevent further abuse while the investigation is in progress.

(e) The results of all investigations shall be reported to the administrator of the facility or the designated representative and to other officials, including the department, in accordance with state law within five working days of the incident.

(f) If the alleged violation is verified, appropriate corrective action shall be taken to protect the resident's safety as well as other residents in the facility. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-30 Resident care. The facility shall have written policies and procedures that address all aspects of resident care needs to assist the resident to attain and maintain the highest practicable health and medical status, including but not limited to:

- (1) Respiratory care including ventilator use;
- (2) Dialysis;
- (3) Skin care and prevention of skin breakdown;

- (4) Nutrition and hydration;
- (5) Fall prevention;
- (6) Use of restraints;
- (7) Communication; and
- (8) Care that addresses appropriate growth and development when the facility provides care to infants, children, and youth.
[Eff _____] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§§11-94.2-31 to 11-94.2-35 (Reserved).

SUBCHAPTER 5

PROGRAM REQUIREMENTS

§11-94.2-36 Admission, transfer, and discharge.

- (a) There shall be written policies and procedures available to staff, residents, and the public that govern:
- (1) All services provided by the facility;
 - (2) The admission, transfer, and discharge of residents; and.
 - (3) Notification to the resident, resident's representative, and the state long term care ombudsman of transfer or discharge initiated by the facility.
- (b) These policies shall ensure that:
- (1) The facility shall not discriminate against admission of any individual as per all federal and state civil rights and anti-discrimination regulations. Should the facility not be able to provide care and services to individuals based on their age, i.e., infants and youth, or specific disability, the facility will need to indicate so in their policies and procedures and by-laws;

- (2) The facility shall accept only those residents whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;
 - (3) As changes occur in a resident's physical or mental condition necessitating a different level of service or care that cannot be adequately provided by the facility, the residents shall be transferred promptly to a facility capable of providing an appropriate level of care;
 - (4) Except in the case of an emergency, the resident or the resident's legal guardian, family, or surrogate and the attending physician shall be informed in advance of the transfer or discharge to another facility; and
 - (5) The facility's buildings are constructed, equipped, and maintained to protect the resident's health, and assure the safety of residents, personnel, and visitors.
- (c) The facility shall permit each resident to remain in the facility and shall not transfer or discharge the resident from the facility unless:
- (1) The transfer or discharge is necessary for the resident's welfare, or the resident's needs cannot be met in the facility;
 - (2) The transfer or discharge is appropriate because the resident's health has improved sufficiently such that the services provided by the facility are no longer needed;
 - (3) The health and safety of individuals in the facility are, or would otherwise be, endangered;

- (4) The resident has failed, after reasonable and appropriate notice, to pay for all costs attendant to residency at the facility; or
- (5) The facility license is terminated, revoked, or suspended.

(d) The facility shall provide supportive counseling and preparation to the resident to ensure safe and orderly transfer or discharge from the facility to mitigate possible relocation stress.

(e) At the time of transfer for hospitalization or therapeutic leave, the facility shall provide written information to the resident concerning the facility's bed hold policy. [Eff

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(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-37 Social work services. (a) The facility shall provide medically related social work services to help residents attain or maintain the residents' highest practicable physical, mental, and psychosocial well-being.

(b) The number of hours of social work services shall be determined by the resident capacity, acuity level, and needs.

(c) Social work services provided to each resident shall be documented in each resident's medical record and shall include but not be limited to:

- (1) A social history and assessment of current social and emotional needs;
- (2) A social work plan of care for each resident recorded in the medical record and integrated into the comprehensive assessment and overall care plan coordinated or integrated with other various disciplines;
- (3) A discharge plan, as appropriate; and
- (4) Evidence of regular review of social work services and discharge plan in

§11-94.2-37

conjunction with the overall plan of care. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-38 Activities. (a) The facility must provide for an ongoing program of age-appropriate activities designed to meet the interests, physical, mental, and psychosocial well-being of each resident.

(b) The activities program shall be directed by an activity professional.

(c) A schedule of activities shall be made available for review by the department as requested. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-39 Nursing services. (a) Each facility shall have nursing staff sufficient in number and qualifications to meet the nursing needs of the residents. There shall be at least one registered nurse at work full-time on the day shift, for eight consecutive hours, seven days a week, and at least one licensed nurse at work on the evening and night shifts, unless otherwise determined by the department.

(b) Nursing services shall include but are not limited to the following:

- (1) A comprehensive nursing assessment of each resident and the development and implementation of a plan of care within five days of admission. The nursing plan of care shall be developed in conjunction with the physician's admission physical examination and initial orders. A nursing plan of care shall be integrated with an overall plan of care developed by an interdisciplinary team no later than the twenty-first day after, or simultaneously, with the initial

interdisciplinary care plan conference;

§11-94.2-39

- (2) Written nursing observations and summaries of the resident's status recorded, as appropriate, due to changes in the resident's condition, but no less than quarterly; and
- (3) Ongoing evaluation and monitoring of direct care staff to ensure quality resident care is provided.

(c) There shall be a registered nurse designated as the nursing administrator or director of nursing who will be responsible for all nursing services.

(d) Should drug or medication administration be delegated pursuant to chapter 16-89, subchapter 15, there shall be documented evidence of a training program, individuals receiving training, and ongoing monitoring and evaluation to assess compliance with requirements.

(e) There shall be a policies and procedures manual that is kept current and consistent with current nursing and medical practices and approved by the medical advisor or director and the person responsible for nursing procedures. The policies and procedures shall include but not be limited to:

- (1) Written procedures for personnel to follow in an emergency including:
 - (A) Care of the resident;
 - (B) Notification of the attending physician and other persons responsible for the resident; and
 - (C) Arrangements for transportation, hospitalization, or other appropriate services;
- (2) All treatment and care provided relative to the resident's needs and requirements for documentation; and
- (3) Medication or drug administration procedures that clearly define drug administration process, documentation,

and authorized individuals able to administer medications or drugs.
[Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-40 Dietary services. (a) The food and nutritional needs of the residents shall be met through a nourishing, well-balanced diet in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, and shall be adjusted for age, sex, activity, and disability.

- (1) At least three meals shall be served daily at regular times with not more than a fourteen hour span between a substantial evening meal and breakfast on the following day;
- (2) Between meals nourishment that is consistent with the resident's needs shall be offered routinely and shall include a regular schedule of hydration to meet each resident's needs;
- (3) Appropriate substitution of foods shall be promptly offered to all residents as necessary;
- (4) Food shall be served in a form consistent with the needs of the resident and the resident's ability to consume it;
- (5) Food shall be served with appropriate utensils;
- (6) Residents needing special equipment, implements, or utensils to assist them when eating shall have the items provided by the facility; and
- (7) There shall be a sufficient number of competent personnel to fulfill the food

and nutrition needs of residents. Paid feeding attendants shall be trained as per the facility's state-approved training protocol.

- (b) All diets prepared for residents shall be:
 - (1) Prescribed by the resident's physician, physician assistant, or APRN with a record of the diet as ordered kept on file;
 - (2) Planned, prepared, and served by qualified personnel according to diet prescription. The current Hawaii Dietetic Association Manual or The Manual of Clinical Dietetics of the American Dietetic Association or both shall be readily available to all medical, nursing, and food service personnel;
 - (3) All diets shall appropriately meet the nutrient, texture, and fluid needs of each resident; and
 - (4) Therapeutic or special diets shall be planned by a dietitian and served accordingly as prescribed by the resident's physician, physician assistant, or APRN.

(c) A nutritional assessment and care plan shall be recorded in each resident's medical record and integrated into the overall comprehensive assessment and overall plan of care coordinated/integrated with all disciplines. The nutritional assessment and care plan shall be reviewed on a regular basis and adjusted as needed.

(d) The food service shall be directed by a dietary manager. If the food service is directed by a dietary manager who is not a dietitian, there shall be frequent and regularly scheduled consultation with, and in-service education by, a dietitian. Consultation and in-service education shall be appropriate to the needs of the dietary personnel and

residents of the facility, and this shall be documented. In-service education specific to the needs of the dietary staff shall be provided at least on a semi-annual basis.

(e) A facility may provide for food service by contract with an outside supplier. The method of transport, storage, preparation, and serving of food, as well as the method of providing prompt, appropriate substitution of foods in therapeutic or special diets shall be approved by the dietitian or dietary manager prior to the implementation of the contract.

(f) The facility shall have a food service plan documented and available for department review that shall include but not be limited to the following:

- (1) Menus shall be written at least one week in advance;
- (2) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal, and be adjusted for seasonal changes along with resident preference;
- (3) A different menu shall be followed for each day of the week. If a cycle menu is used, the cycle shall cover a minimum of four weeks;
- (4) All menus shall be filed and maintained with any recorded changes for at least three months; and
- (5) Menus shall be in place for at least three to five days of meal service in case of a natural or external disaster. A plan for meal service in the event of an internal disaster such as interruption of power or water supply shall also be in place and available for departmental review.

[Eff] (Auth: HRS
§§321-9, 321-11) (Imp: HRS §§321-9,
321-11)

§11-94.2-41 Storage and handling of food. (a) All food shall be procured, stored, prepared, distributed, and served under sanitary conditions.

- (1) Dry or staple food items shall be stored above the floor in a ventilated room not subject to seepage or wastewater backflow, or contamination by condensation, leakages, rodents, or vermin; and
- (2) Perishable foods shall be stored at the proper temperatures to conserve nutritive value and prevent spoilage.

(b) Effective procedures to promptly and consistently clean all equipment and work areas shall be enforced.

(c) Hand-washing facilities, including hot and cold water, soap, and paper towels adjacent to the work areas shall be provided.

(d) In the kitchen and food preparation areas, receptacles shall be kept closed by tight-fitting covers, except in the kitchen during hours of food preparation and serving. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-42 Physician services. (a) Admission orders and ongoing orders by a physician, physician assistant, or APRN and plan of treatment shall be in writing and carried out by the staff of the facility including arrangement for transfer to other facilities when indicated.

(b) Each resident admitted to the facility shall be under the care of a physician selected by the resident, legal guardian, or surrogate.

(c) The facility shall ensure that arrangements have been made for all physician, physician assistant, or APRN visits and services.

(d) Physicians, physician assistants, or APRNs shall visit the facility as necessary to assure that adequate medical care is being provided, review plan of care, make pertinent recommendations, and determine

appropriate level of care of resident.

§11-94.2-42

(e) Physician visits shall be made at least once every thirty days for the first ninety days of stay. After ninety days, a schedule of no less than quarterly visits may be adopted; however, this does not apply to residents who require specialized rehabilitative services. APRN, physician assistant, and physician visits may be alternated after the initial physician visit.

(f) Physicians, physician assistants, or APRNs shall provide an annual health evaluation of each resident.

(g) Each resident shall have a physical examination by a physician, physician assistant, or APRN within five days prior to admission or within one week after admission, and shall have had a tuberculosis clearance within the previous year, pursuant to section 11-164-10.

(h) The facility shall promptly notify the physician, physician assistant, or APRN of any accident, injury, or change in the resident's condition.

(i) The physician, physician assistant, or APRN shall write a discharge summary to ensure adequate continuing care when a resident is transferred to another primary care provider.

(j) Each resident shall receive age-appropriate immunizations or vaccinations including but not limited to pneumococcal and annual influenza vaccines and any necessary immunizations following the recommendations of the Advisory Committee of Immunization Practices unless otherwise contraindicated, or refused by the resident, legal guardian, or surrogate. All immunizations provided shall be documented in each resident's medical record.
[Eff _____] (Auth: HRS §§321-9, 321-11)
(Imp: HRS §§321-9, 321-11)

§11-94.2-43 Interdisciplinary care process.

(a) A comprehensive assessment shall be completed for each resident by an interdisciplinary team at least

annually and updated as appropriate, based on the resident's condition.

(b) An individualized, interdisciplinary overall plan of care shall be developed to address prioritized resident needs including nursing care, social work services, medical services, rehabilitative services, restorative care, preventative care, dietary or nutritional requirements, and resident/family education.

(c) The overall plan of care shall be reviewed periodically by the interdisciplinary team to determine if goals have been met, if any changes are required to the overall plan of care, and as necessitated by changes in the resident's condition.

(d) Implementation of the overall plan of care shall be documented in each resident's medical record.
[Eff _____] (Auth: HRS §§321-9, 321-11)
(Imp: HRS §§321-9, 321-11)

§11-94.2-44 Specialized rehabilitation services.

(a) The facility shall provide for specialized and supportive rehabilitation services, including occupational therapy, physical therapy, and speech therapy, according to the needs of each resident, either directly by qualified staff or through arrangements with qualified outside resources. Services shall be programmed to:

- (1) Preserve and improve the resident's maximal abilities for independent function;
- (2) Prevent, insofar as possible, irreversible or progressive disabilities; and
- (3) Provide for the procurement and maintenance of assistive devices as needed by the resident to adapt and function within the resident's environment.

(b) A written rehabilitative plan of care integrated into the overall plan of care, shall be

§11-94.2-44

provided that is based on the attending physician's, physician assistant's, or APRN's orders and assessment of a resident's needs in regard to specialized rehabilitative procedures. It shall be developed by the rehabilitative staff and incorporated in, and regularly reviewed in conjunction with, the overall care plan for the resident.

(c) Physician's orders for evaluation and treatment shall be documented in each resident's medical record.

(d) Rehabilitation services shall have adequate space, facilities, equipment, supplies, and other related resources.

(e) Rehabilitation services may be ordered by or recertified by APRNs and physician assistants, if within their scope of practice. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-45 Dental services. (a) Emergency and restorative dental services shall be available to each resident.

(b) Each resident or resident's legal guardian, or surrogate shall select the dentist of his or her choice, and the facility shall assist each resident to obtain necessary dental care by making arrangements for appointments and transportation, as requested. [Eff] (Auth: HRS §§321-9, 321-11)
(Imp: HRS §§321-9, 321-11)

§11-94.2-46 Pharmaceutical services. (a) Each facility shall employ a licensed pharmacist or shall have a written contractual arrangement with a licensed pharmacist, to provide consultation on methods and procedures for ordering, storing, administering, disposing, and recordkeeping of drugs and biologicals, and provisions for emergency service.

(b) A facility shall have a current pharmacy policy manual consistent with current pharmaceutical

practices developed and approved by the pharmacist, medical director/medical advisor, and director of nursing that:

- (1) Includes policies and procedures, and defines the functions and responsibilities relating to pharmacy services, including the safe administration and handling of all drugs and self-administration of drugs. Policies and procedures shall include pharmacy functions and responsibilities, formulary, storage, administration, documentation, verbal and telephone orders, authorized personnel, recordkeeping, and disposal of drugs;
- (2) Is reviewed at least every two years and revised as necessary to keep abreast of current developments in overall drug usage; and
- (3) Has a drug recall procedure that can be readily implemented.

(c) As authorized by facility policy and state law, a physician, physician assistant, or APRN shall order medications, either in writing or verbally, to be administered to a resident.

(d) A physician's, physician assistant's, or APRN's verbal orders for prescription drugs shall be given only to a licensed nurse, pharmacist, or another physician.

(e) All verbal or telephone orders for medication shall be recorded and signed by the licensed person receiving them and shall be authenticated by the prescribing physician according to the policies and procedures of the facility.

(f) The physician, physician assistant, or APRN shall review all orders at the time of the visit to the resident.

(g) Each drug shall be rechecked and identified immediately prior to administration.

(h) Prescription medication shall not be used for any resident other than the resident for whom it was issued. Stock supply items may be administered per facility protocol.

(i) Appropriately licensed and trained staff shall be responsible for the entire act of medication administration, which entails removing an individual dose from a container properly labeled by a pharmacist or manufacturer (unit dose included), verifying the dosage with the physician's orders, giving the specified dose to the proper resident, and promptly recording the time, route, and dose given to the resident, and signing the record. Only a licensed nurse, physician, or other individual to whom the licensed professional has delegated the responsibility pursuant to chapter 16-89, subchapter 15, may administer medications.

(j) Medication errors and drug reactions shall be recorded in the resident's chart and reported immediately to the physician, physician assistant, or APRN who ordered the drug, and a medication error report shall be prepared and given to the administrator of the facility or director of nursing for review and appropriate action, according to facility policy.

(k) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(l) All drugs, including drugs that are stored in a refrigerator, shall be kept under lock and key, except when authorized personnel are in attendance. The facility shall be in compliance with all security requirements of federal and state laws as they relate to storerooms and pharmacies.

(m) Drugs for external and internal use shall be kept separate and stored in locked, well-marked, separate cabinets.

(n) Discontinued and outdated prescriptions and containers with worn, illegible, or missing labels shall be disposed of according to facility policy.

(o) A pharmacist shall, on a monthly basis, review the record of all residents receiving medications to determine potential adverse reactions, interactions, and contraindications. The review and any concerns identified shall be documented in the resident's record.

(p) When appropriateness of drugs or dosage of drugs as ordered are questioned by the pharmacist or licensed nurse, the licensed nurse or the pharmacist shall consult the physician, and a record of the consultation shall be made available to the administrator of the facility or director of nursing. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-47 Adult day health services. (a) If a nursing facility chooses to provide adult day health services in its facility, the space and staff requirements for the adult day health service activities shall not reduce the space and staff requirements of the nursing facility.

(b) Client records in adult day health services shall include a pertinent medical history, nursing assessment, emergency telephone numbers, and a plan of care. Adult day health service client records shall be kept separate from the medical records of the nursing facility residents.

(c) All care and services provided to the adult day health service client shall be consistent with the assessment and plan of care and physician orders, as applicable. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§§11-94.2-48 to 11-94.2-52 (Reserved).

SUBCHAPTER 6

ENVIRONMENTAL HEALTH STANDARDS

§11-94.2-53 Infection control. (a) There shall be appropriate policies and procedures written and implemented for the prevention and control of infectious diseases that shall be in compliance with all applicable laws of the State, rules of the department relating to infectious diseases and infectious waste, and national standards such as the Centers for Disease Control and Prevention and Centers for Medicare & Medicaid Services.

(b) The facility shall have provisions for isolating residents with infectious diseases until appropriate transfers can be made.

- (1) The facility shall have a written policy that outlines proper isolation and infection control techniques and practices;
- (2) At least one single bedroom shall be designated as an isolation room as needed and shall have:
 - (A) An adjoining toilet room with nurses' call system, a lavatory, and a toilet;
 - (B) Appropriate hand-washing facilities available to all staff; and
 - (C) Appropriate methods for cleaning and disposing of contaminated materials and equipment;
- (3) The facility shall ensure that visual observations of the resident can be made in each isolation room:
 - (A) By means of the view window in each isolation room; or
 - (B) By an approved mechanical system e.g., closed circuit television monitoring;

- (4) The facility shall have documented evidence that every employee has both an initial employment evaluation and an annual health evaluation. These evaluations shall be specifically oriented to determine the presence of any infectious disease liable to harm a resident;
 - (5) Skin lesions, respiratory tract symptoms, and diarrhea shall be considered presumptive evidence of infectious disease. Any employee who develops evidence of an infection must be immediately excluded from any duties relating to food handling or direct resident contact until such time as a physician certifies it is safe for the employee to resume such duties;
 - (6) There shall be a documented record that every employee and resident have an initial and an annual tuberculosis (TB) clearance. Facilities shall comply with the most current and updated guidelines as set forth in chapter 11-164, Exhibit A; and
 - (7) When a known negative tuberculin skin test on an employee or resident converts to a positive test, it shall be considered a new case of tuberculosis infection and shall be reported to the department.
- [Eff _____] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-54 Sanitation. (a) The facility shall comply with all applicable laws of the State and rules of the department relating to sanitation.

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(b) Written summary reports of inspections by state or county health authorities, and records of action taken in response to deficiencies and recommendations shall be kept on file at the facility.

(c) Every facility shall provide a sufficient number of watertight receptacles of metal or other material acceptable to the department for rubbish, garbage, refuse, and other discarded matter. An area shall be provided for the washing and cleaning of garbage containers and the storage of garbage, trash, and solid waste.

(d) Every facility shall maintain an effective pest control program so that the facility is free of pests and rodents. [Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-55 Housekeeping. (a) Each facility shall have a plan for routine periodic cleaning of the entire building and premises.

(b) After discharge of any resident, the resident's bedroom and equipment shall be thoroughly cleaned prior to reuse.

(c) Floors, sinks, toilets, and showers in resident areas shall be cleaned at least once daily.

(d) The facility shall be kept free of unreasonable accumulation of personal possessions.

(e) All floors, walls, ceilings, windows, and fixtures shall be kept clean and in good repair.

(f) All areas that have contained infectious residents and materials shall be thoroughly cleaned with appropriate sanitizing methods.

(g) All combustible, potentially hazardous, or poisonous agents used for the cleaning of the facility shall be stored in a secured and locked area.

[Eff] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-56 Laundry service. (a) Laundry service shall be managed so that daily clothing and

linen needs are met without delay and in compliance

§11-94.2-56

with facility policies and procedures for infection control.

(b) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

- (1) Provisions shall be made for the handling, storage, and transportation of soiled and clean laundry and for satisfactory cleaning procedures;
 - (2) Provisions may be made for contract service outside the facility in a laundry approved by the department;
 - (3) Laundry contaminated with blood, blood products, or infectious waste shall be handled in accordance with U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulation 29 C.F.R., Part 1910.1030;
 - (4) Clean linen shall be stored in enclosed areas; and
 - (5) Hampers shall be provided for soiled linen.
- [Eff] (Auth:
HRS §§321-9, 321-11) (Imp: HRS §§321-9,
321-11)

§11-94.2-57 Life safety. (a) Facilities licensed under this chapter shall be inspected by appropriate fire authorities for compliance with the current state and county life safety rules and ordinances.

(b) Smoking rules shall be adopted in accordance with applicable state, federal, and county laws, statutes, and regulations. "No Smoking" signs shall be posted where flammable liquids, combustible gases, or oxygen are used or stored. Smoking by residents shall be permitted only under supervision in designated areas, and ashtrays shall be provided.

(c) Electric heating pads shall be prohibited.

(d) Facilities shall have written procedures in

§11-94.2-57

- (1) An emergency electrical power system shall be available and shall, at a minimum, supply power adequate for lighting all entrances and exits and the equipment to maintain the fire detection, alarm, and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted; and
- (2) When life support systems are used, the facility must provide emergency electrical power to those life support systems with an emergency generator (as defined in the most current National Fire Protection Association Code, Health Care Facilities) that is located on the premises. [Eff _____]

Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

(1) Arranging for rapid primary care

provider assistance;

§11-94.2-58

- (2) Transportation arrangements for hospitalization or other services that are appropriate;
- (3) Maintenance of an appropriate emergency preparedness kit for all emergencies or disasters; and
- (4) Preparedness for all hazards to include but not be limited to:
 - (A) Natural disasters such as tropical storm, hurricane, flooding, tsunami, earthquake, and any island-specific disaster such as volcanic eruption and lava flow;
 - (B) Fire;
 - (C) Medical emergencies;
 - (D) Terrorist threat;
 - (E) Pandemic flu; and
 - (F) Public health emergencies.

(b) The facility shall develop and maintain a written disaster preparedness plan consistent with state and local civil defense guidelines that includes the evacuation capacity designation to be followed in case of an emergency or disaster. A copy of the plan shall be readily available at all times within the facility. The plan shall include procedures for evacuating all individuals in the facility to an approved point of safety as designated by the county authority or designated shelter as determined by the state or local civil defense unless the facility has been determined by the State to be capable of sheltering in place. The plan shall include the following:

- (1) Fire drills that include the transmission of a fire alarm signal and that shall be held at least quarterly for each shift, under varied conditions. At least twelve drills shall be held every year and reports filed in the facility;
- (2) Specific provisions and plan for evacuating residents with specific

- details for residents with impaired mobility or cognitive impairments;
- (3) Specific provisions and plan for transporting all of the residents of the facility to a pre-determined appropriate facility or facilities that will accommodate all the residents of the facility in case of a disaster requiring evacuation of the facility;
 - (4) Specific provision to determine the safety of the facility post-disaster prior to the return of evacuated residents;
 - (5) Specific provisions for transfer of residents should the facility not be determined to be structurally sound post-disaster and plan for continuing operations;
 - (7) Evacuation drills shall be conducted at least quarterly and documented; and
 - (8) A written transfer agreement with the appropriate facility or facilities for accommodating all of the residents of the facility in case of a disaster requiring evacuation of the facility.
- [Eff _____] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§§11-94.2-59 to 11-94.2-63 (Reserved).

SUBCHAPTER 7

PHYSICAL FACILITY STANDARDS

§11-94.2-64 Engineering and maintenance. (a) The facility shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

(b) The facility shall have an appropriate

written preventive maintenance program.

§11-94.2-65

(c) The facility shall provide sufficiently trained and experienced personnel to accomplish the required engineering and maintenance functions within the facility or available through contract with an appropriate provider(s).

(d) The facility shall maintain records that document that inspection of all devices essential to the health and safety of residents and personnel shall be carried out at sufficient intervals to ensure proper operational performance. [Eff]
(Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-9, 321-11)

§11-94.2-65 Construction requirements. (a) The facility's buildings shall be constructed and equipped to protect the health and assure the safety of residents, personnel, and visitors.

(b) The facility shall be fully accessible to, and functional for, physically disabled residents, personnel, and the public.

- (1) Resident living areas shall be designed and equipped for the comfort and privacy of the resident;
- (2) Temperature and humidity shall be maintained within a normal comfort range;
- (3) There shall be provisions within the facility for one or more areas of resident dining, diversional, and social activities. Total area for recreational and dining activities shall be not less than thirty-seven and one-half square feet per bed;
 - (A) Dayrooms shall be equipped with reading lamps, adequate lighting, tables, chairs, or their equivalent, for the use and comfort of the residents;
 - (B) Dining areas shall be equipped with tables and safe chairs. A

- sufficient number of tables shall be of proper height to accommodate wheelchair residents. As possible, residents shall be transferred from wheelchairs to safe chairs during meals;
- (C) If a multi-purpose room is used for dining, diversional, and social activities, there shall be sufficient space to accommodate all activities and prevent their interference with each other; and
 - (D) In the event that adult nonresidents (including adult day health services) use part of the facility twenty-four hours or more a week on a regular basis, additional space must be provided on the following basis for those persons:
 - (i) Twenty square feet per person in dining areas;
 - (ii) Thirty square feet per person in recreational areas;
 - (iii) One conveniently located toilet for each eight persons; and
 - (iv) Sufficient additional staff shall be provided to care for the needs of the persons;
- (4) Illumination shall be provided for the comfort and safety of residents and personnel; and
 - (5) Wall or door mirrors shall be provided and placed at convenient heights for resident use.
- (c) The facility shall ensure resident accessibility to living and service areas:
- (1) There shall be adequate space to allow free movement of occupants using

wheelchairs, walkers, canes, and crutches to beds, bathrooms, closets, and common hallways;

- (2) Areas used for recreation, cooking, dining, storage, bathrooms, laundries, foyers, corridors, lanais, libraries, and other areas not suitable for sleeping shall not be used as bedrooms;
- (3) Access from each bedroom to a bathing room, toilet or lavatory, or corridor shall not require passing through another bedroom, cooking, dining, or recreational area; and
- (4) All occupants of any bedroom shall be of the same sex except for those semi-private rooms that may be occupied by married couples or long-time non-married couples upon request.

(d) The facility shall have adequate toilet and bath facilities:

- (1) One toilet room shall serve not more than eight residents;
- (2) The toilet room shall contain a toilet and washbasin. The washbasin may be omitted from a toilet room that serves single or multi-bed rooms if each resident room contains a washbasin;
- (3) There shall be one shower or tub for each fourteen beds that are not otherwise served by bathing facilities within the resident room;
- (4) Appropriately placed and mounted safety-grab bars shall be provided in each toilet, bathtub, or shower enclosure;
- (5) Curtains or doors to ensure privacy shall be provided;
- (6) An adequate supply of potable running water shall be provided at all times. Temperatures of hot water at plumbing fixtures used by the residents shall be

automatically regulated and shall not be below 100 or above 120 degrees Fahrenheit;

- (7) Each toilet and bath facility shall have a call system that permits the occupant to signal the nursing station in an emergency;
- (8) Where bedpans are used, equipment for their care shall be provided in an appropriate area of the facility;
- (9) Provisions shall be made for disinfecting of permanent personal care equipment unless disposables are used; and
- (10) Separate toilet facilities shall be provided for the use of residents and personnel.

(e) The facility shall have resident bedrooms that ensure the health and safety of residents:

- (1) Each room shall be at or above grade level;
- (2) Each resident bedroom shall have window coverings to provide an adequate means of ensuring privacy;
- (3) Resident bedrooms shall have not more than four beds;
- (4) Single resident bedrooms shall measure at least one hundred square feet of usable space, excluding closets, bathrooms, alcoves, and entryways;
- (5) Multi-resident bedrooms shall provide a minimum of eighty square feet per bed of usable space, excluding closets, bathrooms, alcoves, and entryways;
- (6) Bedside screens or curtains shall be provided in multi-bed bedrooms to ensure privacy for each resident;
- (7) Beds shall be placed at least three feet apart; and
- (8) Each resident shall be provided with:

- (A) A separate bed of proper size and height for the convenience of the resident and that permits an individual in a wheelchair to get in and out of bed unassisted;
- (B) A comfortable mattress with impermeable mattress cover, and a pillow with an impermeable cover;
- (C) Sufficient clean bed linen and blankets to meet the resident's needs;
- (D) Appropriate furniture, cabinets, and closets, accessible to and meeting individual resident's needs. Locked containers shall be available upon resident's request; and
- (E) An effective signal call system at the resident's bedside.

(f) Ramps must be designed to permit use by residents in wheelchairs. Ramps shall comply with the American with Disabilities Act requirements (28 C.F.R. Part 36).

(g) The facility shall ensure that floors and walls are maintained as follows:

- (1) Floor coverings shall be of slip resistant material that does not retain odors and is flush at doorways; and
- (2) Walls, floors, and ceilings of rooms used by residents shall be made of materials that shall permit washing, cleaning, and painting.

(h) The facility shall have adequate windows and lighting:

- (1) Each resident bedroom shall have at least one outside window;
- (2) Each resident bedroom shall have an aggregate window area of not less than one-tenth of the gross floor area;
- (3) Resident bedrooms shall have artificial light adequate for reading at bedside;

- (4) There shall be night lighting in resident bedrooms, toilets, and service areas; and
- (5) In bedrooms containing wheelchair residents, at least one window shall be low enough to permit outdoor viewing by the wheelchair-bound resident.
- (i) Where appropriate, screening of doors and windows shall be provided, using screen having sixteen meshes per inch.
- (j) The facility shall ensure that:
 - (1) Sliding doors or folding doors shall not be used as exit doors, and if used in other areas, shall be of light material and easy to handle; and
 - (2) Double acting doors shall be provided with vision panels of sufficient height to permit use by walkers as well as wheelchair riders.
- (k) The facility corridors shall:
 - (1) Have a minimum clear width of forty-four inches, except that corridors serving one or more non-ambulatory or semi-ambulatory residents shall be not less than eight feet in width; and
 - (2) Stationary handrails shall be installed along both sides of corridors.
- (l) The facility shall have sufficient storage space:
 - (1) Locked space shall be provided for janitorial supplies and equipment; and
 - (2) Conveniently located space for other equipment shall be provided.
- (m) The water supply shall be in accordance with chapter 340E, HRS.
- (n) Chapter 11-39, relating to air conditioning and ventilating, shall be followed.
- (o) Additions and alterations or repairs to existing buildings:
 - (1) Where the structure was in use for this type of occupancy prior to December 31,

- (1) At a minimum, the nursing station shall include a telephone, writing space, storage cabinets, and medical record space;
- (2) There shall be a nurses' call system that registers calls within hearing range and is directly visible by on-duty personnel; and
- (3) There shall be appropriately equipped utility rooms within each nursing unit or on each resident floor. [Eff
](Auth: HRS §§321-9,
321-11) (Imp: HRS §§321-9, 321-11)

94.2-60

determines that any person has violated any provision

§11-94.2-69

of this chapter, any provision of chapter 321, HRS, or any term or condition of a license issued pursuant to this chapter, the department may do one or more of the following:

- (1) Issue an order assessing an administrative penalty for any past or current violation;
- (2) Require compliance immediately or within a specific time; or
- (3) Suspend or revoke a license to operate a nursing facility.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any license issued pursuant to this chapter and any administrative penalty assessed in accordance with section 321-20, HRS. The order shall state with reasonable specificity the nature of the violation, the legal bases for the finding of violation, and the right to request an administrative hearing and retain legal counsel. The order shall be sent to the alleged violator by certified mail.

