



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594

AGENDA

Wednesday, February 17, 2016 ★ 1:00 p.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

I. Call to Order

David Y. Ige
Governor

II. Approval of January 27, 2016 Meeting Minutes

Luis P. Salaveria
DBEDT Director

III. Old Business

Members

Anthony Borge
Chairperson
Oahu

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11, Chapter 62, **Wastewater Systems**, promulgated by Department of Health (DOH) - *attached and incorporated as Exhibit 1*

Harris Nakamoto
Vice Chairperson
Oahu

IV. New Business

Barbara Bennett
2nd Vice Chairperson
Kauai

- A. Discussion and Action on Proposed Amendments to **Rules & Regulations of the Liquor Control Commission of the County of Kauai**, promulgated by Department of Liquor Control, County of Kauai - *attached and incorporated as Exhibit 2*

Kyoko Y. Kimura
Maui

- B. Discussion and Action on Proposed New HAR Title 3, Chapter 182.1, **State Electrical Code**, and Repeal of HAR Title 3, Chapter 182, **State Electrical Code**, promulgated by the State Building Code Council, Department of Accounting and General Services – *attached and incorporated as Exhibit 3*

Robert Cundiff
Oahu

- C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 55, **Water Pollution Control**, promulgated by DOH - attached and incorporated *as Exhibit 4*

Nancy Atmospera-Walch
Oahu

- D. Discussion and Action on Proposed new HAR Title 4, Chapter 138, **Hawaii-Grown Cacao and Hawaiian Chocolate**, promulgated by the Department of Agriculture – *attached and incorporated as Exhibit 5*

Phillip Kasper
Maui

V. Legislative Matters

- A. **Discussion, Status, and Action on House Bill 774, HD1 SD1, Relating to Small Business** – Makes an appropriation to the Department of Business, Economic Development and Tourism for the Small Business Regulatory Review Board to hire additional staff
- B. **Discussion and Action on House Bill 1912, “Relating to Administrative Rules”** – Establishes a task force to review administrative rules and recommend the repeal of rules that are no longer statutorily authorized

Garth Yamanaka
Hawaii

Director, DBEDT
Voting Ex Officio

VI. Administrative Matters

- A. Discussion on *The Need for Modernizing Hawaii’s Informal Rulemaking Procedure*, by Denver S. Coon, William S. Richardson School of Law, Spring 2014

VII. Next Meeting: Scheduled for Wednesday, March 16, 2016, at 1:00 p.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

VIII. Adjournment

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

February 17, 2016 ~ SBRRB Meeting Checklist

| Member Attendance | | | | |
|-----------------------------------|--------------------|-------|--------------|--------|
| | Airline Preference | From | Details | Attend |
| Anthony Borge, Chair | NA | Oahu | Parking Pass | Yes |
| Barbara Bennett, 2nd Vice Chair | HA | Kauai | Parking Pass | No |
| Kyoko Kimura (Travel-attached) | HA | Maui | Parking Pass | Yes |
| Harris Nakamoto, Vice Chair | NA | Oahu | NA | Yes |
| Director's ex officio Mark Richey | NA | Oahu | NA | Yes |
| Robert Cundiff | NA | Oahu | Parking Pass | No |
| Nancy Atmospera-Walch | NA | Oahu | NA | No |
| Phillip Kasper | HA | Maui | Parking Pass | No |
| Garth Yamanaka (Travel-attached) | HA | B.I. | Parking Pass | Yes |

| Pre Meeting Checklist | |
|--|-----------------------------|
| Conference Room #436 (Confirm each month) | ✓ |
| Make 12 - 15 copies of rule packages for board packets <i>Working on</i> | ✓ |
| Poll Board Attendance - Working on <i>Nancy?</i> | ✓ |
| Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF = Incorrect | X |
| Airline booking ASAP - Linda | ✓✓ <i>Done</i> |
| Draft Agenda to Chair for approval | ✓ <i>Approved</i> |
| Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office | ✓✓ <i>X</i> |
| Send Agendas to those people who requested it - IMPORTANT | ✓ <i>Done</i> |
| Mail Board Packets to Board members, Deputy AG | ✓ <i>Working on Done</i> |
| Include "discussion leader" names on the agendas to Board members only. | ✓ |
| Adel poliet of Agendas to be sent out - mattrossell@ad-international.org | ✓ |
| Include parking permits in Board members' agenda packets. | ✓ <i>Tim Wynne Done</i> |

| STAFF | | | |
|----------------|----------------|--|-------|
| Margaret Ahn | Amended Packet | | Yes |
| Dori Palcovich | Amended Packet | | Yes |
| | | | Exhrr |

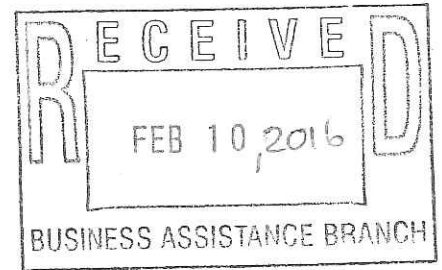
| Other Post Meeting Checklist | |
|--|--|
| Invite the attached Agencies to next Board Mtg | |
| | |

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - February 17, 2016

| | Name | Title | Organization | Email | Phone |
|----|-------------------------|-----------------|--|--------------------------------|--------------|
| 1 | Mike Stone | Field Rep | NEMA | mike.stone@nema.org | 707-495-8424 |
| 2 | TIM MCCLINTOCK | Electrical Spec | NFAA | timclintock@nfaa.org | 530-749-9772 |
| 3 | Gerald Rapozo | Director | Dept. of Liquor Control County of Kauai | grapozo@krc.kauai.gov | 808-241-4969 |
| 4 | Alec Wong | Manager | Dept of Health | alec.wong@doh.hawaii.gov | 586-4309 |
| 5 | Darryl Lund | Eng | " | darryllund@doh.hawaii.gov | " |
| 6 | Reef Migitz | Eng | " | reef.migitz@doh.hawaii.gov | " |
| 7 | Glenn Haase | ENG | " | glenn.haase@doh.hawaii.gov | " |
| 8 | Al Itamoto | Exec Dir | Electrical Contractors also | aitamoto@ecabi.com | 927-9302 |
| 9 | Sina Puder | Manager | DOH | sina.puder@doh.hawaii.gov | 586-4294 |
| 10 | Robert Whittier | Geologist | DOH | robert.whittier@doh.hawaii.gov | 586-0452 |
| 11 | Carol Goessel | Visitor | | | |
| 12 | Peter Ruskin | visitor | | | |
| 13 | Ed Szeky | Ad Spec | State Fire Comm | eszeky@hoholulu.gov | 773-7169 |
| 14 | Ted Bohler Deputy AG | | AG | ted.bohler@hawaii.gov | 587-3050 |
| 15 | LLOYD ROGERS | AD SPEC | STATE FIRE COMMISSION | lrogers@hoholulu.gov | 723-7176 |
| 16 | | | | | |

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - August 17, 2016

| | Name | Title | Organization | Email | Phone |
|----|-------------------|-------------------------|---------------------------------|-------------------------------|----------|
| 1 | MARK PERIELLO | PRESIDENT | KAWAI CHAMBER | MARK@KAWAICHAMBER.ORG | |
| 2 | JoAnn Vidinhar ✓ | Administrator | Dept of Labor | joann.a.vidinhar@hawaii.gov | 586-9151 |
| 3 | Diane Lam ✓ | Prog. Spec | DLIR | Diane.M.Lam@hawaii.gov | 587-8794 |
| 4 | Shelli Gomes ✓ | " " | " | Shelli.C.Gomes@hawaii.gov | X9154 |
| 5 | CLYDE IMADA ✓ | " " | " | CLYDE.T.IMADA@HAWAII.GOV | 5878782 |
| 6 | Mark Garrity | Deputy Dir | Dept of Transportation Services | mgarrity@honorolulu.gov | 768-8304 |
| 7 | Dre Kalili | Revenue Enhancement Mgr | State DOT | dreanalee.k.kalili@hawaii.gov | 587-1933 |
| 8 | PAULS YOGI ✓ | ADMINISTRATOR | DOT | pauls.yogi@hawaii.gov | 587-1528 |
| 9 | Leonard Hoshijo ✓ | Deputy Dir | DLIR | leonard.hoshijo@hawaii.gov | |
| 10 | Elienne Yoshida | RS IV | DLIR | | |
| 11 | Janet Kaye | RSV | DLIR | Janet.m.kaye@hawaii.gov | 586-9005 |
| 12 | | | | | |
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Rules Amending Title 11
Hawaii Administrative Rules

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1. Chapter 62 of Title 11, Hawaii Administrative Rules, entitled "Wastewater Systems" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 62

WASTEWATER SYSTEMS

Subchapter 1 Prohibitions and General Requirements

| | |
|-------------|---|
| §11-62-01 | Preamble |
| §11-62-02 | Purpose and applicability |
| §11-62-03 | Definitions |
| §11-62-04 | County wastewater advisory committee |
| §11-62-05 | Critical wastewater disposal areas (CWDA) |
| §11-62-06 | General requirements |
| §11-62-07 | Repealed |
| §11-62-07.1 | Requirements for non-domestic wastewater |
| §11-62-08 | Other requirements for wastewater systems |
| §11-62-09 | Public access to information |
| §11-62-10 | Public hearings and informational meetings |
| §11-62-11 | Incorporation by reference |
| §11-62-12 | Timely processing |

Subchapter 2 Wastewater Treatment Works

| | |
|-------------|--|
| §11-62-21 | Repealed |
| §11-62-22 | Repealed |
| §11-62-23 | Repealed |
| §11-62-23.1 | Specific requirements for wastewater treatment works |
| §11-62-24 | Treatment unit requirements |
| §11-62-25 | Wastewater effluent disposal systems |
| §11-62-26 | Wastewater effluent requirements, recycled water quality and monitoring requirements applicable to treatment works treating wastewater |
| §11-62-27 | Recycled water systems |
| §11-62-28 | Additional monitoring, recordkeeping, and reporting |
| §11-62-29 | (Reserved) |

Subchapter 3 Individual Wastewater Systems

| | |
|------------------------|--|
| §11-62-31 | Repealed |
| §11-62-31.1 | General requirements for individual wastewater systems |
| §11-62-31.2 | Site evaluation |
| §11-62-32 | Spacing of individual wastewater systems |
| §11-62-33 | Repealed |
| §11-62-33.1 | Specific requirements for new and proposed treatment units |
| §11-62-34 | Specific requirements for new and proposed disposal systems |
| §11-62-35 | Other individual wastewater systems |
| §11-62-36 | Cesspools |
| §11-62-37 | Application for and review of building permits and individual wastewater systems |
| §§11-62-38 to 11-62-39 | (Reserved) |

Subchapter 4 Wastewater Sludge Use and Disposal

| | |
|-----------|--------------------------------------|
| §11-62-41 | General requirements and prohibition |
|-----------|--------------------------------------|

| | |
|-------------|--|
| §11-62-41.1 | Relation to federal law |
| §11-62-42 | Land application of exceptional quality wastewater sludge |
| §11-62-43 | Land application of other than exceptional quality wastewater sludge, to agricultural land, forest, public contact site, or reclamation site |
| §11-62-44 | Land application of domestic septage to agricultural land, forest, or reclamation site |
| §11-62-45 | Repealed |
| §11-62-46 | Pathogens |
| §11-62-47 | Vector attraction reduction |
| §11-62-48 | Sampling method |

Subchapter 5 Wastewater Management Permits and Registration

| | |
|--------------|--|
| §11-62-50 | Registration and permits |
| §11-62-51 | Fees |
| §11-62-52 | Signatories and certification requirements |
| §11-62-53 | Wastewater management registration |
| §11-62-54.01 | Wastewater management individual permits |
| §11-62-54.02 | Draft individual permits |
| §11-62-54.03 | Fact sheets |
| §11-62-54.04 | Public notices of draft individual permits; public comments and hearing requests |
| §11-62-54.05 | Public meetings or hearings on individual permits |
| §11-62-54.06 | Public notice of public meetings or hearings on individual permits |
| §11-62-54.07 | Response to comments |
| §11-62-54.08 | Issuance of individual permits; duration, conditions |
| §11-62-54.09 | Schedules of compliance |
| §11-62-55.01 | Repealed |
| §11-62-55.02 | Repealed |
| §11-62-55.03 | Requiring an individual permit |
| §11-62-55.04 | Repealed |

§11-62-55.05 Repealed
§11-62-55.06 Repealed
§11-62-55.07 Repealed
§11-62-55.08 Repealed
§11-62-56 Standard permit conditions
§11-62-57.01 Transfer of permits
§11-62-57.02 Modification or revocation and
reissuance of permits
§11-62-57.03 Termination of permits
§11-62-57.04 Renewal of permits
§11-62-58 Conflict of interest

Subchapter 6 Wastewater and Wastewater Sludge
Pumpers and Haulers

§11-62-60 Applicability
§11-62-61 Registration requirements
§11-62-62 Recordkeeping and reporting

Subchapter 7 Variances, Penalties and
Severability

§11-62-71 Variances
§11-62-72 Penalties and remedies
§11-62-73 Severability
§11-62-74 Public participation in enforcement

Subchapter 8 Field Citations

§11-62-81 Purpose
§11-62-82 Offer to settle; settlement amounts
§11-62-83 Resolution of field citation
§11-62-84 Form of citation

SUBCHAPTER 1

PROHIBITIONS AND GENERAL REQUIREMENTS

§11-62-01 Preamble. The department of health seeks to ensure that the use and disposal of wastewater and wastewater sludge does not contaminate or pollute any valuable water resource, does not give rise to public nuisance, and does not become a hazard or potential hazard to the public health, safety, and welfare.