(c) Any order issued under this chapter shall become final, unless not later than twenty days after receipt of the notice of order by certified mail, the alleged violator submits a written request for a hearing, along with a copy of the notice, to the Hearings Officer, c/o Director of Health, 1250 Punchbowl St., Third Floor, Honolulu, Hawaii 96813. The written request for hearing, along with the notice, must be filed with the hearings office within the twenty-day period. The hearing request may be filed in person at the director's office, during regular business hours, at the above address within the allotted time. Failure to timely file the hearing request and related documents may result in a denial of the hearing request. Any penalty imposed under this chapter shall become due and payable twenty days after receipt of the notice of order by certified mail unless the alleged violator requests in writing a hearing before the director. Whenever a hearing is

requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon receipt of a request for a hearing, the director or director's designee shall require that the alleged violator appear before the director or the director's designee for a hearing at a time and place specified in a notice of hearing and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case hearing under chapter 91, HRS. If, after a hearing held pursuant to this section, the director or director's designee finds that the violation has, or violations have, occurred, the director or director's designee shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders. If, after the hearing on an order or penalty contained in a notice, the director or the director's designee finds that no violation has occurred or is occurring, the director or the director's designee shall rescind the order or penalty or both.

(e) Nothing in this section shall be construed to nullify or limit other penalties provided elsewhere. [Eff _____] (Auth: HRS §§321-9, 321-10, 321-11, 321-20) (Imp: HRS §§321-9, 321-10, 321-11, 321-20)

§11-94.2-70 Penalties and remedies. In addition to any other action to enforce these rules, the director may initiate either administrative or judicial proceedings as provided in chapter 321, HRS. [Eff _____] (Auth: HRS §§321-9, 321-10, 321-11, 321-18, 321-20) (Imp: HRS §§321-9, 321-10, 321-11, 321-18, 321-20)

§§11-94.2-71 to 11-94.2-74 (Reserved).

§11-94.2-75

§11-94.2-75 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances shall not be affected.
[Eff] (Auth: HRS §§321-1, 321-9, 321-10, 321-11) (Imp: HRS §§321-1, 321-9, 321-10, 321-11)

§11-94.2-76 Transition. A nursing facility licensed at the time of adoption of these rules shall have a period of six months after July 1, 2021, to institute required changes to meet the requirements set forth in this chapter.

DEPARTMENT OF HEALTH

The repeal of chapter 11-94.1 and the adoption of chapter 11-94.2, Hawaii Administrative Rules, on the Summary Page dated _____, were adopted on _____, following public hearings held on _____ at _____, after a public notice was published on _____ in the _____.

The repeal of chapter 11-94, Hawaii Administrative Rules and the adoption of chapter 11-94.2, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

III. Old Business

C. Discussion and Action on the Small
Business Statement After Public Hearing
and Proposed New HAR Title 11 Chapter
97.1, **Home Health Agencies**, promulgated
by DOH

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Health, Office of Health Care Assurance

Administrative Rule Title and Chapter: 11-97.1

Chapter Name: Home Health Agencies

Contact Person/Title: Keith R. Ridley, Chief

Phone Number: (808) 692-7227

E-mail Address: keith.ridley@doh.hawaii.gov **Date:** 07/14/2022

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.)

*

*

*

V. Please explain how the agency involved small business in the development of the proposed rules.

Agency sought input from the Healthcare Association of Hawaii (HAH), a trade association which includes home health agencies as members. HAH worked with its member home health agencies.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Four (4) of the five (5) written comments submitted by HAH were incorporated into the rules. A 6th comment was submitted but didn't offer a language change.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Agency sought input from HAH during the drafting of rules, and public notice was published in all the major newspapers throughout the state pursuant to state law.

2. A summary of the public's and small businesses' comments.

Clarification of definitions, noting an apparent inconsistency and an apparent ambiguity.

3. A summary of the agency's response to those comments.

Four (4) of the five (5) written comments submitted by HAH were incorporated into the rules.

4. The number of persons who:

(i) Attended the public hearing: 5, including 3 DOH staff.

(ii) Testified at the hearing: 1

(iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ Yes ☐ No

(i) If "Yes," was the change adopted? ☒ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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

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

The subject rules and the two rules noted below are in the process of being repealed and amended and new rules are being created; two of the rules are aligned with Medicare; Chapter 11-103.1 in Section III. A. C. is the only rule not being aligned with Medicare.

Chapter 94.2 Nursing Facilities specifically will allow DOH to accept accreditation or certification of one's facilities by other nationally recognized accreditation and/or certification agencies for purposes of renewing state licensure. It was noted that Medicare requirements are much for stringent than state requirements; as such, DOH is aligning the state rules towards the federal rules. This is very beneficial to DOH on a workload and resource allocation standpoint because it allows DOH to conduct only one inspection rather than two or more.

The rule changes will also update requirements for emergencies including but not limited to natural disasters. Mr. Ridley clarified that only the larger institutions such as hospitals would be governed by both federal Medicare and state laws whereas the home health care facilities are only state operated and governed.

Vice Chair Albitz motioned to send the proposed rules to public hearing. Ms. Rodighiero seconded the motion, Dr. Atmospha-Walch recused herself, and the remaining Board members voted in support of the motion.

B. Discussion and Action on Proposed New HAR Title 11 Chapter 97.1, Home Health Agencies, promulgated by DOH **June 2022 Meeting DRAFT Minutes**

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, explained that these rules are similar to the nursing home rules (above) in terms of being aligned with the federal Medicare. However, there is one difference. Congress recently passed a law that for the Veteran's Administration (VA) doctors who are in the VA system, regardless as to what state he or she is licensed in, can continue to do work in his or her host state and provide services to VA beneficiaries even when it relates to services being referred to the private sector.

For example, under the current rules a physician or an APRN has to be licensed in the state of Hawaii in order to provide referrals to home health agencies. Licensed home health agencies can only accept referrals from physicians or APRNs who are licensed in Hawaii. This, of course, becomes a problem for the VA when they treat a patient in Hawaii and send them into the community as the VA does not have a robust home health agency system statewide. Thus, it becomes an issue for Hawaii licensed home health agencies to accept these VA beneficiaries.

Thus, the law that Congress recently passed is being incorporated into the rules that would allow a home health agency to accept a referral from a VA physician who is licensed in another state for the VA patient who is being referred for home health services.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, Dr. Atmospha-Walsh recused herself, and the remaining members voted in support of the motion.

DEPARTMENT OF HEALTH

Repeal of Chapter 11-97, "Home Health Agencies"
and the
Adoption of Chapter 11-97.1, "Home Health Agencies",
Hawaii Administrative Rules

(Date)

SUMMARY

1. Chapter 11-97, Hawaii Administrative Rules, entitled "Home Health Agencies", is repealed.
2. Chapter 11-97.1, Hawaii Administrative Rules, entitled "Home Health Agencies", is adopted.

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 97

HOME CARE AGENCIES

Repealed

§§11-97-1 to 11-97-8 Repealed. []

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 97.1

HOME HEALTH AGENCIES

§11-97.1-1	Definitions
§11-97.1-2	Legal authorization to operate
§11-97.1-3	License
§11-97.1-4	License Revocation
§11-97.1-5	Governance and administration
§11-97.1-6	Policies and procedures and standards
§11-97.1-7	Patients' rights
§11-97.1-8	Emergency preparedness
§11-97.1-9	Enforcement and remedies
§11-97.1-10	Validity

§11-97.1-1 Definitions as used in the chapter:

"Administrator" means the person responsible for the administration of the organization of which the home health agency is a part.

"Advance practice registered nurse" or "APRN" means a person having a valid license from the state of Hawaii as an advance practice registered nurse with prescriptive authority or a person employed by the United States Department of Veterans Affairs or "VA" who has an active, current, full, and unrestricted license in another state and who provides care to a VA beneficiary within the scope of their VA employment.

"Clinical manager" means a person having a valid license from the state of Hawaii as a licensed physician, APRN, physician assistant, physical therapist, speech pathologist, occupational therapist, audiologist, social worker, or registered nurse and responsible to provide oversight of all patient care

services and personnel.

"Department" means the department of health, State of Hawaii.

"Director" means the director of health for the department of health, State of Hawaii, or a duly authorized agent.

"Homebound patient" means a person who because of a condition due to illness or injury is restricted in his ability to leave his place of residence except with the aid of supportive devices such as, crutches, canes, wheelchairs, walkers, use of special transportation, or the assistance of another person; or a person who has a condition which is such that leaving his home is medically contraindicated.

"Home health agency" means a public or proprietary agency, a private nonprofit organization, or a subdivision of such agency or organization which is licensed by the department to provide home health services. A licensed home health agency may provide home health services to a VA beneficiary under the care of a VA physician, VA APRN, VA nurse practitioner, or VA physician assistant practicing within the scope of their VA employment.

"Home health agency clinical manager" means the person responsible and accountable for the functioning of the agency and the services provided.

"Home health aide" means a person who has successfully completed the basic prescribed nurse aide or an equivalent course, with additional training and supervision to prepare the person for this role.

"Home health services" means skilled nursing services and at least one other therapeutic service such as physical therapy, speech language pathology, occupational therapy, medical social services, or home health aide services provided on a visiting basis, in a place of residence used as a patient's home to a homebound patient. Home health services include at least one of the services described herein directly but may provide the second service and additional services under arrangement with another agency or organization.

"Licensed practical nurse" means a person having

a valid license from the state of Hawaii as a licensed practical nurse.

§11-97.1-1

"Nurse practitioner" means a person having a valid license from the state of Hawaii as an advance practice registered nurse.

"Occupational therapist" means a person having a valid license from the state of Hawaii as an occupational therapist.

"Occupational therapy assistant" means a person who has a valid license from the state of Hawaii as an occupational therapy assistant.

"Physician assistant" means a person having a valid license from the state of Hawaii as a physician assistant.

"Physical therapist" means a person having a valid license from the state of Hawaii as a physical therapist.

"Physical therapy assistant" means a person who has a valid license from the state of Hawaii as a physical therapy assistant.

"Physician" means a person having a valid license from the state of Hawaii as a physician or surgeon or a person employed by the VA who has an active, current, full, and unrestricted license in another state and who provides care to a VA beneficiary within the scope of their VA employment.

"Proprietary agency or organization" means a private agency or organization not exempt from income taxation under Section 501C of Internal Revenue Code of 1954.

"Public agency or private non-profit agency" means an agency exempt from income taxation under Section 501C of the Internal Revenue Code of 1954.

"Registered nurse" means a person who has a license from the state of Hawaii as a registered nurse.

§11-97.1-3

"Social worker" means a person who has a license from the state of Hawaii as a social worker and includes social worker, bachelor social worker, and clinical social worker.

"Speech therapist" or "speech pathologist" or "audiologist" means a person who has a license from the state of Hawaii as a speech therapist or audiologist. [Eff.] (Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-2 Legal authorization to operate. A home health agency and, in cases where the home health agency is a part of a larger organization, shall at all times comply with the laws of the state of Hawaii and shall, whenever required by the director, submit to the director evidence of compliance therewith. Such evidence shall include but not be limited to, copies of licenses, certificates, permits, or other authorizations required by the laws of the state of Hawaii. [Eff.] (Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-3 License. (a) It is unlawful for any person, to conduct, maintain, operate, or permit to be maintained or operated, or to participate in conducting, maintaining, or operating a home health agency, unless the home health agency is licensed by the director.

(b) Any person, organization or corporation desiring to operate a home health agency shall make application to the director for a license on forms provided by the department. The director shall issue a license if the proposed home health agency meets the requirements under this chapter.

(c) A license, unless sooner suspended or revoked, shall be renewed every two years on date, or within 30 days thereafter. Application for renewal of license shall be made by the home health agency thirty

days prior to the expiration date of the license. If an application for renewal is not filed, such license shall be automatically cancelled as of the expiration date.

(d) Each license shall be issued only for the home health agency named in the application, shall be for a single contiguous geographic location, and shall not be transferable nor assignable to any other agency or person.

(e) The license issued by the director shall be posted in a conspicuous place on the premises of the home health agency.

(f) A home health agency shall notify each patient concerned and the patient's physician, APRN, or physician assistant directly at least thirty days prior to the voluntary surrender of its license or as directed under any order of revocation or suspension of license by the department. The license shall be promptly surrendered to the department when revoked, suspended or when the home health agency terminates services.

(g) Unannounced inspections or visits may be made to a home health agency at any time by authorized staff of the department. [Eff.]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-4 Licensure revocation. (a) The director, after due notice and an opportunity for a hearing, may suspend, revoke, or refuse to issue or renew a license to any person because of failure to meet the requirements of this chapter.

(b) Any person affected by the director's decision for denial, suspension, or revocation, may appeal in accordance with the law. [Eff.]
(Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-5 Governance and administration. (a) A governing body or designated persons functioning as a governing body shall have full legal authority and responsibility for the agency's overall management and

operation, the provision of all home health services, fiscal operations, review of the agency's budget and its operational plans, and its quality assessment and performance improvement program.

(b) Minutes shall be kept of all meetings of the governing body.

(c) An administrator shall be appointed by and report to the governing body and be responsible for the administration of the home health agency to include but not be limited to the following:

- (1) Responsible for all day to day operations of the home health agency,
- (2) Ensure that a clinical manager is available during all operating hours,
- (3) Ensure that the home health agency employs qualified personnel, including assuring the development of personnel qualifications and policies.

(d) When the administrator is not available, a qualified, pre-designated person, who is authorized in writing by the administrator and the governing body, assumes the same responsibilities and obligations as the administrator. The pre-designated person may be the clinical manager.

(e) A qualified individual shall serve as clinical manager and provide oversight of all patient care services and personnel.

§11-97.1-6 Policies and procedures and standards. (a) A satisfactory statement of policy of the home health agency, including the scope of services, the conditions under which they are offered, and the geographic coverage, shall be available to the department upon request.

(b) Services provided by the home health agency shall be available to any qualified patient in a home setting in the geographic area of the home health agency regardless of race, color, or national origin. Contracts with other agencies to provide services

shall be approved by authorized persons of agencies involved.

(c) The basic services of nursing shall be provided by the home health agency.

(d) Policies governing medical services shall be provided through a governing body or designated persons functioning as a governing body.

(e) Policies governing nursing and other therapeutic services shall be provided through the governing body or an advisory committee which shall include a minimum of at least a practicing physician or APRN or physician's assistant, and a registered nurse, a representative of other professional services such as dietary, occupational therapy, physical therapy, social work, or speech therapy, and community members who are aware of the needs of the community. The policies recommended by such committee shall meet current and acceptable professional practices. Minutes shall be kept of all meetings.

(f) Nursing and other therapeutic service policies shall be established and include but not be limited to:

- (1) Nursing and other therapeutic services provided shall be in accordance with the physician's or APRN's or physician's assistant's written order and plan of treatment.
- (2) The nurses, therapists, social workers, aide, or staff members rendering services shall meet qualifications prescribed in the definitions of this chapter.
- (3) A home health agency provides nursing services, and at least one other therapeutic service such as physical therapy, occupational therapy, or speech therapy consistent with the definition of home health services.
- (4) When a home health agency does not provide all the nursing or therapeutic services specified above, it shall include in its written policies which govern such services, a

plan for identifying, utilizing and cooperating with other resources and facilities including community social agencies for the purpose of providing such services to patients. The home health agency may arrange for the services which it does not provide by written agreements with other licensed home health agencies or by contracts with health professionals who shall meet the requirements of this chapter.

- (g) Medical records.
 - (1) A clinical record for each patient shall be maintained based on standards acceptable to the department;
 - (2) All staff responsible for specific professional aspects of care to a patient shall record in the patient's record information about the services rendered.
- (h) Establishment and review plan of treatment.
 - (1) A home health agency shall establish policies and procedures for assuring that care services to be provided are specified under the plan of treatment ordered, established, and regularly signed by the physician or APRN or physician assistant responsible for the care of the patient.
 - (2) The plan of treatment ordered by the physician or APRN or physician assistant shall be signed by the physician or APRN or physician assistant responsible for the patient and incorporated into the patient's medical record.
 - (3) The total plan shall be reviewed by the attending physician or APRN or physician assistant, in consultation with the agency's professional

personnel at such intervals as the severity of the patient's condition may require, but not less than once every two months.

- (4) The professional staff shall bring to the attention of the patient's physician or APRN or physician assistant changes in the patient's condition which may indicate the need for altering the treatment plan or for the termination of service or services.
- (5) Only the attending physician or APRN or physician assistant shall terminate services. Upon termination of services, the physician or APRN or physician assistant shall prepare or approve a written discharge summary which includes reasons for termination of services, the patient's medical condition upon discharge and a summary of the course of the patient's illness.
- (6) All orders shall be signed by the physician or APRN or physician assistant.
- (7) When verbal orders are received by the professional nurse or other professional disciplines they shall be signed by the physician or APRN or physician assistant within a reasonable period of time.
- (i) Home health agency shall provide:
 - (1) Written job descriptions which specify the qualifications and experience of each category of health personnel and the type of activity each category of health personnel may perform;
 - (2) Written personnel policies to each

staff member; and

§11-97.1-6

- (3) A plan for a pre-employment and periodic medical examination, tuberculosis testing and/or chest x-ray and other appropriate tests and immunizations for all home health agency personnel

(j) Home health agency shall provide for all personnel rendering service to patients, a planned program of orientation to the agency's policies and objectives and a continuous in service education program.

(k) Maintenance of records and reports.

- (1) Clinical records, service reports, fiscal reports, job descriptions, personnel reports, personnel policies and rosters, cost accounting data, committee reports, statements of policies, and such other records and reports as may be required shall be kept on file in the agency's office.
- (2) When a home health agency is a subdivision of a parent agency or organization, the fiscal accounting system shall be maintained in such a method to permit the costs of the home health agency to be easily identifiable.
- (3) Home health agency shall keep confidential all medical, nursing, paramedical, therapeutical, personnel, and financial information relating to each patient and make such available only to authorized persons.

(l) A home health agency shall develop, implement, evaluate, and maintain an effective, ongoing, agency-wide, data-driven quality assessment and performance improvement program that reflects the complexity of its organization and services, involves all services including those services provided under contract or arrangement, focuses on indicators

related to improved outcomes, and shall maintain

§11-97.1-6

documentary evidence of its quality assessment and performance improvement program.

(m) A home health agency shall follow accepted standards of practice, including the use of standard precautions, to prevent the transmission of infections and communicable diseases.

(n) A home health agency shall provide a periodic evaluation of employee performance.

(o) The director may approve a modification of standards for a home health agency when exceptional circumstances warrant such modification.

[Eff. _____] (Auth: HRS Sec. 321-11)

(Imp: HRS Sec. 321-11)

§11-97.1-7 Patients' rights. (a) Be free from verbal, mental, sexual, or physical abuse, including injuries of unknown source, neglect, and misappropriation of property.

(b) Be advised of the state toll free home health telephone hotline, its contact information, its hours of operation, and that its purpose is to receive complaints or questions about local home health agencies.

(c) Be provided written notice of patient's rights and responsibilities.

(d) To have complaints made by a patient, the patient's representative, or the patient's caregiver or family investigated in a timely manner and be informed of the investigation results. [Eff. _____] (Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

§11-97.1-8 Emergency preparedness. A home health agency shall develop and maintain an emergency preparedness plan that must be reviewed and updated at least every two years and includes but is not limited to:

- (1) Addressing patient population, the types of services the agency has the ability to

- provide in an emergency, and continuity of operations;
- (2) Development and implementation of emergency preparedness policies and procedures based on natural or man made disasters;
 - (3) Procedures to follow with on-duty staff and patients to determine services that are needed in the event of an interruption in services during or due to an emergency; and
 - (4) Development and maintenance of an emergency preparedness communication plan that includes but is not limited to names and contact information for staff, entities providing services under arrangement, patients' physicians, APRN, or physician's assistant, and volunteers, and a method for sharing information and medical documentation for patients under the agency's care with other health providers to maintain the continuity of care, and a means of providing information about the general condition and location of patients under the agency's care.

§11-97.1-9 Enforcement and remedies. A person who violates any requirement of this chapter shall be subject to administrative proceedings pursuant to HRS Sec. 321-20. [Eff. _____] (Auth: HRS Sec. 321-20) (Imp: HRS Sec. 321-20)

§11-97.1-10 Validity. If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby." [Eff. _____] (Auth: HRS Sec. 321-11) (Imp: HRS Sec. 321-11)

DEPARTMENT OF HEALTH

The repeal of chapter 11-97 and the adoption of chapter 11-97.1, Hawaii Administrative Rules, on the Summary Page dated _____, were adopted on _____, following public hearings held on _____ at _____, after a public notice was published on _____ in the _____.

The repeal of chapter 11-97, Hawaii Administrative Rules and the adoption of chapter 11-97.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

III. Old Business

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 103.1, **Licensure and Certification Fees for Health Care Facilities and Agencies**, promulgated by DOH

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Health, Office of Health Care Assurance

Administrative Rule Title and Chapter: 11-103.1

Chapter Name: Licensure and Certification Fees for Health Care Facilities and Agencies

Contact Person/Title: Keith R. Ridley, Chief

Phone Number: (808) 692-7227

E-mail Address: keith.ridley@doh.hawaii.gov **Date:** 07/14/2022

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.)

V. Please explain how the agency involved small business in the development of the proposed rules.

Public hearings were held pursuant to state law.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

No recommendations were submitted.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Public hearings were held pursuant to state law. An email reminder was sent to the sole public hearing commenter to submit their written comments.

2. A summary of the public's and small businesses' comments.

Only one (1) written comment was submitted. It was opposed to any fees at all.

3. A summary of the agency's response to those comments.

No agency response to the submitted comment

4. The number of persons who:

(i) Attended the public hearing: 5, including 3 DOH staff.

(ii) Testified at the hearing: 1

(iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ Yes ☐ No

(i) If "Yes," was the change adopted? ☐ Yes ☒ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Only one (1) written comment was submitted. It was opposed to any fees at all.

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

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

C. Discussion and Action on Proposed New HAR Title 11 Chapter 103.1, Licensure and Certification Fees for Health Care Facilities and Agencies, promulgated by DOH

Mr. Keith Ridley, Chief Officer at DOH's Office of Health Care Assurances, indicated that these rules relate to state licensing fees only; there is no alignment with federal fees as the federal government does not charge a fee for certification. The proposed rule changes reflect updating and increasing the fees only; the fees are for providers that DOH license and certify. There are a number of facilities that would be considered small businesses such as adult residential care homes and community care foster family homes.

The fee increase will be for the initial or brand-new licenses as well as for renewals. The fee changes, which hadn't been increased since 2017, depends on the term of license. While most facilities are licensed and renewed every year, there are also a few facilities that are licensed every two years. The percentage increase for these facilities mostly ranges between 10 to 25 percent.

The Bureau of Labor Statistics and the Consumer Price Index over the past few years were reviewed and used as guides for establishing the proposed fees. DOH is expecting a lot of testimony at the public hearing from operators of adult residential care homes where the change in the fees will be 13 percent; this equates to \$225 per year from \$200 per year. Assisted living facilities will be imposed a 25 percent increase, hospitals will be imposed a 20 percent increase, and clinical laboratories a 33 percent increase.

The fee schedule has not yet been discussed with the impacted businesses despite being a major concern. Overall, there is no indication that fees will be raised next year or in the foreseeable future. Vice Chair Albitz requested a list of comments made by the small businesses that attend the public hearing, and noted that it will be helpful to see a chart outlining both the current and proposed fee rates.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Second Vice Chair Shick seconded the motion, Dr. Atmospera-Walch recused herself, and the remaining Board members voted in support of the motion.

IV. LEGISLATIVE MATTERS

A. Update on the following:

1. Governor's Message 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2026
2. Governor's Messages 862 and 823 for Consideration and Confirmation for the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board terms to expire June 30, 2022 and June 30, 2026, respectively

DEPARTMENT OF HEALTH

Repeal of Chapter 11-103, "Licensure and Certification
Fees for Health Care Facilities and Agencies"
and the
Adoption of Chapter 11-103.1, "Licensure and
Certification Fees for Health Care Facilities and
Agencies,"

(Date)

SUMMARY

1. Chapter 11-103, Hawaii Administrative Rules, entitled "Licensure and Certification Fees for Health Care Facilities and Agencies", is repealed.

2. Chapter 11-103.1, Hawaii Administrative Rules, entitled "Licensure and Certification Fees for Health Care Facilities and Agencies," is adopted:

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 103

LICENSURE AND CERTIFICATION FEES FOR
HEALTH CARE FACILITIES AND AGENCIES

Repealed

§§11-103-1 to 103-7 Repealed. []

§11-103.1-1

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 103.1

LICENSURE AND CERTIFICATION FEES FOR
HEALTH CARE FACILITIES AND AGENCIES

§11-103.1-1	Purpose
§11-103.1-2	Definitions
§11-103.1-3	Method and manner of payment
§11-103.1-4	Initial licensure and licensure renewal fees and initial certification and certificate renewal fees
§11-103.1-5	Initial licensure and certification fee requirements
§11-103.1-6	Licensure renewal and certification renewal fee requirements
§11-103.1-7	Deposit of fees

§11-103.1-1 Purpose. The purpose of this chapter is to establish fees for the initial issuance by the department of a license or certificate of approval to a health care facility or health care agency, and the renewal of a health care facility's or health care agency's license or certificate of approval. [Eff _____] (Auth: HRS §§321-9, 321-11, 321-11.5) (Imp: HRS §§321-1.4, 321-11.5)

§11-103.1-2 Definitions. As used in this chapter:

"Adult day care center" or "center" means a licensed facility that meets the requirements of chapter 17-1424.

"Adult residential care home" or "ARCH" means a facility that meets the requirements of section 321-15.6, HRS.

"Applicant" means a person or group of persons, firm, corporation, institution, association, organization or other entity that applies to the department for licensure or certification to operate a health care facility or agency as required by state law.

"Assisted living facility" or "ALF" means a facility that meets the requirements of section 321-15.1, HRS.

"Broad service hospital" or "hospital" means a hospital that is staffed and equipped to provide inpatient medical or surgical care, or both, for acute and chronic illness, injury or obstetrics.

"Certificate of approval" or "certificate" means the certificate issued by the department or its designee that authorizes a person, agency, or organization to operate a health care facility or agency.

"Certification" means the issuance by the department or its authorized agents of a certificate of approval to a health care facility or agency including "initial certificate", "certificate renewal", and "amended certificate".

"Clinical laboratory" means a facility that meets the requirements of section 11-110.1.

"Community care foster family home" means a facility that meets the requirements of chapter 17-1454.

"Day" means a calendar day, unless otherwise indicated.

"Department" means the department of health, State of Hawaii.

"Developmental disability domiciliary home" means a residence that meets the requirements of section 321-15.9, HRS.

"Director" means the director of health, State of Hawaii, or the director's designee.

"Expanded ARCH" means a facility that meets the requirements of section 321-15.62, HRS.

"Freestanding adult day health center" or "ADHC" means a facility that meets the requirements of chapter 11-96.

"Freestanding birthing center" means a facility that meets the requirements of chapter 11-93.2.

"Freestanding outpatient surgical facility" means a facility that meets the requirements of chapter 11-95.

"Health care agency" means a home and community-based case management agency, home care agency, home health agency, and any other entity required by law to be licensed or certified by the department.

"Health care facility" means a hospital, nursing home, intermediate care facility for individuals with intellectual disabilities, freestanding outpatient surgical facility, freestanding adult day health center, freestanding birthing center, adult day care center, laboratory, adult residential care home, expanded adult residential care home, community care foster family home, developmental disability domiciliary home, assisted living facility, therapeutic living program, special treatment facility, and any other entity required by law to be licensed or certified by the department.

"Home and community-based case management agency" means any person, agency, or organization that meets the requirements of chapter 17-1454.

"Home care agency" means an agency or organization that meets the requirements of section 321-14.8, HRS.

"Home care services" includes but is not limited to:

- (1) Personal care, including assistance with dressing, feeding, and personal hygiene to facilitate self-care;
- (2) Homemaker assistance, including housekeeping, shopping, and meal planning and preparation; and

(3) Respite care and assistance and support provided to the family.

"Home health agency" means an agency or organization that meets the requirements of chapter 11-97.

"Intermediate care facility for individuals with intellectual disabilities" or "ICF/ID" means a facility that meets the requirements of chapter 11-99.

"License" means an approval issued by the department or its designee for a person, agency, or organization to operate a health care facility or agency.

"Licensee" means the person, or group of persons, firm, corporation, institution, association, organization, or other entity that holds a license or certificate of approval to operate a health care facility or agency as required by state law.

"Licensure" means the issuance by the department or its authorized agents of a license to a health care facility or agency including "initial license", "license renewal", and "amended license".

"Nursing facility" or "nursing home" means a skilled nursing facility or "SNF", intermediate care facility or "ICF", or a skilled nursing and intermediate care facility or "SNF/ICF", that meets the requirements of chapter 11-94.1.

"Office of health care assurance special fund" or "OHCA SF" means the special fund established by section 321-1.4, HRS.

"Special treatment facility" means a facility that meets the requirements of section 321-16.5, HRS.

"Therapeutic living program" means a program that meets the requirements of section 321-16.6, HRS.

"Value added electronic services" means services defined in section 27G-1, HRS. [Eff]
(Auth: HRS §§27G-1, 321-9, 321-11, 321-11.5) (Imp:
HRS §§27G-1, 321-11.5, 321-14.5, 321-15.1, 321-15.6,
321-15.62, 321-15.9, 321-16.5, 321-16.6)

§11-103.1-3

§11-103.1-3 Method and manner of payment. (a)

An applicant for a license or certificate, or a license or certificate renewal, shall pay to the department applicable fees in U.S. dollars as set forth in sections 11-103.1-4, 11-103.1-5, and 11-103.1-6. The department shall issue no license or certificate to an applicant unless all applicable fees required by this chapter have been paid in full.

(b) All license fees collected pursuant to this chapter shall be paid by corporate check, bank or other financial institution check, or money order made payable to the order of "State of Hawaii OHCA SF", or electronically, if the method is available, and are non-refundable. No applicant or licensee shall pay fees by personal check or cash and neither personal checks nor cash shall be accepted by the department.

(c) Payment using value added electronic services provided through an electronic portal manager may incur a separate fee.

(d) Each dishonored check or insufficient funds shall be considered a failure to pay and shall constitute an incomplete application for initial licensure or licensure renewal, or initial certification or certificate renewal. [Eff]
(Auth: HRS §§27G-1, 321-1.4, 321-9, 321-11, 321-11.5)
(Imp: HRS §§27G-1, 321-1.4, 321-11.5)

§11-103.1-4 Initial licensure and licensure renewal fees and initial certification and certificate renewal fees. (a)

All fees adopted in this chapter shall be effective thirty days after the effective date of this chapter. All fees adopted by an amendment to this chapter shall be effective thirty days after the effective date of the amendment to this chapter.

(b) The department adopts the fees set forth in the following fee schedules:

(b) The prospective licensee in full compliance shall deliver, or if available, electronically submit to the department within ten days of its receipt of the department's notice, its payment of the initial licensure or certification fee required by this chapter. [Eff: 10/1/11] (Auth: HRS §§321-9, 321-11, 321-11.5) (Imp: HRS §§321-1.4, 321-11.5)

(b) The department may extend the term of a license or certificate that is due to renew prior to the license or certificate renewal date to complete the administrative processing of the license or

§11-103.1-6

certificate renewal application form provided the licensee has paid the applicable fee.

(c) Failure, neglect, or refusal of any licensee to pay the licensure or certification renewal fee as directed by the department shall constitute a forfeiture of the license or certificate effective on the licensure or certificate renewal date.

[Eff: HRS §§321-9, 321-11, 321-11.5] (Auth: HRS §§321-9, 321-11, 321-11.5)
 (Imp: HRS §§321-1.4, 321-11.5)

§11-103.1-7 Deposit of fees. The department shall deposit all fees paid to the department pursuant to this chapter into the office of health care assurance special fund. [Eff _____] (Auth: HRS §§321-1.4, 321-9, 321-11, 321-11.5) (Imp: HRS §§321-1.4, 321-11.5)

DEPARTMENT OF HEALTH

The repeal of chapter 11-103 and the adoption of chapter 11-103.1, Hawaii Administrative Rules, on the Summary Page dated _____, were adopted on _____, following public hearings held on _____ at _____, after a public notice was published on _____ in the _____.