The department of health seeks to migrate towards an ultimate goal of regional sewage collection, treatment and disposal systems [which] that are consistent with state and county wastewater planning policies. Off-site treatment and disposal systems, followed in priority by on-site systems, meeting health and environmental standards will be allowed whenever they are consistent with state and county wastewater planning policies and on the premise that these systems will eventually connect to regional sewage systems. Individual wastewater systems may be utilized in remote areas and in areas of low population density. [A goal has been established such that the] Hawai'i is long overdue in eliminating construction of wastewater disposal systems depositing untreated sewage into the environment [will not be allowed], such as cesspools. Indeed, the department stated in its prior rules back in the 1990's, with the agreement of all counties' wastewater advisory committees, that installation of new cesspools should end after the year 2000. [As a means to this end, upon the adoption of these rules, new publicly owned buildings shall utilize a method of sewage disposal other than cesspools.]

The department of health seeks to work in close partnership with the counties [on] to manage wastewater [management matters, seeks to allow each county to participate in the implementation of these rules through the recommendations of a county wastewater advisory committee to the director, and seeks to encourage each county to assume complete administration of the wastewater treatment system program within their county] to prevent pollution and

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harm to public health, safety and welfare. Each county may participate in the implementation of these rules through the recommendations of a county wastewater advisory committee to the director.

The department of health seeks to advance the use of recycled water and wastewater sludge consistent with public health and safety and environmental quality. The state department of health acknowledges that when properly treated and used, all recycled water and wastewater sludge are valuable resources with environmental and economic benefits and can be used to conserve the State's precious resources. The director acknowledges that the most highly treated recycled water and exceptional quality wastewater sludge can be used for a wide variety of applications with the appropriate restrictions and when best management practices and other requirements of this chapter are met. [Eff 12/10/88; am and comp 12/09/2004; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3)

§11-62-02 Purpose and applicability. (a) [These rules seek] This chapter seeks to ensure that the use and disposal of wastewater and wastewater sludge from wastewater systems:

- (1) Do not contaminate or pollute any drinking water or potential drinking water supply, or the waters of any beaches, shores, ponds, lakes, streams, groundwater, or shellfish growing waters;
- (2) Do not encourage the harborage of insects, rodents, or other possible vectors;
- (3) Do not give rise to nuisances;
- (4) Do not become a hazard or a potential hazard to public health, safety and welfare;
- (5) Contribute to the achievement of wastewater management goals contained in approved county water quality management plans;
- (6) Reinforce state and county planning policies; and

(7) Are consistent with the State's administration of the National Pollutant Discharge Elimination System.

(b) [These rules] This chapter seeks to advance the appropriate uses of recycled water and wastewater sludge.

(c) This chapter allows and does not preempt[:] provisions in county codes, rules or ordinances that are not inconsistent with these rules, including, without limitation:

- (1) Plumbing requirements in county plumbing codes or rules, including county adoptions of all or parts of the Uniform Plumbing Code;
- (2) Sanitary sewer system and wastewater treatment works use permission and pretreatment requirements in county ordinances or rules regarding the introduction of fats, oils, grease, septage, sludge, or wastewater into sanitary sewers or wastewater treatment works, requirements on the use of grease traps, and requirements on wastewater and wastewater sludge pumping and hauling;
- (3) Storm sewer system use permission requirements in county ordinances or rules; or
- (4) Water recycling requirements in county ordinances or rules, including requirements for connection to or use of available recycled water. [Eff 12/10/88; am and comp 12/09/2004; am and comp]
(Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; HRS ch. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 501, 503)

§11-62-03 Definitions. As used in this chapter: "Activated sludge process" means a biological wastewater treatment process in which a mixture of wastewater and microorganisms is agitated with induced

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aeration. Aeration supplies dissolved oxygen and wastewater supplies the organic substrate necessary for microorganism growth. This process includes sedimentation units which follow the aeration and where settled solids are withdrawn for disposal or returned to the aeration unit.

"Aerobic treatment unit system" shall have the same meaning as defined in Chapter 235, HRS.

"Aerosol" means a solid suspended in air with or without preceding evaporation.

"Bedrock" means a continuous horizontal layer of hardened mineral deposits that does not support the growth of common plant life.

"Bedroom" means any room within a dwelling that is or might reasonably be used as a sleeping room. A room is presumed to be a bedroom if it has a superficial floor area not less than seventy square feet and is provided with windows or skylights with an area of not less than one-tenth of the floor area or ten square feet, whichever is greater [and having at least one-half of the window or skylight area being operable to provide natural ventilation].

"Best management practices" or "BMPs" means the most effective, practical schedules of activities, prohibitions of conduct, maintenance procedures, and other specifications of conduct to prevent or reduce the pollution. BMPs also include treatment requirements, operating procedures, and practices to site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

"BOD₅" means five days biochemical oxygen demand as measured by a standard test indicating the quantity of oxygen utilized by wastewater under controlled conditions of temperature and time.

"Building" means a structure, permanent or temporary, built, erected, and framed of component structural parts used or designed for the housing, shelter, workplace, enclosure or support of persons, animals or property of any kind.

"Building modification" means any change to an existing building's configuration that may result in the increase in wastewater flows or change in the wastewater characteristics.

"Cesspool" means an individual wastewater system consisting of an excavation in the ground whose depth is greater than its widest surface dimension, which receives untreated wastewater, and retains or is designed to retain the organic matter and solids discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

"Collection system" means the conveyance system, which includes the building and street sewer laterals, interceptor sewer, sewage pump station, and force main, used to transport the sewage to the treatment unit.

"Composite sample" means sample(s) collected on regular intervals in proportion to the existing flow or volume and then combined to form a sample that represents the flow or volume over a period of time or space.

"Compost toilet" means a non-flush, waterless toilet that employs an aerobic composting process to treat toilet wastes.

"Confined work areas" means any area having a limited means of egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined work areas include, but are not limited to, storage tanks, process vessels, bins, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines, and open top spaces more than four feet in depth such as pits, tubs, vaults and vessels.

"Construction" in the context of a wastewater system means the building of the system in the ground; construction is not completed until the system has been fully installed so that it is ready for hookup.

"Contractor" means the installer of a wastewater system or any part of a wastewater system.

"County" means any county of the state.

"Critical Wastewater Disposal Area (CWDA)" means an area where the disposal of wastewater has or may cause adverse effects on human health or the environment due to existing hydrogeological conditions.

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["CWDA maps" means the maps attached at the end of this chapter as appendix E, pages E-1 through E-6, indicating the boundaries of the critical wastewater disposal areas established pursuant to section 11-62-05(a) and dated March 16, 1990 and amended April 15, 1997.]

"Department" means the department of health.

"Director" means the director of health or the director's duly authorized agent, including a contractor of the director.

"Disinfection" means a process to destroy, neutralize, or inhibit the growth of pathogenic microbes.

"Disposal system" means any sewer, sewer outfall, sewer lateral, seepage pit, cesspool, injection well, soil absorption system, disposal trench, or other facility used in the disposal of wastewater or wastewater sludge, including any wastewater transmission lines, pumps, power, or other equipment associated with the ultimate disposal of wastewater or wastewater sludge.

"Distribution box" means a watertight chamber from which effluent from a treatment unit is distributed evenly to various portions of a disposal system.

"Drip irrigation" means application of water and wastewater, including recycled water, from emitters, either on the surface or subsurface, that are part of a piping system alongside the plants being irrigated and that discharges at a rate not to exceed two gallons per hour per emitter.

"Domestic sewage" is waste and wastewater from humans or household operations that[:] is:

- (1) [Is discharged] Discharged to or otherwise enters a treatment works; or
- (2) [Is of] Of a type that is usually discharged to or otherwise enters a treatment works or an individual wastewater system.

"Domestic wastewater" has the same meaning as "domestic sewage".

"Dwelling" means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants and includes, but is not

limited to, apartment houses, single family houses, duplex houses, cluster houses, townhouses, and planned developments, but excludes hotels and lodging houses.

" Dwelling unit " means any habitable room or group of habitable rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

" Engineer " means a professional engineer registered in the State of Hawaii.

" EPA " means the [U.S.] United States Environmental Protection Agency.

" EPA's methods for chemical analysis of water and wastes " means the 1979 edition of " Methods for Chemical Analysis of Water and Wastes " as published by the EPA.

" Evapotranspiration system " means a subsurface disposal system which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

" Exceptional quality sludge " means wastewater sludge that has been treated to a level specified in [these rules] this chapter in which it may be used with little or no restrictions for land application.

" Existing " means constructed under a valid county permit or with written approval from the director before the effective date of this rule.

" Filter fabric " means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt and clay through the filter material. This material shall be non-biodegradable, resistant to acids and alkalies within a pH range of 4 to 10, and resistant to common solvents.

[" General permit " means a rule or document that authorizes each of a class of people, facilities, or sources to generate, treat, use, dispose, or discharge of wastewater, including recycled water, and wastewater sludge within a specified geographic area. General permit refers to a type of permit that has fewer procedural requirements than an individual permit.]

" Grab sample " means a single discrete sample of wastewater collected at a particular time and place

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which represents the composition of the source at that time and place.

"Graywater" [means wastewater from a dwelling or other establishment produced by bathing, washdown, minor laundry and minor culinary operations, and specifically excluding toilet waste.] shall have the same meaning as defined in HRS section 342D-1.

"Haul" means the transport of an item by vehicle or boat.

"Holding tank" means a nonportable, watertight closed vault used or designed to temporarily hold domestic wastewater.

"Household aerobic unit" means an individual wastewater system which receives domestic wastewater from dwellings or from other sources generating wastewater of a similar volume and strength, and retains solids, aerobically digests organic matter over a period of time, and allows the clarified effluent to discharge outside the tank into a disposal system.

"Individual permit" means a document issued under this rule to a specific person for a specific facility, or practice to generate, treat, use, dispose, or discharge of wastewater and wastewater sludge at a specific location.

"Individual wastewater [system] systems" means [a facility which is used and designed to receive and dispose of no more than one thousand gallons per day of domestic wastewater. Each individual wastewater system includes all connected plumbing, treatment (if any), and disposal components that could, if not connected, serve as separate wastewater systems.] facilities, such as septic systems, aerobic treatment units, and cesspools, that are not connected to a sewer and are used and designed to receive and dispose of:

(1) No more than one thousand gallons per day of domestic wastewater; or

(2) Greater than one thousand gallons per day of domestic wastewater from buildings with highly variable flows.

"Injection well" has the same meaning as defined in chapter 11-23.

"Land application" means the spraying or spreading of wastewater sludge onto the land surface, the injection of wastewater sludge below the land surface, or the incorporation of wastewater sludge into the soil such that the wastewater sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"Large capacity cesspool" means a cesspool that serves more than one residential dwelling or, for a non-residential cesspool, has the capacity to serve twenty or more persons per day.

"Living area" means the portion(s) of a dwelling unit including, but not limited to, the bedroom, kitchen, bathroom, living room, family room, covered lanai, den, and library, but excluding the garage, carport, open lanai, fence, and utility shed.

"Makai" means toward the sea or the area outside the Underground Injection Control (UIC) Line encircling the protected aquifer.

"Manual of Septic Tank Practice" means the United States Department of Health, Education and Welfare Publication No. (HSM) 72-10020, formerly known as "PHS Publication No. 526", revised in 1967.

"Modal time" means the amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in water where it is discharged from the chamber.

"Mound system" means a soil absorption system which is installed in or below an artificially created mound or earth.

"MPN" means most probable number.

"New" means constructed on or after the effective date of this chapter.

"Non-domestic wastewater" means all wastewater excluding domestic wastewater.

"Non-exceptional quality wastewater sludge" means wastewater sludge that is not exceptional quality wastewater sludge.

["Notice of intent" or "NOI" means a form or document used to notify the director that a person seeks coverage under a general permit.]

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"Owner" means a person(s) who has legal title to a treatment works or individual wastewater system, or duly authorized representative of the owner.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person" has the same meaning as defined in section 342D-1, HRS.

"Person who prepares wastewater sludge" means anyone who generates wastewater sludge during the treatment of wastewater in a wastewater treatment works, a person who derives a material from wastewater sludge, a person who provides treatment of wastewater sludge, or a person who changes the quality of wastewater sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25 degrees Celsius or measured at another temperature and then converted to an equivalent value at 25 degrees Celsius.

"Private" means not owned or operated by a federal, state, or county authority.

"Proposed" means put forward for consideration or suggested to the director. For the purposes of this chapter, [it] "proposed" shall refer to the plans for a wastewater system or activity.

"Public" means, for issues of ownership, owned or operated by a federal, state, or county authority.

"Public water system" has the same meaning as defined in chapter 11-20.

"Qualified cesspool" shall have the same meaning as defined in Chapter 235, HRS.

"Qualified expenses" shall have the same meaning as defined in Chapter 235, HRS.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in this chapter.

"R-2 water" means recycled water that has been oxidized and disinfected to meet the corresponding standards set in this chapter.

"R-3 water" means recycled water that has been oxidized to meet secondary treatment standards as set forth by EPA.

"Recycled water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Recycled water system" means a facility which conveys to users or uses recycled water. Recycled water systems are subdivided into distribution and use systems. Recycled water systems include all piping, storage, and repressurization facilities to deliver recycled water to users, but exclude treatment units.

"Residential large capacity cesspool" shall have the same meaning as defined in Chapter 235, HRS.

"Reuse guidelines" means the "Guidelines for the treatment and use of reclaimed water", Hawaii State Department of Health, Wastewater Branch, November 23, 1993, [and] revised [May 15, 2002] January 2016.

"Seepage pit" means an excavation in the ground whose depth is greater than its widest surface dimension and which receives the discharge from treatment units and permits the effluent to [seep]exit through its bottom or sides [to gain access to the underground formation.] for gradual seepage into the ground which does not result in contamination of water-bearing formations or surface water.

"Septage" means either a liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives wastewater.

"Septic system" shall have the same meaning as defined in Chapter 235, HRS.

"Septic tank" means a watertight receptacle [which] that receives the raw wastewater, retains after settling solid matter or sewage for treatment by bacteria, and discharges a [settled,] partially treated effluent.

"Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation device pumpings (33 Code of Federal Regulations Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

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"Sewer" means a pipe or conduit or any other appurtenances that carry wastewater from a building or buildings to a specific point for treatment and disposal.

"Sewer system" shall have the same meaning as defined in Chapter 235, HRS.

"Soil absorption" means a process which uses the soil to treat and dispose of effluent from a treatment unit.

"Spray irrigation" means application of water and wastewater, including recycled water, to the land to maintain vegetation or support the growth of vegetation by spraying the water and wastewater above ground from sprinklers, micro-sprinklers, or orifices in piping.

"SS" means suspended solids and indicates the characteristic state of solids in wastewater.

"Standard methods" means the [17th] 22nd edition, [1989,] 2014, of "Standard Methods for the Examination of Water and Wastewater" as published by the American Water Works Association, American Public Health Association and the Water Pollution Control Federation, unless another edition is specified by the director.

"State waters" shall have the same meaning as defined in section 342D-1, HRS.

"Subsurface disposal system" means a disposal system [which permits effluent to reach the underground geologic formation] that allows the gradual seepage of effluent into the ground which does not result in contamination of water-bearing formations or surface water, such as a seepage pit, cesspool, [injection well,] soil absorption system, or other facility used in the disposal of wastewater, including any wastewater transmission lines, pumps, power, or other equipment associated with the disposal of wastewater.

"Subsurface drip irrigation" means the application of water and wastewater, including recycled water, to the land to maintain vegetation or to support the growth of vegetation by discharging or emitting the water and wastewater from orifices in piping below the surface or finished grade.

"Suitable soil" means a soil which acts as an effective filter in the removal of organisms and suspended solids before the effluent reaches any highly permeable earth formations, bedrock, or groundwater.

"Surface disposal" means the placing of wastewater sludge on the land for final disposal and includes storage on land for two or more years.

"Surface irrigation" means the application of water and wastewater, including recycled water, by means other than spraying.

"Ten States Standards" means the 1980 edition of the Recommended Standards for Individual Sewage Systems, a report by the committee of the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers on the policies for review and approval of plans and specifications for individual wastewater systems.

"Theoretical detention time" means the value obtained by dividing the volume of a chamber, through which fluid flows, by the flow rate expressed in amount of fluid volume per unit of time.

"Treatment unit" means any plant, facility, or equipment used in the treatment of wastewater, including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment.

"Treatment works" means any treatment unit and its associated collection system and disposal system, excluding individual wastewater systems.

"Vector attraction" means the characteristic of wastewater sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Wastewater" means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes.

"Wastewater sludge" has the same meaning as "sewage sludge".

"Wastewater sludge facility" means a facility which collects, handles, stores, treats, or disposes of wastewater sludge. Wastewater sludge facilities shall exclude individual wastewater systems.

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"Wastewater system" means the category of all wastewater and wastewater sludge treatment, use, and disposal systems, including all wastewater treatment works, collection systems, wastewater sludge facilities, recycled water systems, and individual wastewater systems.

"Water pollution" has the same meaning as defined in section 342D-1, HRS.

"Watertight" means constructed so that no water can enter and discharge except through the inlet and outlet pipe respectively. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 328(a), 342D-1, 342D-4, 342D-5)
(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-1, 342D-2, 342D-4, 342D-5, 342D-50, 342E-3; 40 CFR Parts 501, 503, 40 CFR §501.2)

§11-62-04 County wastewater advisory committee.

(a) The mayor of each county may request that the director form a county wastewater advisory committee ("committee"), and the mayor may nominate its members, who may include representatives of the county water supply, public works, planning, and land utilization departments, labor, industry, environmental groups, and other interested people. The chief of the environmental management division on Oahu and the district environmental health program chiefs on the neighbor islands shall serve as [ex-officio] ex officio members of their respective county committees. The department shall provide technical and support services for the committee.

(b) The primary role of the committee is to review and make recommendations to the director on the application of [these rules] this chapter on matters which are unique to each county, on the establishment of critical wastewater disposal areas, on proposals which are not specifically addressed in these rules, and upon the director's request, for applications for variances. The committee's recommendations shall seek to advance the purposes of this chapter. [Eff 12/10/88; am 8/30/91; am and comp 12/09/2004; am and comp] (Auth: HRS §§321-11,

342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-05 Critical wastewater disposal areas (CWDA). (a) [The director may establish] All areas of the State are critical wastewater disposal areas [in each county based on one or more of the following concerns:

- (1) High water table;
- (2) Impermeable soil or rock formation;
- (3) Steep terrain;
- (4) Flood zone;
- (5) Protection of coastal waters and inland surface waters;
- (6) High rate of cesspool failures; and
- (7) Protection of groundwater resources].

(b) The director may impose more stringent requirements than those specified in [these rules] this chapter for wastewater systems located or proposed to be located within [any designated critical wastewater disposal area.] areas that require additional protection. Requirements that the director may impose include, but are not limited to, meeting higher effluent standards for wastewater systems, limiting the method of effluent disposal, and requiring flow restriction devices on water fixtures.

[(c) Proposed cesspools shall be severely restricted or prohibited in any designated critical wastewater disposal area.

(d) Areas designated as critical wastewater disposal areas pursuant to subsection (a) are indicated on the CWDA maps dated March 16, 1990 and revised April 15, 1997, which are attached to this chapter in appendix E, entitled CWDA Maps, dated April 15, 1997. Larger and more detailed copies of the maps are incorporated by reference and are available for examination at the department's environmental management division and district health offices. In case of a conflict between maps, the more detailed tax map key map designations shall control.] [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11,

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342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-06 General requirements. Owners shall comply with these requirements: (a) All buildings used or occupied as a dwelling, all public buildings, and all buildings and places of assembly [, and all buildings] generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater, shall be connected to a wastewater system. In addition, any new building capable of generating wastewater shall be connected to a wastewater system which meets the requirements of this rule.

(b) All [building(s)] buildings and places of assembly generating wastewater or with toilets, sinks, drains, or other plumbing fixtures capable of conveying wastewater and located within or near [proximity of] an available public sewer system as determined by the director, shall connect to the public sewer.

(c) All wastewater systems shall be designed, constructed, operated, and maintained in accordance with this chapter.

[(d) Buildings and operations, including farms, generating non-domestic wastewater shall meet the specific requirements of this chapter as determined to be applicable by the director.

(1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, the Reuse Guidelines, and wherever applicable the department's Guidelines for Livestock Waste Management (Animal Waste Guidelines) dated July 1996. The Reuse Guidelines and the Animal Waste Guidelines are available for inspection and purchase at the department's environmental management division and the district health offices. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for

determining the adequacy of compliance with the provisions of section 11-62-02.

- (2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts or conservation districts may be exempt from the provisions of subchapters 2 and 3, provided that such buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. However, the owner shall submit for the director's approval plans or engineering reports or both for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Such information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of section 11-62-02.

- (e)](d) Operation and maintenance. All wastewater systems and parts thereof that are installed or used by persons to achieve compliance with this [rule] chapter and the conditions of any [permit] department approval for use issued under this rule shall at all times be properly operated and maintained. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures as specified by the director. Effluent testing for private wastewater systems shall be performed by an independent laboratory. Proper operation and maintenance also includes operation of any required back-up or auxiliary facilities or similar systems as specified by the director to be installed to achieve compliance with this [rule] chapter and the conditions of any [permit] department approval for use issued under this [rule] chapter.

[(f)] (e) No holding tank, except for public facilities, and no privy shall be used. No portable

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toilets shall be used for any permanent structure unless approved by the director.

[(g)] (f) No person or the owner shall cause or allow any wastewater system to create or contribute to any of the following:

- (1) Human illness;
- (2) Public health hazard;
- (3) Nuisance;
- (4) Unsanitary condition;
- (5) Wastewater spill, overflow, or discharge into surface waters or the contamination or pollution of state waters, except in compliance with a permit or variance issued under chapter 11-55, or a water quality certification or waiver obtained under chapter 11-54;
- (6) A wastewater spill, overflow, or discharge (spill) onto the ground, except for R-1 water from a recycled water system that is implementing BMPs approved by the director. The burden of proof is on the recycled water system's owner or operator to demonstrate that the spill qualifies for this exception;
- (7) Harborage of vectors, including insects and rodents;
- (8) Foul or noxious odors;
- (9) Public safety hazard; or
- (10) Contamination, pollution, or endangerment of drinking waters, except in compliance with a permit issued under chapter 11-23.

[(h)](g) Notice. If any of the conditions in subsection [(g)](f) exist, the owner or the person responsible for the wastewater system shall notify the director immediately, unless for subsection [(g)(5)] (f)(5) and [(g)(6)] (f)(6), the owner or person responsible demonstrates compliance with the protocol attached to this chapter as [appendix C,] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills") dated [April 15, 1997.] July 1, 2014.

[(i)](h) In case of a violation of this chapter, the director, at the director's discretion, shall initiate enforcement action against the owner(s) of the wastewater system and initiate enforcement action

against other persons to have the offending condition abated, corrected, or removed [, destroyed, or prevented]. In addition, once a violation of this chapter occurs, the director shall order the [owner of the wastewater system] owner to take immediate actions to protect public health and safety.

[(j)](i) Duty to mitigate. The owners of wastewater systems shall take steps to minimize or prevent the use and disposal of wastewater or wastewater sludge in violation of this chapter which has a reasonable likelihood of adversely affecting human health or the environment.

[(k)](j) Upon request by the director, proposed wastewater systems in critical wastewater disposal areas shall be approved in writing or by rule by the respective county board of water supply or department of water supply.

[(l)](k) If applicable, a wastewater system involving the subsurface disposal of wastewater shall be in compliance with chapter 11-23.

[(m)](l) Approvals to-construct the wastewater system shall be considered invalid if:

- (1) A county does not issue a building permit for a private building within one year after the director approves the wastewater system, or the construction of the wastewater system has not begun within one year of the approval; and
- (2) A county revokes or rescinds a building permit and the building is to be served by a wastewater system that was approved in conjunction with the building permit application.

Reapproval of any wastewater system for which the director's approval has been rescinded or determined invalid pursuant to this paragraph shall be based on the applicable rules in effect at the time the request for reapproval is made.

[(n) Whenever] (m) The director, at the director's discretion, may require that a wastewater system be upgraded to meet the applicable requirements of this chapter whenever a building modification is proposed that may change the nature or quantity of the wastewater flowing to the wastewater system. The

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modifications may include but not be limited to adding additional bedrooms to a dwelling or adding a restaurant to a shopping complex. The director, at the director's discretion, may also require that a wastewater system be upgraded[, the wastewater system serving the building shall be required to be upgraded in order to meet the applicable requirements of this rule]if any of the following conditions exists:

- (1) The existing wastewater system has created or contributed to any of the conditions noted in subsection [(g);](f);
- (2) The existing wastewater disposal system has [been pumped more than twice] within the last twelve months [;] been pumped more than twice or has spilled wastewater more than once;
- (3) The existing wastewater system disposes untreated wastewater directly into the groundwater table; or
- (4) The owner of the existing wastewater system has not satisfactorily addressed [any] all of the deficiencies noted by the director.

[Upon the director's discretion and the engineer's recommendation, for a cesspool located below the Underground Injection Control Line, not disposing wastewater directly into the groundwater table, located in suitable soil, and meeting all distance requirements of Table II, the installation of a septic tank before the cesspool shall temporarily meet this upgrade requirement until such time that the director determines a new wastewater system is required.]

[(o)] (n) Modifications to wastewater systems that may affect the quality [and] or quantity of the wastewater and wastewater sludge shall meet the applicable provisions of this [rule] chapter.

[(p)] (o) Actions [of] taken by the director to evaluate and determine possible [engaged in the evaluation and determination of] measures [required]to [effect] achieve compliance with this chapter [shall in no way be taken as a] do not guarantee that [the] an approved wastewater [systems approved] system will function [in a satisfactory] satisfactorily [manner] for any [given] period of time, or mean that [the] department employees [assume any] are [liability]

liable for any damages, consequential or direct, that [which] are or may be caused[, or which may be caused,] by a malfunction of the wastewater systems. [(q)] (p) Duty to comply. The owners of any wastewater system shall comply with all applicable provisions of this chapter. In addition, all [permittees] owners shall comply with all conditions of any [permit] department approval for use issued under this chapter. Any noncompliance constitutes a violation and is grounds for: enforcement action; [for permit] department approval for use termination, revocation and reissuance, or modification; or denial of a [permit] department approval for use renewal application.