The repeal of chapter 11-103, Hawaii Administrative Rules and the adoption of chapter 11-103.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

Exhibit A

HAR CHAPTER 11-103.1

Initial Licensure and Certification Fee Schedule
5/1/22

Facility or Service	Initial Licensure and Certification Fee (in \$USD)
Adult Day Care Center	1,000
Adult Residential Care Home Type I	350
Adult Residential Care Home Type II	350
Assisted Living Facility	1,000
Broad Service Hospital or Hospital	1,500 plus 15 per bed
Clinical Laboratory	150
Community Care Foster Family Home	200
Developmental Disability Domiciliary Home	325
Expanded Adult Residential Care Home Type I	350
Expanded Adult Residential Care Home Type II	350
Freestanding Adult Day Health Center	1,400
Freestanding Birthing Center	2,000
Freestanding Outpatient Surgical Facility	3,500

Home and Community Based Case Management Agency	175
Home Care Agency	1,500
Home Health Agency	2,750
Intermediate Care Facility for Individuals with Intellectual Disabilities	1,100 plus 12 per bed
Intermediate Care Facility (ICF), Skilled Nursing Facility (SNF), ICF/SNF, or Nursing Facility (NF)	1,300 plus 12 per bed
Special Treatment Facility	400
Therapeutic Living Program	400

Exhibit B

HAR CHAPTER 11-103.1

Licensure and Certification Renewal Fee Schedule
5/1/22

Facility or Service	Licensure and Certification Renewal Fee (in \$USD)
Adult Day Care Center	700
Adult Residential Care Home Type I	225
Adult Residential Care Home Type II	225
Assisted Living Facility	500
Broad Service Hospital or Hospital	1,000 plus 10 per bed
Clinical Laboratory	100
Community Care Foster Family Home	125
Developmental Disability Domiciliary Home	225
Expanded Adult Residential Care Home Type I	225
Expanded Adult Residential Care Home Type II	225
Freestanding Adult Day Health Center	1,000
Freestanding Birthing Center	1,000
Freestanding Outpatient Surgical Facility	2,500

Home and Community Based Case Management Agency	125
Home Care Agency	1,000
Home Health Agency	2,000
Intermediate Care Facility for Individuals with Intellectual Disabilities	700 plus 10 per bed
Intermediate Care Facility (ICF), Skilled Nursing Facility (SNF), ICF/SNF, or Nursing Facility (NF)	700 plus 10 per bed
Special Treatment Facility	250
Therapeutic Living Program	250

INITIAL (NEW)	2016	2022	% Change
Adult Day Care Center	950	1,000	5%
Adult Residential Care Home Type I	300	350	17%
Adult Residential Care Home Type II	300	350	17%
Assisted Living Facility	600	1,000	67%
Broad Service Hospital or Hospital	1,247	1,500	20%
Plus per bed	12	15	25%
Clinical Laboratory	100	150	50%
Community Care Foster Family Home	150	200	33%
Developmental Disability Domiciliary Home	300	325	8%
Expanded Adult Residential Care Home Type I	300	350	17%
Expanded Adult Residential Care Home Type II	300	350	17%
Freestanding Adult Day Health Center	1,200	1,400	17%
Freestanding Birthing Center	1,200	2,000	67%
Freestanding Outpatient Surgical Facility	2,700	3,500	30%
Home and Community Based Case Management Agency	150	175	17%
Home Care Agency	1,200	1,500	25%
Home Health Agency	2,500	2,750	10%
Intermediate Care Facility for Individuals with Intellectual Disabilities	1,027	1,100	7%
Plus per bed	12	12	0%
Intermediate Care Facility (ICF), Skilled Nursing Facility (SNF), ICF/SNF, or Nursing Facility (NF)	1,027	1,300	27%
Plus per bed	12	12	0%
Special Treatment Facility	300	400	33%
Therapeutic Living Program	300	400	33%

RENEWAL	2016	2022	% Change
Adult Day Care Center	600	700	17%
Adult Residential Care Home Type I	200	225	13%
Adult Residential Care Home Type II	200	225	13%
Assisted Living Facility	400	500	25%
Broad Service Hospital or Hospital	831	1,000	20%
Plus per bed	9	10	11%
Clinical Laboratory	75	100	33%
Community Care Foster Family Home	100	125	25%
Developmental Disability Domiciliary Home	200	225	13%
Expanded Adult Residential Care Home Type I	200	225	13%
Expanded Adult Residential Care Home Type II	200	225	13%
Freestanding Adult Day Health Center	900	1,000	11%
Freestanding Birthing Center	900	1,000	11%
Freestanding Outpatient Surgical Facility	1,862	2,500	34%
Home and Community Based Case Management Agency	100	125	25%
Home Care Agency	900	1,000	11%
Home Health Agency	1,800	2,000	11%
Intermediate Care Facility for Individuals with Intellectual Disabilities	685	700	2%
Plus per bed	9	10	11%
Intermediate Care Facility (ICF), Skilled Nursing Facility (SNF), ICF/SNF, or Nursing Facility (NF)	685	700	2%
Plus per bed	9	10	11%
Special Treatment Facility	200	250	25%
Therapeutic Living Program	200	250	25%

III. Old Business

- E. Re-review and Action on Proposed Amendments to HAR Title 13, Chapter 256, **Ocean Recreation Management Rules and Areas**, promulgated by DLNR

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

Date: 8/8/2022

Department or Agency: Dept. of Land & Nat. Resources, Div. of Boating & Ocean Rec.

Administrative Rule Title and Chapter: Title 13, Chapter 256

Chapter Name: Ocean Recreation Management Rules and Areas

Contact Person/Title: Todd Tashima/General Professional

E-mail: todd.h.tashima@hawaii.gov Phone: 808-587-0142

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," provide details: Available at: <https://dlnr.hawaii.gov/dobor/draft-rules>

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.
Small businesses operating surfing instruction schools in Kahalu'u Bay on Hawaii Island will be affected by this proposal. DOBOR's proposed amendments are intended to reduce adverse effects on affected businesses by providing more permits and reducing restrictive prerequisites to obtaining a commercial use permit. As proposed, operators would be able to choose a shift: morning or afternoon.
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 anticipated increase in direct costs to businesses.

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.
Anticipated minor impact to DOBOR staffing needs - DOBOR staff will need to review permit applications and handle procedures for issuance of permits.

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.

In order to reduce restrictions on small businesses, DOBOR's proposal includes the following: (1) increase the permit limit from 4 to 8; and (2) remove the requirement that an applicant obtain County of Hawaii authorization to operate commercially as a prerequisite to qualifying for a DOBOR commercial use permit.

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

One less restrictive alternative is to remove the permit limit, but the community has expressed the desire for permit limits, and DOBOR agrees that commercial permit limits should be implemented for Kahalu'u Bay to balance recreational and commercial use.

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.

DOBOR considered issuing permits by public auction but does not have statutory authority to hold public auctions for commercial use permits. DOBOR also considered issuing permits based on the length a business has been in operation as determined by GET license, but that would also require a statutory amendment. Commercial surfing instruction businesses would be affected by the proposed rules and would be able to obtain a commercial use permit to operate their surfing schools.

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

DOBOR has been in discussions with affected operators over permit count limits and commercial restrictions for Kahalu'u Bay.

- 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, businesses recommended increasing the permit count limit. DOBOR adopted this recommendation and increased the permit count limit to 8.

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 amendments would not create more stringent restrictions and would provide additional opportunities by increasing the commercial permit count limit and by removing County of Hawaii authorization as a prerequisite, thereby simplifying approval requirements.

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

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

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

June 17, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, 2nd Vice Chair
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Mary Albitz, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Alison Kato

II. **APPROVAL OF May 20, 2021 MINUTES**

Mr. Lee motioned to accept the May 20, 2021 meeting minutes, as presented.
Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 798.3, Child Care Payments, promulgated by Department of Human Services (DHS)

Discussion leader Mr. Ritchie stated that the DHS rules involve child care licensing with regards to requirements, background checks and payments. The rules reflect where a state agency has to update its Hawaii Administrative Rules due to receiving federal grant monies and updated federal rules; they have already gone to public hearing.

Ms. Dayna Luka, who is temporarily assigned as DHS's Child Care Office Administrator, reminded the board members that before the public hearing the rules were presented to this Board in September 2020. They were created to support the requirements of the child care development block grant (CCDBG) of 2014; she noted that states utilize grant monies for financial assistance to low-income families to access various aspects of childcare.

Overall, the 2014 CCDBG was intended to strengthen the protection of child care nationwide for parents to make informative choices. It assists in child development, provides equal

access and stable child care for eligible children and it enhances the quality of childcare and early childhood workforce.

Ms. Loreen Okamura, Child Care Subsidy Lead Specialist, explained that Chapter 798.3 is moving from a six-month to a twelve-month eligibility period to provide more stable child care to families. The testimonies provided at the public hearing were in support of the proposed rules; several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 800, Requirements for Listing of Exempt Center-Based Providers, promulgated by DHS

Ms. Okamura stated that testimonies at the public hearing were in support of the proposed changes and several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Mr. Shick seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 801, Background Checks, promulgated by DHS

Ms. Luka indicated that no oral or written testimonies were received at the public hearing for these rule changes. The changes are based on the requirements set forth by the CCDBG Act, which requires all individuals who work with children or who have unsupervised access to children to undergo comprehensive background checks to be cleared to work with children.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on the Proposed Amendments of HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Ms. Rodighiero, explained that the proposed rules affect surfing schools in Kahalu'u Bay on the Big Island as it has been found that there is a need to regulate the number of entities in the water. The intent is to have eight limited permits on a shift basis, four permits allowed in the morning and four in the afternoon.

In response to Chair Cundiff's inquiry as to whether any conflicts or concerns may arise as a result of these rules, Mr. Todd Tashima, General Professional from DLNR's Division of Boating and Ocean Recreation (DOBOR), replied that some contention is anticipated due to the restriction of only eight possible permits going into effect versus sixteen businesses vying for the licenses.

Ms. Meghan Statts, DOBOR's Assistant Administrator, confirmed that there will definitely be some challenges ahead with the proposed rules as they only allow for four licensed operators. While it has been discussed with the County of Hawaii to allow for eight permits, (utilizing four in the morning and four in the afternoon), surfing companies are not at all happy with this arrangement.

Kahalu'u Bay is a heavily used area in the local community which is why DOBOR is working very hard with the County to determine amicable solutions for everyone involved. The options available for providing permits are first come, first served with two other options requiring statutory amendments.

Because Kahalu'u Bay is a culturally sensitive area, Second Vice Chair Yamanaka recommended that DOBOR reach out to the businesses and families for feedback to determine the fairest way to move forward with the proposed changes. Chair Cundiff suggested that DOBOR offer a temporary solution that is fair and equitable to both the permitted and non-permitted businesses currently operating in the area.

Over the members' concerns in regard to having a lottery process for permits, Mr. Tashima explained that this process was not DOBOR's first option. However, because the promulgation of these rules has been stagnant since 2016, DOBOR believed it was time to go ahead with this proposal. DOBOR would need to approach the legislature next year with alternatives to the lottery system process such as permits by auction.

Second Vice Chair Yamanaka motioned to move the proposed amendments to public hearing. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

Chair Cundiff explained that there is no updated news yet on the budget.

Chair Cundiff announced that Harris Nakamoto's term with this Board will end on June 30th. We appreciate all of Harris' participation and hard work over the years. He was a great mentor to Chair Cundiff when he began as a member of this Board. Because we want to thank Harris for all his hard work, DBEDT staff will be creating an electronic card that will be sent to all the board members to include any comments and thoughts to Harris in appreciation for his efforts.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-152
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-152, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-152 Kahaluu Bay ocean waters. (a) Kahaluu Bay ocean waters means the area confined by the boundaries shown on Exhibit ["H-5", dated November 20, 2014,] H-5, titled "Kahaluu Bay Ocean Waters, Ocean Recreation Management Area", dated August 1, 2022, located at the end of this [subchapter and incorporated herein.]subchapter. The boundaries are as follows:~~[-Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.]~~

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of Kahaluu Bay at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.
~~[(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.
(2) No commercial water sports instruction or Commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department]~~

Kahaluu Bay ocean waters is designated as a swimming, surfing, and diving zone. No commercial water sports instruction or commercial tours shall be

conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay [~~Zone~~]ocean waters zone A is described as follows:

~~[Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.]~~

Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then southeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards northeasterly ending at the point of beginning.

- ~~(1) Restrictions. Zone A is designated as a surfing zone.~~
- ~~(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.~~
- ~~(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one to four instructor to student ratio must be maintained at all times while in the water.~~
- ~~(4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.~~
- ~~(5) The department may designate the site of~~

~~instruction with Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.]~~

Kahaluu Bay ocean waters zone A is designated as a surfing zone. At all times, no person shall operate or moor any motorized vessel in this zone.

All commercial activities of any type shall be prohibited in this zone, except that the department may issue commercial use permits to authorize commercial surfing instruction within this zone; provided that:

- (1) The total number of permits authorizing commercial surfing instruction issued under this subsection shall not exceed eight at any one time for Kahaluu Bay ocean waters zone A;
- (2) Each permit issued by the department pursuant to this subsection shall only authorize surfing instruction within Kahaluu Bay ocean waters zone A;
- (3) No more than four permits shall authorize commercial surfing instruction from 0800 hours (8:00 a.m.) to 1200 hours (noon 12:00 p.m.), and no more than four permits shall authorize commercial surfing instruction from 1300 hours (1:00 p.m.) to 1700 hours (5:00 p.m.);
- (4) No permittee may allow more than four students in the water at any one time per surfing instruction permit, regardless of the number of surf instructors of that permittee in the water;
- (5) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
- (6) The department may designate the site of surf instruction within Kahaluu Bay ocean waters zone A and hours of operation for each permittee. The department may change a designated site of operation

within Kahaluu Bay ocean waters zone A
whenever such changes are found by the
department to be necessary for reasons
of public health, safety, or welfare.

(c) Kahaluu Bay ~~[Zone]~~ ocean waters zone B is described as follows:

Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards ~~[north-westerly]~~ northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaau O Kalakani Point at the point of beginning.

~~[(1) Restrictions. Zone B is designated as a swim zone.~~

~~(2) No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.]~~

Kahaluu Bay ocean waters zone B is designated as a swimming and diving zone. No person shall operate or moor any vessel within this zone, including, but not limited to, boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes." [Eff

2/24/94; am 4/22/16; am] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)



**Exhibit H-5
Kahaluu Bay Ocean Waters,
Ocean Recreation Management Area**



Map date: August 1, 2022

**Kahaluu Bay
Ocean Waters**

**Hand
Rail**

Zone A

**Pyramid
Rock**

**Life Guard
Station**

Zone B

**Kala'au O
Kalakani Point**

Legend



**Boundary Reference
Points**



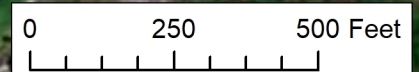
**Ocean Waters
Boundary**



Zone A - Surfing



Zone B - Swimming



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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

3. The amendments to section 13-256-152, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing is a copy of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which, if adopted by the Board of Land and Natural Resources, will be filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Colin J. Lau
Deputy Attorney General

IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 55, **Water Pollution Control**, as follows, promulgated by DOH
 - a. Appendix A – Standard General Permit Conditions
 - b. Appendix D – NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
 - c. Appendix H – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
 - d. Appendix I – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
 - e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

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

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

- 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.
Please see attached.

- 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," provide details: _____

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.

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.

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.).
-
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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.

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.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
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.
7. How the agency involved small business in the development of the proposed rules.
 - 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.

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.

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

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

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)

Water pollution permits in Hawaii are part of the federal Clean Water Act (CWA) 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, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The Department of Health (DOH) has been authorized by the U.S. Environmental Protection Agency (EPA) 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 HAR Chapter 11-55 Water Pollution Control.

HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES General Permits are incorporated into the HAR Chapter 11-55 as appendices. General Permits are issued as rules in the HAR and not specifically to any individual owner or operator. Each General Permit authorizes a category of discharges for a group of similar types of activities or facilities (e.g., once-through cooling water for air-conditioning systems or storm water discharges from construction activities) and contain requirements to minimize pollutants from being discharged to State waters. 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. 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 A of HAR Chapter 11-55 is the list of standard general permit conditions that are applicable to all of the General Permits.

Appendix D of HAR Chapter 11-55 authorizes the discharge of treated effluent from leaking underground storage tank remedial activities to a State receiving water from the cleanup (or remedial action) of underground storage tanks that have leaked petroleum hydrocarbons.

Appendix H of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with petroleum bulk stations and terminals to a State receiving water. Treated process wastewater effluent includes tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater, and contaminated storm water runoff from the product storage and handling areas.

Appendix I of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with well drilling activities to a State receiving water. Treated process wastewater associated includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

Appendix M of HAR Chapter 11-55 authorizes point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to a State receiving water.

The only portions of the main body of HAR 11-55 that are proposed to be substantively revised (i.e., are not grammatical or stylistic revisions) are:

1. HAR 11-55-01 updates to definitions regarding certifying person, authorized representative, and pesticide discharges;
2. HAR 11-55-03 clarifying that regulated discharges are only allowed in compliance with State statutes, rules, and an issued permit or variance;
3. HAR 11-55-04(a) listing when an application is required to be submitted;
4. HAR 11-55-04(j) listing certain types of discharges that may not require an NPDES permit if they are not a source of pollutants;
5. HAR 11-55-07 to require updates to contact information when the certifying person changes as well as codifying the federal certification statement language that is currently being used, as well as specifying requirements for electronic reporting of information in accordance with federal regulations;
6. HAR 11-55-34.02 to reflect the new expiration dates for the proposed General Permits in Appendices D, H, I, and M;
7. HAR 11-55-34.08 to clarify signature requirements, requirements to notify the DOH when changes to the certifying person or authorized representative occur, and codifying the federal certification statement language that is currently being used, as well as specifying requirements for electronic reporting of information in accordance with federal regulations;
8. HAR 11-55-40 adding violations and increasing penalty amounts through field citations; and
9. HAR 11-55-41 reorganizing and clarifying the requirements for a zone of mixing.

Early Stakeholder Outreach on the proposed revisions to HAR 11-55 and the general permits was conducted from July 11, 2022 through August 1, 2022. The CWB sent 585 emails to notify current permittees and organizations and to solicit comments. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

Acronyms used in this reference:

CWA	Clean Water Act
HRS	Hawaii Revised Statutes
HAR	Hawaii Administrative Rules
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
DOH	State of Hawaii, Department of Health
CWB	Clean Water Branch
NPDES	National Pollutant Discharge Elimination System
NGPC	Notice of General Permit Coverage

HRS §201M Determination of Small Business Impact

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

The addition of HAR 11-55-04(j) listing certain types of discharges that may not require an NPDES permit if they are not a source of pollutants would affect small businesses that may engage in those activities. The addition of the list would not adversely affect them. On the contrary, it will better inform them. Section 11-55-40 adding violations and increasing penalty amounts through field citations would only adversely affect those small businesses that were actually bad actors when it comes to complying with our environmental regulations. However, the listing of the additional violations and increased fines serve as warnings to those potential bad actors.

The Appendix A, Standard General Permit Conditions being revised affects businesses that need General Permit coverage. The revisions are only additions of state law references and listing of requirements that were already in effect. Small businesses would not be adversely affected by the revisions.

The Appendix D, Leaking Underground Storage Tank General Permit being revised and renewed affects businesses that need to release or discharge treated ground water from the cleanup (or remediation action) of leaking underground storage tanks that have released petroleum hydrocarbons. There is only one permittee, Naval Facilities Engineering Systems Command, Hawaii, so no small businesses will be currently affected.

The Appendix H, Petroleum Bulk Station and Terminals General Permit being revised and renewed affects businesses engaged in the distribution of crude petroleum and petroleum products that need to discharge treated process wastewater associated with their petroleum bulk stations and terminals into State waters. Currently, there are only two permittees, Aloha Petroleum LLC, that has this type of permit coverage for two of their facilities, and Par Hawaii, LLC, Par West. Currently, no small business will be affected.

The Appendix I, Well Drilling General Permit being revised and renewed affects businesses that need to discharge treated process wastewater associated with well drilling activities (i.e. well drilling slurries, lubricating fluids, and well purge wastewaters) to State waters. Currently there are no permittees covered under this general permit, so no small businesses will be affected.

The Appendix M, Pesticides General Permit being revised and renewed affects business that need to apply pesticides to State waters for mosquito and other flying insect control, weed and algae control, animal pest control, and forest canopy pest control. This general permit mostly affects government agencies. The non-government agencies covered under this general permit include Mahi Pono, LLC; Mr. Avery Chumbley; East Maui Irrigation Company, Ltd.; and Kekaha Agriculture Association, therefore no small business will be 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.

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.

HAR 11-55-40(b)(2)(A): \$500 for the first violation and \$2,000 for subsequent violations, first established October 22, 2007.

HAR 11-55-40(b)(2)(B): \$100 for the first violation and \$200 for subsequent violations, first established October 22, 2007.

HAR 11-55-40(b)(2)(C): \$500 for the first violation and \$1,000 for subsequent violations, first established December 6, 2013.

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

HAR 11-55-40(b)(2)(A): \$1,000 for the first violation and \$4,000 for subsequent violations, 100% increase from previous (i.e., double).

HAR 11-55-40(b)(2)(B): \$200 for the first violation and \$400 for subsequent violations, 100% increase from previous (i.e., double).

HAR 11-55-40(b)(2)(C): \$1,000 for the first violation and \$2,000 for subsequent violations, 100% increase from previous (i.e., double).

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

Field citations are only applicable to certain types of violations subject to the DOH's discretion. Field citations and their monetary penalties are used as deterrents to incentivize compliance with the issued permit, while also allowing for quick and efficient enforcement resolution for certain types of violations. The increased penalties maintain levels that promote timely resolution while maintaining the deterrent effect intended. Further, by increasing the fee amount, the economic advantage of choosing to pay a fine rather than invest in compliance practices is reduced.

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

Compliance and construction costs have doubled since field citations were initially authorized in 2007. As such, penalty amounts were also doubled across the board to match the increase in compliance and construction costs.

(3) 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 CWB or other agencies affected by the rule changes. The CWB does not receive direct monetary benefit from the proposed revisions. Statutorily, under HRS §342D-39 these fines are deposited into the environmental response revolving fund established under HRS §128D-2, and are not directly accessible by the CWB.

(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 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.

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

DOH does not believe there are less restrictive alternatives to the proposed amendments.

- (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.

DOH does not believe that these revisions to HAR Chapter 11-55 will have an adverse impact on small business. Therefore, alternative methods of compliance for small businesses were not explored.

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

- 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.

Early Stakeholder Outreach on the proposed revisions was conducted from July 11, 2022 through August 1, 2022. The CWB emailed permittees, government agencies, public notice distribution list (list of anyone in the public that wants to be notified of all CWB public notices), General Contractors Association, and Kauai Contractors Association. Combined, the CWB sent out approximately 585 emails. CWB did receive two substantive comments from PAR Hawaii (which is not a small business), however, none were received from small businesses.

- (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 standards proposed are not more stringent than any 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.
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.

Public Hearing Approval Request

The DOH-CWB requests approval to conduct a public hearing.

- Summary of changes

- Why is this section of Hawaii Administrative Rules being amended?

The DOH-CWB proposes to amend HAR 11-55, HAR 11-55 Appendix A and amend and reissue HAR 11-55, Appendices D, H, I, and M.

Rulemaking is required as Appendices DHIM expire on July 12, 2023 and must be readopted and reissued to continue their use.

- What problem is the rule change meant to solve?

The rule change is primarily to issue the Appendices D, H, I, and M before they expire. The rule change also updates the main body of HAR 11-55 and Appendix A to conform with current implementation practices and to address any needed clarifications and revisions that were deemed necessary since the last substantive revision.

- List all changes that are being made.

See the fact sheets for each general permit.

- Impact of changes

- How does this rule change address the problem?

As stated previously, the rule change is primarily to issue Appendices D, H, I, and M before they expire.

Failure to make this rule change will result in the expiration of Appendices D, H, I, and M on July 12, 2023.

See the fact sheets for specific explanations for each specific change.

- Who are the stakeholders? Positive and negative.

Appendices D, H, and I do not impact small businesses, so there should be no adverse impact from revisions.

Appendix M primarily impact government agencies and municipalities. Although there may be contractors or sub-contractors that are small business that are hired for these projects, there should be no adverse impact. These revisions to Appendix M only clarify existing submittal and compliance requirements and are required to comply with Federal regulations.

Revisions to HAR 11-55 and Appendix A potentially affect other NPDES permittees, however, most changes are clarifications of current rules, and changes to the field citation penalties don't affect permittees who are in compliance with their permit.

- What are the potential problems with the rule change?

If these rule changes don't go through, all potential permittees will be required to apply for NPDES Individual permits. The filing fee for an NPDES Individual permit application is \$1000 vs. \$500 for general permit coverage. The individual permitting process adds significant processing time and burden to CWB staff. Further, the individual permitting process requires a public notice in a local newspaper (with all costs borne by the applicant) and a public comment period of a minimum of 30 days. The individual permitting process may also involve a public hearing. These additional procedures would cause delays in projects that could be covered under the general permit.

The CWB does not expect there to be potential problems with the rule change. The general permits have not become more stringent or costly than they were before.

- What is the fiscal impact?

The CWB does not expect there to be any major fiscal impacts as a result of this rule change. There may even possibly be reduced fiscal impact to permittees due to changes in effluent limitations and monitoring requirements. Further, the increased penalties do not affect permittees that comply with the general permit.

- What is the economic impact to the State?

There should be no significant economic impact to the State. There are no additional fees or costs associated with the changes to these general permits. As stated previously, State agencies issued coverage under these general permits may even save money as a result of changes to effluent limitations and

monitoring requirements. Further, the increased penalties do not affect State agency permittees that comply with the general permit.

- Consequences if changes are not made.
 - What are the consequences if the rule change does not get adopted, amended, or repealed?

As stated before, if these rule changes don't go through, all potential permittees will be required to apply for NPDES Individual permits. The filing fee for an NPDES Individual permit application is \$1000 vs. \$500 for general permit coverage. The individual permitting process adds significant processing time and burden to CWB staff. Further, the individual permitting process requires a public notice in a local newspaper (with all costs borne by the applicant) and a public comment period of a minimum of 30 days. The individual permitting process may also involve a public hearing. These additional procedures would cause delays in projects that could be covered under the general permit.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Listing types of discharges that may be discharged without NPDES permit coverage if they're not a significant source of pollutants.
- Requiring a certification statement for all submittals.
- Documenting electronic signature submittal requirements.
- Revisions to Appendix A – Standard General Permit Conditions.
- Reissuance of NPDES general permits:
 - Appendix D authorizing discharges of treated effluent from leaking underground storage tank remedial activities
 - Appendix H authorizing discharges of treated process wastewater associated with petroleum bulk stations and terminals
 - Appendix I authorizing discharges of treated process wastewater associated with well drilling activities
 - Appendix M authorizing point source discharges from the application of pesticides.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

- Addition of offenses that may be addressed by a field citation and increasing of the monetary penalties.
- Reorganization of the zone of mixing rule.

Section	Current	Proposed	Rationale
Throughout		Various formatting, grammatical, and stylistic changes.	Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements.
Title Page	Stamped adoption date.	Placeholder.	Left a placeholder for the adoption date to be stamped after rule making.
11-55-01	None	“Authorized Representative” means an individual who has been duly authorized by the certifying person and given the express, implied, and apparent authority to act on behalf of the certifying person as a signatory for legally binding documents such as reports or other information submitted to the department in accordance with section 11-55-07(b).	Define “authorized representative” as used throughout 11-55.
11-55-01	None	“Certifying Person” means an individual who meets the signatory requirements in section 11-55-07(a).	Define “certifying person” as used throughout 11-55.
11-55-01	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters <u>from pesticide application</u> .	Clarifying this applies to discharges from pesticide application.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-01	None	“Pesticide discharges to State waters from pesticide application” means the discharges that result from the application of biological pesticides or chemical pesticides that leave a residue from point sources to State waters. In the context of this definition of pesticide discharges to State waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law.	Define “pesticide discharges to State waters from pesticide application” as used in Appendix M.
11-55-01	“Pesticide residue” includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	“Pesticide residue” <u>for the purpose of determining whether an NPDES permit is needed for pesticide discharges to State waters from pesticide application, means</u> that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	Revised definition of “pesticide residue” to match definition used in Appendix M.
11-55-03	General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter.	General prohibition. <u>(a) No person shall violate any provision of section 342D-50, HRS. (b) No person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except in compliance with this chapter 342D, HRS, rules adopted pursuant to chapter 342D, HRS, a permit or variance issued by the director.</u>	Explicitly state that there shall be no discharges to state waters unless authorized by a permit or variance.
11-55-04(a)	Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction 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,	A person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), complete notice of intent (except for the point source discharges from the application of pesticides, if not required under Appendix M) or “no exposure” certification for certain storm water discharges which meet all	Reorganized statements for clarity.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
	or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.	requirements for a conditional "no exposure" exclusion: <ol style="list-style-type: none"> (1) Before discharging any pollutant; (2) Before substantially altering the quality of any discharges; (3) Before substantially increasing the quantity of any discharges; (4) Before beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land 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; (5) Before beginning discharge from sources or activities identified and described in 40 CFR §122.23 through §122.27; (6) For small regulated municipal storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e). 	
11-55-04(j)	None	<u>Exclusions:</u> <ol style="list-style-type: none"> (1) An NPDES permit may not be required provided that the discharges are consistent with the exclusions identified in 40 CFR §122.3 or have a de minimus impact on water quality due to the quantity or quality of the discharge as determined by the director. (2) The discharge shall not be reasonably expected (based on information available to the department) to be significant sources of pollutants to State waters. 	Add list of non-storm water discharges that may be discharged without an NPDES permit if they are not a significant source of pollutants, similar to discharges allowed to permitted MS4s.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		<p>(3) Discharges which do not require an NPDES permit unless found to cause or contribute to a waterbody exceeding narrative or numeric water quality criterion in chapter 11-54 include, but are not limited to, the following:</p> <p>(A) Water line flushing (using potable water);</p> <p>(B) Landscape irrigation (using potable water);</p> <p>(C) Diverted stream flows;</p> <p>(D) <Reserved></p> <p>(E) Uncontaminated pumped ground water infiltration (as defined in 40 CFR §35.2005[20]) to separate storm sewers;</p> <p>(F) Uncontaminated pumped groundwater;</p> <p>(G) Discharges from potable water sources;</p> <p>(H) Discharges from foundation drains;</p> <p>(I) Air conditioning condensate;</p> <p>(J) Irrigation water (using potable water);</p> <p>(K) Springs;</p> <p>(L) Uncontaminated water from crawl space pumps and footing drains;</p> <p>(M) Lawn watering (using potable water);</p> <p>(N) Individual residential car washing (using potable water);</p> <p>(O) Flows from riparian habitats and wetlands;</p> <p>(P) Dechlorinated freshwater swimming pool discharges to non-marine environments;</p>	

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		<p>(Q) Low pressure rinsing of sidewalks without chemical additives (using potable water); and,</p> <p>(R) Discharges or flows from firefighting activities.</p> <p>Exclusions for agriculture are limited to discharges identified in 40 CFR §122.3, or agricultural land that implements practices consistent with section 11-54-4(d), or section 11-56), but do not include storm water or wastewater discharges from construction or industrial activities associated with the construction or operation of agricultural facilities.</p>	
11-55-07(c)	None	If the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.	Requires a new certifying person to notify the department of the change and provide their contact information so the department can update permit records.
11-55-07(d), formerly (c)	If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	If an authorization under subsection (b) is no longer accurate because <u>the certifying person changed or</u> a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	Requires submittal of new authorization of authorized representative upon change of the certifying person.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-07(e)		Any person signing a document under subsections (a), (b), or (c) shall make the following certification: "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 and imprisonment for knowing violations."	Document the certification statement required for all submittals.
11-55-07(f)		Electronic reporting. If documents described in subsections (a) or (b) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.	Document requirements for signatories providing submittals using an electronic signature.
11-55-34.02(b)(3)	Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated July 13, 2018;	Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated _____;	Update issuance date of Appendix D.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-34.02(b)(7)	Appendix H, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals” for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated July 13, 2018;	Appendix H, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals” for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated _____;	Update issuance date of Appendix H.
11-55-34.02(b)(8)	Appendix I, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities” for the discharge of treated process wastewater effluent associated with well drilling activities, dated July 13, 2018;	Appendix I, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities” for the discharge of treated process wastewater effluent associated with well drilling activities, dated _____;	Update issuance date of Appendix I.
11-55-34.02(b)(12)	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated July 13, 2018.	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated _____.	Update issuance date of Appendix M.
11-55-34.08(e)	Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).	Any notice of intent form submitted to the director shall be signed <u>by the certifying person</u> .	Replaced the rule reference with “certifying person” for clarity.
11-55-34.08(f)	All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).	All other reports or responses to requests for information required by the director shall be signed <u>by either the certifying person or authorized representative</u> .	Replaced the rule reference with “certifying person or authorized representative” for clarity.
11-55-34.08(g)	Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).	Any change <u>of the certifying person or authorized representative</u> which occurs after the issuance of a permit shall be reported to the director. <u>A change in authorized representative</u> shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of <u>section 11-55-07(b)</u> .	In addition to a change of the authorized representative, rule requires notification of change of the certifying person.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-34.08(h)	Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).	Any person signing a document under subsections (e) and (f) shall make the following certification: <u>"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 and imprisonment for knowing violations."</u>	Document the certification statement required for all general permit submittals.
11-55-34.08(p)	None	<u>Electronic reporting. If documents described in subsections (e) or (f) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.</u>	Document requirements for signatories providing general permit submittals using an electronic signature.
11-55-40(b)(1)(A) formerly 11-55-40(1)(i)	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in <u>non-compliance of an NPDES permit</u> ;	Language added such that if a discharger does have a permit, but exceeds limits, field citation can be utilized. Prevents unnecessarily large and complex penalties for smaller violations.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-40(b)(1)(B) formerly 11-55-40(1)(A)(ii)	Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Any person who begins an activity <u>or discharge</u> prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Added language to clarify that the field citation is applicable when someone who requires permit coverage discharges without a permit, not just starts the activity.
11-55-40(b)(1)(C) formerly 11-55-40(1)(A)(iii)	Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan, best management practices plan, or other plan;	Any person who fails to correctly install, implement, maintain, or repair site best management practices, <u>treatment system, pollution control device or who fails to provide and/or receive training as called for by the applicable NPDES permit, in whole or in part;</u>	Added language to clarify that the Field Citation is applicable when a discharger fails to meet specific requirements such as installing or maintaining required treatment systems or conduct training. The added language facilitates timely resolution to smaller violations as those identified.
11-55-40(b)(1)(D) formerly 11-55-40(1)(iv)	Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;	Any person who fails to <u>conduct monitoring, including visual monitoring or inspections,</u> as required by the applicable NPDES permit, in whole or in part;	Added language to clarify that “monitoring” includes visual monitoring and oversight inspections required to ensure compliance with the permit.
11-55-40(b)(1)(E)(ii) formerly 11-55-40(1)(v)b)	storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,	storm water pollution control plan, <u>storm water pollution prevention plan, storm water management plan,</u> best management practices plan or all other plans required in the NPDES permit <u>or</u> NGPC and all subsequent revisions,	Added language to clarify and account for the various different plan names referenced in various NPDES permits.
11-55-40(b)(1)(F) formerly 11-55-40(1)(vi)	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to <u>notices of start, discharge monitoring reports, reports of non-compliance,</u> monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation;	Added language to clarify that notices of start and reports of non-compliance, both required by permits, are specifically captured by this Field Citation. Previously, they were captured but were not specifically identified.
11-55-40(b)(1)(G)	None	Any person who fails to update their storm water pollution control plan, storm water pollution prevention plan, best management practices plan, or other plan as required by	Added a category for situations when a discharger fails to update plans as required by the permit. The addition facilitates timely resolution when violation of this nature occur.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		the applicable NPDES permit, in whole or in part;	
11-55-40(b)(1)(H)	None	Any person who submits a document without the appropriate signature or certification statement.	Category added to provide an option for a Field Citation when this type of violation is identified. The added language facilitates timely resolution for this type of situation.
11-55-40(b)(2)(A) through (C) formerly 11-55-40(2)(i) through (iii)	(i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation; (ii) \$100 for any person who violates paragraph (1)(A)(v) for the first violation, and \$200 for a subsequent violation; (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.	<u>(A) \$1,000</u> for any person who violates paragraphs <u>(b)(1)(A), (B), (C), or (D)</u> for the first violation, and <u>\$4,000</u> for a subsequent violation; <u>(B) \$200</u> for any person who violates paragraph <u>(b)(1)(E)</u> for the first violation, and <u>\$400</u> for a subsequent violation; <u>(C) \$1,000</u> for any person who violates paragraph <u>(b)(1)(F), (G), or (H)</u> for the first violation, and <u>\$2,000</u> for a subsequent violation.	Field citations were initially authorized in 2007. The penalties have not changed since original adoption. The increased penalties maintains levels that promote timely resolution while maintaining the deterrent effect intended.
11-55-41(a)	Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Zones of mixing are defined and authorized for use in NPDES permits in section 11-54-1. <u>This only applies to NPDES individual permits.</u> Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Specify that zones of mixing only apply to NPDES individual permits.
11-55-41(b)		Reorganized existing text.	Clarified requirements and reorganized to consolidate similar requirements into their own sections. Except for changes identified in this fact sheet, the original text was only moved/ reorganized and not revised.
11-55-41(b)	All references to "NPDES permit"	NPDES <u>individual</u> permit	Clarify that zones of mixing only apply to NPDES individual permits.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-41(b)(4), now 11-55-41(c)(1)	Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.	Approval of a zone of mixing shall be made after the <u>public participation process in sections 11-55-09 and 11-55-13 for the NPDES individual permit and associated zone of mixing.</u>	Clarify that a public hearing isn't required prior to approving a zone of mixing.
11-55-41(b)(5), now 11-55-41(c)(2)	No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:	No zone of mixing shall be established <u>or approved</u> by the director unless the application and the supporting information clearly show that:	Revised to be consistent with similar language in section 11-55-41 which references approval of a zone of mixing. There is no functional difference as a zone of mixing may only established once approved.

Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-41(b)(5)(D), now 11-55-41(c)(2)(D)	The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	The discharge occurring or proposed to occur does not violate <u>applicable water quality standards contained in chapter 11-54 (except for pollutants for which dilution is being requested and only within the boundary of the zone of mixing or initial dilution)</u> , will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	Revised to clarify that the discharge may exceed water quality standards but only within the boundary of the zone of mixing or dilution. These zones by definition allow for dilution of a discharge within a defined area and as such, allow for water quality standard exceedances within the zone of mixing or dilution for approved pollutants. Therefore, such an exceedance should not prevent a zone of mixing or dilution from being granted as that type of exceedance is allowable within a zone of mixing or dilution. The language was also further clarified to state that the exceedance is only allowed for pollutants that were granted dilution. Any other exceedance of a water quality standard that was not granted dilution is still considered a violation.
11-55-41(b)(11), now 11-55-41(f)(2)	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee, <u>unless the NPDES individual permit for the facility which has been granted the zone of mixing has been administratively extended.</u>	Revised to clarify that the term of the zone of mixing is effective when the NPDES individual permit for the facility that has the zone of mixing has been administratively extended. Zone of mixing approvals are issued within an NPDES permit and for the same effective term of the NPDES permit. Therefore, when an NPDES permit is administratively extended, the zone of mixing approval is also considered to be extended as it is a part of the NPDES permit.
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix A
Standard General Permit Conditions

The Standard General Permit Conditions is divided into the following sections:

1. *Basic water quality criteria [Revised]*
2. *Onshore or offshore construction [Revised]*
3. *Sampling requirements and definitions [Revised]*
4. *Duty to reapply [Revised]*
5. *Applications [Revised]*
6. *Duty to comply [Revised]*
7. *Need to halt or reduce activity not a defense [Revised]*
8. *Duty to mitigate [Revised]*
9. *Proper operation and maintenance [Revised]*
10. *Permit actions [Revised]*
11. *Property rights [Revised]*
12. *Duty to provide information [Revised]*
13. *Inspection and entry [Revised]*
14. *Monitoring and records [Revised]*
15. *Signatory requirement [Revised]*
16. *Reporting requirements [Revised]*
17. *Bypass [Revised]*
18. *Upset [Revised]*
19. *Existing manufacturing, commercial, mining, and silvicultural dischargers [Revised]*
20. *Publicly owned treatment works [Revised]*
21. *Reopener clause [Revised]*
22. *Privately owned treatment works [Revised]*
23. *Transfers by modification [Revised]*
24. *Automatic transfers [Revised]*
25. *Minor modification of permits [Revised]*
26. *Termination of permits [Revised]*
27. *Removed substances [Revised]*
28. *Availability of reports [Revised]*
29. *Civil and criminal liability [Revised]*
30. *Oil and hazardous substance liability [Revised]*
31. *Federal facility construction [Revised]*
32. *State law [Revised]*

33. Severability [Revised]

34. Notice of Intent Requirements [Revised]

Main

Original:

Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2012 unless otherwise specified.

Revised:

Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2021 unless otherwise specified.

Rationale:

Title 40 of the Code of Federal Regulations has been updated.

Section 1

Original: Basic water quality criteria (section 11-54-4)

Revised: Basic water quality criteria (comply with Section 11-54-4)

Rationale:

A more detailed reference to the State law was added to this section.

Section 1(b)

Original: The discharge shall not cause or contribute to a violation of the basic requirements of section 11-54-4(b)

Revised: The Permittee shall not cause or contribute to a violation of the basic numeric water quality requirements of Hawaii Administrative Rules, Chapter 11-54, Section 11-54-4(c).

Rationale:

Revised verbiage to match Standard NPDES Permit Conditions (Version 16) and update the reference to applicable section of 11-54.

Section 2

Original: Onshore or offshore construction

Revised: Onshore or offshore construction (Hawaii Revised Statutes, Section 342D-4)

Rationale:

Reference to the State law was added to this section.

Section 3

Original: *Sampling requirements and definitions*

Revised: *Sampling requirements and definitions (Hawaii Revised Statutes, Section 342D-4)*

Rationale:

Reference to the State law was added to this section.

Section 3(b)(2)

Original: *"Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001, 485 pp. (Available from the U.S. Government Bookstore. Order by Stock No. 024-003-00186-4 and ISBN 0-16-061763-4.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. PB2002-100323.)*

Revised: *"Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001 (Available at: <https://www.usbr.gov/tsc/techreferences/mands/wmm.html>.)*

Rationale:

Revised to provide website to access various media versions of document.

Section 3(b)(4)

Original: *"NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, EPA No. 832B81102, September 1981, 149 pp. (Available from the National Technical Information Service (NTIS). Order by NTIS No. PB82-131178.)*

Revised: *"NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 147 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)*

Rationale:

Revised to update agency from which to order document.

Section 4

Original: *Duty to reapply*

Revised: *Duty to reapply (comply with 40 CFR §122.41(b) and Sections 11-55-04, 11-55-34.08 and 11-55-34.09)*

Rationale:

References to the State and Federal laws were added to this section.

Section 5

Original: *Applications (comply with 40 CFR §122.22)*

Revised: *Signatories to permit applications and reports (based in part on 40 CFR §122.22 and Section 11-55-07)*

- a. *Applications. All permit applications shall be signed as follows:*
- (1) *For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:*
 - (A) *A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or*
 - (B) *The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*
 - (2) *For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or*
 - (3) *For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:*
 - (A) *The chief executive officer of the agency, or*

- (B) *A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);*
- (4) *For a trust. By a trustee; or*
- (5) *For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.*
- (b) *All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:*
 - (1) *The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);*
 - (2) *The authorization is made in writing by a person designated under subsection (a); and*
 - (3) *The written authorization is submitted to the director.*
- (c) *If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.*
- (d) *Certification. Any person signing a document under subsection a. or b. shall make the following certification:*

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 and imprisonment for knowing violations.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 6

Original: *Duty to comply (comply with 40 CFR §122.41(a))*

Revised: *Duty to comply (comply with 40 CFR §122.41(a) and Section 11-55-03)*

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and Hawaii water pollution law and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- a. *The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.*
- b. *The Permittee shall be subject to statutory penalty amounts for violations are set forth in Hawaii Revised Statutes, 342D.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 7

Original: *Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c))*

Revised: *Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c) and based in part on Hawaii Revised Statutes, Section 342D-4)*

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 8

Original: *Duty to mitigate (based in part on 40 CFR §122.41(d))*

Revised: *Duty to mitigate (based in part on 40 CFR §122.41(d) and Hawaii Revised Statutes, Section 342D-4)*

Rationale:

Reference to the State law was added to this section.

Section 9

Original: *Proper operation and maintenance (comply with 40 CFR §122.41(e))*

Revised: *Proper operation and maintenance (comply with 40 CFR §122.41(e) and Section 11-55-23(9))*

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 10

Original: *Permit actions (comply with 40 CFR §122.41(f))*

Revised: *Permit actions (comply with 40 CFR §122.41(f) and Sections 11-55-16 and 11-55-17)*

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 11

Original: *Property rights (comply with 40 CFR §122.41(g))*

Revised: *Property rights (comply with 40 CFR §122.41(g) and Sections 11-55-15(g))*

This permit does not convey any property rights of any sort or any exclusive privilege.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 12

Original: *Duty to provide information (comply with 40 CFR §122.41(h))*

Revised: *Duty to provide information (comply with 40 CFR §122.41(h) and based in part on Hawaii Revised Statutes, Section 342D-4))*

The Permittee shall furnish to the Director of Health, within a reasonable time, any information which the Director of Health may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also furnish to the Director of Health upon request, copies of records required to be kept by this permit.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 13

Original: *Inspection and entry (comply with 40 CFR §122.41(i))*

Revised: *Inspection and entry (comply with 40 CFR §122.41(i)(3) and Section 11-55-23(5))*

The Permittee shall allow the Director of Health, or a duly authorized agent (including an authorized contractor acting as a duly authorized agent of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

- a. *Enter upon the Permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;*
- b. *Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;*
- c. *Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and*
- d. *Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.*

Rationale:

Reference to the State law was added to this section. Reference to the Federal law was made more specific. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 14

Original: *Monitoring and records (based in part on 40 CFR §122.41(j))*

Revised: *Monitoring and records (based in part on 40 CFR §122.41(j)) and Sections 11-55-29 and 11-55-31)*

Rationale:

Reference to the State law was added to this section.

Section 15

Original: *Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k))*

Revised: *Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k)) and Section 11-55-07)*

- a. *All applications, reports, or information submitted to the Director of Health shall be signed and certified. (See section 5 or 40 CFR §122.22)*
- b. *The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 16

Original: Reporting requirements (comply with 40 CFR §122.41(l))

Revised: Reporting requirements (comply with 40 CFR §122.41(l) and Hawaii Revised Statutes, Section 342D-4)

- a. *Planned changes. The Permittee shall give notice to the Director of Health as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b); or (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR §122.42(a)(1) or section 19. (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and the alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.*
- b. *Anticipated noncompliance. The Permittee shall give advance notice to the Director of Health of any planned changes in the permitted facility or activity which may result in noncompliance with this permit's requirements.*
- c. *Transfers. This permit is not transferable to any person except after notice to the Director of Health. The Director of Health may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate other requirements as may be necessary under the Act or Chapter STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 15 of 27 v.16 342D, HRS. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory.)*
- e. *Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.*
 - (1) *All monitoring results, including intake monitoring results, effluent, and receiving water, must be reported on a Discharge Monitoring Report Form or forms submitted electronically using NetDMR, or as otherwise specified by the Director for reporting results of*

monitoring of sludge use or disposal practices. NetDMR is accessed from: <http://www.epa.gov/netdmr>. DMRs shall be submitted electronically no later than the 28th day of the month following the completed reporting period, unless otherwise specified in the permit.

- (2) *If the Permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form or sludge reporting form specified by the Director.*
- (3) *Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director of Health in this permit.*
- (4) *For the purposes of reporting, the Permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal to or less than the concentration of the minimum level (ML).*

 - (i) *The Permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.*
 - (ii) *The Permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in a sample is below detection limit/no detection.*
 - (iii) *The Permittee shall report sample results and calculations between the ML and MDL as NODI(Q). NODI(Q) means that the concentration of the pollutant in a sample is detected but not quantifiable. STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 16 of 27 v.16*
 - (iv) *For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.*

- (v) *For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.*
 - (vi) *When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.*
- (5) *Should there be no discharges during the monitoring period, the DMR form shall so state.*
- e. *Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.*
- f. *Immediate reports of non-compliance. The Permittee shall report any noncompliance which may endanger human health or the environment as soon as practical. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:*
 - (1) *Any unanticipated bypass which exceeds any effluent limitation in the permit. See 40 CFR §122.41(g).*
 - (2) *Any upset which exceeds any effluent limitation in the permit.*
 - (3) *Violations of a maximum daily discharge limitation for any of the pollutants listed by the Director of Health in the permit to be reported within 24 hours. See 40 CFR §122.44(g)*

*The Director of Health may waive the written report on a case-by-case basis for reports under Section 16.f if the oral report has been received within 24 hours. STANDARD NPDES PERMIT CONDITIONS (Version 16)
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- g. Other noncompliance. The Permittee shall report all instances of noncompliance not reported under subsections d., e., and f. at the time monitoring reports are submitted. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*
- h. Other information. Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director of Health, the Permittee shall promptly submit the facts or information.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 17

Original: *Bypass (based in part on 40 CFR §122.41(m))*

Revised: *Bypass (based in part on 40 CFR §122.41(m) and Hawaii Revised Statutes, Section 342D-4)*

Rationale:

Reference to the State law was added to this section.

Section 18

Original: *Upset (based in part on 40 CFR §122.41(n))*

Revised: *Upset (based in part on 40 CFR §122.41(n) and Hawaii Revised Statutes, Section 342D-4)*

Rationale:

Reference to the State law was added to this section.

Section 19

Original: *Existing manufacturing, commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a))*

Revised: *Existing manufacturing commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a) and Hawaii Revised Statutes, Section 342D-4)*

In addition to the reporting requirements under 40 CFR §122.41(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director of Health as soon as they know or have reason to believe:

- a. *That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels”:*
 - (1) *One hundred micrograms per liter (100 µg/l);*
 - (2) *Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;*
 - (3) *Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or*
 - (4) *The level established by the Director of Health in accordance with 40 CFR §122.44(f). STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 20 of 27 v.16*
- b. *That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels”:*
 - (1) *Five hundred micrograms per liter (500 µg/l);*
 - (2) *One milligram per liter (1 mg/l) for antimony;*
 - (3) *Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or*
 - (4) *The level established by the Director of Health in accordance with 40 CFR §122.44(f).*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 20

Original: Publicly owned treatment works (comply with 40 CFR §122.42(b))

Revised: Publicly owned treatment works (comply with 40 CFR §122.42(b) and Hawaii Revised Statutes, Section 342D-4)

This section applies only to publicly owned treatment works as defined in 40 CFR §122.2.

- a. *All publicly owned treatment works must provide adequate notice to the Director of Health of the following:*
 - (1) *Any new introduction of pollutants into the publicly owned treatment works from an indirect discharger which would be subject to Section 301 or 306 of the Act if it were directly discharging those pollutants; and*
 - (2) *Any substantial change in the volume or character of pollutants being introduced into that publicly owned treatment works by a source introducing pollutants into the publicly owned treatment works at the time of issuance of the permit; and*
 - (3) *For purposes of this paragraph, adequate notice shall include information on paragraph (1), the quality and quantity of effluent introduced into the publicly owned treatment works, and paragraph (2), any anticipated impact of the change on the quantity or quality of effluent to be discharged from the publicly owned treatment works.*
- b. *(The following condition has been established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act.) Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR Part 270. Hazardous wastes are defined in 40 CFR Part 261 and include any mixture containing any waste listed under 40 CFR §§261.31-261.33. The Domestic Sewage Exclusion (40 CFR §261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 21

Original: Reopener Clause (comply with 40 CFR §122.44(c) and 40 CFR §125.123(d)(4);

Revised: Reopener Clause (comply with 40 CFR §122.44(c), 40 CFR §122.46(d), and 40 CFR §125.123(d)(4) and Hawaii Revised Statutes, Section 342D-4);

- a. For any discharger within a primary industry category (see 40 CFR Part 122, Appendix A), requirements under Section 307(a)(2) of the Act as follows:
- (1) On or before June 30, 1981:
 - (A) If applicable standards or limitations have not yet been promulgated, this permit shall include a condition stating that, if an applicable standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act and that effluent standard or limitation is more stringent than any effluent limitation in this permit or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.
 - (B) If applicable standards or limitations have been promulgated or approved, this permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are “approved” or the purpose of this regulation.)
 - (2) On or after the statutory deadline set forth in Sections 301(b)(2)(A), (C), and (E) of the Act, any permit issued shall include effluent limitations to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by this section.
 - (3) The Director of Health shall promptly modify or revoke and reissue any permit containing the clause required under this section to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act which is promulgated or approved after this permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in this permit, or controls a pollutant not limited in this

permit. STANDARD NPDES PERMIT CONDITIONS (Version 16)
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- (4) *For any permit issued to a treatment works treating domestic sewage, including “sludge-only facilities,” the Director of Health shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the Act. The Director of Health may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in this permit, or controls a pollutant or practice not limited in this permit. b. All permits which authorize the discharge of pollutants pursuant to 40 CFR §125.123(c) shall contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director of Health determines that continued discharge may cause unreasonable degradation of the marine environment.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 22

Original: *Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR §122.44(m))*

Revised: *Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act, 40 CFR §122.44(m), and Hawaii Revised Statutes, Section 342D-4.)*

Rationale:

Reference to the State law was added to this section.

Section 23

Original: *Transfers by modification (comply with 40 CFR §122.61(a))*

Revised: *Transfers by modification (comply with 40 CFR §122.61(a) and Section 11-55-34.08(i)(2))*

Except as provided in section 24, a permit may be transferred by the Permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR §122.62(b)(2)), or a minor modification made (under 40 CFR §122.63(d)), to identify the new Permittee and incorporate other requirements as may be necessary under the Act.

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 24

Original: *Automatic transfers (comply with 40 CFR §122.61(b) and section 11-55-34.08(i)(2))*

Revised: *Automatic transfers (comply with 40 CFR §122.61(b) and Section 11-55-34.08(i)(2))*

As an alternative to transfers under section 23, any NPDES permit may be automatically transferred to a new Permittee if:

- a. The current Permittee notifies the Director of Health at least 30 days in advance of the proposed transfer date in subsection b;*
- b. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and*
- c. The Director of Health does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under 40 CFR §122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection b.*

Rationale:

Reference to the State law was added to this section. Verbiage included on the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 25

Original: *Minor modification of permits (comply with 40 CFR §122.63);*

Revised: *Minor modification of permits (comply with 40 CFR §122.63 and Section 11-55-16);*

Upon the consent of the Permittee, the Director of Health may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR Part 124 draft permit and public notice as required in 40 CFR §122.62. Minor modifications may only:

- a. *Correct typographical errors;*
- b. *Require more frequent monitoring or reporting by the Permittee;*
- c. *Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;*
- d. *Allow for a change in ownership or operational control of a facility where the Director of Health determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new Permittees has been submitted to the Director of Health;*
- e.
 - (1) *Change the construction schedule for a discharger which is a new source. No change shall affect a discharger's obligation prior to discharge under 40 CFR §122.29.*
 - (2) *Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with the permit limits.*
- f. *(Reserved.)*
- g. *Incorporate conditions of a publicly owned treatment works pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR §403.18) as enforceable conditions of the publicly owned treatment works' permit.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 26

Original: *Termination of permits (comply with 40 CFR §122.64)*

Revised: *Termination of permits (comply with 40 CFR §122.64, 40 CFR §124.5(d), and Section 11-55-18)*

- a. *The following are causes for terminating a permit during its term, or for denying a permit renewal application:*
- (1) *Noncompliance by the Permittee with any condition of the permit;*
 - (2) *The Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the Permittee's misrepresentation of any relevant facts at any time;*
 - (3) *A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or*
 - (4) *A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).*
- b. *An NPDES Permittee shall report within 30 days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued. The NPDES permit shall then be surrendered to the Director of Health within 30 days from the date of the report.*
- c. *The Director of Health shall follow the applicable State procedures equivalent to 40 CFR Part 124 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the Director of Health may terminate the permit by notice to the Permittee. Termination by notice shall be effective 30 days after notice is sent, unless the Permittee objects within that time. If the Permittee objects during that period, the Director of Health shall follow 40 CFR Part 124 of this chapter or applicable State procedures for termination. Expedited permit termination procedures are not available to Permittees that are subject to pending State or Federal of both enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a Permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use 40 CFR Part 22 procedures for NPDES permit terminations.*

- d. *If the Director of Health tentatively decides to terminate a permit under 40 CFR §122.64 where the Permittee objects, the Director of Health shall issue a notice of STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 26 of 27 v.16 intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6.*

Rationale:

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

Section 27

Original: *Removed substances (under Sections 301 and 405 of the Act and 40 CFR §125.3(g));*

Revised: *Removed substances (under Sections 301 and 405 of the Act, 40 CFR §125.3(g), and Hawaii Revised Statutes, Section 342D-4);*

Rationale:

Reference to the State law was added to this section.

Section 28

Original: *Availability of reports (under Section 308 of the Act);*

Revised: *Availability of reports (under Section 308 of the Act and Section 11-55-12);*

Rationale:

Reference to the State law was added to this section.

Section 29

Original: *Civil and criminal liability (under Section 309 of the Act);*

Revised: *Civil and criminal liability (under Section 309 of the Act and Hawaii Revised Statutes, Chapter 342D);*

Rationale:

Reference to the State law was added to this section.

Section 30

Original: *Oil and hazardous substance liability (under Section 311 of the Act);*

Revised: Oil and hazardous substance liability (under Section 311 of the Act and Hawaii Revised Statutes, Section 342D-4);

Rationale:

Reference to the State law was added to this section.

Section 31

Original: Federal facility construction (under Section 313(b) of the Act);

Revised: Federal facility construction (under Section 313(b) of the Act and Hawaii Revised Statutes, Section 342D-4);

Rationale:

Reference to the State law was added to this section.

Section 32

Original: State law (under Section 510 of the Act);

Revised: State law (under Section 510 of the Act and Hawaii Revised Statutes, Chapter 342D);

Rationale:

Reference to the State law was added to this section.

Section 33

Original: Severability (under Section 512 of the Act);

Revised: Severability (under Section 512 of the Act and Section 11-55-37);

Rationale:

Reference to the State law was added to this section.

Section 34(j)

Original: Certifying person's name and position title, company name, and telephone and fax numbers.

Revised: Certifying person's name and position title, company name, and telephone number.

Rationale:

The CWB no longer has a fax number.

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DEPARTMENT OF HEALTH
STANDARD GENERAL PERMIT CONDITIONS

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Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 20~~12~~²¹ unless otherwise specified. The Clean Water Act (Act) is also known as the Federal Water Pollution Control Act, as amended by the Clean Water Act, and appears at 33 U.S.C. §§1251 to 1387.

The permittee shall comply with the following standard conditions.

1. Basic water quality criteria [~~(section 11-54-4)~~](comply with section 11-54-4)
 - a. The permittee shall not cause or contribute to a violation of the basic water quality criteria specified in section 11-54-4(a) which states:

"(a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

 - (1) Materials that will settle to form objectionable sludge or bottom deposits;

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- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
- (4) High or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands."

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b. ~~[The discharge shall not cause or contribute to a violation of the basic requirements of section 11-54-4(b).]~~ The Permittee shall not cause or contribute to a violation of the basic numeric water quality requirements of Section 11-54-4(c).

2. Onshore or offshore construction (Hawaii Revised Statutes, Section 342D-4)

The applicable general permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any state waters.

3. Sampling requirements and definitions (Hawaii Revised Statutes, Section 342D-4)

(a) Sampling Points

All samples shall be taken at the monitoring points specified in the applicable general permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the director. No discharge is authorized which does not totally pass through the final monitoring point.

(b) Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of discharges.

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The devices shall be installed, calibrated and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than plus or minus ten per cent from the true discharge rates throughout the range of expected discharge volumes. Once-through condenser cooling water flow which is monitored by pump logs or pump hour meters as specified in the applicable general permit based on the manufacturer's pump curves shall not be subject to this requirement. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references:

- (1) "A Guide of Methods and Standards for the Measurement of Water Flow," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. COM-7510683.)
- (2) "Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001, ~~485 pp.~~ (Available from the U.S. Government Bookstore. Order by Stock No. 024-003-00186-4 and ISBN 0-16-061763-4.) ~~(Also available from~~

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~~National Technical Information Service (NTIS). Order by NTIS No. PB2002-100323.)~~ (Available at: <https://www.usbr.gov/tsc/techreferences/mands/wmm.html>.)

- (3) "Flow Measurement in Open Channels and Closed Conduits," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB-273 535/5ST.)
- (4) [~~"NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, EPA No. 832B81102, September 1981, 149 pp. (Available from the National Technical Information Service (NTIS). Order by NTIS No. PB82-131178.)~~] "NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 147 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

(c) Calibration

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The permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants discharged under the applicable general permit, at intervals which will ensure the accuracy of measurements, but no less than the manufacturer's recommended intervals or six-month intervals (whichever comes first). Records of calibration shall be kept under section 14.

(d) pH Effluent Limitations Under Continuous Monitoring

If the permittee continuously measures the pH of the effluent under a requirement or option in the applicable general permit, excursions from the range provided in the general permit or as specified in chapter 11-54 are permitted, provided:

- (1) The pH limitation in the general permit is based upon a requirement imposed under 40 CFR Subchapter N, Effluent Guidelines and Standards;
- (2) The total time during which the pH values are outside the required range of pH values shall not exceed four hundred forty-six minutes in any calendar month;
- (3) No individual excursions from the range of pH values shall exceed sixty minutes; and
- (4) For purposes of this section, an "excursion" is an unintentional and

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temporary incident in which the pH value of the effluent exceeds the range set forth in the applicable general permit. The number of individual excursions exceeding sixty minutes and the total accumulated excursion time in minutes occurring in any calendar month shall be reported in accordance with the applicable general permit.

(e) Average

As used in the applicable general permit, unless otherwise stated, the term "average" means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For fecal coliform, enterococcus, or *clostridium perfringens*, the "average" shall be the geometric mean. For total coliform, the "average" shall be the median.

(f) Mass/Day Measurements

- (1) The "daily discharge" is the total mass (weight) of a pollutant discharged during a calendar day. The daily discharge shall be determined by using the following equations:

$$\text{Daily Discharge (lbs/day)} = 8.34 \times Q \times C;$$

$$\text{Daily Discharge (kg/day)} = 3.785 \times Q \times C;$$

and

where "C" (in mg/l) is the measured daily concentration of the pollutant and "Q" (in million gallons per day) is

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the measured effluent flow rate for the same calendar day.

If only one sample is taken during any calendar day, the mass (weight) of pollutant discharged that is calculated from it is the "daily discharge."

- (2) The "average monthly discharge" is defined as the total mass of all daily discharges sampled or measured or both during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled or measured or both during such month. It is, therefore, an arithmetic mean found by adding the weights of the pollutant found each day of the month and then dividing this sum by the number of days. This limitation is identified as "Monthly Average" in the applicable general permit and the average monthly discharge value is reported in the "Average" column under "Quantity" on the discharge monitoring report form.
- (3) The "average weekly discharge" is defined as the total mass of all daily discharges sampled or measured or both during the calendar week in which daily discharges are sampled or measured or both. It is, therefore, an arithmetic mean found by adding the weights of pollutants found each day of the week and then dividing this sum by the number of days. This limitation is identified as "Weekly Average" in the

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applicable general permit and the average weekly discharge value is reported in the "Maximum" column under "Quantity" on the discharge monitoring report form.

- (4) The "maximum daily discharge" is the highest daily discharge value recorded, sampled, or measured during the reporting period. This limitation is identified as "Daily Maximum" in the applicable general permit and the maximum daily discharge value is reported in the "Maximum" column under "Quantity" on the discharge monitoring report form.

(g) Concentration Measurements

- (1) The "daily concentration" is the concentration of a pollutant discharged during a calendar day. It is equal to the concentration of a composite sample or in the case of grab samples, it is the arithmetic mean (weighted by flow value) of all samples collected during that calendar day. If only one sample is taken during any calendar day, it represents the "daily concentration."
- (2) The "average monthly concentration," other than for fecal coliform, enterococcus, *clostridium perfringens*, or total coliform, is the sum of the daily concentrations sampled or measured or both divided by the number of daily discharges sampled or measured or both during such month (arithmetic

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mean of the daily concentration values). The average monthly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a calendar month. The average monthly count for total coliform is the median of the counts for samples collected (not less than five discrete samples) during a calendar month. This limitation is identified as "Monthly Average" or "Daily Average" under "Other Limits" in the applicable general permit and the average monthly concentration value is reported under the "Average" column under "Quality" on the discharge monitoring report form.

- (3) The "average weekly concentration," other than for fecal coliform, enterococcus, or *clostridium perfringens*, or total coliform, is the sum of the concentrations of all daily discharges sampled or measured or both during a calendar week on which daily discharges are sampled and measured divided by the number of daily discharges sampled or measured or both during such week (arithmetic mean of the daily concentration values). The average weekly count for fecal coliform, enterococcus, or *clostridium perfringens* is the geometric mean of the counts for samples collected during a calendar week. The average weekly count for total coliform is the median of the counts for samples collected

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during a calendar week. This limitation is identified as "Weekly Average" under "Other Limits" in the applicable general permit and the average weekly concentration value is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.

- (4) The "maximum daily concentration" is the highest daily concentration value recorded, sampled, or measured during the reporting period. This limitation identified as "Daily Maximum" under "Other Limits" in the applicable general permit and the maximum daily concentration is reported under the "Maximum" column under "Quality" on the discharge monitoring report form.
- (h) The effluent flow expressed as cubic meters per day or million gallons per day (MGD), is the twenty-four-hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in the applicable general permit, the flow rate values are reported in the "Average" column under "Quantity" on the discharge monitoring report form.
- (1) An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

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- (2) Where monitoring requirements for pH, dissolved oxygen or fecal coliform, enterococcus, or *clostridium perfringens* are specified in the applicable general permit, the values are generally reported in the "Quality or Concentration" column on the discharge monitoring report form.
- (i) The "arithmetic mean" of any set of values is the summation of the individual values divided by the number of individual values.
- (j) The "geometric mean" of any set of values is the Nth root of the product of the individual values where N is equal to the number of individual values. The geometric mean is equivalent to the antilog of the arithmetic mean of the logarithms of the individual values. For purposes of calculating the geometric mean, values of zero shall be considered to be one. For purposes of calculating the geometric mean, non-detect values shall be substituted with one-fourth the method detection limit.
- (k) "Weighted by flow value" means the summation of each concentration times its respective flow divided by the summation of the respective flows.
- (l) The "median" of any set of ordered values is the value below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number.