[(r)](q) In cases where the director is required to conduct an inspection at a location outside the State, the owner of the wastewater system shall be required to cover all costs related to the inspection. [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342D-15, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3; HRS chs. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 40 CFR §501.15(b)(6))

§11-62-07 REPEALED [R 8/30/91]

§11-62-07.1 Requirements for non-domestic wastewater. (a) The director will review the use and disposal of non-domestic wastewater on a case-by-case basis.

(b) Non-domestic wastewater includes, but is not limited to:

- (1) Wastewater from agricultural, commercial, or industrial activities or operations;
- (2) Solids, semi-solids, or liquids removed from the non-domestic wastewater;
- (3) Wastewater that contains a mix of both domestic and non-domestic wastewater; or

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(4) Solids, semi-solids, or liquids removed from wastewater that contains a mix of both domestic and non-domestic wastewater.

(c) Buildings and operations generating non-domestic wastewater, including farms, shall meet the specific requirements of this chapter as determined to be applicable by the director.

(1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, Chapter 11-23, the Department's Guidelines for the Treatment and Reuse of Recycled Water, and wherever applicable, Department's Guidelines for Livestock Waste Management. The Guidelines are available on-line at the Wastewater Branch section of the department's website. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining compliance with the provisions of this chapter.

(2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts, or conservation districts may be exempt from the provisions of subchapters 2 and 3 for its non-domestic wastewater provided that the buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. The owner shall submit for the director's approval plans or engineering reports, or both, for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of this chapter.

[(e)](d) [The director in] In determining treatment requirements for the non-domestic wastewater, the director shall use requirements for

non-domestic wastewater as set forth by EPA, [40 CFR 257, subchapter 4,] Chapter 11-23, the [Reuse Guidelines] Department's Guidelines for the Treatment and Reuse of Recycled Water and the [Animal Waste Guidelines] Department's Guidelines for Livestock Waste Management. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342E-3)

§11-62-08 Other requirements for wastewater systems. (a) Purpose.

- (1) It is the purpose of this section and subchapters 2, 3, and 4 to set forth minimum requirements for the following purposes:
 - (A) To clarify responsibilities of owners, engineers, and the department;
 - (B) To set minimum distance requirements so that nuisances are avoided;
 - (C) To set minimum requirements to protect public health, safety, and welfare, and to protect the wastewater systems from malicious damage or unauthorized entry; and
 - (D) To emphasize the need for proper design, installation, operation, and maintenance.
- (2) This section and subchapters 2, 3, and 4 give the engineer designing the wastewater system flexibility and design responsibility. The design engineer is responsible for the choice of equipment, types of treatment processes used, structural integrity, electrical components, disposal system designs, adequate work space, accessibility for operation, maintenance and repair, redundancy of major equipment and processes, corrosion control, and all other major aspects of wastewater system design.
- (3) Nothing in this chapter shall be construed to prevent the engineer from exceeding the minimum requirements if the engineer

determines that specific conditions warrant such additional measures.

(b) No person shall construct [or], modify the construction of, or modify the use of a wastewater system without the approval of the director. The following documents shall be submitted to the director prior to such approval:

(1) Construction plans prepared by or under the supervision of an engineer indicating the following:

- (A) Acreage, address, and tax map key number(s) of the project site;
- (B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies of water, drinking water sources, and existing public sewers within 2,000 feet of the nearest property line; and
- (C) Sufficient details to show compliance with all applicable requirements of this chapter.

(2) Construction plans for an individual wastewater system prepared by the engineer [shall show] showing sufficient details to enable the contractor to construct the individual wastewater system.

(3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.

(c) Whenever applicable, the design flow of any development to be served by a wastewater system shall be based on Appendix D, Table I, dated July 1, 2014, except as provided by section 11-62-24(b).

(d) Measures to control public accessibility to all treatment units shall be provided to prevent accidents, drownings, vandalism, and interference with the treatment process. At a minimum, the provisions shall include:

(1) Fencing or other secured enclosures at least six feet in height with no more than three

and a half inch clear openings or spaces for treatment units with exposed water surfaces or equipment; or

- (2) Completely enclosed treatment units with unexposed water surfaces and equipment. Access openings to completely enclosed treatment unit(s) and equipment shall be secured and properly identified, and be large enough to allow removal of equipment from the facility.

(e) No person shall use the area adjacent to or directly above any wastewater system for purposes or activities which may hinder or interfere with the operation and maintenance, modification, or replacement of the wastewater system.

(f) No person shall operate a wastewater system unless that person or the owner of the wastewater system is authorized by the director in accordance with the applicable provisions of sections 11-62-23.1(e) and 11-62-31.1(f) and the applicable provisions of chapter 11-61. The director may inspect the wastewater system or its site at any time before authorizing the use of the system and may require advance notice of the engineer's inspection.

(g) All wastewater systems shall be constructed or modified by a person meeting the requirements of [section] chapter 444, HRS, and any pertinent rules [promulgated] adopted by the department of commerce and consumer affairs, State of Hawaii. [Eff 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3) (Imp: §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-09 Public access to information. (a)
The following information is available for public inspection:

- (1) The name and address of any person seeking or obtaining registration, an individual permit, or [general permit coverage;] department approval for use of an individual wastewater system; and
- (2) Registration information and forms, registrations, individual permit

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applications and permits, [notices of intent to be covered by a general permit, general permit coverage notices,] department approval for use of an individual wastewater system, sludge and effluent data, and reports required to be submitted under this chapter. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(b) This section is not intended to limit chapter 92F, HRS, or any other law requiring the disclosure of information.

(c) Applications for request for public information regarding wastewater system shall be made in writing on forms furnished by the director. At a minimum, the application shall identify where the wastewater system is, including when possible the applicable street address to and tax map key of the lot, and a mailing address which the information is to be sent. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§91-2, 92-21, 342D-4, 342D-5, 342D-14) (Imp: HRS §§91-2, 92-21, 342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55)

§11-62-10 Public hearings and informational meetings. (a) The director may hold a public hearing in the director's discretion, when such a hearing may help the director's decision on a matter regulated by this chapter or for another reason which the director considers to be in the public interest.

(b) The director may hold a public informational meeting when the director considers it to be in the public interest. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, §501.15(d)(7))

§11-62-11 Incorporation by reference. Appendices A through [F] E, dated [April 15, 1997,] July 1, 2014, [and form A] located at the end of this chapter, [is] are made a part of this chapter. [Eff

and comp 12/09/04; am and comp
(Auth: 342D-4, 342D-5) (Imp: 342D-4, 342D-5, 342D-6) ¹

§11-62-12 Timely processing. (a) [The] This section applies to applications for a permit, license, certificate, or any form of approval required under this chapter.

(b) The director shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within one hundred eighty days of the receipt of the complete application. Otherwise, the application is deemed automatically approved on the one hundred eighty-first day.

(c) The director shall determine and notify an applicant of the completeness or deficiency of an application covered by this section, including payment of required fees, within forty-five days of receipt of the application. Failure by the applicant to provide additional information, pay the fees, or correct a deficiency for completeness of the application is sufficient ground to suspend or terminate a review of the application. The director shall determine and notify an applicant of the completeness of a revised application covered by this section, including payment of required fees, within thirty days of receipt of the revised completed application.

(d) Notice to the applicant shall be complete upon mailing, facsimile transmission, or electronic mail transmission.

(e) The period for the director's action includes all calendar days, but if the period ends on a Saturday, Sunday, or state holiday, the period extends to the next working day.

(f) The one hundred eighty day period for the director's action under subsection (b) applies to the director's initial decision and notice. The initial decision and notice do not become untimely if later there is a request for hearing, an actual hearing, a lawsuit, or other challenges to the initial decision which prevents it from becoming final.

(g) The time for the director's action and notice to the applicant shall be extended when allowed by section 91-13.5, HRS.

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(h) Any action taken and any wastewater system or sludge facility built, modified, or operated under an automatic approval shall comply with all applicable requirements of this chapter, and the automatic approval is effective for a period of one year. [Eff 10/21/00; comp 12/09/04; am and com]
(Auth: HRS §§91-13.5, 322-11, 322-8(a), 342D-4, 342D-5) (Imp: HRS §91-13.5)

SUBCHAPTER 2

WASTEWATER TREATMENT WORKS

§11-62-21 REPEALED [R 8/30/91]

§11-62-22 REPEALED [R 8/30/91]

§11-62-23 REPEALED [R 8/30/91]

§11-62-23.1 Specific requirements for wastewater treatment works. (a) In addition to the requirements of section 11-62-08(b), the following documents shall be submitted to the director prior to approval to construct the treatment works:

- (1) A written declaration signed and dated by the engineer that the proposed treatment works was designed to meet all applicable effluent requirements of sections 11-62-26 and 11-62-27; and
- (2) Certification by the owner of a proposed treatment works that the treatment works shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to subsection (d)(2). The owner shall certify that the operation and maintenance manual shall be available to the operator of the treatment works and shall further certify that, upon sale or transfer

of ownership of the treatment works, the sale or transfer will include construction drawings, equipment manuals, operational data collected, and the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(b) All treatment works shall be provided with a continuous effluent flow measuring device such that daily wastewater flow can be determined. For treatment works with design flows equal to or greater than 100,000 gallons per day, the continuous effluent flow measuring device shall include recording equipment to totalize or chart daily flows.

(c) Unless otherwise specified by the director, the following distance requirements apply to all treatment works:

- (1) Treatment units, except as provided in paragraph (3), shall not be less than twenty-five feet from any property lines nor less than ten feet from any building and swimming pools;
- (2) Disposal systems, excluding effluent irrigation systems, shall not be less than five feet from a property line nor less than five feet from any building; and
- (3) Completely enclosed, locked, and ventilated equipment rooms used to house items such as blowers, motors, pumps, electrical controls, and chemical feeders shall not be less than five feet from property lines or less than ten feet from dwelling unit(s).

(d) No person shall operate a treatment works unless the following documents are provided:

(1) A written declaration signed and dated by the engineer responsible for the preparation of the operation and maintenance manual for the treatment works, that the operation and maintenance manual meets paragraph (2) and that if the treatment works is operated in accordance with the manual, all applicable effluent requirements will be met; and

(2) An operation and maintenance manual prepared by the engineer. The manual [shall], as a

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minimum, shall provide the details on the following:

- (A) Operation and maintenance instructions for each pump station and treatment unit or process under normal and emergency conditions such as power outage and equipment malfunction;
- (B) Operation and maintenance instructions for the disposal system including procedures for purging or chemical "shock loading" to prevent or eliminate biological growth in the subsurface disposal system;
- (C) List of required sampling frequencies and analyses to be conducted by the operator;
- (D) Troubleshooting, corrective, and preventive measures to be taken to maintain process control and treatment performance;
- (E) Start-up procedures;
- (F) Applicable state effluent requirements;
- (G) Instructions on wasting and disposal of wastewater sludge;
- (H) Manpower requirements needed to operate and maintain the treatment works;
- (I) List of critical parts of the treatment works;
- (J) "As-built" drawings of the treatment works;
- (K) List of required daily activities, checks, and observations;
- (L) Logs or report forms for all operation and maintenance activities performed;
- (M) Flow schematic diagrams with details of piping and valving;
- (N) Plot plan of the treatment works and project site including all collection lines and equipment;
- (O) Details on all safety equipment at the treatment works site, any applicable spare parts, maintenance, and operation instructions; and

(P) Details on all monitoring equipment including spare parts, maintenance, and operating instructions.

(e) No person shall operate a treatment works until it has been inspected to the director's satisfaction and the director has authorized in writing the use of the treatment works.

(1) The owner's engineer shall inspect the treatment works and submit to the director a final inspection report stating whether the wastewater treatment works has been constructed according to the submitted plans approved by the director and identifying any discrepancies and their resolutions. Any discrepancy between the constructed treatment works and the approved plans is sufficient reason to withhold approval to operate the treatment works.

(2) Before operation of the treatment works, the owner shall resolve all discrepancies.

(3) Any changes to the approved plan shall be resubmitted to the director for approval before the final inspection.

(4) The inspection shall not be considered final until the constructed treatment works conforms to the approved plans.

(f) After the first year of operation, the [owner of the treatment works] owner's engineer shall submit to the director a written statement based on results of actual sampling and [the] professional judgment of [the owner's engineer] whether or not the treatment works is meeting and at the design flow will meet the applicable effluent requirements of sections 11-62-26 and 11-62-27. If the treatment works is not meeting the applicable effluent requirements, the [owner] owner's engineer shall submit to the director a corrective action report containing:

- (1) An analysis of the cause of the treatment works' failure to meet the effluent requirements and an estimate of the scope of the corrective action necessary to enable the treatment works to be in compliance;
- (2) A schedule for undertaking the corrective actions; and

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(3) A date by which the treatment works shall be in compliance with the applicable effluent requirements.

(g) Treatment works shall be designed with safety in mind and comply with appropriate provisions of the Occupational Safety and Health Standards of the State of Hawaii, Department of Labor and Industrial Relations.

(h) Upon abandoning, retiring, or permanently discontinuing use of a treatment works, the owner shall render it safe by removing it or filling it completely with earth, sand, gravel, or similar non-organic matter. All above ground portions of the treatment works shall be rendered safe and vector free. Electrical components shall be disconnected at the circuit breaker or source and all access openings sealed. Injection wells shall be abandoned in accordance with chapter 11-23.

(i) For public wastewater treatment works, a facility plan shall be initiated when the actual wastewater flow reaches 75 per cent of the design capacity of the wastewater treatment works. Implementation of the recommendation of the facility plan shall be initiated when the actual wastewater flow reaches 90 per cent of the design capacity of the wastewater treatment works.

(j) [Standby] The owner or operator shall provide standby power for all lift stations to prevent unauthorized discharges of wastewater during a primary power outage.

(k) For all treatment works which produce recycled water, the director shall be guided by the requirements of subchapter 1, other applicable sections of this subchapter, and the Reuse Guidelines for all decisions on production of recycled water. [Eff 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-24 Treatment unit requirements. (a) For private wastewater treatment works of required design capacities of less than 100,000 gallons per day:

- (1) For sludge digesters or aerated sludge holding tanks constructed after December 10, 1988, the sludge digesters or aerated sludge holding tanks shall treat and store at least the amount of sludge generated over a twenty day period;
- (2) Except for subsurface disposal systems, continuous disinfection of the treated effluent shall be provided for treatment works unless otherwise approved or ordered by the director;
- (3) For aeration tanks constructed after December 10, 1988, the aeration tank loading shall not exceed 12.5 pounds of BOD₅ per 1,000 cubic feet. For the sequencing batch reactor process, food to microorganism (F/M) ratios shall be between 0.05 and 0.10;
- (4) For final settling tanks constructed after December 10, 1988, the detention time for final settling tanks shall not be less than four hours and the surface overflow rate shall not exceed 300 gallons per day per square foot based on the average daily flow;
- (5) For treatment works constructed after December 10, 1988, flow equalization shall be provided unless the engineer submits written justification that changes in normal daily flow rate or seasonal occupancy rates shall not affect the treatment unit's ability to meet continuous compliance with the effluent requirements of sections 11-62-25, 11-62-26, and 11-62-27;
- (6) For treatment works constructed after December 10, 1988, easy access shall be provided for operators to allow necessary operation, maintenance, and repair. Completely enclosed treatment units with unexposed water surfaces and equipment shall not be allowed unless the design engineer can satisfy the director that provisions have been included to eliminate confined space work areas and to allow accessibility for necessary operation, maintenance, and repair, and replacement; and

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- (7) For all treatment units utilizing gas chlorination for disinfection, the following equipment shall be provided: chlorine gas leak detector and alarm, self contained breathing apparatus, chlorine gas mask, warning signs, and an emergency eyewash and shower.

(b) New and proposed private wastewater treatment works of required design capacity greater than or equal to 100,000 gallons per day and new and proposed county wastewater treatment works shall comply with the design standards of their respective counties. If a county does not have wastewater treatment works design standards, then the design standards of the City and County of Honolulu shall be used.

(c) Private wastewater treatment works with design flows greater than or equal to 100,000 gallons shall have solids dewatering equipment included in the facility design. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-25 Wastewater effluent disposal systems.

- (a) New and proposed [subsurface] effluent disposal systems.
 - (1) [Subsurface] Effluent disposal systems shall at least consist of a primary disposal component and a separate 100 per cent back-up disposal component.
 - (2) The primary disposal component and the back-up disposal component shall each be designed to handle the peak flow. The peak flow shall be determined in accordance with the design standards of their respective county. If a county does not have design standards, the design standards of the City and County of Honolulu shall be used. Other means of determining the peak flow, as recommended by the design engineer, may be approved by the director.

(3) Each disposal component shall be tested to accommodate the wastewater flow as required in paragraph (2).

(b) For treatment works utilizing subsurface disposal systems, [other than subsurface disposal systems] design data and other pertinent data shall be submitted to and approved by the director on a case-by-case basis. Decisions by the director shall be guided by subchapter 1 and other applicable sections of this subchapter.

(c) All wastewater effluent disposal systems shall include provisions to facilitate operation, maintenance, and inspection.

(d) All wastewater subsurface effluent disposal systems and injection wells shall include provisions for purging and chemical "shock loading". [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-26 Wastewater effluent requirements, recycled water quality, [and] monitoring, and reporting requirements applicable to treatment works treating domestic wastewater. (a) All treatment works shall meet the applicable requirements of this section. Nothing in this section shall be construed to prevent the engineer from applying more stringent requirements if the engineer determines that the particular design and circumstances for which the engineer is responsible warrants the more stringent requirements.

(b) Treatment works' effluent and other parameters shall be monitored as follows and shall not exceed the following limits:

(1) Biochemical oxygen demand (BOD₅).

(A) For wastewater treatment works excluding wastewater pond systems with [design] average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.

- (B) For wastewater treatment works with [design] average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
 - (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
 - ~~[(C)]~~ (D) The BOD₅ in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.
 - ~~[(D)]~~ (E) The BOD₅ in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (2) Suspended solids.
- (A) For wastewater treatment works, except for wastewater pond systems, with [design] average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform composite sampling at least weekly.
 - (B) For wastewater treatment works with [design] average daily flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.
 - (C) For wastewater pond systems with average daily flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.
 - ~~[(C)]~~ (D) The suspended solids in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.

- [(D)](E) The suspended solids in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.
- (3) Owners or authorized agents shall submit suspended solids and BOD₅ lab data to the director no later than thirty days after the last day of June and December, unless the data is already being submitted to the Department under an NPDES permit by a public agency.
- [(3)](4) The dissolved oxygen, pH, and 30 minutes settleability of the contents of the aeration tank shall be sampled and analyzed at least weekly.
- [(4)](5) Effluent chlorine residual, if any, shall be sampled and analyzed at least weekly.
- [(5)](6) Total daily flow shall be monitored at least weekly.
- [(6)](7) The volume of wastewater sludge wasted, the solids concentration of wastewater sludge wasted, the name of the wastewater sludge pumping and hauling firm, and the dates of pumping and hauling, if applicable, shall be recorded.
- (8) The operator shall maintain a log book or records which shall include but not be limited to: the date and time of operator entry, operating conditions, process control testing performed, and any servicing or preventative maintenance done while at the wastewater treatment works.
- [(7)](9) Alternative effluent limitations as permitted by EPA regulations, (40 CFR 125 and 40 CFR 133), relating to the definition of secondary treatment or other industrial categories, may be utilized by the director.
- [(8)](10) For the purposes of this section, the arithmetic average of the results of the analyses of composite samples shall be based upon one or more analyses made within a 30 consecutive calendar day period. The

arithmetic average shall be the sum of the results of all analyses divided by the number of analyses made during the 30 consecutive calendar day period.

- [(9)] (11) For the purposes of this section, composite samples shall consist of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite sample must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically.

(c) In addition to subsection (b), treatment works producing R-1 water or R-2 water for recycled water systems shall provide continuous disinfection of the effluent as specified below unless otherwise specified by the director.

- (1) R-1 water disinfection requirements.
 - (A) For chlorine disinfection process. The disinfection process shall [provides] provide a CT (the product of total chlorine residual and modal contact time measured at the same point) value of not less than 450 milligrams-minutes per liter at all times with a modal contact time of at least ninety minutes based on peak dry weather design flow; or
 - (B) For non-chlorine disinfection processes. The disinfection process shall demonstrate to the director's satisfaction [that] the inactivation and removal of 99.999 per cent of the plaque forming units of F-specific bacteriophage MS2 or polio virus in the wastewater.
- (2) R-2 water disinfection requirements.
 - (A) For chlorine disinfection processes.

- (i) A theoretical contact time of fifteen minutes or more and an actual modal time of ten minutes or more throughout which the chlorine residual is 0.5 milligrams per liter or greater; and
 - (ii) Automatic [control of chlorine dosage and automatic] continuous measuring and recording of chlorine residual shall be provided. The chlorine facilities shall have adequate capacity to maintain a residual of 2 milligrams per liter.
- (B) For non-chlorine disinfection processes.
- (i) The disinfection process shall demonstrate to the director's satisfaction the ability to meet the requirements of [paragraph] subsection (d) (2); and
 - (ii) Automatic controls shall be provided to continuously measure and record disinfection dosage and residuals, if any.
- (3) Monitoring shall be by grab samples that shall be taken at a point following disinfection.
- (d) In addition to [subsection] subsections (b) and (c), treatment works producing R-1 water or R-2 water for recycled water systems shall meet the following daily fecal coliform requirements unless other sampling frequencies are approved by the director. Monitoring shall be by grab samples that shall be taken at a point following disinfection.
- (1) R-1 water.
 - (A) The median density measured in the disinfected effluent shall not exceed 2.2/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed;

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- (B) The density shall not exceed 23/100 milliliters in more than one sample in any thirty day period; and
 - (C) The density in any one sample shall not exceed 200/100 milliliters.
- (2) R-2 water.
- (A) The median density as measured in the disinfected effluent shall not exceed 23/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed; and
 - (B) The density of shall not exceed 200/100 milliliters in more than one sample in any thirty day period.

(e) In addition to subsections (b) through (d), treatment works producing R-1 water for recycled water systems shall provide continuous turbidity monitoring and recording prior to the filtration process and at a point after the filters and before application of the disinfectant. [For granular media filtration units, the effluent turbidity shall not exceed 2.0 nephelometric turbidity units (NTUs). For membrane filtration units, the effluent turbidity limitations shall be determined by the director on a case by case basis.] The R-1 water shall meet the following turbidity limits:

- (1) For filtration systems utilizing sand or granular media, cloth, or other synthetic media, the turbidity shall not exceed any of the following:
 - (A) An average of two nephelometric turbidity units (NTU) within a twenty-four hour period;
 - (B) 5 NTU more than five percent of the time within a twenty-four hour period;
and
 - (C) 10 NTU at any time.
- (2) For filtration systems utilizing membrane filtration, the turbidity shall not exceed any of the following:
 - (A) 0.2 NTU more than five percent of the time within a twenty-four hour period;
and

(B) 0.5 NTU at any time.

(f) When using media filtration for existing R-1 facilities the following performance criteria shall apply:

(1) The design UV dose shall be at least 100 mJ/cm² under maximum daily flow; and

(2) The filtered UV transmittance shall be 55 percent or greater at 254 nanometers (nm).

(g) When using membrane filtration for existing R-1 facilities, the following performance criteria shall apply:

(1) The design UV dose shall be at least 80 mJ/cm² under maximum daily flow; and

(2) The filtered effluent UV transmittance shall be 65 percent or greater at 254 nm.

(h) The minimum acceptable design requirements and commissioning of new UV disinfection systems shall comply with the Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Third Edition, 2003, published by the National Water Research Institute.

[(f)](g) The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods or EPA's Methods for Chemical Analysis of Water and Wastes. The director may approve alternative methods for analyzing the effluent limits of this section. The alternative test methods, when approved, may be used by the director to determine compliance with effluent limits as stated in this rule. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-27 Recycled water systems. (a) No recycled water system shall be constructed, used, or modified without written approval by the director.

(b) In reviewing recycled water systems and in addition to [the these rules] this chapter, the director shall be guided by the Reuse Guidelines.

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(c) Before using recycled water, the owner of the recycled water system shall submit to the director the following information:

- (1) Name, address, and phone number of the owner and party responsible for the application of recycled water at the site (if different from the owner);
- (2) Clear identification of the people who will actually operate and maintain the system, if different from paragraph (1);
- (3) Detailed site information on the water recycling application site and its surroundings, including site name, address, and tax map key number(s), a map indicating specific areas of use, areas of public access, surrounding land use, location of all wells within a one-fourth mile radius, description of nearest housing or public area, setbacks, general location of existing and proposed water and sewer lines, the direction of drainage with a description of how the drainage will flow, and the depth to groundwater underlying the irrigated area with a description of the ground water quality; and
- (4) Information sufficient to show compliance with the requirements of subsection (h), and identification of best management practices.

(d) Before using recycled water, the owner of the recycled water system shall also submit to the director for approval an engineering report or recycled water application. The report or application form shall include the following information and shall clearly identify all best management practices to be implemented:

- (1) An irrigation use plan that includes information on application rates, intended uses, and schedules for recycled water use. The irrigation use plan shall also include information on types of vegetation, types and methods of irrigation, proposed irrigation schedules, vegetative consumption rates, water balance calculations, nutrient

- balance calculations, and the corresponding acreage to be used for irrigation;
- (2) An overflow control plan that includes detailed best management practices to control or minimize runoff or ponding or recycled water;
 - (3) A management plan that includes establishment and delineation of the responsibilities of operation and maintenance of the recycled water system;
 - (4) A public information and access plan, to minimize public contact with the recycled water, that includes methods to adequately inform the public that recycled water is being used[,] and that the recycled water is unfit for human consumption; and methods to control public access to the recycled water system and areas of recycled water use;
 - (5) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water;
 - (6) An employee training plan (if applicable) that describes the training that the employees will receive to ensure compliance with [these rules] this chapter and any other features specified by the director;
 - (7) A vector control plan (if applicable); and
 - (8) A groundwater monitoring plan (if applicable), including formulation of a strategy for the observation and surveillance of groundwater for possible sources of pollution.
- (e) For existing users of recycled water, the owner of the recycled water system shall submit the information and plans required in subsections (c) and (d), except for the information contained in subsection (d)(1) regarding the vegetative consumption rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigation systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

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(f) For new users of recycled water obtaining access to an existing recycle water system, the user shall submit the information and plans required in subsections (c) and (d), except for the information contained in (d)(1) regarding vegetative consumption rates and water balance, and subsection (d)(8) regarding groundwater monitoring. For users of non R-1 recycled water spray irrigations systems, the owner shall also describe the methods and controls used to ensure that public contact with aerosols are minimized.