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- (m) A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for the purposes of the applicable general permit, any consecutive twenty-four-hour period that reasonably represents the calendar day may be used for sampling.
- (n) "Removal efficiency" is the ratio of pollutants removed by the treatment unit to pollutants entering the treatment unit. Removal efficiencies of a treatment plant shall be determined using the average monthly concentrations (C, in mg/l) of influent and effluent samples collected about the same time and the following equation (or its equivalent):

$$\text{Removal Efficiency (per cent)} = 100 \times \left(1 - \frac{C_{\text{effluent}}}{C_{\text{influent}}}\right)$$

4. Duty to reapply (comply with 40 CFR §122.41(b) and Sections 11-55-04, 11-55-34.08 and 11-55-34.09)

If the permittee wishes to continue an activity regulated by the applicable general permit after the expiration of the notice of general permit coverage or in the case of automatic coverage, the expiration of the general permit itself, the permittee shall follow the procedures as specified in sections 11-55-34.08 and 11-55-34.09.

5. [~~Applications (comply with 40 CFR §122.22)~~]
Signatories to permit applications and reports

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(based in part on 40 CFR §122.22 and Section 11-55-07)

a. Applications. All permit applications shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application

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requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

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- (b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
 - (2) The authorization is made in writing by a person designated under subsection (a); and
 - (3) The written authorization is submitted to the director.
- (c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be

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submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

- (d) Certification. Any person signing a document under subsection a. or b. shall make the following certification:

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 and imprisonment for knowing violations.

6. Duty to comply (comply with 40 CFR §122.41(a) [†] and Section 11-55-03)

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and Hawaii water pollution law and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

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- a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.
 - b. The Permittee shall be subject to statutory penalty amounts for violations are set forth in Hawaii Revised Statutes, Chapter 342D.
7. Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c) [†] and based in part on Hawaii Revised Statutes, Section 342D-4)

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
8. Duty to mitigate (based in part on 40 CFR §122.41(d) [†] and Hawaii Revised Statutes, Section 342D-4)

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the applicable general permit or applicable law.
9. Proper operation and maintenance (comply with 40 CFR §122.41(e) [†] and Section 11-55-23(9))

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The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

10. Permit actions (comply with 40 CFR §122.41(f) [†] and Sections 11-55-16 and 11-55-17)

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

11. Property rights (comply with 40 CFR §122.41(g) [†] and Section 11-55-15(g))

This permit does not convey any property rights of any sort or any exclusive privilege.

12. Duty to provide information (comply with 40 CFR §122.41(h) [†] and based in part on Hawaii Revised Statutes, Section 342D-4)

The Permittee shall furnish to the Director of Health, within a reasonable time, any information which the Director of Health may request to

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determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also furnish to the Director of Health upon request, copies of records required to be kept by this permit.

13. Inspection and entry (comply with 40 CFR §122.41(i) [†](3) and Section 11-55-23(5))

The Permittee shall allow the Director of Health, or a duly authorized agent (including an authorized contractor acting as a duly authorized agent of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

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14. Monitoring and records (based in part on 40 CFR §122.41(j) [†] and Sections 11-55-29 and 11-55-31)

- (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

As used in this section, a representative sample means that the content of the sample shall:

- (1) Be identical to the content of the substance sampled at the time of the sampling;
- (2) Accurately represent the monitored item (for example, sampling to monitor final effluent quality shall accurately represent that quality, even though the sampling is done upstream of the discharge point); and
- (3) Accurately represent the monitored item for the monitored time period (for example, sampling to represent monthly average effluent flows shall be taken at times and on days that cover significant variations). Representative sampling may include weekends and storm events and may mean taking more samples than the minimum number specified elsewhere in the applicable general permit. The burden of proving that sampling or monitoring is representative is on the permittee.

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- (b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the applicable general permit, and records of all data used to complete the application for the applicable general permit, for a period of at least five years from the date of the sample, measurement, report or application. Any records required by 40 CFR 503 shall be retained for at least five (5) years or longer. This period may be extended by request of the director at any time.
- (c) Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The individual(s) who performed the sampling or measurements;
 - (3) The date(s) the analyses were performed;
 - (4) The individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used; and
 - (6) The results of the analyses.

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- (d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, unless other test procedures have been specified in the applicable general permit.
 - (e) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by the applicable general permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both for a first conviction. For a second conviction, the person is subject to a fine of not more than \$20,000 per day of violation, or by imprisonment for not more than four years, or both. (Updated under the Water Quality Act of 1987)
15. Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k) [↗] and Section 11-55-07)
- a. All applications, reports, or information submitted to the Director of Health shall be signed and certified. (See section 5 or 40 CFR §122.22)
 - b. The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of

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compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.

16. Reporting requirements (comply with 40 CFR §122.41(1) [†] and Hawaii Revised Statutes, Section 342D-4)
 - a. Planned changes. The Permittee shall give notice to the Director of Health as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b); or (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR §122.42(a)(1) or section 19. (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and the alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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- b. Anticipated noncompliance. The Permittee shall give advance notice to the Director of Health of any planned changes in the permitted facility or activity which may result in noncompliance with this permit's requirements.
- c. Transfers. This permit is not transferable to any person except after notice to the Director of Health. The Director of Health may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate other requirements as may be necessary under the Act or Chapter STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 15 of 27 v.16 342D, HRS. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory.)
- c. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (1) All monitoring results, including intake monitoring results, effluent, and receiving water, must be reported on a Discharge Monitoring Report Form or forms submitted electronically using NetDMR, or as otherwise specified by the Director for reporting results of monitoring of sludge use or disposal practices. NetDMR is accessed from: <http://www.epa.gov/netdmr>. DMRs shall be submitted electronically no later than the 28th day of the month following the completed reporting

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period, unless otherwise specified in the permit.

- (2) If the Permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form or sludge reporting form specified by the Director.
- (3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director of Health in this permit.
- (4) For the purposes of reporting, the Permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal to or less than the concentration of the minimum level (ML) .

 - (i) The Permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

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- (ii) The Permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in a sample is below detection limit/no detection.
- (iii) The Permittee shall report sample results and calculations between the ML and MDL as NODI(Q). NODI(Q) means that the concentration of the pollutant in a sample is detected but not quantifiable.
- (iv) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.
- (v) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

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(vi) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

(5) Should there be no discharges during the monitoring period, the DMR form shall so state.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

f. Immediate reports of non-compliance. The Permittee shall report any noncompliance which may endanger human health or the environment as soon as practical. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:

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- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit. See 40 CFR §122.41(g).
- (2) Any upset which exceeds any effluent limitation in the permit.
- (3) Violations of a maximum daily discharge limitation for any of the pollutants listed by the Director of Health in the permit to be reported within 24 hours. See 40 CFR §122.44(g)

The Director of Health may waive the written report on a case-by-case basis for reports under Section 16.f if the oral report has been received within 24 hours.

- g. Other noncompliance. The Permittee shall report all instances of noncompliance not reported under subsections d., e., and f. at the time monitoring reports are submitted. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- h. Other information. Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director

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of Health, the Permittee shall promptly submit the facts or information.

17. Bypass (based in part on 40 CFR §122.41(m) [↗] and Hawaii Revised Statutes, Section 342D-4)

(a) Definitions

- (1) "Bypass" means the intentional diversion of any waste streams from any portion of a treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (b) Prohibition of bypass. Every bypass is prohibited, and the director may take enforcement action against a permittee for bypass, except as provided in section 17(c).

(c) Exceptions to bypass prohibition

- (1) Bypass not exceeding limitations. A bypass is allowable under this paragraph only if it does not cause any effluent limitation to be exceeded, and only if the bypass is necessary for essential maintenance to assure efficient operation.

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- (2) Bypass unavoidable to prevent specified harm. A bypass is allowable under this paragraph if:
 - (A) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (C) The permittee submitted notices as required under section 17(d).
- (3) Approved anticipated bypass. An anticipated bypass is allowable if the director approves it. The director shall approve the anticipated bypass only if the director receives information sufficient to show compliance with section 17(c)(2), including information on the potential adverse effects with and without the bypass, and information on the search

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for and the availability of alternatives, whether the permittee ultimately considers the alternatives feasible or not.

(d) Notice

- (1) Anticipated bypass.** If the permittee knows in advance of the need for a bypass, the permittee shall submit prior notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass.** The permittee shall report unanticipated bypasses.
 - (A)** Reports required by the reporting requirements of the applicable general permit shall be made in accordance with that section. If the permittee questions whether the reporting requirements of the applicable general permit applies, it shall follow the reporting requirements of the applicable general permit;
 - (B)** For all other bypasses, reports shall be made orally within twenty-four hours from the time the permittee becomes aware of the bypass. Written reports may be required on a case-by-case basis.
- (e) Burden of proof.** In any enforcement proceeding the party seeking to establish that any exception to the bypass prohibition applies has the

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burden of proof. Proof that effluent limitations were met requires effluent monitoring during the bypass.

18. Upset (based in part on 40 CFR §122.41(n) [†] and Hawaii Revised Statutes, Section 342D-4)
- (a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - (b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with the technology-based permit effluent limitations if the requirements of section 18(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
 - (c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

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- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted within twenty-four hours a notice of any upset which exceeded any effluent limitation in the applicable general permit; and
 - (4) The permittee complied with any remedial measures required under 40 CFR §122.41(d).
- d. Burden of proof. In any enforcement proceeding, any person seeking to establish the occurrence of an upset has the burden of proof.
19. Existing manufacturing, commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a) [†] and Hawaii Revised Statutes, Section 342D-4)

In addition to the reporting requirements under 40 CFR §122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director of Health as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the

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highest of the following "notification levels":

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4- dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g) (7); or
- (4) The level established by the Director of Health in accordance with 40 CFR §122.44(f) .

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following "notification levels":

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;

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(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g) (7); or

(4) The level established by the Director of Health in accordance with 40 CFR §122.44(f) .

20. Publicly owned treatment works (comply with 40 CFR §122.42(b) [†] and Hawaii Revised Statutes, Section 342D-4)

This section applies only to publicly owned treatment works as defined in 40 CFR §122.2.

a. All publicly owned treatment works must provide adequate notice to the Director of Health of the following:

(1) Any new introduction of pollutants into the publicly owned treatment works from an indirect discharger which would be subject to Section 301 or 306 of the Act if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that publicly owned treatment works by a source introducing pollutants into the publicly owned treatment works at the time of issuance of the permit; and

(3) For purposes of this paragraph, adequate notice shall include

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information on paragraph (1), the quality and quantity of effluent introduced into the publicly owned treatment works, and paragraph (2), any anticipated impact of the change on the quantity or quality of effluent to be discharged from the publicly owned treatment works.

b. (The following condition has been established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act.) Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR Part 270. Hazardous wastes are defined in 40 CFR Part 261 and include any mixture containing any waste listed under 40 CFR §§261.31-261.33. The Domestic Sewage Exclusion (40 CFR §261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.

21. Reopener clause [~~(comply with 40 CFR §122.44(c) and 40 CFR §125.123(d)(4))~~] (comply with 40 CFR §122.44(c), 40 CFR §122.46(d), and 40 CFR §125.123(d)(4) and Hawaii Revised Statutes, Section 342D-4)

a. For any discharger within a primary industry category (see 40 CFR Part 122, Appendix A), requirements under Section 307(a)(2) of the Act as follows:

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- (1) On or before June 30, 1981:
- (A) If applicable standards or limitations have not yet been promulgated, this permit shall include a condition stating that, if an applicable standard or limitation is promulgated under Sections 301(b) (2) (C) and (D), 304(b) (2), and 307(a) (2) of the Act and that effluent standard or limitation is more stringent than any effluent limitation in this permit or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.
- (B) If applicable standards or limitations have been promulgated or approved, this permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are "approved" or the purpose of this regulation.)
- (2) On or after the statutory deadline set forth in Sections 301(b) (2) (A), (C), and (E) of the Act, any permit issued shall include effluent limitations to meet the requirements of Sections

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301(b) (2) (A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by this section.

- (3) The Director of Health shall promptly modify or revoke and reissue any permit containing the clause required under this section to incorporate an applicable effluent standard or limitation under Sections 301(b) (2) (C) and (D), 304(b) (2), and 307(a) (2) of the Act which is promulgated or approved after this permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in this permit, or controls a pollutant not limited in this permit.
- (4) For any permit issued to a treatment works treating domestic sewage, including "sludge-only facilities," the Director of Health shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the Act. The Director of Health may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in this permit, or controls a pollutant or practice not limited in this permit.

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- b. All permits which authorize the discharge of pollutants pursuant to 40 CFR §125.123(c) shall contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director of Health determines that continued discharge may cause unreasonable degradation of the marine environment.
22. Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR §122.44(m) [†], and Hawaii Revised Statutes, Section 342D-4.)

This section applies only to privately owned treatment works as defined at 40 CFR §122.2.

- (a) Materials authorized to be disposed of into the privately owned treatment works and collection system are typical domestic sewage. Unauthorized materials are hazardous waste (as defined at 40 CFR Part 261), motor oil, gasoline, paints, varnishes, solvents, pesticides, fertilizers, industrial wastes, or other materials not generally associated with toilet flushing or personal hygiene, laundry, or food preparation, unless specifically listed under "Authorized Non-domestic Sewer Dischargers" elsewhere in the applicable general permit. The Domestic Sewage Exclusion (40 CFR §261.4) does not apply to hazardous wastes mixed with

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domestic sewage in a sewer leading to a privately owned treatment works.

- (b) It is the permittee's responsibility to inform users of the privately owned treatment works and collection system of the prohibition against unauthorized materials and to ensure compliance with the prohibition. The permittee must have the authority and capability to sample all discharges to the collection system, including any from septic haulers or other unsewered dischargers, and shall take and analyze such samples for conventional, toxic, or hazardous pollutants when instructed by the permitting authority or by an EPA or state inspector. The permittee must provide adequate security to prevent unauthorized discharges to the collection system.
- (c) Should a user of the privately owned treatment works desire authorization to discharge non-domestic wastes, the permittee shall submit a request for permit modification and an application, under 40 CFR §122.44(m), describing the proposed discharge. The application shall, to the extent possible, be submitted using forms provided by the Administrator, unless another format is requested by the permitting authority. If the privately owned treatment works or collection system user is different from the permittee, and the permittee agrees to allow the non-domestic discharge, the user shall submit the application and the permittee shall submit the applicable general permit

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modification request. The application and request for modification shall be submitted at least six months before authorization to discharge non-domestic wastes to the privately owned treatment works or collection system is desired.

23. Transfers by modification (comply with 40 CFR §122.61(a) [†] and Section 11-55-34.08(i) (2))

Except as provided in section 24, a permit may be transferred by the Permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR §122.62(b) (2)), or a minor modification made (under 40 CFR §122.63(d)), to identify the new Permittee and incorporate other requirements as may be necessary under the Act.

24. Automatic transfers (comply with 40 CFR §122.61(b) and [~~section~~]Section 11-55-34.08(i) (2))

As an alternative to transfers under section 23, any NPDES permit may be automatically transferred to a new Permittee if:

- a. The current Permittee notifies the Director of Health at least 30 days in advance of the proposed transfer date in subsection b;
- b. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The Director of Health does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify or

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revoke and reissue the permit. A modification under this paragraph may also be a minor modification under 40 CFR §122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection b.

25. Minor modification of permits (comply with 40 CFR §122.63[+] and Section 11-55-16)

Upon the consent of the Permittee, the Director of Health may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR Part 124 draft permit and public notice as required in 40 CFR §122.62. Minor modifications may only:

- a. Correct typographical errors;
- b. Require more frequent monitoring or reporting by the Permittee;
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
- d. Allow for a change in ownership or operational control of a facility where the Director of Health determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability

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between the current and new Permittees has been submitted to the Director of Health:

- e. (1) Change the construction schedule for a discharger which is a new source. No change shall affect a discharger's obligation prior to discharge under 40 CFR §122.29.
 - (2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with the permit limits.
 - f. (Reserved.)
 - g. Incorporate conditions of a publicly owned treatment works pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR §403.18) as enforceable conditions of the publicly owned treatment works' permit.
26. Termination of permits (comply with 40 CFR §122.64[~~7~~], 40 CFR §124.5(d), and Section 11-55-18)
- a. The following are causes for terminating a permit during its term, or for denying a permit renewal application:
 - (1) Noncompliance by the Permittee with any condition of the permit;
 - (2) The Permittee's failure in the application or during the permit

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issuance process to disclose fully all relevant facts or the Permittee's misrepresentation of any relevant facts at any time;

- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

- b. An NPDES Permittee shall report within 30 days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued. The NPDES permit shall then be surrendered to the Director of Health within 30 days from the date of the report.
- c. The Director of Health shall follow the applicable State procedures equivalent to 40 CFR Part 124 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the Director of Health may terminate the permit by notice to the Permittee. Termination by notice shall be effective 30 days after notice is sent, unless the

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Permittee objects within that time. If the Permittee objects during that period, the Director of Health shall follow 40 CFR Part 124 of this chapter or applicable State procedures for termination. Expedited permit termination procedures are not available to Permittees that are subject to pending State or Federal of both enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a Permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use 40 CFR Part 22 procedures for NPDES permit terminations.

d. If the Director of Health tentatively decides to terminate a permit under 40 CFR §122.64 where the Permittee objects, the Director of Health shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6.

27. Removed substances (under Sections 301 and 405 of the Act, 40 CFR §125.3(g) [†], and Hawaii Revised Statutes, Section 342D-4)

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner which prevents any pollutant from the materials from entering state waters.

28. Availability of reports (under Section 308 of the Act[†]and Section 11-55-12)

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Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of the applicable general permit shall be available for public inspection at the offices of the director. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

29. Civil and criminal liability (under Section 309 of the Act[↗]and Hawaii Revised Statutes, Chapter 342D)

Except as provided in the applicable general permit conditions on "Bypass" (section 17) and "Upset" (section 18), nothing in the applicable general permit shall be construed to relieve the permittee from civil or criminal penalties or remedies for noncompliance.

30. Oil and hazardous substance liability (under Section 311 of the Act[↗]and Hawaii Revised Statutes, Section 342D-4)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

31. Federal facility construction (under Section 313(b) of the Act[↗] and Hawaii Revised Statutes, Section 342D-4)

Construction shall not be initiated for facilities for treatment of wastewater at any []Federal property or facility if alternative methods for wastewater treatment at the property or facility utilizing innovative treatment

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processes and techniques, including, but not limited to, methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than fifteen per cent.

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32. State law (under Section 510 of the Act[+]and Hawaii Revised Statutes, Chapter 342D)

Nothing in the applicable general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established under any applicable state law or regulation.

33. Severability (under Section 512 of the Act[+]and Section 11-55-37)

The provisions of the applicable general permit are severable and if any provision of the applicable general permit, or the application of any provision of the applicable general permit to any circumstance, is held invalid, the application of the provision to other circumstances, and the remainder of the applicable general permit, shall not be affected thereby.

34. Notice of Intent Requirements (comply with section 11-55-34.08)

The owner or its duly authorized representative shall include the following information in the notice of intent (NOI):

- (a) Legal name(s), street address, contact person's name and position title, and telephone and email address of the owner, operator, except for Appendix C and duly authorized representative, if applicable;

Note: For a construction activity, the operator is usually the general contractor.

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- (b) Ownership status as federal, state, private, public or other entity;
- (c) Name, street address, island, tax map key number(s), contact person's name and position title, and telephone and email address of the facility or project for which the notice of intent is submitted;
- (d) Name(s) of the receiving state water(s) that the effluent enters or will enter, the latitude and longitude of each outfall or discharge point to the nearest receiving state water(s), and the classification of the receiving state water(s).

If the effluent initially enters a separate storm water drainage system, the owner or its duly authorized representative shall provide the following information:

- (1) Name of the owner of the drainage system; and
 - (2) Copy of the permit, license, or equivalent written approval granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s).
- (e) Type of general permit required for the proposed discharge;
 - (f) Quantity of discharge; the source of the discharge; and the period of discharge, i.e., continuous, seasonal, occasional, or emergency;
 - (g) Topographic map or maps of the area extending at least one mile beyond the

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property boundaries of the site which clearly show the following:

- (1) Legal boundaries of the site;
 - (2) Location and an identification number for each of the site's existing and proposed intake and discharge structures; and
 - (3) Receiving state water(s) or receiving storm water drainage system(s) identified and labeled. If the receiving state water is a wetland, submit a map showing the delineated wetland.
- (h) Flow chart or line drawing showing the general route taken by the discharge from the intake or source to the discharge point, except for Appendices B, C, and K. The owner or its duly authorized representative shall show any treatment system(s) or erosion control(s) used or to be used for new discharges. The flow contributed by each source may be estimated if no data is available;
- (i) List of existing or pending permits, licenses, or approvals and corresponding file numbers; and
- (j) Certifying person's name and position title, company name, and telephone [~~and fax~~
~~numbers~~] number.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix D
Authorizing Discharges of Treated Effluent from Leaking Underground Storage
Tank Remedial Activities

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

This general permit covers facilities or activities in the State of Hawaii where petroleum hydrocarbons have been released from leaking underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.

- (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 treated ground water which is not commingled with other process water or stormwater.

- (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 40 CFR §124.9 (for EPA-issued permits);

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Whole Effluent Toxicity Limitations and Monitoring Requirements [Revised]
8. Corrective Action
9. Reporting Requirements [Revised]
10. Submittal Requirements [Revised]
11. Additional Conditions
12. Record Retention
13. Falsifying Report
14. Renewal [Revised]

15. Forms

Table 34.2 *Effluent Limitations and Monitoring Requirements for Discharge of Treated Effluent from Leaking Underground Storage Tank Remedial Activities [Revised]*

Sections 1 through 5 and 8 through 15 are basic requirements necessary to the General Permit. Sections 6 and 7, and Table 34.2 detail the effluent limitations and monitoring requirements for discharge of treated effluent from leaking underground storage tank remedial activities.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from leaking underground storage tank remedial activities.

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.

Discharges of treated effluent from leaking underground storage tank remedial activities do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

Flow: *The monitoring for flow is for quantification of the discharge.*

Petroleum Hydrocarbons and Lead: *Pollutants in the effluent that may have been contained in the leaking underground storage tank. Therefore, the general permit includes effluent limitations per HAR Section 11-54 for total recoverable lead, benzene, toluene, and ethylbenzene. The general permit also contains monitoring and reporting requirements for total petroleum hydrocarbons as gasoline and diesel, xylenes, and organic lead.*

pH: *The pH effluent limitation is based on HAR Chapter 11-54 for applicable pH criteria.*

Whole Effluent Toxicity: *The Whole Effluent Toxicity limit is based on HAR Chapter 11-54 for toxicity.*

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

The permittee shall collect representative discharge samples at the nearest accessible point after final treatment and prior to actual discharge of missing with the receiving state waters.

Requirements for Discharge into Class 1 or Class AA Waters

Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters. There are no specific requirements for discharges to Class 1 and Class AA waters.

Chapter 11-55, Appendix D Revisions

Section 2(a)(3) [New]

Original: (NEW)

Revised: Discharges of treated groundwater that the director finds more appropriately regulated under an individual permit.

Rationale:

Added this restriction to reflect Item 2(b) regarding a discharge that would be more appropriately regulated under an individual permit.

Section 2(c)(1) through (6) [New]

Original: (NEW)

Revised: (c) Permittees authorized by this general permit are required to comply with the following requirements:

- (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;

- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and
- (6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
 - *Achieves results similar in nature to numeric requirements.*
 - *Ensures that the receiving water isn't visually degraded by the authorized discharge.*
 - *Reflects recognized variability in receiving water criteria.*

- *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
- *Strengthens enforceability including enforcement associated with complaints.*
- *Reduces the complexity and cost of discharge monitoring.*
- *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

Section 3(a)

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

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *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)(3) are adopted,*

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

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal Notice of Intent (NOI) prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified three scenarios in accordance with this renewal procedure. The Clean Water Branch (CWB) is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the

reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until sixty days after effective date of the reissued general permit, unless one of three actions are taken by the permittee. In the new process, permittees would have sixty days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *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.*

Revised: *The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the NOI no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was also added to this section. Further, while the owner or operator's certifying person or duly authorized representative may submit the notice of intent as applicable, the requirement to submit the notice

of intent is still the owner or operator's responsibility. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its duly authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the NOI. As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was added to this section. Further, while the owner or operator's certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator's responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(d)

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 initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that DOH has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and

authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original: *[From the previous section 4(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*

Revised: *The owner or operator 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*

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit a complete notice of intent to the DOH address listed. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the NOI is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2. (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.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2.*

Rationale:

The effluent limits are no longer receiving water specific.

Section 6(a)(4)(C)

Original: *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.*

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:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Section 9(a)(6) was added to describe the reporting of the method detection limit (MDL), minimum level (ML), and reporting of results below the MDL.

Section 9(a)(2)

Original: *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.*

Revised: *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. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general

permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

Section 9(a)(6) [New]

Original: (NEW)

Revised: For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory’s ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory’s MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, 0.25*MDL shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory’s numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that

include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 10(a)

Original: *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, Hawaii 96801-3378*

Revised: *The permittee 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, Hawaii 96801-3378*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Sections 10(b)

Original: *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 and imprisonment for knowing violations.”

Revised: *The permittee 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 and imprisonment for knowing violations.”

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Sections 10(c)

Original: *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 may be a basis for delay of the processing of the document(s).*

Revised: *The permittee 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 may be a basis for delay of the processing of the document(s).*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 14

Original: *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.

Revised: *Administrative Extension*

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Rationale:

Request for renewals requires the permittee to certify in the NOI that they will comply with the new general permit. Request for renewals should not be submitted before the new general permit is issued. The permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within 60 days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.

Table 34.2

Original: TABLE 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGE
OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

<i>Effluent Parameter</i>	<i>Effluent Limitations {1}</i>		<i>Monitoring Requirements</i>	
	<i>For Saline Water</i>	<i>For Fresh Water</i>	<i>Minimum Frequency</i>	<i>Type of Sample</i>
<i>Flow (GPD)</i>	<i>{2}</i>	<i>{2}</i>	<i>Continuous</i>	<i>Calculated or Estimated</i>
<i>Total Petroleum Hydrocarbons as Gasoline (mg/l) {3}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Total Petroleum Hydrocarbons as Diesel (mg/l) {3}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Benzene (mg/l) {4}</i>	<i>1.7</i>	<i>1.8</i>	<i>Weekly</i>	<i>Grab</i>
<i>Toluene (mg/l) {4}</i>	<i>2.1</i>	<i>5.8</i>	<i>Weekly</i>	<i>Grab</i>
<i>Xylenes (mg/l) {4}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Ethylbenzene (mg/l) {4}</i>	<i>0.14</i>	<i>11</i>	<i>Weekly</i>	<i>Grab</i>
<i>Lead (mg/l) {5}</i>	<i>0.14</i>	<i>0.029</i>	<i>Weekly</i>	<i>Grab</i>
<i>Organic Lead (mg/l) {6}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>pH (standard units)</i>	<i>{7}</i>		<i>Weekly</i>	<i>Grab {8}</i>
<i>Whole Effluent Toxicity</i>	<i>Pass {9}</i>		<i>Monthly</i>	<i>Composite</i>
<i>Toxic Pollutants mg/l {10}</i>	<i>{11}</i>		<i>Annually</i>	<i>{12}</i>

GPD = gallons per day
mg/l = milligrams per liter

Revised: Table 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGE
OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

<i>Effluent Parameter</i>	<i>Effluent Limitations {1}</i>	<i>Monitoring Requirements</i>	
		<i>Minimum Frequency</i>	<i>Type of Sample</i>
<i>Flow (GPD)</i>	<i>{2}</i>	<i>Continuous</i>	<i>Calculated or Estimated</i>
<i>Total Petroleum Hydrocarbons as Gasolines (mg/l) {3}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Total Petroleum Hydrocarbons as Diesel (mg/l) {3}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Benzene (mg/l) {4}</i>	<i>1.7</i>	<i>Weekly</i>	<i>Grab</i>
<i>Toluene (mg/l) {4}</i>	<i>2.1</i>	<i>Weekly</i>	<i>Grab</i>
<i>Xylenes (mg/l) {4}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Ethylbenzene (mg/l) {4}</i>	<i>0.14</i>	<i>Weekly</i>	<i>Grab</i>
<i>Lead (mg/l) {5}</i>	<i>0.029</i>	<i>Weekly</i>	<i>Grab</i>
<i>Organic Lead (mg/l) {6}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>pH (standard units)</i>	<i>6.0 to 8.0</i>	<i>Weekly</i>	<i>Grab {7}</i>
<i>Whole Effluent Toxicity</i>	<i>Pass {8}</i>	<i>Monthly</i>	<i>Composite</i>

GPD = gallons per day
mg/l = milligrams per liter

Rationale: 40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Effluent limitations for pH were revised to apply one standard pH range to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. Thus, the proposed range is expected to be protective of all types of waterbodies while still prohibiting discharge of extreme pH values from leaking underground storage tank

remedial activities that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Effluent limitations for benzene, ethylbenzene, toluene, and lead were also revised to apply to all discharges. The more stringent limits from the previous general permit were retained, therefore, the limits are at least as stringent as the previous permit.

Table 34.2 Footnote {2}

Original: *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. The department may include discharge limitations specified in section 11-55-19.*

Revised: *The permittee shall monitor and report the analytical result.*

Rationale:

The effluent parameters that use footnote {2} in the “Effluent Limitations” column do not have standards listed in chapter 11-54 at this time so the reference is not applicable.

Table 34.2 Footnote {7}

Original: *The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.*

Revised: *[REMOVED]*

Rationale:

The pH range is specified as “6.0 to 8.0” for all discharges, regardless of receiving water.

Table 34.2 Footnote {8}

Original: *{8} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Revised: *{7} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Rationale:

Renumbered due to the deletion of the previous footnote {7}.

Table 34.2 Footnote {9}

Original: *{9} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.*

Revised: {8} *Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.*

Rationale:

Renumbered due to the deletion of the previous footnote {7}.

Table 34.2 Footnotes {10}, {11}, and {12}

Original: {10} *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 or as identified by the director. If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.*

{11} *Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.*

{12} *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.*

Revised: [REMOVED]

Rationale:

Toxic parameters not listed in the table are not allowed to be discharged, therefore, footnotes {10}, {11}, and {12} are no longer applicable.

- (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 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix G 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 WQBELs because no effluent limitation guidelines (ELG) and TBELs apply.

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

Not applicable.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

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 only facilities where petroleum hydrocarbons have been released from underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.
 - (b) This general permit covers all areas of the State except for discharges into natural freshwater lakes, saline lakes, and anchialine pools.
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated ground water into a sanitary sewer system; ~~and~~
 - (2) Discharges of treated ground water 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

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discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system [÷]; and

- (3) Discharges of treated groundwater that the director finds more appropriately regulated under an individual permit.
- (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.
- (c) Permittees authorized by this general permit are required to comply with the following requirements.
 - (1) Treat dewatering discharges with controls to minimize discharges of pollutants. Appropriate controls include sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of dewatering controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.
 - (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
 - (3) Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil,

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grease, or other products if dewatering water is found to contain these materials.

- (4) To the extent feasible, use vegetated, upland areas to infiltrate dewatering water before discharge. State waters are prohibited from being used as part of the treatment area.
- (5) At all points where dewatering water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process.
- (7) Replace or clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

3. Term of General Permit

- (a) This general permit becomes effective ten days after filing with the office of the lieutenant

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governor[-] and shall expire five years after the effective date, unless amended 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)(3) are adopted,~~

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

(b) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

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- (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;
- (2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
- (3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

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 or thirty days before the expiration date of the applicable notice of general permit coverage.]~~
- (a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

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- (b) The owner or [~~its duly authorized representative~~] operator shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
 - (3) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the existing or proposed receiving state waters are specified in section 11-54-4;
 - (4) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. If any treatment technology is being considered other than the Granular[-] Activated Carbon Process or the Air[-] Stripping Process, then additional technical information on the technology which is consistent with this permit shall be submitted to the director for review as soon as the decision for its use has been made. The treatment system operations plan shall include a contingency plan to be activated in the event of an emergency; provisions for system shut[-]down and any other measures for the protection of health and safety

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of employees and the public; a sampling plan; and a detailed schedule for sampling and analysis of the treated groundwater. The treatment system operations plan shall be modified as required by the director. The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office;

- (5) Certification report certifying the adequacy of each component of the proposed treatment facility along with the associated treatment system operations plan. The certification report shall describe accepted engineering practice of how the process and physical design of the treatment facilities will ensure compliance with this general permit. The signature and professional engineering license number of the design engineer shall be placed on the report. Each report shall also certify that:
 - (A) All of the startup and operation instruction manuals for the treatment facility are adequate and available to operating personnel;
 - (B) All treatment facility maintenance and testing schedules are included in the treatment facility treatment system operations plan; and
 - (C) Effluent sampling locations and ports are located in areas where samples representative of the waste

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stream to be monitored can be obtained.