[(f)](g) For recycled distribution water systems, the owner of the recycled water distribution system shall submit an engineering report or recycled water application containing the following information:

- (1) Name, address, and phone number of the owner and party responsible for the recycled water distribution system (if different from the owner);
- (2) Information about the treatment works supplying the recycled water, including the name, address, tax map key number, and owner's name;
- (3) Maps showing the location of the distribution system layout. The maps shall also include the location of all water and sewer lines;
- (4) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water; and
- (5) A description of how the distribution system complies with [these rules] this chapter and the Reuse Guidelines.

[(g)] (h) The engineering report or application required in subsection (d), (e), [or] (f), or (g) plus any other submittals shall contain sufficient information to assure the director that the degree of treatment and reliability is commensurate with the proposed use, that the distribution and use of the recycled water will not create a health hazard or nuisance, and that the director is able to make

decisions in accordance with subsection (b).

[(h)](i) For recycled water systems that use recycled water, the owner of the recycled water system shall operate the system in accordance with the requirements of this chapter and to the maximum extent practicable shall:

- (1) Irrigate at a rate not greater than the plants use it;
- (2) Minimize recycled water runoff and ponding on the ground;
- (3) Post signs or other devices warning the public not to drink, swim, or otherwise come into contact with the recycled water;
- (4) Keep the public away from the areas being irrigated with recycled water;
- (5) Clearly mark pipes, tanks, valves, and equipment used in recycled water use systems such that they are easily differentiated from potable water systems;
- (6) Provide training to employees such that they are aware of [these rules] this chapter and any conditions the director imposed on the recycled water use system;
- (7) Provide control measures to minimize vector nuisances; and
- (8) Monitor groundwater as required by the director.

[(i)](j) The owners of new, proposed, or modified recycled water systems, where applicable, shall provide adequate storage basin(s) or a backup disposal system to prevent any overflows or discharges from the system when the irrigation system is not in operation or when recycled water quantities exceed the irrigation requirements.

[(j)](k) Spills, overflows, and discharges ("spills") of recycled water shall be responded to as required by section 11-62-06[(g) and (h)] (f) and (g) and [appendix C] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated [April 15, 1997.] July 1, 2014.

[(k)](l) For recycled water systems, the owner or the owner's duly authorized agent [shall], unless

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otherwise directed, shall report the following information to the director:

- (1) The volume of recycled water used, the volume of recycled water stored, the volume and location of any recycled water spills, and details on the irrigated areas, including water budgets, precipitation, evaporation, application rates, and monitoring of best management practices; and
- (2) Reported information shall be submitted by February 19 of each year and shall be in a monthly summary format for the preceding calendar year unless otherwise specified or agreed to by the director. [Eff and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1311, 1342; 40 CFR Parts 122, 123)

Historical note: §11-62-27 is based substantially upon §11-62-25(b)(1), (b)(2), and (c). [Eff 12/10/88; am and comp 8/30/91]

§11-62-28 Additional monitoring, recordkeeping, and reporting. (a) The owners of treatment works or the owners' duly authorized agents shall maintain complete records of operation and maintenance, repairs, replacements, and improvements performed or installed at the treatment works.

(b) The monitoring results, reports, and all records required in sections 11-62-26 and 11-26-27, this section, and [appendix C] Appendix B, entitled Responses for Wastewater Spills, Overflows, and Discharges ("Spills"), dated [April 15, 1997,] July 1, 2014, located at the end of this chapter shall be kept on site and available for the director's inspection for at least [five] two years and a copy made available to the director without charge upon the director's request. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-6, 342D-50)

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SUBCHAPTER 3

INDIVIDUAL WASTEWATER SYSTEMS

§11-62-31 REPEALED [R 8/30/91]

§11-62-31.1 General requirements for individual wastewater systems. (a) Individual wastewater systems may be used as a temporary on-site means of wastewater disposal in lieu of wastewater treatment works under the following conditions:

- (1) Developments involving dwellings.
 - (A) There shall be 10,000 square feet of land area for each individual wastewater system;
 - (B) Total development of an area shall not exceed fifty single family residential lots or exceed fifty dwelling units except for developments consisting of one dwelling unit per acre or greater;
 - (C) Area of the lot shall not be less than 10,000 square feet, except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed.
 - (D) The total wastewater flow into one individual wastewater system shall not exceed one thousand gallons, and one individual wastewater system shall not serve more than five bedrooms, whether they are in one dwelling unit or two.
- (2) Developments involving buildings other than dwellings.

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- (A) There shall be 10,000 square feet of usable land area for each individual wastewater system. Usable land area shall not include the area under buildings;
 - (B) The total wastewater flow of the development shall not exceed 15,000 gallons per day;
 - (C) Area of the lot shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed; and
 - (D) The total wastewater flow into each individual wastewater system shall not exceed one thousand gallons per day.
- (b) Whenever an individual wastewater system is allowed under subsection (a), the following shall apply:
- (1) The director may allow an individual wastewater system other than a cesspool to be used for two dwelling units which may or may not be located within the same building, provided[:] that:
 - (A) Both of the dwelling units are located on the same single family residential lot; and
 - (B) The individual wastewater system used shall meet the current requirements of this chapter.
 - (2) A building may use more than one individual wastewater system where each individual wastewater system shall connect to a single dwelling unit[;].
 - (3) For buildings without any dwelling units:
 - (A) More than one individual wastewater system may be used provided that the building is owned by one person; or
 - (B) Upon the director's discretion, buildings may connect to one individual

wastewater system other than a cesspool provided the buildings are located on the same lot and the buildings generate wastewater of similar strength and character[;].

- (4) For buildings, other than dwellings with highly variable wastewater flow rates, such as but not limited to schools, parks, and churches, the individual wastewater system excluding cesspools may exceed a design flow rate of 1000 gallons per day; provided that the density does not exceed 1000 gallons per day per 10,000 square feet of useable land area and the development is owned by one person.

(c) The director may require the installation of dry sewers as a condition of approval of proposed individual wastewater systems where:

- (1) Public sewers exist but are at capacity such that connection is prohibited but remedial actions have been initiated to increase the public sewer capacity;
- (2) Public sewers exist, but the treatment and disposal system is not complete or operational;
- (3) Design of the public sewers has been completed and construction of the public sewers is imminent; or
- (4) Conditions warrant such requirements.

(d) No cesspool shall be used as the wastewater system by any new [public] building. No new cesspools shall be constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

(e) Before the approval of the operation of an individual wastewater system excluding cesspools, the following requirements shall be satisfied:

- (1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and
- (2) The owner of the individual wastewater system shall certify that the individual

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wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

(f) No person shall use an individual wastewater system until authorized in writing by the director.

(1) Written approval to use an individual wastewater system shall be issued if:

(A) The owner resolves all discrepancies recorded as a result of any inspections conducted.

(B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:

(i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specifications or that changes made to the approved plans and [specification] specifications are accepted by the engineer; and

(ii) An "as-built" plan of the individual wastewater system; and

(2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.

(g) A graywater system shall be designed in accordance with [the following criteria:

(1) Design of graywater systems for dwelling units shall be based on a minimum graywater flow of 150 gallons per day per bedroom. The design flow of graywater systems for buildings other than dwellings or from

- specific graywater sources shall be determined on a case-by-case basis;
- (2) Graywater treatment units when required shall be sized with no less than a 600 gallon tank capacity and for graywater tanks shall conform to the requirements of section 11-62-33.1(a);
 - (3) Effluent from a graywater tank may be conveyed to a sand filter, absorption trenches and beds, mounds or seepage pits, or used for subsurface irrigation;
 - (4) Graywater from a residential washing machine may be used for subsurface irrigation; and
 - (5) Graywater use or disposal shall not interfere with the operation of the other parts of the wastewater system or any other individual wastewater systems.] Chapter 3-183.

(h) Each individual wastewater system shall be an independent system and shall have all of its plumbing, treatment (if any), and disposal components separate from any other wastewater system.

(i) Wastewater into an individual wastewater system from buildings other than dwellings shall meet the pretreatment standards and local pollutant limits as set by the respective county. If the county does not have any local pollutant limits, the local limits as set forth by the City and County of Honolulu shall be used.

(j) Certification of a qualified cesspool. A taxpayer seeking a cesspool upgrade, conversion, or connection income tax credit must obtain a certification by the director indicating: that the cesspool location makes it eligible to be a qualified cesspool; that the cesspool upgrade has been completed consistent with this rule and plans prepared by a licensed engineer; and the total dollar amount the taxpayer paid for the cesspool upgrade. The director may issue such certification only where the director has received:

(1) A certification from a licensed contractor or licensed engineer that the cesspool is located within 200 feet of a shoreline, perennial stream, or wetland. Certifications are not required for

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properties that are located in their entirety within 200 feet of a shoreline, perennial stream, or wetland. The director shall certify as qualified all cesspools that are located within a source water assessment area (two year time of travel from a cesspool to a public drinking water source);

(2) Design plans prepared by a licensed engineer for a sewer connection or individual wastewater system that complies with this chapter;

(3) Certification by a licensed contractor of closure and filling of the cesspool and completion of an upgrade, either sewer connection or installation of an individual wastewater system that complies with this chapter; and

(4) A licensed engineer's final construction inspection report with photos and as built plans and certifying that the system was constructed in accordance with design plans and this chapter. The director will review submitted documentation and provide certification to the taxpayer and the Department of Taxation of any qualified cesspool.

(k) Certification of qualified expenses. The director will determine all qualified expenses for the tax credit. The taxpayer seeking a tax credit shall submit to the director all receipts of payments made to engineers and installers for the design, completed installation and final construction inspection for the cesspool upgrade along with the appropriate form as directed by the Department of Taxation. The director will notify the taxpayer and the Department of Taxation of the amount of the tax credit allowed for the tax year by noting the same on the form and affixing the signature of the director or the director's designee thereto.

(1) If the annual amount of the certified credits reaches \$5,000,000 in the aggregate, the director shall immediately discontinue certifying credits for that year and notify the Department of Taxation. Any taxpayer who is not eligible to claim the credit in a taxable year due to the \$5,000,000 cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year, except if the \$5,000,000 cap was exceeded in 2020 and no additional credits are available.

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[Eff 8/30/91; am and comp 12/09/04; am and comp
] (Auth: HRS §§321-11, 342D-4,
342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8,
342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-31.2 Site evaluation. (a) The site evaluation shall be performed by the engineer.

(b) The site shall be evaluated for depth of permeable soil over seasonal high groundwater, bedrock, or other limiting layer, soil factors, land slope, flooding hazard, and amount of suitable area available.

(c) The minimum depth of the soil profile observation shall be at least five feet. If the engineer performs a preliminary observation at three feet, the engineer shall confirm the soil profile to five feet at the time of construction.

(d) The following factors shall be evaluated and reported for a depth of at least three feet below the proposed absorption system:

- (1) Thickness of layers or horizons;
- (2) Texture of soil layers;
- (3) General color, and color variation (mottling);
- (4) Depth to water, if observed;
- (5) Depth to estimated seasonal high groundwater table;
- (6) Depth to and type of bedrock, if observed; and
- (7) Other prominent features such as structure, stoniness, and roots[, etc].

(e) Percolation tests.

- (1) Soil percolation tests shall be conducted at a minimum depth of three feet. If at the time of construction, the soil profile at five feet is different than at three feet, another percolation test shall be performed at the depth of the bottom of the absorption system;
- (2) Percolation tests shall follow the falling head test procedure in [appendix D,] Appendix C, entitled Falling Head Test Procedure, dated [April 15, 1997,] July 1,

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2014, located at the end of this chapter;
and

(3) Additional percolation tests may be required to identify the existence of a limiting layer.

(f) The site evaluation information shall be reported on forms developed by the director.

(g) If, during construction the actual site conditions differ from the site conditions upon which the wastewater system was approved, the design engineer shall revise the wastewater plans to reflect the actual site conditions. The plans of the revised wastewater system shall be submitted to the director for approval pursuant to section 11-62-31.1(f). [Eff 8/30/91, am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-32 Spacing of individual wastewater systems. No individual wastewater system shall be located at any point having less than the minimum distances indicated in Table II attached to this chapter in [appendix F,] Appendix D, entitled Tables, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter unless otherwise approved by the director. The minimum distances indicated in Table II shall be measured from the outer edge of each item. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-33.1 Specific requirements for new and proposed treatment units. (a) Septic tank.

(1) All wastewater shall discharge into the septic tank. Roof, footing, garage, surface water drainage, cooling water, and graywater disposed of in accordance with section 11-62-31.1(g)(4) shall be excluded.