- (6) The average and maximum daily flow rates of effluent discharge; and
 - (7) The best estimate of the date(s) on which the facility will begin and terminate the discharge.
- (c) The director may require additional information to be submitted.
- (d) The initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).
- ~~[(d)]~~ (e) The owner or ~~[its duly authorized representative]~~ operator 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

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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 34.2. [~~(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.)~~]

(1) Sampling Point

The permittee shall collect representative discharge samples at the nearest accessible point after final treatment and prior to actual discharge or mixing with the receiving state waters.

(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.

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(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 at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a twenty-four-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.

(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

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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 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 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

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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.

- (c) There shall be no visible oil sheen in the effluent.
- (d) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process must be disposed of in a manner which prevents its entrance into or pollution of any state waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

7. Whole Effluent Toxicity Limitations [~~And~~] and Monitoring Requirements

- (a) Monitoring Requirements

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- (1) The permittee shall conduct, or have a contract laboratory conduct, monthly static or flow-through bioassays on composite effluent samples in accordance with the methods described in "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (EPA 821/R-02-013, October 2002), and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (EPA 821/R-02-014, October 2002).
- (2) Tests shall be conducted in one hundred per cent effluent for a period of ninety-six hours unless the methods specify a shorter period for a definitive test for a particular species (e.g. forty-eight hours for *ceriodaphnia dubia*).
- (3) If the permittee uses static tests, the daily renewal solutions shall be fresh twenty-four-hour composite samples. The permittee may conduct tests using locally available species at ambient temperature.
- (4) Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form. Results shall be reported as pass or fail from a single[-]effluent concentration toxicity test at the applicable instream waste concentration (IWC) using the Test of Significant Toxicity (TST) approach.
- (5) Effluent dilution water and control water shall be receiving water or lab water, as

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described in the test methods manual Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms (EPA/600/R-95/136, 1995). If the dilution water is different from test organism culture water, then a second control using culture water shall also be used.

- (6) If either the reference toxicant or effluent toxicity tests do not meet all test acceptability criteria in the test methods manual, then the Permittee shall re-sample and re-test within 14 calendar days.

(b) Species Selection

- (1) The permittee shall select three species for monitoring from the EPA manual identified in section 7(a)(1). The Permittee may use *ceriodaphnia dubia* (life stage - twenty-four hours) in freshwater only. The permittee shall submit the selection to the director for approval within thirty days after receiving written approval from the director to perform chronic toxicity tests.
- (2) The permittee shall obtain written approval from the director before changing any of the three selected species after the initial notification.
- (3) The permittee shall conduct monitoring, at a minimum, on one of the three

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selected species each month. The permittee shall rotate the three selected species on a monthly basis.

(c) Chronic WET Permit Limit

All State waters shall be free from chronic toxicity as measured using the toxicity tests listed in [~~HAR, Section~~] section 11-54-10, or other methods specified by the Director. For this discharge, the determination of "Pass" or "Fail" from a single-effluent concentration chronic toxicity test at the applicable [~~instream waste concentration (IWC)~~] IWC using the [~~Test of Significant Toxicity (TST)~~] TST approach described in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, 2010). For any one chronic toxicity test, the chronic WET permit limit that must be met is rejection of the null hypothesis (H_0):

$$\text{IWC (100 percent effluent) mean response} \leq 0.75 \times \text{Control mean response.}$$

An IWC of 100% shall be used.

A test result that rejects this null hypothesis is reported as "Pass" on the DMR form. A test result that does not reject this null hypothesis is reported as "Fail" on the DMR form. To calculate either "Pass" or "Fail", the permittee shall follow the instructions in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, Appendix A. If a test result is reported as "Fail", then

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the permittee shall follow 7[-](e) Additional Toxicity Testing, of this permit.

(d) Preparation of Initial Investigation Toxicity Reduction Evaluation Workplan

The [~~Permittee~~] permittee shall submit to the director an initial investigation toxicity reduction evaluation workplan (approximately one to two pages) within one hundred twenty days after the issuance date of the notice of general permit coverage, the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2), or the date the facility begins operations. This workplan shall describe steps which the permittee intends to follow in the event that toxicity is detected, and should include at a minimum the following information:

- (1) Description of the investigation and evaluation techniques that would be used to identify potential causes or sources or both of toxicity, effluent variability, treatment system efficiency;
- (2) Description of the facility's method of maximizing in-house treatment efficiency, good housekeeping practices, and a list of all chemicals used in operation of the facility; and
- (3) If a toxicity identification evaluation is necessary, who (e.g., contract laboratory, etc.) will conduct the toxicity identification evaluation.

(e) Additional Toxicity Testing

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- (1) If toxicity is detected, then the permittee shall conduct six additional weekly tests. Effluent sampling for the first test of the six additional tests shall begin within approximately twenty-four hours of receipt of the test results exceeding a toxicity discharge limitation;
 - (2) However, if implementation of the initial investigation toxicity reduction evaluation workplan indicates the source of toxicity (e.g., a temporary plant upset, etc.), then the permittee shall conduct only the first test of the six additional tests required above. If toxicity is not detected in this first test, the permittee may return to the normal sampling frequency as specified in Table 34.2. If toxicity is detected in this first test, then section 7(f) of this general permit shall apply.
 - (3) If toxicity is not detected in any of the six additional tests required above, then the permittee may return to the normal sampling frequency as specified in Table 34.2.
- (f) Toxicity Reduction Evaluation/Toxicity Identification Evaluation
- (1) If toxicity is detected in any of the six additional tests, then, based on an evaluation of the test results and additional available information, the director may determine that the permittee shall initiate a toxicity reduction

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evaluation, in accordance with the permittee's initial investigation toxicity reduction evaluation workplan and "Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants" (EPA 833-B-99-002, 1999). Moreover, the permittee shall develop a detailed toxicity reduction evaluation workplan which includes:

- (A) Further actions to investigate and identify the cause(s) of toxicity;
- (B) Actions the permittee has taken or will take to mitigate the impact of the discharge, to correct the noncompliance, and to prevent the recurrence of toxicity;
- (C) A schedule under which these actions will be implemented;

and shall submit this workplan to the director for approval.

- (2) As part of this toxicity reduction evaluation process, the permittee may initiate a toxicity identification evaluation using the test methods manuals, EPA/600/6-91/005F (Phase I), EPA/600/R-92/080 (Phase II), and EPA/600/R-92/081 (Phase III), to identify the cause(s) of toxicity.
- (3) If a toxicity reduction evaluation/toxicity identification evaluation is initiated prior to completion of the accelerated testing

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schedule required by section 7(e) of this general permit, then the accelerated testing schedule may be terminated, or used as necessary in performing the toxicity reduction evaluation/toxicity identification evaluation.

(g) Reporting

- (1) The permittee shall submit a full report of toxicity test results, including any toxicity testing required by sections 7(e) and 7(f) of this general permit, with the discharge monitoring report for the month in which the toxicity tests are conducted. A full report shall consist of: toxicity test results; dates of sample collection and initiation of each toxicity test; and toxicity discharge limitation. Toxicity test results shall be reported according to the test methods manual chapter on report preparation.

If the initial investigation toxicity reduction evaluation workplan is used to determine that additional toxicity testing is unnecessary, these results shall be submitted with the discharge monitoring report for the month in which investigations conducted under the toxicity reduction evaluation workplan occurred.

- (2) Within fourteen days of receipt of test results exceeding a toxicity discharge limitation, the permittee shall provide to the director written notification of:

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- (1) Findings of the toxicity reduction evaluation or other investigation to identify the cause(s) of toxicity;
- (2) Actions the permittee has taken or will take, to mitigate the impact of the discharge and to prevent the recurrence of toxicity;
- (3) When corrective actions, including a toxicity reduction evaluation, have not been completed, a schedule under which corrective actions will be implemented; or
- (4) The reason for not taking corrective action, if no action has been taken.

8. 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.

9. 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 Table 34.2 and other requirements of this general permit.

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- (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. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).
- (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.
- (6) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the

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lowest standard point is equal or less than the concentration of the minimum level (ML) .

- (A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.
- (B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.
- (C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.
- (D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.
- (E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the

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numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

(b) 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) of this general permit, 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.

(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 34.2 or a basic

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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 or its duly authorized representative 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.
- (3) The permittee or its duly authorized representative 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

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expected to continue if it has not been corrected; and

- (D) Steps taken or plans 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) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in ground water treatment and which are discharged.

(f) 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. The schedule shall include a

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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.

10. Submittal Requirements

- (a) The [~~owner~~] permittee 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~~] permittee 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

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complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (c) The [~~owner~~] permittee 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).

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 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.

13. Falsifying Report

Knowingly making any false statement on any report required by this general permit may result in the

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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.]~~ 14. Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

- (a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or
- (b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

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

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Clean Water Branch's website at:
<http://health.hawaii.gov/cwb/>

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TABLE 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR
DISCHARGE OF TREATED EFFLUENT FROM
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements	
	[For Saline Water]	[For Fresh Water]	Minimum Frequency	Type of Sample
Flow (GPD)	{2}	[+2]	Continuous	Calculated or Estimated
Total Petroleum Hydrocarbons as Gasoline (mg/l) {3}	{2}	[+2]	Weekly	Grab
Total Petroleum Hydrocarbons as Diesel (mg/l) {3}	{2}	[+2]	Weekly	Grab
Benzene (mg/l) {4}	1.7	[1.8]	Weekly	Grab
Toluene (mg/l) {4}	2.1	[5.8]	Weekly	Grab
Xylenes (mg/l) {4}	{2}	[+2]	Weekly	Grab
Ethylbenzene (mg/l) {4}	0.14	[11]	Weekly	Grab
Lead (mg/l) {5}	[0.14]	0.029	Weekly	Grab
Organic Lead (mg/l) {6}	{2}	[+2]	Weekly	Grab

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Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements	
	[For Saline Water]	[For Fresh Water]	Minimum Frequency	Type of Sample
pH (standard units)	[{7}] <u>6.0 to 8.0</u>		Weekly	Grab [{8}] <u>{7}</u>
Whole Effluent Toxicity	Pass [{9}] <u>{8}</u>		Monthly	Composite
[Toxic Pollutants mg/l {10}]	[{11}]		[Annually]	[{12}]

GPD = gallons per day
mg/l = milligrams per liter

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 9(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~~]
The permittee shall monitor and report the analytical result. [~~The department may include discharge limitations specified in section 11-55-19.~~]
- {3} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement

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of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

- {4} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} The method for measuring for organic lead shall be the one referenced in the State of Hawaii's Technical Guidance Manual for Underground Storage Tank Closure and Release Response (March 2000).
- ~~{7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.~~
- ~~{8}~~ {7} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- ~~{9}~~ {8} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.
- ~~[{10} 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 or as identified by the director.~~

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~~If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.~~

- ~~{11} Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.~~
- ~~{12} 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.]~~

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix H

Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals

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

This general permit covers facilities or activities in the State of Hawaii that discharge treated process wastewater associated with petroleum bulk stations and terminals to State receiving waters.

This revision defines "Process Wastewater Effluent" to include tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas. "Treated Process Wastewater Effluent" is defined as process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with the general permit.

- (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 petroleum bulk stations and terminals 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. The process wastewater may include tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater and contaminated stormwater runoff from the product storage and handling areas.

The most notable pollutants in the discharge are petroleum hydrocarbons, however, additional pollutants may be present in the discharge dependent upon the source of the process water and groundwater.

- (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 40 CFR §124.9 (for EPA-issued permits).

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [Revised, Renamed]
14. Forms [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.6 detail the effluent limitations and monitoring requirements for discharges of treated process wastewater associated with petroleum bulk stations and terminals.

Basis for Discharge Limitations and Monitoring Requirements

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for discharges of treated process wastewater associated with petroleum bulk stations and terminals.

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.

Discharges of treated process wastewater associated with petroleum bulk stations and terminals do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

Quantity of Discharge: The monitoring for flow is for quantification of the discharge.

Oil and Grease: The effluent limitations for oil and grease were based on the individual NPDES permits that were issued for this type of discharge. The limitation for oil and grease are to ensure that pumps and other mechanical equipment are being properly operated and maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent.

Total Recoverable Lead, Petroleum Hydrocarbons, and Ammonia Nitrogen: Pollutants in the process wastewater or stormwater that indicate presence of petroleum or byproducts or waste products generated from petroleum product manufacture. Therefore, the general permit includes effluent limitations per Hawaii Administrative Rules (HAR) Section 11-54 for total recoverable lead, benzene, toluene, xylenes, and ethyl benzene. The general permit also now contains monitoring and reporting requirements for total petroleum hydrocarbons as gasoline and diesel. The requirements and monitoring procedures for these hydrocarbons are similar to those contained in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tanks. Effluent limitations for ammonia nitrogen are the applicable criteria established in HAR Sections 11-54.

pH: The pH effluent limitation is based on HAR Chapter 11-54, Water Quality Standards, for applicable pH criteria.

Dissolved Oxygen (DO): The DO effluent limitation is based on HAR Chapter 11-54, Water Quality Standards, for applicable DO criteria. It is protective of aquatic life that require DO.

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

Discharge into Class 1 or Class AA Waters

Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters.

Chapter 11-55, Appendix H Revisions

Section 1(a)

Original: This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Treated process wastewater effluent covered by this general permit includes tank water draws; product displacement process wastewater; wash down and fire hydrant

system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas.

Revised: *This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Process wastewater effluent includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and storm water runoff from the product storage and handling areas that have been commingled with other process wastewater effluent prior to discharge. Treated process wastewater effluent covered by this general permit is process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with this general permit including effluent limitations in this general permit.*

Rationale:

This revision is to clarify what types of discharges are covered under the general permit. The intent of this general permit is to cover only treated process wastewater discharges that are generated by the facility that are then discharged. Notably, under the previous general permit contaminated storm water runoff was considered to be a treated process wastewater. The previous description of treated process wastewater did not explicitly state that such runoff needed to be captured and treated prior to discharge. Storm water runoff is typically permitted differently under the NPDES program, as managing runoff from a site is different from managing wastewater from industrial activities that can be fully captured and treated. This revision makes this distinction explicit that the permit is not authorizing runoff from the site, but runoff that is generated, fully captured, and treated like other process wastewater. This revision also explicitly specifies that treated process wastewater is wastewater that has undergone treatment to remove pollutants.

Section 2(c)(1) – (6) [New]

Original: (NEW)

Revised: (c) Permittees authorized by this general permit are required to comply with the following requirements:

(1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to

minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

(2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;

(3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;

(4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;

(5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and

(6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.
- Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.

- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
 - *Achieves results similar in nature to numeric requirements.*
 - *Ensures that the receiving water isn't visually degraded by the authorized discharge.*
 - *Reflects recognized variability in receiving water criteria.*
 - *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
 - *Strengthens enforceability including enforcement associated with complaints.*
 - *Reduces the complexity and cost of discharge monitoring.*
 - *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

Section 3(a)

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

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *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)(5) are adopted,]*
whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *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.*

Revised:

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added,

which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(d)

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 initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be*

signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original [From the previous section 4(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

Revised: The owner or operator 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

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To

provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. (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.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6.*

Rationale:

As discussed later in this rationale for changes to effluent limitations in Table 34.6, there will no longer be separate effluent limitations for saline waters and fresh waters. Therefore, this language is removed in this section as it is unnecessary due to the aforementioned revision to effluent limitations in Table 34.6.

Section 6(a)(4)(C)

Original: *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.*

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:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(3).

Section 8(a)(2)

Original: *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.*

Revised: *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. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

Section 8(a)(3)

Original: *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

Revised: *(3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).*

(A) The permittee shall report sample results and calculations at or above the laboratory’s ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory’s MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.6 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

Original: 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.

Revised: The permittee or its duly authorized representative 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.

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and

also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

Original: *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:*

Revised: *The permittee or its duly authorized representative 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:*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.

Section 9(a)

Original: *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, Hawaii 96801-3378*

Revised: *The permittee 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, Hawaii 96801-3378*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee

(the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(b)

Original: *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 and imprisonment for knowing violations."

Revised: *The permittee 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 and imprisonment for knowing violations."

Rationale:

Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(c)

Original: *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 may be a basis for delay of the processing of the document(s).*

Revised: The permittee 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 may be a basis for delay of the processing of the document(s).

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13

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

Revised:

Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. The new renewal process also now gives 60 from adoption of the new general permit for permittees who want to retain coverage under the new general permit to submit an NOI to maintain coverage. Section 13 was revised in accordance with this new process.

Table 34.6

Original:

TABLE 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGES OF TREATED EFFLUENT FROM
PETROLEUM BULK STATIONS AND TERMINALS

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{3}	{3}	Once/Batch Discharge {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	Once/Batch Discharge {10}	Grab {4}
Total Recoverable Lead (mg/l) {5}	0.14	0.029	Once/Batch Discharge {10}	Grab
Benzene (mg/l) {6}	1.7	1.8	Once/Batch Discharge {10}	Grab
Toluene (mg/l) {6}	2.1	5.8	Once/Batch Discharge {10}	Grab
Xylenes (mg/l) {6}	{3}	{3}	Once/Batch Discharge {10}	Grab

General Permit Fact Sheet for
HAR Chapter 11-55, Appendix H

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Ethyl benzene (mg/l) {6}	0.14	11	Once/Batch Discharge {10}	Grab
Turbidity (NTU)	{7}	{7}	Once/Batch Discharge {10}	Grab
Ammonia Nitrogen (NH ₄ -N mg/l)	{7}	{7}	Once/Batch Discharge {10}	Grab
pH (standard units) {8}	{7}	{7}	Once/Batch Discharge {10}	Grab {9}
Dissolved Oxygen (%saturation)	{7}	{7}	Once/Batch Discharge {10}	Grab

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Revised:

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements {2}</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Quantity of Discharge (gallons)</u>	<u>{2}</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Calculated or Estimated</u>

General Permit Fact Sheet for
HAR Chapter 11-55, Appendix H

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements {2}</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Oil and Grease (mg/l)</u>	<u>15</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab {4}</u>
<u>Total Recoverable Lead (µg/l) {5}</u>	<u>29</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons as Gasoline (µg/l) {6}</u>	<u>{2}</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons as Diesel (µg/l) {6}</u>	<u>{2}</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Benzene (µg/l) {7}</u>	<u>1700</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Toluene (µg/l) {7}</u>	<u>2100</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Xylenes (µg/l) {7}</u>	<u>{2}</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Ethyl benzene (µg/l) {7}</u>	<u>140</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>
<u>Ammonia Nitrogen (NH₄-N µg/l)</u>	<u>5</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements {2}</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>pH (standard units) {8}</u>	<u>6.0 - 8.0</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab {9}</u>
<u>Dissolved Oxygen (%saturation)</u>	<u>>80</u>	<u>Once/Batch Discharge</u> <u>{3}</u>	<u>Grab</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

Rationale:

(Note: Revisions to each footnote shall be discussed later in this fact sheet)

40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition of visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. Since there is no longer a turbidity limit, the unit explanation for NTU (nephelometric turbidity unit) was removed.

New monitoring requirements for total petroleum hydrocarbons as gasoline and diesel were added. As stated earlier, total petroleum hydrocarbons are a potential pollutant that may be discharged from these facilities. While there are currently no established water quality standards for these specific forms of total petroleum hydrocarbons, monitoring is necessary to assess whether the facility is effectively removing these pollutants prior to discharge. The monitoring requirements are similar to those contained in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tanks.

Effluent limitations for total recoverable lead, benzene, toluene, and ethyl benzene were changed from being water body dependent, to being one standard for all waterbodies. The revised limitation is the most stringent of

the previous saline and freshwater limitation. The proposed revision is intended to standardize the limit set associated with these pollutants for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitations are the most stringent criteria for each of these pollutants.

The effluent limitation for ammonia nitrogen was revised to apply only one standard effluent limitation to all discharges. The revised effluent limitation is the most stringent 10% water quality criteria of waters (not including oceanic waters as discharges to waters that far offshore are not expected), which is the water quality criteria for dry embayments. As the effluent limitation is the most stringent applicable criteria, it is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with ammonia nitrogen for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for ammonia nitrogen.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. The pH range is the most stringent pH range of waters (not including oceanic waters as discharges to waters that far offshore are not expected) and therefore is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with pH for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for pH.

The effluent limitation for dissolved oxygen was revised to apply one standard minimum dissolved oxygen effluent limitation to all discharges. The minimum dissolved oxygen limitation is the most stringent minimum dissolved oxygen criteria of waters (not including oceanic waters as discharges to waters that far offshore are not expected) and therefore is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with dissolved for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for dissolved oxygen.

Effluent limitations were also converted to be expressed in micrograms per liter (except for oil and grease and as applicable) to be consistent with how the water quality criteria are expressed in HAR 11-54 (i.e., criteria are in micrograms per liter).

Table 34.6 Footnote 2

Original: *No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is*

discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.

Revised: Report. The permittee shall monitor and report the analytical result.

Rationale:

As discussed in the revisions to Section 1(a), this permit does not authorize any storm water discharges that are not collected, treated, and discharged with any other treated process wastewater, therefore monitoring of storm water discharges should not be required. To account for renumbering, the text for footnote 2 is revised to be the previous footnote 3.

Table 34.6 Footnote 3

Original: *Report. The permittee shall monitor and report the analytical result.*

Revised: If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.

Rationale:

To account for renumbering, the text for footnote 3 is revised to be the previous footnote 10.

Table 34.6 Footnote 6

Original: *The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.*

Revised: The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

Rationale:

This footnote was added to provide monitoring instructions for sampling total petroleum hydrocarbons as gasoline and diesel, which is a new requirement. The methods specified are the same as used in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tanks, which also monitors for gasoline and diesel. The previous footnote 6 has been renumbered as footnote 7.

Table 34.6 Footnote 7

Original: *Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.*

Revised: *The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005:), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.*

Rationale:

As discussed in the revisions to Table 34.6, there are no longer waterbody-specific effluent limitations in this general permit, therefore the previous footnote 7 language is not necessary. To account for renumbering, the text for footnote 7 is revised to be the previous footnote 6.

Table 34.6 Footnote 8 [Removed]

Original: *The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.*

Revised: **[Removed]**

Rationale:

This footnote was removed to be consistent with compliance monitoring requirements in all other general permits. Current general permits do not allow for compliance to be assessed by sampling the receiving water(s). As most receiving water bodies are or can be influenced by a variety of other external inputs (such as runoff from neighboring facilities or land) receiving water monitoring may not be representative of the quality of the discharge from the regulated facility. Therefore, the allowance for an alternative compliance determination based on receiving water sampling has been removed.

Table 34.6 Footnote 9

Original: {9} the pH shall be measured within fifteen minutes of obtaining the grab sample.

Revised: {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.

Rationale:

To account for the deletion of the previous footnote 8, footnote 9 has been renumbered to footnote 8.

Table 34.6 Footnote 10 [Removed]

Original: If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.

Revised: [Removed]

Rationale:

To account for renumbering and changes to effluent limitations, footnote 10 was removed, as it was not necessary.

- (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 40 CFR §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 Section 11-1-51 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 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations 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 effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
PETROLEUM BULK STATIONS AND TERMINALS

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 only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. ~~[Treated process]~~ Process wastewater effluent ~~[covered by this general permit]~~ includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and ~~[contaminated storm water runoff]~~ storm water runoff from the product storage and handling areas that have been commingled with other process wastewater effluent prior to discharge. Treated process wastewater effluent covered by this general permit is process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with this general permit including effluent limitations in this general permit.
- (b) This general permit covers all areas of the State except for discharges into natural

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freshwater lakes, saline lakes, and anchialine pools.

2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
 - (1) Discharges of treated effluent into a sanitary sewer system and
 - (2) Discharges of treated effluent 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.
- (c) Permittees authorized by this general permit are required to comply with the following requirements:
 - (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive

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treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

- (2) Prohibit visible plume from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater is expected to contain these materials;
- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and

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(6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

3. Term of General Permit

(a) This general permit becomes effective ten days after filing with the office of the lieutenant governor~~[-]~~ and shall expire five years after the effective date, unless amended 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)(7) are adopted,~~

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

(b) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

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(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

4. Notice of Intent Requirements

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~~[(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.]~~

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

(b) The owner or ~~[its duly authorized representative]~~operator shall include the following information in the notice of intent:

- (1) Information required in section 34 of appendix A of chapter 11-55;
- (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
- (3) Brief description of the nature of business conducted at the facility;
- (4) Description of the following for each outfall:
 - (A) All operations contributing wastewater and contaminated storm water runoff to the effluent;

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- (B) The average flow contributed by each operation and contaminated storm water runoff;
 - (C) The treatment received by the wastewater and contaminated storm water runoff; and
 - (D) The average and maximum daily flow rates of the effluent discharge;
- (5) Quantitative data on pollutants 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, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of discharge(s); and
- (7) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. The plan shall include a sampling plan and a detailed schedule for sampling and analysis of the effluent. The treatment system operations plan shall be modified by the permittee as requested by the director. The plan, and all subsequent revisions,

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shall be retained on-site or at a nearby field office.

(c) The director may require additional information to be submitted.

(d) The initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).

~~[(d)]~~ (e) The owner or ~~[its duly authorized representative]~~ operator 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

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- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. [~~(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.)~~]

(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(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) Type of Sample

"Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants that conform with regulations published under Section 304(h) of the Act.

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(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 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.

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- (2) 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.

- (c) The permittee shall collect the following information for each batch discharge: date, duration (in hours), starting and ending times, and volume.
- (d) There shall be no discharge of floating solids or visible foam.
- (e) There shall be no visible oil sheen in the effluent.

7. Corrective Action

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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 Table 34.6 and other requirements of this general permit.

(2) The permittee shall submit monitoring results obtained during the previous calendar month and the results shall be postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).

~~[(3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly~~

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~~average values for each parameter on the discharge monitoring report.]~~

- (3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).
- (A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.
- (B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.
- (C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.
- (D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting

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average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

- (4) 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.
- (5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to

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electronic reporting upon written notification by the director.

(b) Monitoring Report

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

(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 34.6 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 or its duly authorized representative 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

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Hospital Operator at (808) 247-2191
outside of regular office hours.

- (3) The permittee or its duly authorized representative 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) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR

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§122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) 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. 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~~]permittee 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~~]permittee 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

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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 and imprisonment for knowing violations."

- (c) The [~~owner~~]permittee 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

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enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. 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.

13. ~~[Renewal]~~ Administrative Extension

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

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

- (a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

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(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

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 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGES OF TREATED EFFLUENT FROM PETROLEUM BULK STATIONS AND TERMINALS

[Effluent Parameter	Effluent Limitations (1)		Monitoring Requirements (2)	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	(3)	(3)	Once/Batch Discharge (10)	Calculated or Estimated
Oil and Grease (mg/l)	15	15	Once/Batch Discharge (10)	Grab (4)
Total Recoverable Lead (mg/l) (5)	0.14	0.029	Once/Batch Discharge (10)	Grab
Benzene (mg/l) (6)	1.7	1.8	Once/Batch Discharge (10)	Grab
Toluene (mg/l) (6)	2.1	5.8	Once/Batch Discharge (10)	Grab
Xylenes (mg/l) (6)	(3)	(3)	Once/Batch Discharge (10)	Grab
Ethyl benzene (mg/l) (6)	0.14	11	Once/Batch Discharge (10)	Grab
Turbidity (NTU)	(7)	(7)	Once/Batch Discharge (10)	Grab

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[Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Ammonia Nitrogen (NH ₄ -N mg/l)	{7}	{7}	Once/Batch Discharge {10}	Grab
pH (standard units) {8}	{7}	{7}	Once/Batch Discharge {10}	Grab {9}
Dissolved Oxygen (%saturation)	{7}	{7}	Once/Batch Discharge {10}	Grab]

Effluent Parameter	Effluent Limitations {1}	Monitoring Requirements	
		Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	Once/Batch Discharge {3}	Calculated or Estimated
Oil and Grease (mg/l)	15	Once/Batch Discharge {3}	Grab {4}
Total Recoverable Lead (µg/l) {5}	29	Once/Batch Discharge {3}	Grab
Total Petroleum Hydrocarbons as Gasoline (µg/l) {6}	{2}	Once/Batch Discharge {3}	Grab
Total Petroleum Hydrocarbons as Diesel (µg/l) {6}	{2}	Once/Batch Discharge {3}	Grab

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<u>Effluent Parameter</u>	<u>Effluent Limitations</u> {1}	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Benzene (µg/l)</u> {7}	<u>1700</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>
<u>Toluene (µg/l)</u> {7}	<u>2100</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>
<u>Xylenes (µg/l)</u> {7}	<u>{2}</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>
<u>Ethyl benzene (µg/l) {7}</u>	<u>140</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>
<u>Ammonia Nitrogen (NH₄-N µg/l)</u>	<u>5</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>
<u>pH (standard units) {8}</u>	<u>6.0 - 8.0</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab {9}</u>
<u>Dissolved Oxygen (%saturation)</u>	<u>>80</u>	<u>Once/Batch Discharge</u> {3}	<u>Grab</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

~~[NTU = nephelometric turbidity units]~~

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.

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- {2} ~~[No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.]~~Report. The permittee shall monitor and report the analytical result.
- {3} ~~[Report. The permittee shall monitor and report the analytical result.]~~If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} ~~[The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.]~~The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

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{7} ~~[Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.]~~ The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.

~~[{8} The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.]~~

~~[{9}]~~ {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.

~~[{10} If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.]~~

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix I

Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling

- (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 treated process wastewater associated with well drilling activities into storm drain systems and/or State receiving waters.

This general is not intended for discharge of treated or untreated process wastewater associated with well drilling activities into a sanitary sewer system. It is also not intended for discharges of well pump testing wastewaters that are not associated with well drilling activities.

- (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 well drilling activities 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. The process wastewater may include well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

The most notable pollutants in the discharge are petroleum-based lubricants, slurry fines, silt, and mud, however, additional pollutants may be present in the discharge dependent upon the source of the process water and groundwater.

- (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 40 CFR §124.9 (for EPA-issued permits).

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]

5. *Standard Conditions*
6. *Effluent Limitations and Monitoring Requirements [Revised]*
7. *Corrective Action*
8. *Reporting Requirements [Revised]*
9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Revised, Renamed]*
14. *Forms [Revised]*

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.7 detail the effluent limitations and monitoring requirements for discharges of treated process wastewater associated with well drilling activities.

Basis for Discharge Limitations and Monitoring Requirements

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for well drilling activities.

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.

Discharges of treated process wastewater associated with well drilling do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

Quantity of Discharge: *The monitoring for flow is for quantification of the discharge.*

Suspended Solids, Oil and Grease: *The effluent limitations for suspended solids and oil and grease were based on the individual NPDES permits that were issued for this type of discharge. The limitation for oil and grease are to ensure that*

pumps and other mechanical equipment are being properly operated and maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent. The limitation for suspended solids is to ensure that the operation and maintenance of the well drilling system does not result in excessive discharge of particulate material.

Benzene and Ammonia Nitrogen: The effluent limitation for benzene and ammonia nitrogen are based on the applicable water quality standard in HAR Chapter 11-54.

pH: The pH effluent limitation is based on HAR Chapter 11-54, Water Quality Standards, for applicable pH criteria.

The general permit contains a narrative prohibition that there shall be no discharge of compounds used in closed-loop systems.

The discharges are not subject to regulations that govern the design and operation of intake structures [316(b) rule] as it has been determined that the discharges are short duration, of limited volume, and result in de minimis impacts.

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

Requirements for Discharge into Class 1 or Class AA Waters

For discharges to Class 1 and Class AA waters, the treatment system plan will be submitted with the NOI to allow for review of the plan.

Chapter 11-55, Appendix I Revisions

Section 2(a)(4) [New]

Original: (NEW)

Revised: Discharges of treated process wastewater with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and

Rationale:

This limitation was added to prevent treated process wastewater discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(5) [New]

Original: (NEW)

Revised: Discharges of treated process wastewater that the director finds more appropriately regulated under an individual permit.

Rationale:

This limitation was added to explicitly specify that the director may (as allowed by HAR 11-55-34.05) require that an individual apply for an obtain an individual permit instead of general permit coverage in instances where it is appropriate.

Section 2(c)(1) – (6) [New]

Original: (NEW)

Revised: (c) Permittees authorized by this general permit are required to comply with the following requirements:

- (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;
- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and
- (6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. “bag”) filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
 - *Achieves results similar in nature to numeric requirements.*
 - *Ensures that the receiving water isn’t visually degraded by the authorized discharge.*
 - *Reflects recognized variability in receiving water criteria.*
 - *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
 - *Strengthens enforceability including enforcement associated with complaints.*
 - *Reduces the complexity and cost of discharge monitoring.*
 - *Simplifies permit data tracking and compliance with EPA’s E-Reporting Rule.*

Section 3(a)

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

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 3(b)

Original: *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)(5) are adopted,]*
whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

Revised: *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

Section 3(c) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly

required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

Original: *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.*

Revised:

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.