(2) Septic tanks shall meet the International Association of Plumbing and Mechanical

- Officials (IAPMO) material and property standards for prefabricated septic tanks, IAPMO [PS 1-93.] ANSI Z1000-2013. Septic tanks shall be approved and listed by IAPMO.
- [(3)] Septic tanks which currently meet the requirements of the Ten States Standards and are being distributed in the State shall comply with paragraph (2) within two years after the effective date of this rule.
 - (4)] (3) Plans for cast-in-place septic tanks shall be submitted with the application for the individual wastewater system. The plans for the septic tank shall be designed and stamped by a licensed structural engineer and shall meet the IAPMO design specifications.
 - [(5)] (4) The following schedule shall apply to septic tank sizing:

| No. of Bedrooms | Minimum Capacity (Gallons) |
|-----------------|-------------------------------|
| 4 or less | 1000 |
| 5 | 1250 |

- (5) For wastewater flows greater than 1,000 gallons per day or five bedrooms, the formula: Minimum capacity gallons = $1,000 + (Q-800) \times 1.25$, where Q=design flow, shall be used.
- (6) Concrete septic tanks shall be coated to protect the tank from leakage and corrosion by acceptable means. The coating shall cover the entire tank interior.
- (7) Manholes or removable covers to [the] septic tanks shall be [extended to within twelve inches of the finished grade. If the manhole or removable cover is brought to grade, it shall be secured from unwanted entry. If the manhole or removable cover does not extend to the finished grade, a permanent inspection port with a minimum diameter of six inches expanding through the cover shall be brought to the finished grade and fitted with a screw type cap. The inspection port shall be located such that

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- the downward projection of the inspection port clears the inlet and outlet devices by not less than two inches.] brought to grade. The cover shall be secured to prevent unauthorized entry or opening of the tank.
- (8) When septic tanks are installed in ground water or in clay soils with an expansive nature, the engineer shall design or provide adequate protection to prevent the tank from floating, moving, or crushing.
- (9) The excavation to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional six inches and backfilled with sand, crushed stone, or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.
- (10) When a septic tank is installed under a driveway, parking lot, in a heavy saturated soil, or other areas subject to heavy loads, the tank shall be capable of withstanding an H-20 wheel load as defined by the American Association of State Highway Officials.
- (11) Effluent from a septic tank shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit [permitted] approved for use by the director.
- (b) Household aerobic units.
- (1) All wastewater shall discharge into the household aerobic unit. Roof, footing, garage, surface water drainage, and cooling water[, and graywater disposed of in accordance with section 11-62-31.1(g)(4)] shall be excluded.
- (2) Household aerobic units shall be approved by the director based upon the "Standard No.

- 40" for Class I units as set forth by the National Sanitation Foundation. The performance data shall have been obtained by an agency such as a university or an independent research laboratory acceptable to the director or from the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan.
- (3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit[.] and its disposal system with a certified operator or factory certified representative, and a copy of an active service contract shall be submitted annually to the department. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system.
- (4) As a minimum, the aerobic treatment unit service contract shall include the term of contract period (start and end dates) and the following requirements:
- (A) Inspect all aerobic treatment unit equipment to ensure its proper operation at least every six (6) months;
 - (B) Provide regular maintenance of equipment as required by the manufacturer;
 - (C) Verify the aerobic treatment unit is providing adequate mixing and aeration of the microbes;
 - (D) Measure the depth or volume of sludge in the aerobic treatment unit every six months, and assess whether sludge removal by pumping is necessary. Provide sludge pumping, as needed. If pumping is necessary, record the depth of sludge or percentage of sludge volume in the ATU prior to pumping; and

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- (E) Maintain a log of all service provided.
- [(4)] (5) Effluent from an aerobic unit shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit or disposal system [permitted] approved for use by the director.
- [(5)] (6) In areas below (makai of) the Underground Injection Control Line established pursuant to chapter 11-23, where the vertical separation distance from the discharge to the seasonal high groundwater table is less than three feet, a new household aerobic unit may discharge its effluent [directly into the groundwater provided the effluent is disinfected.] into an elevated mound to achieve the vertical separation or drip irrigation system or, with a variance approved by the director and if the effluent is disinfected, to a seepage pit. Where water bearing formations are in danger of contamination, the director may require greater vertical separation.
- (c) Subsurface and recirculating sand filters shall be reviewed on a case-by-case basis by the director. [Eff 8/30/91; am and comp 12/09/04; am and comp]
(Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-34 Specific requirements for new and proposed disposal systems. (a) Absorption trenches.

- (1) Location.
- (A) Absorption trenches shall be located in accordance with section 11-62-32.
- (B) Absorption trenches shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.

- (C) Absorption trenches shall be located on the property to maximize the vertical separation distance from the bottom of the absorption trench to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption trenches shall not be constructed in unstabilized fill.
- (2) Design.
- (A) The minimum absorption area for any absorption trench system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III located in Appendix [F,] D, entitled Tables, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.
 - (B) The absorption area shall be computed using the bottom area of the absorption trench.
 - (C) Each absorption trench system shall have a minimum of two trenches.
 - (D) Each distribution line shall be equal in length.
 - (E) The maximum length of any one trench shall be one hundred feet.
 - (F) Absorption trenches shall be at least eighteen inches wide but no more than thirty-six inches wide.
 - (G) The bottom of absorption trenches shall be at least eighteen inches below the finished grade.
 - (H) Gravity fed absorption lines and trenches shall have a slope at the rate of two to four inches per hundred feet.
 - (I) Absorption trenches shall not be installed on land with a slope gradient greater than twelve per cent.

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- (J) On rolling or sloping land, each absorption trench shall approximate the land surface contour.
 - (K) A distribution box or header shall be installed between the treatment unit and the absorption trenches.
 - (L) Each distribution line shall connect individually to the distribution box.
 - (M) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap or cover.
 - (N) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
 - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to assure stability and

provide access for inspection of the distribution lines.

- (B) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
- (C) If a header is used, it should be made of water-tight construction.
- (D) When the trenches have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
- (E) At least six inches of gravel or crushed stone shall be placed in the bottom of the trench.
- (F) The distribution line shall be carefully placed on the bedding at a uniform slope and covered with at least two inches of gravel or stone.
- (G) The ends of the distribution lines shall be capped or plugged.

(b) Deep absorption trenches. Deep absorption trenches may be considered where the depth of suitable soil is insufficient to permit the installation of a conventional trench system due to the presence of a limiting layer more than two feet in depth which overlies suitable soils of sufficient thickness. Requirements for location, design, slope, material, construction, and dosing system design contained in subsection (a) shall apply to deep absorption trenches except for depth of construction. In addition, the following design considerations shall apply:

- (1) The site evaluation procedure shall include soil profile observations of at least three soil observation pits constructed to a minimum depth of three feet below the

- proposed trench bottom. Monitoring to establish depth to seasonal soil saturation or high groundwater may be considered;
- (2) Deep absorption trenches shall be constructed at least one foot into the suitable soil; and
 - (3) The distribution piping in deep absorption trenches shall be installed with the invert of the piping at a depth of not more than thirty inches. Gravel or crushed stone shall be placed from the bottom of the trench excavation to a point two inches above the top of the distribution piping.
- (c) Absorption beds.
- (1) Location.
 - (A) Absorption beds shall be located in accordance with section 11-62-32.
 - (B) Absorption beds shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.
 - (C) Absorption beds shall be located on the property to maximize the vertical separation distance from the bottom of the absorption bed to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
 - (D) Absorption beds shall not be constructed in unstabilized fill.
 - (2) Design.
 - (A) The minimum area for any absorption bed system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated [April 15, 1997] July 1, 2014 and located at the end of this chapter.

- (B) The absorption area shall be computed using the bottom area of the absorption bed.
 - (C) Each soil absorption bed system shall have a minimum of two distribution lines.
 - (D) If more than one absorption bed is designed, each absorption bed shall be equal in area.
 - (E) The maximum length of any distribution line shall be one hundred feet.
 - (F) Distribution lines within an absorption bed shall be uniformly spaced no more than six nor less than four feet apart.
 - (G) Distribution lines within an absorption bed shall be placed no more than three feet nor less than eighteen inches from the sidewall of the bed.
 - (H) The bottom of absorption beds shall be at least eighteen inches below the finished grade.
 - (I) Absorption beds shall not be installed on land with a slope gradient greater than eight per cent.
 - (J) A distribution box or header shall be installed between the treatment unit and the absorption bed.
 - (K) Each distribution line shall connect individually to the distribution box.
 - (L) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap.
 - (M) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.

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- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
 - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
 - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
 - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) The floor of the absorption bed shall be level.
 - (B) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to [assure] ensure stability and provide access for inspection of the distribution lines.
 - (C) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
 - (D) If a header is used, it should be made of watertight construction.
 - (E) When the beds have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.

- (F) At least six inches of gravel or crushed stone shall be placed in the bottom of the bed.
 - (G) The distribution line shall be carefully placed on the bedding with no slope and covered with at least two inches of gravel or stone.
 - (H) The ends of the distribution lines shall be capped or plugged.
- (d) Seepage pits.
- (1) Location.
 - (A) Seepage pits shall be located in accordance with section 11-62-32.
 - (B) Seepage pits shall not be constructed in soils having a percolation rate slower than ten minutes per inch (weighted average) or where rapid percolation through such soils may result in contamination of water-bearing formations or surface water.
 - (C) The seepage pit shall be located on the lot to maximize the vertical separation distance from the bottom of the seepage pit to the seasonal high groundwater table, bedrock, or other limiting layer. The vertical separation shall not be less than three feet unless otherwise approved by the director and the requirements of section 11-62-33.1(b)(5) are met. Where water-bearing formations are in danger of contamination, greater vertical separation may be required.
 - (2) Design.
 - (A) Seepage pits shall be used only when one of the following are met:
 - (i) Slope of the finished elevation of the lot is greater than twelve per cent and the use of absorption beds or trenches is not feasible.
 - (ii) The presence of a limiting layer more than seven feet in depth

- which overlies suitable soils of sufficient thickness.
- (iii) Insufficient land area exists to install absorption trenches or beds.
 - (B) The minimum area in any seepage pit shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Appendix D, Table III dated [April 15, 1997] July 1, 2014 and located at the end of this chapter.
 - (C) The surface dimension is measured as the mean distance of the clear opening below the inlet pipe.
 - (D) The minimum surface dimension is six feet.
 - (E) The effective depth of the seepage pit shall be measured from the bottom of the inlet pipe to the bottom of the pit, with the thickness of strata of soils having percolation rates slower than thirty minutes per inch deducted.
 - (F) The minimum effective depth is ten feet and shall be greater than its widest surface dimension.
 - (G) The effective area of the seepage pit shall be the vertical wall area of the areas corresponding to the effective depth of the pit excavation. No allowance shall be made for the bottom area.
 - (H) When more than one seepage pit is used, a distribution box shall be installed between the treatment unit and all seepage pits. Each seepage pit shall individually connect to the distribution box.
 - (I) When more than one seepage pit is used, each pit shall have an equal effective area.
 - (J) If a distribution box is used, a permanent inspection port with a

minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.

(3) Construction.

- (A) Seepage pits shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil.
- (B) Seepage pits shall include a cover which extends at least twelve inches beyond the seepage pit excavation[.], unless a concrete ring is used.
- (C) The lining and cover of any seepage pit shall be capable of supporting the normal loads imposed. The engineer shall submit written justification for the deletion of any sidewall lining.
- (D) The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between lining and the excavation diameter shall be filled with washed gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and excavation diameter. Gravel and stone shall not be placed within the seepage pit itself.
- (E) The watertight cover shall be provided and at least one watertight manhole either round or square, tapered to a minimum of twelve inches in dimension shall be provided in the cover for inspection or for emptying the contents when required.

- (F) The top of the seepage pit shall be within twelve inches of the final grade.
 - (G) If the cover of the seepage pit does not extend to the finished grade, a permanent inspection port with a minimum diameter of [six] twelve inches expanding through and secured to the cover shall be brought to the finished grade and fitted with a screw type cap or cover.
 - (H) The distribution box shall be set level so that the effluent is evenly distributed to each seepage pit.
 - (I) The distribution box shall connect to each seepage pit with pipe of watertight construction at least six inches in diameter, and sloped at least one-eighth inch per foot.
 - (J) The material used to cover the top of the stone or gravel surrounding the lining shall be a filter fabric material or equal.
- (e) Elevated mound system. Elevated mound systems shall be reviewed on a case-by-case basis.
- (f) Other disposal systems.
- (1) Soil replacement system.
- (A) Soil replacement systems shall be used for sites with the following soils layers in the upper soil horizons:
 - (i) Soils with percolation rates less than one minute per inch;
 - (ii) Soils with percolation rates greater than sixty minutes per inch that occur within the upper five feet of the soil and underlain by more permeable soils. Installation guidelines shall comply with the requirements of very high permeability soils of subparagraph (B); or
 - (iii) Fractured lava.

- (B) Trenches may be excavated up to thirty-six inches in width to depths not to exceed five feet below grade nor closer than three feet to seasonal high groundwater level, provided any groundwater mounding induced by wastewater does not rise closer than one foot from the bottom of the excavation and bedrock is at least three feet below the bottom of the excavation.
 - (C) Soil replacement absorption trenches and beds shall follow the applicable provisions of subsections (a), (b), and (c).
- (2) Evapotranspiration systems shall be reviewed on a case-by-case basis by the director. The director shall use the provisions of section 7.3.2 of the October 1980 edition of the EPA Design Manual on Onsite Wastewater Treatment and Disposal Systems as a guide for the review of evapotranspiration systems.
- (3) Gravelless systems.
 - (A) Gravelless soil absorption systems may be used as an alternative to soil absorption systems as specified in subsections (a) and (b), except for sections 11-62-34(a)(3)(C), 11-62-34(a)(3)(D), 11-62-34(a)(4)(E), and 11-62-34(a)(4)(F), 11-62-34(c)(2)(F), 11-62-34(c)(2)(G), 11-62-34(c)(3)(C), 11-62-34(c)(3)(D), and 11-62-34(c)(4)(F).
 - (B) Design criteria, material specifications, and other pertinent data shall be submitted to the director.
 - (C) The total area of the soil absorption system for the gravelless system shall be the same as specified in subsections (a), (b), and (c), except for chambered system where the director may approve of a reduction factor as deemed appropriate.