As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(b)

Original: *The owner or its authorized representative shall include the following information in the notice of intent:*

Revised: *The owner or operator shall include the following information in the notice of intent:*

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 4(d)

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 initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

Original [From the previous section 4(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*

Revised: *The owner or operator 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*

Rationale:

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.7. (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.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.7.*

Rationale:

As discussed later in this rationale for changes to effluent limitations in Table 34.7, there will no longer be separate effluent limitations for saline waters and fresh waters. Therefore, this language is removed in this section as it is unnecessary due to the aforementioned revision to effluent limitations in Table 34.7.

Section 6(a)(4)(C)

Original: *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.*

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:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(3).

Section 8(a)(2)

Original: *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.*

Revised: *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. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying "no discharge" when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to

have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit's reporting requirements.

Section 8(a)(3)

Original: *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

Revised: (3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.7 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections,

new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

Original: *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.*

Revised: *The permittee or its duly authorized representative 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.*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

Original: *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:*

Revised: *The permittee or its duly authorized representative 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:*

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.

Section 9(a)

Original: *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, Hawaii 96801-3378*

Revised: *The permittee 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, Hawaii 96801-3378*

Rationale:

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(b)

Original: *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 and imprisonment for knowing violations.”

Revised: The permittee 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 and imprisonment for knowing violations."

Rationale:

Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 9(c)

Original: 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 may be a basis for delay of the processing of the document(s).

Revised: The permittee 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 may be a basis for delay of the processing of the document(s).

Rationale:

Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 13

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

Revised:

Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. The new renewal process also now gives 60 from adoption of the new general permit for permittees who want to retain coverage under the new general permit to submit an NOI to maintain coverage. Section 13 was revised in accordance with this new process.

Table 34.7

Original:

TABLE 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGE OF TREATED EFFLUENT
FROM WELL DRILLING ACTIVITIES

Effluent Parameters	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample

General Permit Fact Sheet for
HAR Chapter 11-55, Appendix I

Effluent Parameters	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	{2}	Daily {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	{3} {10}	Grab {4}
Benzene (mg/l) {5}	1.7	1.8	{3} {10}	Grab
Total Suspended Solids (mg/l)	{6}	{6}	{3} {10}	Grab
Turbidity (NTU)	{6}	{6}	{3} {10}	Grab
Ammonia Nitrogen (NH ₄ -N/l) {7}	{6}	{6}	{3} {10}	Grab
pH (standard units)	{6}	{6}	{3} {10}	Grab {8}
Toxic Pollutants {7}	{6}	{6}	{3} {10}	{9}

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Revised:

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>

General Permit Fact Sheet for
HAR Chapter 11-55, Appendix I

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Quantity of Discharge (gallons)</u>	<u>{2}</u>	<u>Daily {3}</u>	<u>Calculated or Estimated</u>
<u>Oil and Grease (mg/l)</u>	<u>15</u>	<u>{3}</u> <u>{4}</u>	<u>Grab {5}</u>
<u>Benzene (µg/l) {6}</u>	<u>1700</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>Total Suspended Solids (mg/l)</u>	<u>55</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>Ammonia Nitrogen (NH₄-N µg/l)</u>	<u>5</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>pH (standard units)</u>	<u>6.0 - 8.0</u>	<u>{3}</u> <u>{4}</u>	<u>Grab {7}</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

Rationale:

(Note: Revisions to each footnote shall be discussed later in this fact sheet)

40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Effluent limitations for oil and grease were not functionally changed as the limit for both water types were the same, although visually, consistent with the change to one effluent limitation for all water types, there is only one effluent limitation value for oil and grease.

Effluent limitations for benzene were changed from being water body dependent, to being one standard for all waterbodies. The revised limitation is the most stringent of the previous saline and freshwater limitation. The proposed revision is intended to standardize the limit set associated with these pollutants for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitations are the most stringent criteria for each of these pollutants.

A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was added. 55 mg/l is the applicable dry season water quality criteria for intermittent discharges to inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition of visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. Since there is no longer a turbidity limit, the unit explanation for NTU (nephelometric turbidity unit) was removed.

The effluent limitation for ammonia nitrogen was revised to apply only one standard effluent limitation to all discharges. The revised effluent limitation is the most stringent 10% water quality criteria of waters (not including oceanic waters as discharges to waters that far offshore are not expected), which is the water quality criteria for dry embayments. As the effluent limitation is the most stringent applicable criteria, it is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with ammonia nitrogen for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for ammonia nitrogen.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. The pH range is the most stringent pH range of waters (not including oceanic waters as discharges to waters that far offshore are not expected) and therefore is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with pH for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for pH.

In addition, Toxics (except for benzene as it is a particular pollutant of concern for the category of activity) were also removed due to the newly required treatment requirements under section 2(c), numeric limits for TSS, and inclusion of the narrative prohibition of discharges which cause exceedances of basic water quality criteria. Based on these new limitations which are more stringent than those in the previous general permit, there is no reasonable potential for toxics to cause or contribute to an exceedance of water quality standards and as such, toxic effluent limitations (except for benzene) were removed from the table.

Effluent limitations were also converted to be expressed in micrograms per liter (except for oil and grease, and TSS and as applicable) to be consistent with how the water quality criteria are expressed in HAR 11-54 (i.e., criteria are in micrograms per liter).

Table 34.7 Footnote 3

Original: *For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.*

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

Rationale:

To account for renumbering, the text for footnote 3 is revised to be the previous footnote 10.

Table 34.7 Footnote 4

Original: *Oil and Grease shall be measured by EPA Method 1664, Revision A.*

Revised: *For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.*

Rationale:

To account for renumbering, the text for footnote 4 is revised to be the previous footnote 3.

Table 34.7 Footnote 5

Original: *The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.*

Revised: *Oil and Grease shall be measured by EPA Method 1664, Revision A.*

Rationale:

To account for renumbering, the text for footnote 5 is revised to be the previous footnote 4.

Table 34.7 Footnote 6

Original: *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.*

Revised: The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.

Rationale:

To account for renumbering, the text for footnote 6 is revised to be the previous footnote 5.

Table 34.7 Footnote 7

Original: *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 or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.*

Revised: The pH shall be measured within fifteen minutes of obtaining the grab sample.

Rationale:

To account for renumbering, the text for footnote 7 is revised to be the previous footnote 8.

Table 34.7 Footnotes 8 – 10 [Removed]

Original:

{8} *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

{9} *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.*

{10} *If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly*

*minimum, and monthly average values on the discharge monitoring report.
For pH, only report monthly minimum and monthly maximum.*

Revised: [Removed]

Rationale:

*To account for renumbering and changes to effluent limitations,
footnotes 8, 9, and 10 were removed, as they were not necessary.*

- (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 40 CFR §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 Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix I 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 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations 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 effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF TREATED
PROCESS WASTEWATER ASSOCIATED WITH
WELL DRILLING ACTIVITIES

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 only discharges of treated process wastewater associated with well drilling activities upon compliance with the applicable general permit requirements. Treated process wastewater covered by this general permit includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.
 - (b) This general permit covers all areas of the State except for discharges into natural freshwater lakes, saline lakes, and anchialine pools.
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of treated process wastewater into a sanitary sewer system;
 - (2) Discharges of treated process wastewater which initially enter

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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; and

- (3) Discharges of well pump testing wastewaters which are not associated with well drilling activities[.];
 - (4) Discharges of treated process wastewater with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and
 - (5) Discharges of treated process wastewater that the director finds more appropriately regulated under an individual permit.
- (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.
- (c) Permittees authorized by this general permit are required to comply with the following requirements:
- (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps,

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sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment.

Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

- (2) Prohibit visible plume from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;
- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;

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- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and
- (6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

3. Term of General Permit

- (a) This general permit becomes effective ten days after filing with the office of the lieutenant governor~~[-]~~ and shall expire five years after the effective date, unless amended 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)(8) are adopted, whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).]~~

- (b) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit,

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unless it is administratively extended in accordance with section 3(c) of this general permit.

- (c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:
- (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;
 - (2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
 - (3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

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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 or thirty days before the expiration date of the applicable notice of general permit coverage.]~~

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

(b) The owner or ~~[its duly authorized representative]~~operator shall include the following information in the notice of intent:

- (1) Information required in section 34 of appendix A of chapter 11-55;
- (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the well drilling process wastewater treatment facility(ies);
- (3) Site characterization report which includes:
 - (A) The history of the land use at the proposed drilling site,
 - (B) The potential pollution source(s) at the proposed drilling site,

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- (C) The potential pollutant(s) present at the proposed drilling site,
 - (D) Any proposed corrective measures, and
 - (E) Pollutants that may be in the effluent;
- (4) Brief description of the project, including:
- (A) An estimated timetable of the drilling activities, including the date when the contractor will begin the well drilling process;
 - (B) Details of the proposed wastewater(s) discharge(s):
 - (i) Estimates of the quantity and frequency of the proposed discharge(s) and
 - (ii) The name(s) of the chemical(s) or material(s) listed by both chemical and trade names that is(are) present in the proposed wastewater(s) discharge(s). Also, provide the material safety data sheet (MSDS) for the chemical(s) or materials; and
 - (C) The time frame of the proposed discharges;

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- (5) Quantitative data on pollutants that the owner or operator of the activity knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the receiving state waters are specified in section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of well drilling activities;
- (7) Well drilling plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include:
 - (A) The well drilling equipment to be used,
 - (B) Process wastewater treatment design,
 - (C) Design concerns,
 - (D) Calculations used in the treatment design, and
 - (E) Proposed mitigative measures.

The site-specific detailed well drilling plan shall be submitted to the director with the notice of intent or thirty days before the start of well

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drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

- (8) Well drilling best management practices plan to ensure that the well drilling effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The well drilling best management practices plan shall include:
 - (A) A schedule of activities;
 - (B) Prohibited practices;
 - (C) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:
 - (i) Responsible field person of the system, by title or name;
 - (ii) Operations plan;
 - (iii) Maintenance scheduling or action criteria, and program;
 - (iv) Effluent monitoring program (e.g. visual inspection);
 - (v) Cessation of discharge plan; and

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- (vi) Effluent control plan;
- (D) Other management practices to prevent or reduce the pollution of state waters;
- (E) Treatment requirements; and
- (F) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

The site-specific detailed well drilling best management practices plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.

- (c) The director may require additional information to be submitted.
- (d) The initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).
- ~~[(d)]~~ (e) The owner or ~~[its duly authorized representative]~~ operator shall submit a complete notice of intent to the director at

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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 discharges shall be limited and monitored by the permittee as specified in this section and in Table 34.7 [~~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.~~]

(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

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(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 at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24hour 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.

(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.

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- (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 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.

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- (2) 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 odor or 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.

- (c) There shall be no discharge of floating solids or visible foam.
- (d) There shall be no visible oil sheen in the effluent.
- (e) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any

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other material generated by any treatment process shall be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

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 Table 34.7 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. The first reporting period begins on the effective date of the issued notice of general permit

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coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).

~~[(3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.]~~

(3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the

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concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

- (4) 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

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implemented based on monitoring results.

- (5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (6) 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) Monitoring Report

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

(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 34.7 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may

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endanger health or the
environment; or

(C) Unanticipated bypass or upset.

(2) The permittee or its duly authorized representative 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.

(3) The permittee or its duly authorized representative 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

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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) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) 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. 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]~~permittee 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:

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

- (b) The [~~owner~~]permittee 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 and imprisonment for knowing violations."

- (c) The [~~owner~~]permittee 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).

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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

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]~~ Administrative Extension

~~[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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Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

- (a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or
- (b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

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 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR DISCHARGE OF TREATED EFFLUENT
FROM WELL DRILLING ACTIVITIES

[Effluent Parameters	Effluent Limitations (1)		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	(2)	(2)	Daily (10)	Calculated or Estimated
Oil and Grease (mg/l)	15	15	(3) (10)	Grab (4)
Benzene (mg/l) (5)	1.7	1.8	(3) (10)	Grab
Total Suspended Solids (mg/l)	(6)	(6)	(3) (10)	Grab
Turbidity (NTU)	(6)	(6)	(3) (10)	Grab
Ammonia Nitrogen (NH₄-N/l) (7)	(6)	(6)	(3) (10)	Grab
pH (standard units)	(6)	(6)	(3) (10)	Grab (8)
Toxic Pollutants (7)	(6)	(6)	(3) (10)	(9)

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<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Quantity of Discharge (gallons)</u>	<u>{2}</u>	<u>Daily {3}</u>	<u>Calculated or Estimated</u>
<u>Oil and Grease (mg/l)</u>	<u>15</u>	<u>{3} {4}</u>	<u>Grab {5}</u>
<u>Benzene (µg/l) {6}</u>	<u>1700</u>	<u>{3} {4}</u>	<u>Grab</u>
<u>Total Suspended Solids (mg/l)</u>	<u>55</u>	<u>{3} {4}</u>	<u>Grab</u>
<u>Ammonia Nitrogen (NH₄-N µg/l)</u>	<u>5</u>	<u>{3} {4}</u>	<u>Grab</u>
<u>pH (standard units)</u>	<u>6.0 - 8.0</u>	<u>{3} {4}</u>	<u>Grab {7}</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

~~[NTU = nephelometric turbidity units]~~

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} Report. The permittee shall monitor and report the analytical result.
- {3} ~~[For intermittent discharges, the sample shall be taken once for each discharge. For continuous~~

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~~discharge a sample shall be taken at least once per week.] If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.~~

- {4} ~~[Oil and Grease shall be measured by EPA Method 1664, Revision A.] For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.~~
- {5} ~~[The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.] Oil and Grease shall be measured by EPA Method 1664, Revision A.~~
- {6} ~~[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.] The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or~~

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5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.

{7} ~~[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 or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.]~~ The pH shall be measured within fifteen minutes of obtaining the grab sample.

~~[{8} The pH shall be measured within fifteen minutes of obtaining the grab sample.~~

~~{9} 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.~~

~~{10} If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.]~~

National Pollutant Discharge Elimination System**General Permit Fact Sheet for****Hawaii Administrative Rules Chapter 11-55, Appendix M****Authorizing Discharges from the Application of Pesticides**

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

This general permit covers point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to State waters.

- (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.

This general permit covers the discharge of pesticides (biological pesticides and chemical pesticides which leave a residue) to State Waters resulting from the following use patterns: (1) Mosquito and Other Flying Insect Pest Control; (2) Weed and Algae Control; (3) Animal Pest Control; and (4) Forest Canopy Pest Control.

The PGP excludes pesticide applications that result in discharges of any pesticide to (1) waters impaired for that pesticide or a degradate of such an active ingredient, except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director or (2) any "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director; or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term basis, or to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.

This permit requires Operators to control discharges as necessary to meet applicable water quality standards. When the Operator, the State or EPA determines a discharge will cause or contribute to an excursion above any WQS, including failure to protect and maintain existing designated uses of receiving waters, the Operator must take corrective action to ensure that the situation is eliminated and will not be repeated in the future. (See Section 6). If additional Pest

Management Measures are required, the State and EPA expects the Operator to vigilantly and in good-faith follow and document, as applicable, the process for Pest Management Measure selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within the timeframe stipulated in Section 6 of the permit.

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

Not applicable.

- (3) 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 Hawaii Department of Health, Clean Water Branch administers the NPDES Permit Program through Title 11 of the Hawaii Administrative Rules, Chapter 55 (HAR Chapter 11-55) – Water Pollution Control. Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as this Pesticide General Permit.

The General Permit is divided into the following sections:

1. *Coverage under this General Permit [Revised]*
2. *Technology-Based Effluent Limitations [Revised]*
3. *Water Quality-Based Effluent Limitations*
4. *Monitoring*
5. *Pesticide Discharge Management Plan (PDMP)*
6. *Corrective Action*
7. *Recordkeeping and Annual Reporting [Revised]*
8. *Notice of Intent Requirements [Revised]*
9. *Administrative Extension [New]*

Sections 1 through 9 are basic requirements necessary to the General Permit.

Basis for Discharge Limitations and Monitoring Requirements

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality

criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELS for a parameter exist, then the more protective effluent limitation is selected.

There are no effluent guidelines promulgated for discharges resulting from point source discharges from the application of pesticides. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that most discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected; and*
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met.*

Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent (NOI). Effluent limitations for these parameters are based on applicable water quality criteria in HAR Section 11-54-4.

The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-54, Appendix A.

Section 1(c)(1)

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

Revised: *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

Rationale:

This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

Section 1(c)(2)

Original: *A notice of general permit coverage under this general permit expires:*

- (A) Five years after the effective date of this general permit;
- (B) When the notice of general permit coverage specifies; or
- (C) When amendments to section 11-55-34.02(b)(5) are adopted,

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

Revised: Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 1(c)(3) of this general permit.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 1(c)(3) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 1(c)(3). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 1(c)(3).

Section 1(c)(3) [New]

Original: (NEW)

Revised: If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (A) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

- (B) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
- (C) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 1(f)

Original: All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60-calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

Revised:

All Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 1-2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs such that discharges from different activities are authorized at different times

Rationale:

This revision is to be consistent with the 2021 EPA PGP

Section 2(b)(3)(B)

Original:

- (i) No action*
- (ii) Prevention*
- (iii) Mechanical or physical methods*
- (iv) Biological control agents'*
- (v) Pesticides*

Revised:

- (i) No action*
- (ii) Prevention*
- (iii) Mechanical or physical methods*
- (iv) Biological control agents*
- (v) Pesticides*
- (vi) Cultural Methods*

Rationale:

Added "cultural methods" to the list of pest management options for animal pest control to clarify that cultural methods can be used as a pest management option for animal pest control.

Section 7(g)(2) and 7(g)(3)

Original: *The operator or its duly authorized representative shall;*

Revised: The permittee or its duly authorized representative shall;

Rationale:

Previously, the term “operator” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

Section 8(a),(b), & (c)

Original: The owner or duly authorized representative shall;

Revised: The owner or operator shall;

Rationale:

The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

Section 9 [New]

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would

need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

- (4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

- (5) 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 40 CFR §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 Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix M within HAR Chapter 11-55, Water Pollution Control.

- (6) 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*

- (7) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges.

Water quality-based effluent limitations 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 effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.

- (8) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

Not applicable.

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NPDES GENERAL PERMIT
AUTHORIZING POINT SOURCE DISCHARGES FROM THE
APPLICATION OF PESTICIDES

This General Permit is effective on

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

1. Coverage under this General Permit.

This permit covers any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides that meets the eligibility requirements identified in section 1(a) of this pesticide general permit (PGP) and if so required, submits a Notice of Intent (NOI) in accordance with section 1(e) of this general permit. For the purpose of this permit, an Operator is defined in section 11-55-01 to mean any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers. As defined, more than one Operator may be responsible for complying with this permit for

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any single discharge from the application of pesticides.

For purposes of this permit, all Operators are defined as either an Applicator or a Decision-maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

(a) Activities Covered.

This permit is available to Operators who discharge to state waters from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for at least one of the following pesticide use patterns:

- (1) Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- (2) Weed and Algae Pest Control - to control weeds, algae, and pathogens

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that are pests in water and at water's edge, including ditches and/or canals.

- (3) Animal Pest Control -to control animal pests in water and at water's edge. Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.
 - (4) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (b) Limitations on Coverage under this General Permit
- (1) Discharges to Water Quality Impaired Waters.

Except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director, Operators are not eligible for coverage under this permit for any discharges from a pesticide application to state waters if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this general permit, impaired waters are

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those that have been identified by the State pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters, for the purposes of this general permit, consist of both waters with EPA-approved Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved a TMDL. Coverage under this general permit is allowed for discharges to impaired waters listed generically for "pesticides" where the specific pesticide for which the waterbody is impaired has not been identified and without additional information suggesting that the waterbody is impaired for a specific active ingredient or degradate of the active ingredient.

- (2) Discharges 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."

Operators are not eligible for coverage under this permit for discharges from a pesticide application to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and discharges into natural freshwater lakes, saline lakes, and anchialine pools.

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Except for discharges from the following pesticide applications:

- (A) made in response to a declared pest emergency situation or as determined by the director;
 - (B) to protect the public health or the environment that either do not degrade water quality or only degrade water quality on a short term basis; or
 - (C) to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.
- (3) Discharges to surface drinking water sources (for domestic use) and their tributaries up-stream are not eligible for coverage under this permit. Such discharges will require coverage under an individual NPDES permit.

Except in the following conditions:

- (A) made in response to a declared pest emergency situation or as determined by the director; or
- (B) the following:

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- (i) the NOI indicates whether the proposed application may discharge to surface drinking water sources; and
- (ii) the application to surface drinking water sources is consistent with the FIFRA label, including but not limited to, following any distance restriction and intended use; and
- (iii) the Decision-maker provides the owner (e.g., municipality, private) of the surface drinking water source the following information, including but not limited to: the pesticide(s) to be applied, general location, and approximate frequency and the department receives written consent from the owner of the surface drinking water source for such discharges; and
- (iv) the Operator adheres to the Safe Drinking Water Act and safe drinking water regulations; and
- (v) the Operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-

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treated water from entering the drinking water intake and distribution system (e.g., the valve to the drinking water source is shut, or by diversion).

- (4) Discharges Currently or Previously Covered by another Permit.

Discharges are not eligible for coverage under this permit if any of the following circumstances apply:

- (A) The discharge is covered by another NPDES permit, or
- (B) The discharge was included in a permit that in the past five (5) years has been or is in the process of being denied, terminated, or revoked by the State or EPA (this does not apply to the routine reissuance of permits every five (5) years).

- (5) Individual Permit

The Director may require any Operator 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.

- (c) Term of General Permit

- (1) This general permit becomes effective ten days after filing with the office

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of the lieutenant governor[-] and shall expire five years after the effective date, unless amended earlier.

- (2) ~~[A notice of general permit coverage under this general permit expires:~~
- ~~(A) Five years after the effective date of this general permit;~~
 - ~~(B) When the notice of general permit coverage specifies; or~~
 - ~~(C) When amendments to section 11-55-34.02(b)(12) are adopted,~~

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

- (2) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 1(c)(3) of this general permit.
- (3) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of

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general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (A) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;
- (B) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
- (C) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

(d) How to Obtain Authorization.

The following discharges, consistent with the activities covered in section 1(a) and limitations on coverage under this general permit in section 1(b), are automatically authorized by this permit beginning when section 11-55-34.02(b) (12) becomes effective

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ten days after filing with the office of the lieutenant governor:

- (1) Eligible discharges made prior to the Notice of Intent submission deadline. See Table 2;
- (2) Eligible discharges for which submission of an NOI is not required. See sections 1(e) and 1(f).

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a complete, and accurate NOI consistent with the requirements of sections 1(e) and 1(f), be issued a Notice of General Permit Coverage (NGPC) and meet all conditions of the NGPC, unless the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f); and this general permit to the satisfaction of the department.

- (e) Decision-makers Required to Submit an NOI.

Any "Decision-maker Who is or Will be Required to submit an NOI" is identified in Table 1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for, "annual treatment area threshold" in section 11-55-01.

An NOI provides notice to the State that a Decision-maker intends to discharge to state

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waters from pesticide application activities eligible for coverage under this permit. Information required to be provided is on the NOI form. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to state waters to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 1(f), Table 2. The Decision-maker must submit an updated NOI if the criteria in section 1(f), Table 3 are met. Late NOIs may be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of this general permit for Decision-makers who file an NOI and are issued an NGPC and who meet all conditions of the NGPC and this general permit to the satisfaction of the department or for those rightfully (refer to the risks in section 11-55-34.09(f)) claiming coverage in writing under the automatic provision of section 11-55-34.09(e)(2), including the Decision-makers' employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to appendix A of chapter 11-55. If a submitted NOI is not timely, accurate, or complete, and an NGPC is not issued or any condition not met, any employee, contractor, subcontractor or other entity that discharges is not covered by this permit.

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Applicators who are not also Decision-makers do not need to submit an NOI, however they are still required to comply with other requirements, as applicable in this general permit.

(f) Discharge Authorization Date

Except for discharges identified in Tables 1 through 3, any Operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Decision-makers with eligible discharges identified in Tables 1 through 3 are authorized under this permit consistent with the requirements in those tables.

On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in section 1(b)(5).

~~[All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60 calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment~~

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~~period, all Operators with eligible discharges for which an NOI is not required also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs when a pesticide use pattern is not already covered within the same treatment area under another NOI.~~

~~Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.]~~

All Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 1-2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs such that discharges from different activities are authorized at different times.

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Table 1. Decision-makers Required to Submit NOIs

PGP Section/ Pesticide Use	Which Decision- makers Must Submit NOIs?	For Which Pesticide Application Activities?
All four use patterns identified in section 1(a)	Any Decision-maker with an eligible discharge to water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up- stream consistent with sections 1(b)(1), 1(b)(2), or 1(b)(3).	Activities resulting in a discharge to water quality impaired waters, class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy, or to surface drinking waters and their tributaries up-stream.
1(a)(1) - Mosquito and Other Flying Insect Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All mosquito and other flying insect pest control activities resulting in a discharge to state waters.
	Mosquito control districts, or similar pest control districts.	All mosquito and other flying insect pest control activities

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		resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Adulticide treatment if more than 6,400 acres during a calendar year. {1}
1(a)(2) - Weed and Algae Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All weed and algae pest control activities resulting in a discharge to state waters.
	Irrigation and weed control districts, or similar pest control districts.	All weed and algae pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(3) - Animal Pest Control	Any Federal or State government entities for which pest management for land resource	All animal pest control activities resulting in a discharge to state waters.

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	stewardship is an integral part of the organization's operations.	
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(4) - Forest Canopy Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment if more than 6,400 acres during a calendar year. {1}

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Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

After the adjustment period, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If the Director receives an NOI at least 30 calendar days before the end of the adjustment period, uninterrupted coverage may continue {3}. NOI due dates for any discharges occurring on or after the adjustment period are as follows:		
Operator Type	NOI Submission Deadline	Discharge Authorization Date {3}
Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Section 1(e).	At least 30 calendar days after beginning discharge.	Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation {4}.
Any Decision-maker that exceeds any annual treatment area threshold.	At least 30 calendar days before exceeding an annual treatment area threshold.	Upon NGPC issuance {5} or if the operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).

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Any Decision-maker otherwise required to submit an NOI as identified in Table 1.	At least 30 calendar days before any discharge for which an NOI is required.	Upon NGPC issuance {5} or if the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).
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Table 3. Change of Information, resulting in a Major Modification {6} of the NGPC, Submittal Deadlines and Discharge Authorization Dates

Operator Type	NOI Submission Deadline	Discharge Authorization Date
Any Decision-makers discharging to an class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy not specifically identified by name on a previously submitted NOI for this permit.	At least 30 calendar days before beginning to discharge in that newly identified class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.
Any Decision-maker with any discharge to state waters requiring permit coverage for a newly identified pest management	At least 30 calendar days before beginning to discharge in that newly identified pest management area or new pesticide	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest

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area or new pesticide use pattern not identified on a previously submitted NOI for this permit. This includes changes in any treatment area, pesticide product, method or rate of application, or approximate dates of applications.	use pattern not identified on a previously submitted NOI for this permit unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.	emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.
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Notes:

{1} Treatment during a calendar year if more than 6,400 acres, as discussed for the categories "Mosquito and Other Flying Insect Pest Control" and "Forest Canopy Pest Control," refers to the total area to which pesticide applications (e.g. aerial spraying) are made, when any part of those areas is a state water and shall be treated as separate treatment areas to be additive in a calendar year. If the additive total areas in a calendar year to which pesticides application are made exceeds 6,400 acres, when any part of these areas is a state water, submittal of an NOI is required for those Decision-makers required to submit an NOI as identified in Table 1. For example, applying pesticides three times a year to the same three thousand acre site (i.e., total area to which pesticide applications are made, when any part of those areas is a state water)

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should be counted as nine thousand acres of treatment area.

- {2} For the categories "Weed and Algae Pest Control" and "Animal Pest Control", "20 linear miles" means 20 linear miles of river, stream, riverbank, or other linear water feature subject to coverage under this permit, counting each bank of the water feature separately if pesticides are applied to both banks. This means that applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * for applications per year = twenty four miles to which pesticides are applied in a calendar year) and require submission of an NOI. For applications made to the water of a linear water feature, the length of the reach or surface area may be used to determine if the annual treatment area threshold is exceeded. Treatment during a calendar year if more than "80 acres of water (i.e., surface area)" means application of pesticides to a waterbody surface area of greater than 80 acres.
- {3} On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 1, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Section 1(b) (5).
- {4} To remain authorized, an NOI must be submitted no later than 30 calendar days after beginning discharge and result in issuance of an NGPC. At

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no time, during the processing the NOI, shall the time between the department's request for more information, and its receipt from the Decision-maker be longer than 30 calendar days. If longer than 30 calendar days, coverage under this general permit may be terminated automatically.

- {5} All requirements in the NGPC must be complied with and in the timeframe as specified, including this general permit and any additional requirements as determined by the State to the satisfaction of the department.
- {6} The department may require submittal of a new NOI if it is determined that the modification of the information is significant or more than one (1) change to the information used in the issuance of its NGPC is required.

(g) Standard Conditions

The Decision-maker shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding biocides as identified in section 1.a.(4) of appendix A. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding biocides as identified in section 1.a.(4) of appendix A, the more stringent conditions shall apply.

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(h) Other Federal and State Laws.

Operators must comply with all other applicable federal and state laws and regulations that pertain to pesticides. The pesticide must be registered by the EPA, licensed by the State Department of Agriculture or other lead state agency regulating pesticides, and used in a manner consistent with the labeling of the pesticide under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). This permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

2. Technology-Based Effluent Limitations

This Section includes technology-based effluent limitations applicable to all Operators, as defined in section 11-55-01, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in section 11-55-01, or both. Applicators must perform the tasks identified in section 2(a) - Applicators' Responsibilities. Decision-makers must perform

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the tasks identified in section 2(b) - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

As stated in section 1(h), this general permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

(a) Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement section 2(a) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

- (1) To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.
- (2) Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.

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- (3) Assess weather conditions (e.g. temperature, precipitation and wind speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

(b) Decision-makers' Responsibilities

For All Decision-makers

To meet the effluent limitations in section 2(b), all Decision-makers must minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

For Any Decision-maker Who is or Will be Required to Submit an NOI.

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker who is or will be required to submit an NOI as required in section 1(e) must also implement sections 2(b)(1) - 2(b)(4) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

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(1) Mosquito and Other Flying Insect Pest Control

This section applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in section 1(a)(1) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
- (ii) Identify target pest(s) to develop Pest Management

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Measures based on developmental and behavioral considerations for each pest;

- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(1)(A) of this general permit.

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to

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submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to a state water, any

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Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area(s) prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
- (ii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use

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adulticides for mosquito or
flying insect pest control
when the adult action
threshold(s) has been met.

(2) Weed and Algae Pest Control

This section applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in section 1(a)(2) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

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- (ii) Identify target pest(s);
 - (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
 - (iv) Establish any pest- and site-specific action threshold, as defined in HAR, Chapter 11-55-01, for implementing section 2(b)(2)(B); and
 - (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(2)(A) of this general permit.
- (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures

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that minimize discharges resulting from the application of pesticides to pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Cultural methods
 - (v) Biological control agents
 - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to

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each pesticide application to assess the pest management area and to determine when the action threshold(s) is met; and

- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

(3) Animal Pest Control

This section applies to discharges from the application of pesticides for control of animal pests as defined in section 1(a)(3) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize

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the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

- (ii) Identify target pest(s);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
- (iv) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b) (3) (B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2[~~(B)~~] (b) (3) (A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each year thereafter prior to the first pesticide

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application during that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
 - (ii) Prevention
 - (iii) Mechanical or physical methods
 - (iv) Biological control agents
 - (v) Pesticides
 - (vi) Cultural Methods
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any

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Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
- (ii) Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

(4) Forest Canopy Pest Control

This section applies to discharges from the application of pesticides for forest canopy pest control as defined in section 1(a)(4) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application in that

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calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b) (4) (B);
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- (iii) Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
- (iv) In the event there are no data for pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(~~B~~b) (4) (A).

(B) Pest Management Options.

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Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Cultural methods
- (v) Biological control agents
- (vi) Pesticides

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(C) Pesticide Use.

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
- (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
- (iii) Evaluate using pesticides against the most susceptible developmental stage.

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3. Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, as required in chapter 11-54, for discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or EPA), or the Director determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in section 6 and section 7 of appendix A, chapter 11-55, up to and including the ceasing of the discharge, if necessary.

4. Monitoring

(a) Visual Monitoring Requirements for Pesticide Applicators.

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

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- (b) Visual Monitoring Requirements for all Operators.

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

5. Pesticide Discharge Management Plan

Any Decision-maker who is or will be required to submit an NOI, as required in section 1(e), and is a large entity, as defined in section 11-55-01, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is submitted to the department, except (for which a PDMP is not required to be developed) any applications made in response to a Declared Pest Emergency Situation, as defined in section 11-55-01.

The PDMP does not contain effluent limitations; the effluent limitations are specified in sections 2 and 3 of this general permit. The PDMP documents how Decision-makers will implement the effluent limitations in sections 2 and 3 of this general permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans

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in other documents that meet the requirements of this general permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this general permit, such as a pre-existing pest management plan, the Decision-makers must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- (a) Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- (1) Pesticide Discharge Management Team

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- (A) Person(s) responsible for managing pests in relation to the pest management area;
- (B) Person(s) responsible for developing and revising the PDMP; and
- (C) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

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(2) Problem Identification

(A) Pest problem description.

Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in sections 2(b)(1), 2(b)(2), 2(b)(3), and 2(b)(4).

(B) Action Threshold(s).

Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.

(C) General location map.

In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the state water and

(D) Water quality standards.

Document any water(s) identified as impaired by a substance which either is an active ingredient or

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a degradate of such an active ingredient.

(3) Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

(4) Response Procedures.

Decision-makers must document the following procedures in the PDMP:

(A) Spill Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to state waters.

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Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

- (ii) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

(B) Adverse Incident Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for responding to any adverse incident resulting from pesticide applications;
- (ii) Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external.

Contact information for state/federal permitting agency, nearest emergency

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medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(5) Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with section 15 of appendix A, chapter 11-55.

(b) Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in section 6(a) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 calendar days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with section 15 of appendix A, chapter 11-55.

(c) Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at each address provided in the NOI. The PDMP and all supporting

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documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the state, EPA, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). The Director may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Director, if requested, and may not be withheld from those staff within EPA, FWS, and NMFS cleared for CBI review.

6. Corrective Action

All Operators must comply with the provisions of section 6 for any discharges authorized under this general permit, with compliance required upon beginning such discharge.

(a) Situations Requiring Revision of Pest Management Measures.

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with section 2(a) and 2(b) for the following situations:

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- (1) An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.
 - (2) Operators become aware, or the Director concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
 - (3) Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in section 2.
 - (4) An inspection or evaluation of activities by the Director, an EPA official, local, or state entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this general permit.
 - (5) Any Operator observes or is otherwise made aware of an adverse incident as defined in section 11-55-01.
- (b) Corrective Action Deadlines.

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in section 6(a), such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.

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(c) Effect of Corrective Action.

The occurrence of a situation identified in section 6(a) of this general permit may constitute a violation of the permit. Correcting the situation according to section 6(a) of this general permit does not absolve the Operator of liability for any original violation. However, failure to comply with Section 6(a) of this general permit constitutes an additional permit violation. The Director will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Director, EPA or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Section 6(a) of this general permit if such requirements conflict.

(d) Adverse Incident Documentation and Reporting

(1) Twenty-Four (24) Hour Adverse Incident Notification

(A) Adverse Incident Notification Required

Except as provided for in section 6(d)(4), if an Operator observes or is otherwise made aware of an

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adverse incident, as defined in section 11-55-01, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Director. This notification must be made 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, within 24 hours of the Operator becoming aware of the adverse incident; and State Department of Agriculture or other state lead agency for pesticide regulation and must include at least the following information:

- (i) The caller's name and telephone number;
- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;
- (iv) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

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- (v) How and when the Operator became aware of the adverse incident;
- (vi) Description of the location of the adverse incident;
- (vii) Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- (viii) Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- (ix) If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Clean Water Branch within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

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The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

(B) Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- (i) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (ii) An Operator has been notified by the Director, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- (iii) An Operator receives information of an adverse incident, but that information is clearly erroneous; or

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- (iv) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

(2) Thirty (30) Calendar Day Adverse Incident Written Report.

Except as provided for in section 6(d)(4), within 30 calendar days of a reportable adverse incident pursuant to section 6(d)(1), Operators must provide a written report of the adverse incident to the Clean Water Branch and to the State Department of Agriculture or other state lead agency for pesticide regulation. The adverse incident report must include at least the following information:

- (A) Information required to be provided in Section 6(d)(1);
- (B) Date and time the Operator notified the Clean Water Branch and the State Department of Agriculture of the adverse incident and who the Operator spoke with and any instructions you received;
- (C) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

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- (D) A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- (E) Magnitude and scope of the affected area (e.g. aquatic square area or total stream distance affected);
- (F) Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- (G) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (H) If laboratory tests were performed, an indications or which test(s) were performed, and when; additionally, a summary of the test results must be provided within five (5) calendar days after they become available if not available at the time of submission of the 30-day report;
- (I) Description of actions to be taken to prevent recurrence of adverse incidents; and

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(J) Signature, date, and certification in accordance with section 15 of appendix A, chapter 11-55.

(3) Adverse Incident to Threatened or Endangered Species or Critical Habitat

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, which may have resulted from a discharge from the Operator's pesticide application, the Operator must immediately notify the NMFS in the case of an anadromous or marine species, or the FWS in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon the Operator becoming aware of the adverse incident and must include at least the following information:

- (A) The caller's name and telephone number;
- (B) Operator name and mailing address;
- (C) The name of the affected species;
- (D) How and when the Operator became aware of the adverse incident;

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- (E) Description of the location of the adverse incident;
- (F) Description of the adverse incident and the pesticide product, including the EPA pesticide registration number for each product applied in the area of the adverse incident; and
- (G) Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species.

(4) Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in section 6(d)(2) is also provided to all of the other authorized Operators within 30 calendar days of the reportable adverse incident.

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(e) Reportable Spills and Leaks

(1) Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into state waters 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 in any 24-hour period, an Operator must notify 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 and the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

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(2) Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in section 6(e)(1) and results in an adverse incident, then the Operator must report the incident per the guidelines in section 6(d)(1) and 6(d)(2). If the spill, leak, or other unpermitted discharge triggers the notification in section 6(e)(1), but does not result in an adverse incident, then the Operator must document and retain the following information within 30 calendar days of becoming aware of the situation:

- (A) Information required to be provided in section 6(e)(1);
- (B) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (C) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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(f) Other Corrective Action Documentation.

For situations identified in section 6(a), other than for adverse incidents (addressed in section 6(d)), or reportable spills or leaks (addressed in section 6(e)), Operators must document the situation triggering corrective action and planned corrective action within 30 calendar days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- (1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- (2) Brief description of the situation;
- (3) Date the problem was identified;
- (4) Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- (5) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

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7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 4 references applicable requirements for the range of Operators covered under this permit.

Table 4: Applicable Recordkeeping and Annual Reporting Requirements for Different Types of Operators.

PGP Section	Applicable Type of Operator
7(a)	Recordkeeping: All Operators
7(b)	Recordkeeping: All Operators who are Applicators, as defined in section 11-55-01
7(c)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a small entity{1}
7(d)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a large entity{2}
7(e)	Retention of Records: All Operators
7(f)	Annual Reporting: Any Decision-maker required to submit an NOI and who is a large entity{2}

{1} Small Entity - As defined in section 11-55-01, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.

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{2} Large Entity - As defined in section 11-55-01, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

Operators must keep written records as required in this permit for all discharges covered under this general permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this general permit. Operator's may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this general permit are satisfied.

The Director recommends that all Decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold, is exceeded during any calendar year.

(a) Recordkeeping For All Operators.

All Operators must keep the following records:

- (1) A copy of any Adverse Incident Reports
(See section 6(d)(2));

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- (2) Rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Section 6(d) (1) (B) ;
 - (3) A copy of any corrective action documentation (See section 6(f)) ; and
 - (4) A copy of any spill and leak or other unpermitted discharge documentation (See section 6(e) (2)) .
- (b) Recordkeeping for All Operators who are Applicators.

After the adjustment period, any Operator who is an Applicator, as defined in section 11-55-01, must retain the following records:

- (1) Documentation of equipment calibration; and
- (2) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects,

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weed and algae, animal pest, or forest canopy);

- (C) Target pest(s);
 - (D) Documentation of any assessment of weather conditions in the treatment area prior to and during application to ensure application is consistent with all applicable federal requirements;
 - (E) Name of each pesticide product used including the EPA registration number;
 - (F) Quantity of each pesticide product applied to each treatment area;
 - (G) Pesticide application date(s); and
 - (H) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not, and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (c) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Small Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a small entity, must retain the

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following records at the address provided on the NOI.

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the Director specific to coverage under this permit, and a copy of the NGPC;
- (2) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (3) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticides are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Description of pest management measure(s) implemented prior to the first pesticide application;

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- (E) Company name and contact information for pesticide applicator;
 - (F) Name of each pesticide product used including the EPA registration number;
 - (G) Quantity of each pesticide product applied to each treatment area;
 - (H) Pesticide Application Start Date;
 - (I) Pesticide Application End Date; and
 - (J) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (d) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the Operator's business address provided on the NOI:

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the

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Director specific to coverage under this permit, and a copy of the NGPC;

- (2) A copy of your PDMP, including any modifications made to the PDMP during the term of this general permit.
- (3) Copy of annual reports submitted to the Director;
- (4) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (5) Information on each treatment area to which pesticides are discharged, including:
 - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticide(s) are discharged;
 - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
 - (C) Target pest(s) and explanation of need for pest control;
 - (D) Action Thresholds;

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- (E) Method and/or data used to determine that action threshold(s) has been met;
- (F) Description of pest management measure(s) implemented prior to the first pesticide application;
- (G) Company name and contact information for pesticide applicator;
- (H) Name of each pesticide product used including the EPA registration number;
- (I) Quantity of each pesticide product applied to each treatment area;
- (J) Pesticide application date(s); and
- (K) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

(e) Retention of Records for All Operators.

All required records must be documented as soon as possible but no later than 14 calendar days following completion of each pesticide application. Operators must retain any records required under this permit for at least five (5) years after the

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Operator's coverage under this permit expires or is terminated. Operators must make available to the State, including EPA or an authorized representative of EPA, all records kept under this permit upon request and provide copies of such records, upon request.

- (f) Annual Reporting for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

Any Decision-makers required to submit an NOI and are defined as a large entity in section 11-55-01, must submit an annual report to the Director. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The Decision-maker must submit the annual report to the Director no later than February 15, in pdf format (minimum of 300 dpi) on CD/DVD, of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring after the adjustment period.

Any Decision-maker required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required

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to include activities for the portion of the calendar year after the point at which the Decision-maker exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first annual report submitted also including information from the first partial year.

When Decision-makers terminate permit coverage, as specified in appendix A of chapter 11-55, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information:

- (1) Decision-maker's name and contact information;
- (2) NPDES file number
- (3) Contact person name, title, e-mail address (if any), and phone number; and
- (4) For each treatment area, report the following information:
 - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state

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waters, either by name or by location, to which pesticide(s) are discharged;

- (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
- (C) Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
- (D) Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
- (E) Whether this pest control activity was addressed in the PDMP prior to pesticide application;
- (F) The approximate date(s) of any discharge;
- (G) If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Section 6(d)(1) of this general permit; and
- (H) If applicable, description of any corrective action(s), including

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spill responses, resulting from
pesticide application activities
and the rationale for such
action(s).

(g) Submittal Requirements

- (1) All submittals shall be addressed 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

- (2) The ~~[operator]~~permittee 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.

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I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (3) The [~~operator~~]permittee 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 on future correspondence or submittals may be a basis for delay of the processing of the document(s).

8. Notice of Intent Requirements

- (a) The owner or [~~duly authorized representative~~]operator shall submit a complete NOI in accordance with the deadline in Section 1(f), Table 2 or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or [~~duly authorized representative~~]operator shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Pesticide use activities that trigger the PGP requirements;

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- (3) If the operator is a Large entity that triggers developing a PDMP and submittal of an annual report;
 - (4) Pest Management Area name and map of the location of the area or description of the Pest Management Area in detail; and
 - (5) Name of the water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream for which permit coverage is being requested and demonstration of eligibility for such discharges.
- (c) The owner or [~~duly authorized representative~~]operator 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/>

(see CWB NOI Form M) .

9. Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty

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days after the effective date of this general permit unless:

- (a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or
- (b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

\$11-55-01	Definitions
\$11-55-02	General policy of water pollution control
\$11-55-03	General prohibition
\$11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
\$11-55-05	Receipt of federal information
\$11-55-06	Transmission of information to regional administrator
\$11-55-07	Identity of signatories to NPDES forms
\$11-55-08	Formulation of tentative determinations and draft permit
\$11-55-09	Public notice of applications

§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits
§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to regional administrator of proposed NPDES permits
§11-55-26	Transmission to regional administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms

§11-55-34.04 General permit conditions
 §11-55-34.05 Requiring an individual permit
 §11-55-34.06 Reserved
 §11-55-34.07 Degree of waste treatment
 §11-55-34.08 Notice of intent
 §11-55-34.09 Notice of intent review, notice of
 general permit coverage, additional
 conditions, terms, renewals, effective
 dates, and automatic coverage
 §11-55-34.10 Review of coverage issues and notice of
 intent and notice of general permit
 coverage decisions
 §11-55-34.11 Notice of general permit coverage
 revocation and/or termination
 §11-55-34.12 General permit compliance
 §11-55-35 Penalties and remedies
 §11-55-36 Hearings and appeals
 §11-55-37 Severability clause
 §11-55-38 Repealed
 §11-55-39 Public interest
 §11-55-40 Field Citations; non-compliance with
 NPDES requirements
 §11-55-41 Zones of mixing
 §11-55-42 Intake credits

Appendix A Department of Health Standard General
 Permit Conditions
 Appendix B NPDES General Permit Authorizing
 Discharges of Storm Water Associated
 with Industrial Activities
 Appendix C NPDES General Permit Authorizing
 Discharges of Storm Water Associated
 with Construction Activity
 Appendix D NPDES General Permit Authorizing
 Discharges of Treated Effluent from
 Leaking Underground Storage Tank
 Remedial Activities

Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions.

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2018 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence.

Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M.

For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three_thousand-acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each treatment area as a separate area treated.

Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if

pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile-long reach of stream will count as a total of twenty-four linear miles (three miles * two banks * four applications per year = twenty-four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Authorized Representative" means an individual who has been duly authorized by the certifying person and given the express, implied, and apparent authority to act on behalf of the certifying person as a signatory for legally binding documents such as reports or other information submitted to the department in accordance with section 11-55-07(b).

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations

of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that is a:

- (1) Eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) Procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or
- (3) Parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)). "Plant-incorporated protectant"

means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Certifying Person" means an individual who meets the signatory requirements in section 11-55-07(a).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut[-]downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage

of a facility's intake flow that is used for cooling purposes in 40 CFR §125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any

pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is

intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads

with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter

promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure"

exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(f) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters from pesticide application.

"Pesticide" means the same thing as defined in section 11-54-4(f) (1).

"Pesticide discharges to State waters from pesticide application" means the discharges that result from the application of biological pesticides or chemical pesticides that leave a residue from point sources to State waters. In the context of this definition of pesticide discharges to State waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law.

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" [~~includes~~] for the purpose of determining whether an NPDES permit is needed for pesticide discharges to State waters from pesticide application, means that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load

allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute State waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution

control. (a) It is the public policy of this State:

- (1) To conserve State waters;
- (2) To protect, maintain, and improve the quality of State waters:

- (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses;
- (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
 - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
 - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS

§§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. (a) No person shall violate any provision of section 342D-50, HRS [~~or any NPDES permit issued under this chapter.~~].

(b) No person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except in compliance with this chapter 342D, HRS, rules adopted pursuant to chapter 342D, HRS, a permit or variance issued by the director. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp]
(Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion.

~~[(a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction 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, or substantially altering the~~

~~quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a]~~

(a) A person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), ~~[submit a]~~ complete notice of intent~~[7]~~ (except for the point source discharges from the application of pesticides, if not required ~~[(refer to]~~ under Appendix M) or~~[7]~~ "no exposure" certification for certain storm water discharges which meet all requirements for a conditional "no exposure" exclusion~~[7]~~:

- (1) Before discharging any pollutant;
- (2) Before substantially altering the quality of any discharges;
- (3) Before substantially increasing the quantity of any discharges;
- (4) Before beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land 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;
- (5) Before beginning discharge from sources or activities identified and described in 40 CFR §122.23 through §122.27;
- (6) For small regulated municipal storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e).

Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection ~~[(e)-]~~ (f).

(b) An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least three hundred sixty days before the expiration date of the existing permit. The director may waive this three hundred sixty-day requirement by issuing the permit with an effective date before the three hundred sixty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal,

state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR

§122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

~~[(b)]~~ (c) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

~~[(e)]~~ (d) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

~~[(d)]~~ (e) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application; and
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

~~[(e)]~~ (f) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

~~[(f)]~~ (g) (Reserved)

~~[(g)]~~ (h) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

~~[(h)]~~ (i) (Reserved)

(j) Exclusions:

- (1) An NPDES permit may not be required provided that the discharges are consistent with the exclusions identified in 40 CFR §122.3 or have a de minimus impact on water quality due to the quantity or quality of the discharge as determined by the director.
- (2) The discharge shall not be reasonably expected (based on information available to

the department) to be significant sources of pollutants to State waters.

- (3) Discharges which may not require an NPDES permit include, but are not limited to, the following:
- (A) Water line flushing (using potable water);
 - (B) Landscape irrigation (using potable water);
 - (C) Diverted stream flows;
 - (D) <Reserved>
 - (E) Uncontaminated pumped ground water infiltration (as defined in 40 CFR §35.2005[20]) to separate storm sewers;
 - (F) Uncontaminated pumped groundwater;
 - (G) Discharges from potable water sources;
 - (H) Discharges from foundation drains;
 - (I) Air conditioning condensate;
 - (J) Irrigation water (using potable water);
 - (K) Springs;
 - (L) Uncontaminated water from crawl space pumps and footing drains;
 - (M) Lawn watering (using potable water);
 - (N) Individual residential car washing (using potable water);
 - (O) Flows from riparian habitats and wetlands;
 - (P) Dechlorinated freshwater swimming pool discharges to non-marine environments;
 - (Q) Low pressure rinsing of sidewalks without chemical additives (using potable water); and,
 - (R) Discharges or flows from firefighting activities.

Exclusions for agriculture are limited to discharges identified in 40 CFR §122.3, or agricultural land that implements practices consistent with section 11-54-4(d), or section 11-56), but do not include storm water

or wastewater discharges from construction or industrial activities associated with agricultural facilities. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. (a)

The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree.

(b) Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the

director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to regional administrator. (a) The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree.

(b) Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any

- category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
 - (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
 - (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,

342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES

forms. (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
 - (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather

complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having

responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.

~~[(c)]~~ (d) If an authorization under subsection (b) is no longer accurate because the certifying person changed or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(e) Any person signing a document under subsections (a), (b), or (c) shall make the following certification: "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 and imprisonment for knowing violations."

(f) Electronic reporting. If documents described in subsections (a) or (b) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 3; 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
 - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
 - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
 - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
 - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-4, 342D-5,

342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)

The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) Notice shall comply with section 1-28.5, HRS;
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations

with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);

- (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
- (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]
 (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that

incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
 - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
 - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
 - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
- (3) The tentative determinations required under section 11-55-08;

- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
 - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and
 - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
 - (6) The name and telephone number of a person to contact for additional information; and
 - (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.
- (c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

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(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit, provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published in accordance with section 1-28.5, HRS;
 - (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
 - (3) Mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
 - (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.
- (b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:
- (1) Name and address of the agency holding the public hearing;
 - (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
 - (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
 - (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
 - (5) Information regarding the date, time, and location of the hearing;
 - (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
 - (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any

additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality

- standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
- (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
- (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
- (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
- (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).
- (f) Notwithstanding the provisions of subsections (a) through (e), the director shall not

issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4[÷] (g). The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. "Interested" means any person with "standing" as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

- (1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.
- (2) Any revisions made to the permit during the appeals process shall comply with ~~[HAR]~~ section 11-55-16.
 - (i) The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits.

(a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification as defined in 40 CFR 122.63. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).
- (5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.
- (6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is

permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6.

[Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by

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submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
 - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
 - (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;

- (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
 - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and

- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants;
 - (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it;
 - (9) Intake credits in accordance with 40 CFR §122.45(g) and section 11-54-12; and
 - (10) Recreational criteria for all State waters in section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty-day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty-day period.
- (b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp

10/22/07; comp 06/15/09; am and comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp
] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C.

§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
 - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of

progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; comp

09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
 - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
 - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
 - (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and

- 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
- (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
 - (C) The quality and quantity of effluent to be introduced into a treatment works; and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;
- (9) The permittee at all times shall maintain in good working order and operate as

efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit;

- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342,
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5,
342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C.
§§1251, 1284, 1311, 1316, 1317, 1318, 1342,
1370, 1251-1387; 40 CFR Parts 122; 123; 124,
Subparts A and D; 125; 403; §§122.41,
122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
- (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
- (3) Sample any discharge of pollutants or effluent.

(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

- (1) Establish and maintain records;
- (2) Make reports;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent and State waters;
- (5) Provide access to and copying of any records which are maintained; and
- (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. (a) The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j).

(b) Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least three hundred sixty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices;

nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and

- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period:

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp

09/22/97; comp 01/06/01; am and comp 11/07/02; comp
08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12;
comp 12/06/13; comp 11/15/14; comp 02/09/19; am and
comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §§122.21(d), 122.29, 122.41(b), 122.41(l),
122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

- (1) Flow (in gallons per day or cubic feet per second); and
- (2) All of the following pollutants:
 - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to

reduction or elimination under the terms and conditions of the NPDES permit;

- (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
- (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
- (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
 - (A) The date, exact place, and time of sampling or measurements;
 - (B) The individual(s) who performed the sampling or measurements;
 - (C) The date(s) the analyses were performed;
 - (D) The individual(s) who performed the analyses;
 - (E) The analytical techniques or methods used; and
 - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. 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. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.41(l)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and

other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut[-]down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut[-]down.

(b) In the case of a shut[-]down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut[-]down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut[-]down period;

- (4) Measures that will be taken to minimize the length of the shut[-]down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp]
 (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of

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the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
 - (A) Involve the same or substantially similar types of operations;
 - (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - (D) Require the same or similar monitoring; and
 - (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp

10/22/07; comp 06/15/09; comp 10/21/12; comp
 12/06/13; comp 11/15/14; comp 02/09/19; comp
 10/22/21; comp 01/15/22; comp]
 (Auth: HRS §§342D-4, 342D-5; 33 U.S.C.
 §§1342, 1370, 1251-1387; 40 CFR §122.28)
 (Imp: HRS §§342D-2, 342D-4, 342D-5,
 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-
 1387; 40 CFR Parts 122; 123; 124; 125;
 §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water

associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated January 15, 2022;

- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction 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, dated February 9, 2019;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated [~~July 13, 2018,~~]
;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated January 15, 2022;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated January 15, 2022;

- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity, dated January 15, 2022;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated ~~[July 13, 2018;]~~ _____;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities, dated ~~[July 13, 2018;]~~ _____;
- (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;
- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated January 15, 2022;
- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from

- decorative ponds or tanks, dated February 9, 2019; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides", dated [~~July 13, 2018.~~] _____. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; am and comp 01/15/22; am and comp _____] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 123.25(a) (11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp _____] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a) (11))

§11-55-34.04

§11-55-34.04 General permit conditions. (a)

Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a) (11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
 - (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
 - (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
 - (4) A water quality management plan containing requirements applicable to the point sources is approved;
 - (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
 - (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to State waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the State waters; and
 - (D) Other relevant factors.
- (b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-

55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp

01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07;
comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am
and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp
01/15/22; comp] (Auth: HRS §§342D-4,
342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;
40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5,
342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387;
40 CFR Parts 122; 123; 124; 125; §122.28(b)(3),
123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
 - (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and

- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

- (b) A notice of intent shall:
- (1) Be submitted on forms provided by the director;
 - (2) Comply with the notice of intent requirements of the respective general permit; and
 - (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed ~~[in accordance with section 11-55-07(a).]~~ by the certifying person.

(f) All other reports or responses to requests for information required by the director shall be signed ~~[in accordance with section 11-55-07(b).]~~ by either the certifying person or authorized representative.

(g) Any change ~~[in]~~ of the ~~[written authorization submitted to the director under subsection (f)]~~ certifying person or authorized representative which occurs after the issuance of a permit shall be reported to the director. A change in authorized representative shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of ~~[subsections (e) and (f).]~~ section 11-55-07(b).

(h) Any person signing a document under subsections (e) and (f) shall make ~~[a]~~ the following certification ~~[in accordance with 40 CFR §122.22(d).]~~ : "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 and imprisonment for knowing violations."

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500; and

(3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

(1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;

(2) The beginning of any construction activity which is covered under Appendix C, unless

coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than thirty calendar days after the start of construction activities;

(3) The expiration date of the existing general permit; or

(4) The expiration date of the existing notice of general permit coverage.

(k) (Reserved).

(l) (Reserved).

(m) A notice of intent shall be submitted to the director for:

(1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power[-]plant, or uncontrolled sanitary landfill; or

(2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if

the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty-day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty-day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty-day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire.

(p) Electronic reporting. If documents described in subsections (e) or (f) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a),

342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage.

(a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the permittee otherwise. The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for coverage, shall remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The permittee's submittal of a notice of cessation;
- The issuance of an individual NPDES permit;
- A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit; or
- A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.

The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance may be terminated and may be

required to apply for individual NPDES permit coverage.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit

coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e) (2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren §11-55-34.10, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general permit coverage and automatic coverage under section 11-55-34.09(e) (2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and

appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [R 6/15/09]

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public

interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05;

comp 10/22/07; comp 06/15/09; comp 10/21/12; comp
12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21;
comp 01/15/22; comp] (Auth: HRS
§§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4,
342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. (a) This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

~~[(1)]~~ (b) Offer to settle.

~~[(A)]~~ (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

~~[(i)]~~ (A) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in ~~[excess of limitations established by]~~ non-compliance of an NPDES permit;

~~[(ii)]~~ (B) Any person who begins an activity or discharge prior to obtaining the required individual NPDES permit, coverage under a

- general permit, and/or
authorization from the director;
- ~~[(iii)]~~ (C) Any person who fails to
correctly install, implement,
maintain, or repair site best
management practices, treatment
system, pollution control device
or who fails to provide and/or
receive training as called for
[in their storm water pollution
control plan, best management
practices plan, or other plan,]
by the applicable NPDES permit,
in whole or in part;
- ~~[(iv)]~~ (D) Any person who fails to
~~[monitor]~~ conduct monitoring,
including visual monitoring or
inspections, as required by the
applicable NPDES permit, in whole
or in part;
- ~~[(v)]~~ (E) Any person who fails to
retain on-site or at a nearby
office or field office:
~~[a)]~~ (i) a copy of the NPDES permit
application or notice of intent
or "no exposure" certification,
~~[b)]~~ (ii) storm water pollution
control plan, storm water
pollution prevention plan, storm
water management plan, best
management practices plan or all
other plans required in the NPDES
permit [and] or NGPC and all
subsequent revisions,
~~[c)]~~ (iii) individual NPDES permit,
notice of general permit
coverage, or conditional "no
exposure" exclusion, or

- ~~[(d)]~~ (iv) discharge monitoring reports;
- ~~[(vi)]~~ (F) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to notices of start, discharge monitoring reports, reports of non-compliance, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation~~[-]~~;
- (G) Any person who fails to update their storm water pollution control plan, storm water pollution prevention plan, best management practices plan, or other plan as required by the applicable NPDES permit, in whole or in part;
- (H) Any person who submits a document without the appropriate signature or certification statement.
- ~~[(B)]~~ (2) A field citation shall indicate the following amounts:
- ~~[(i)]~~ ~~[\$500]~~ (A) \$1,000 for any person who violates paragraphs ~~[(1)(A)(i), (ii), (iii), or (iv)]~~ (b) (1) (A), (B), (C), or (D) for the first violation, and ~~[\$2,000]~~ \$4,000 for a subsequent violation;
- ~~[(ii)]~~ ~~[\$100]~~ (B) \$200 for any person who violates paragraph ~~[(1)(A)(v)]~~ (b) (1) (E) for the first violation, and ~~[\$200]~~ \$400 for a subsequent violation;

- ~~[(iii)]~~ \$500 (C) \$1,000 for any person who violates paragraph ~~[(1)(A)(vi)]~~ (b) (1) (F), (G), or (H) for the first violation, and ~~[\$1,000]~~ \$2,000 for a subsequent violation.
- ~~[(2)]~~ (c) Resolution of field citation.
- ~~[(A)]~~ (1) A person issued a field citation may accept the citation by:
- ~~[(i)]~~ (A) Signing the field citation;
- ~~[(ii)]~~ (B) Paying the full amount indicated on the field citation.
- Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
- ~~[(iii)]~~ (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
- ~~[(iv)]~~ (D) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- ~~[(B)]~~ (2) By signing the field citation, the person to whom it was issued agrees to:
- ~~[(i)]~~ (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or

otherwise challenge the field citation;

~~[(i)]~~ (B) Pay the amount indicated; and

~~[(ii)]~~ (C) Correct the violation;

~~[(C)]~~ (3) If the field citation is not accepted in compliance with paragraph ~~[(2)(A)]~~, (c)(1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

~~[(3)]~~ (d) Form of citation. The department shall prescribe a field citation form. [Eff and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp]
(Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-55-41 Zones of mixing. (a) Zones of mixing are defined and authorized for use in ~~[discharge]~~ NPDES permits in section 11-54-1. This only applies to NPDES individual permits. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.

~~[(b) Establishment, renewal, and termination.~~

~~(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and~~

~~the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.~~

- ~~(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.~~
- ~~(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.~~
- ~~(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being~~

~~considered concurrently with the discharge permit.~~

- ~~(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:~~
 - ~~(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;~~
 - ~~(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;~~
 - ~~(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and~~
 - ~~(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.~~
 - ~~(E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.~~
- ~~(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:~~
 - ~~(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the~~

~~adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;~~

~~(B) The director may issue a zone of mixing for a period not exceeding five years;~~

~~(C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established.~~

~~Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and~~

~~(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other~~

~~controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.~~

- ~~(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.~~

- ~~(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.~~
- ~~(9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.~~
- ~~(10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.~~
- ~~(11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.]~~
- (b) Application for a zone of mixing.
- (1) Application for establishment of a zone of mixing shall be made concurrently with any applications for an NPDES individual permit whenever applicable.
- (2) Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to

- standards, and other information as the director may prescribe.
- (3) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.
- (c) Approval and establishment of a zone of mixing.
- (1) Approval of a zone of mixing shall be made after the public participation process in sections 11-55-09 and 11-55-13 for the NPDES individual permit and associated zone of mixing.
- (2) No zone of mixing shall be established or approved by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
- (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
- (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public;
- (D) The discharge occurring or proposed to occur does not violate applicable water quality standards contained in chapter 11-54 (except for pollutants for which dilution is being requested and only within the boundary of the zone of

- mixing or initial dilution), will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control; and
- (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
- (4) Conditions of a zone of mixing shall be incorporated as conditions of the NPDES individual permit for the facility that has been granted a zone of mixing.
- (5) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it

shall be allowed only until the
necessary means for prevention, control
or abatement become practicable, and
subject to the taking of any substitute
or alternative measures that the
director may prescribe;

- (B) The director may issue a zone of mixing
for a period not exceeding five years;
- (C) Every zone of mixing established under
this section shall include conditions
requiring the applicant to perform
effluent monitoring, at a minimum, for
pollutants with effluent limitations
established in the permit, and
receiving water quality monitoring, at
a minimum, for pollutants for which a
zone of mixing is established.
Additional effluent and receiving water
monitoring, including monitoring of
bottom biological communities, may be
required as appropriate. The results
of all required monitoring shall be
reported to the director. A program of
research to develop reasonable
alternatives to the methods of
treatment or control in use by the
applicant may be required if research
is deemed prudent by the director; and
- (D) In order to prevent high temperature
discharges from violating section 11-
54-04(a)(4), no new or increased
domestic, industrial, or other
controllable source shall discharge at
a maximum temperature which will cause
temperatures to exceed three degrees
Celsius above ambient, or thirty
degrees Celsius, whichever is less,
within one meter of the bottom within a
zone of mixing. For discharges with or

without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

- (6) Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. §1251).
- (7) When establishing numeric effluent limitations for pollutants for which a zone of mixing or zone of initial dilution has been granted, the director shall account for dilution applicable to that pollutant when determining final numeric effluent limitation values.
- (d) Renewal of a zone of mixing.
- (1) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41.
- (2) The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable.
- (3) No renewal shall be allowed except upon application.

- (4) Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.
 - (5) No renewal of a zone of mixing established under this section shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved.
- (e) Revocation, suspension, or modification of a zone of mixing.
 - (1) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS, and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS, have been violated.
 - (2) In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters.
 - (3) The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (f) Termination of a zone of mixing.
 - (1) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
 - (2) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee, unless the NPDES individual permit for the facility which has been granted the zone of mixing has been administratively extended.

(g) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law. [Eff and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-55-42 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant that is present in the intake water body.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific

factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and
- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;
- (2) The facility does not chemically or

physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;

- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,
- (4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water" or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and
- (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee:

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained

during the permit term; and

(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply." [Eff and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

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

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

4. These amendments to and compilation of chapter 11-55, 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.

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED AS TO FORM:

Dale K. Sakata

Deputy Attorney General

V. Administrative Matters

A. Update on the Status of the Board's Proposed Phase II Website Project

No Attachments

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

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