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- (D) If chambered systems are used, the chamber units shall be [place] placed up against the sidewall of the excavation. In absorption beds, the adjacent chambers shall abut one another.
- (E) The use of filter fabric, unless specified by the director, shall follow the manufacturer's recommendation.
[Eff 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-35 Other individual wastewater systems.

(a) The specific design requirements for composting toilets, incinerator toilets, natural systems, and other individual wastewater systems not specifically covered in this [rule] chapter shall be reviewed and approved by the director on a case-by-case basis. Solids generated from such products that are land applied must meet the requirements of subchapter 4. Such products, if sold in Hawaii, shall be approved by the director based on appropriate testing procedures and standards as set forth by the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan. The performance data shall be obtained by an agency such as [an] a university or an independent research laboratory acceptable to the director or from the NSF.

- (b) The director may approve an innovative wastewater system based on the following conditions:
 - (1) The innovative system provides or may provide a benefit to the people of the State;
 - (2) The owner of the innovative system shall agree that for a period of up to twelve months after the initiation of the operation of the innovative system, operational data shall be gathered and submitted to the director; and

- (3) The owner shall submit a written agreement stating that should the director at any time find the operation of the innovative system unsatisfactory, the owner shall promptly repair or modify the system, or replace it with another acceptable system. [Eff 8/30/91; am and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-36 Cesspools. (a) No new cesspools shall be [construction without the approval of the director. Approved cesspools shall be constructed in areas designated by the director after the effective date of this rule.] constructed after the effective date of this rule unless they have been approved for construction before the effective date of this rule.

[(b) Design.

- (1) The inlet pipe shall be at least ten feet above the bottom of the cesspool and there shall be at least three feet of suitable soil from the bottom of the cesspool to the highest known level of the groundwater table. The ultimate depth required shall be determined by the engineer based on actual soil materials encountered on the site or on the record of experience with the performance of cesspools in the area.
- (2) The inlet pipe shall be at least one and one-half feet below the finished ground surface.
- (3) Each cesspool shall have a clear opening of at least six feet in diameter.
- (4) Cesspools shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil. The sidewall lining of any cesspool shall be capable of supporting the normal loads imposed. The engineer shall submit justification for the

deletion of any sidewall lining. The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between outer lining and the excavation diameter shall be filled with gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and the excavation diameter. Gravel and stone shall not be placed within the cesspool itself.

- (5) A structurally sound reinforced concrete cover shall be provided. The cover shall protrude at least twelve inches beyond the perimeter of the cesspool and resting on firm ground with substantially stable sidewalls. At least one watertight manhole with a minimum dimension of twelve inches shall be provided in the cover for inspection or for emptying of the contents when required. The top of each cover shall be at least twelve inches below the finished ground surface. If the cover does not extend to the finished grade, a permanent inspection port with a minimum diameter of six inches expanding through and secured to the cover shall be brought to the finished grade and be provided with a screw type cap or cover.

(c) Location. The cesspool shall be located in accordance with section 11-62-32.

(d) If the cesspool was approved to construct prior to the effective date of this chapter, the design engineer shall perform a final inspection and submit a new cesspool card to the director within thirty days after the completion of the construction certifying that the cesspool was constructed in accordance with the requirements in this section.

(e)] (b) The director may require a cesspool card from an owner whose cesspool has no cesspool card on file with the department. An existing cesspool card shall

be completed and signed by a licensed engineer, contractor, plumber, or architect. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3)

§11-62-37 Application for and review of building permits and individual wastewater systems. (a) The director shall review all individual wastewater systems before [signing] the director signs any related county building permit application.

(b) The application to construct a new individual wastewater system or to modify an existing individual wastewater system shall be made by the applicant on forms furnished by the director. The application at a minimum shall contain the following information:

- (1) Name of the owner of the individual wastewater system;
- (2) The location of the individual wastewater system, including a location map, plot plan, street address, and tax map key number; [and]
- (3) The type and size of treatment unit and disposal system[.];
- (4) Certification by the engineer that the individual wastewater system has been designed in accordance with sections 11-62-31.1 through 11-62-41; and
- (5) Certification by the engineer that a final inspection report will be submitted to the director in accordance with section 11-62-31.1(f)(1)(B).

(c) Every applicant for an individual wastewater system shall pay a filing fee in accordance with the schedule of this subsection. The filing fee shall be submitted with the individual wastewater system application and shall not be refunded nor applied to any subsequent individual wastewater system application. Fees shall be made payable to the State of Hawaii.

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- (1) New individual wastewater system, new treatment unit or new disposal system - \$100; and
- (2) Addition or modification to an approved or existing individual wastewater system or part thereof - \$25. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50)

§§11-62-38 to 11-62-39 (Reserved)

SUBCHAPTER 4

WASTEWATER SLUDGE USE AND DISPOSAL

§11-62-41 General requirements and prohibition.

- (a) No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except:
- (1) In compliance with:
 - (A) A permit or department approval for use of an individual wastewater system obtained under this chapter;
 - [(B) General permit coverage under this chapter;
 - (C)] (B) A registration under this chapter;
or
 - [(D)] (C) An exemption from permitting or registration provided by section 11-62-50.
 - (2) In a municipal solid waste landfill unit which is in compliance with the sludge related conditions in a permit issued under chapter 11-58.1:
 - (A) Where that permit was issued following public participation procedures at least as open to the public as those specified in subchapter 5; and

- (B) Incorporates the requirements of 40 CFR Part 258.
- (3) By incineration in a facility in compliance with the requirements of 40 CFR Part 503, Subpart E, Incineration, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions;
 - (4) In a facility in compliance with the sludge related conditions in a National Pollutant Discharge Elimination System (NPDES) permit issued under chapter 11-55 or issued by the U.S. EPA, where that permit includes or incorporates the requirements of 40 CFR Part 503, Subpart B, Land Application, [Subpart C, Surface Disposal,] Subpart D, Pathogens and Vector Attraction Reduction, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions and any applicable requirements of this chapter;
 - (5) For hauling, by a county, state, or federal agency, or by a person or an operation registered under [§] section 11-62-50(b)(4); or
 - (6) As otherwise authorized in writing by the director.

(b) Direct enforceability. No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except in compliance with the requirements of this chapter and all applicable federal rules, whether or not a permit has been issued, general permit coverage has been obtained, or registration has been made.

(c) Exclusion. This chapter does not apply to operations and facilities involved with the collection, handling, storage, treatment, use, disposal, or transportation of the following:

- (1) Wastewater sludge co-fired in an incinerator with other wastes or incinerators in which the wastewater sludge and other wastes are co-fired;
- (2) Wastewater sludge generated at an industrial facility during the treatment of industrial wastewater, including wastewater sludge generated during the treatment of industrial

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wastewater combined with domestic wastewater;

- (3) Wastewater sludge determined to be hazardous under state rule or federal regulation;
- (4) Wastewater sludge containing polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis);
- (5) Incinerator ash generated during the firing of wastewater sludge in a wastewater sludge incinerator;
- (6) Grit and screenings;
- (7) Drinking water treatment sludge; and
- (8) Commercial and industrial septage that

contains no domestic wastewater. [Eff and comp 12/09/04; am and comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR 503 Subparts B, C, D, E, 40 CFR §§501.15, 503.1(b), 503.3, 503.4, 503.6, 503.7, 503.8, 503.9)

§11-62-41.1 Relation to federal law. (a) This chapter shall be interpreted and applied so that it is at least as stringent as 40 CFR Part 503 and so that the department's sludge management program complies with 40 CFR Part 501.

(b) No wastewater sludge generation, treatment, preparation, storage, hauling, application, placement, use, or disposal shall be conducted unless allowed by this chapter, even if allowed under 40 CFR Part 503.

(c) References to the Code of Federal Regulations (CFR) are to the July 1, 1999 version, and references to specific sections or subparts of the CFR incorporate those regulations and make them part of this chapter, whether or not the word incorporate is specifically used, unless otherwise specifically stated.

(d) Special definitions. For the purposes of this chapter, when used in 40 CFR Part 503:

"Municipal solid waste landfill unit" has the same meaning as defined in 40 CFR Part 258.

"Permitting authority" means the director.

"Sewage" means wastewater.

(e) No permit shall be issued when the [U.S.] United States Environmental Protection Agency Administrator for Region IX has objected in writing under 40 CFR §123.44. [Eff and comp 12/09/04; am and comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR §§123.41, 123.42, 123.44, 501.2, 501.18, 501.19, 501.20, 503.1(b), 503.5, 503.21, 503.32)

§11-62-42 Land application of exceptional quality wastewater sludge. (a) Exceptional quality wastewater sludge shall meet the following criteria at a minimum:

- (1) Pollutant limits. No pollutant concentration shall exceed the ceiling limits in Appendix D, Table IV.
- (2) Pathogens. The Class A pathogen requirements in section 11-62-46(a) shall be met.
- (3) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met.

(b) Monitoring. Exceptional quality wastewater sludge shall be monitored by the preparer at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated [April 15, 1997] July 1, 2014 and located at the end of this chapter. To determine compliance with section 11-62-42(a)(2), wastewater sludge shall be monitored not more than sixty days before land application or being bagged for distribution unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(c) Recordkeeping.

- (1) The preparer of exceptional quality wastewater sludge that is applied to the land shall meet the requirements of 40 CFR §503.17(a)(1), except the certification requirement there;

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- (2) The preparer shall sign complete certification form, form A, entitled Certification Form - Land Application, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2.a, and 3.a, and retain the form for five years; and
- (3) The preparer shall develop and retain information for five years on the volume of wastewater sludge bagged, distributed, or land applied.
- (d) Reporting. The test results and records required in subsections (b) and (c) shall be kept on site and unless otherwise specified, copies shall be submitted to the director on February 19 of each year.
- (e) The exceptional quality sludge shall be applied to the land at a rate that is less than ten dry tons per acre and equal to or less than the agronomic rate.
 - (1) The preparer shall provide to each land applier a fact sheet which contains the nitrogen, phosphorus, and potassium concentrations of the wastewater sludge; and
 - (2) When the wastewater sludge is applied in bulk to agricultural land, forest, a public contact site, or a reclamation site, the director may require a nutrient balance to be submitted prior to the application to the land. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.1, 503.5, 503.10, 503.13, 503.15(a), 503.16(a), 503.17(a), 503.18, 503.32, 503.33(b))

§11-62-43 Land application of other than exceptional quality wastewater sludge, to agricultural land, forest, public contact site, or reclamation site. (a) No person shall apply non-exceptional quality wastewater sludge to land unless the land is agricultural land, forest, a public contact site, or a

reclamation site, and all the requirements of this section are met.

(b) Pollutant limits. Non-exceptional quality wastewater sludge shall not be land applied if the concentration of any pollutant in the wastewater sludge exceeds the ceiling limits in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.

(c) Pathogens. The Class A pathogen requirements in section 11-62-46(a) or the Class B pathogen requirements in 40 CFR §503.32(b) shall be met for non-exceptional quality wastewater sludge.

(d) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (1) through (10) shall be met for non-exceptional quality wastewater sludge.

(1) The preparer shall meet one of the requirements of 40 CFR §503.33(b) (1) through (8); or

(2) The applier shall meet one of the requirements of 40 CFR §503.33(b) (9) or (10).

(e) Notice. The preparer of the non-exceptional quality wastewater sludge shall inform in writing to the land applier and the owner of the land application site of:

(1) The vector attraction reduction requirements of 40 CFR §503.33(b) (9) and (10), if the preparer did not use or meet any of the requirements of 40 CFR §503.33(b) (1) through (8);

(2) The spacing and site restrictions in subsection (g);

(3) The management requirements of subsection (h); and

(4) The concentration of total nitrogen (as N on a dry weight basis).

(f) Monitoring. Non-exceptional quality wastewater sludge shall be monitored at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Appendix D, Table IV dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter. To determine compliance with section

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11-62-43(c), wastewater sludge shall be monitored not more than sixty days before land application unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(g) Spacing and site restrictions for non-exceptional quality sludge.

- (1) Horizontal distances. The land application of wastewater sludge shall meet the minimum horizontal limits in Appendix D, Table VI.
- (2) Vertical separation. The land application of wastewater sludge shall be at least five feet above the seasonal high groundwater table.
- (3) If the class B pathogen requirements are met, the site restrictions in 40 CFR §503.32(b)(5) shall be met.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) shall be met, and wastewater sludge shall not be applied to the land so that either the sludge or any pollutant from the sludge enters state waters.

(i) Recordkeeping, preparers of non-exceptional quality wastewater sludge.

- (1) The preparer of the wastewater sludge which meets the Class A pathogen requirements in section 11-62-48(a) shall develop and retain for five years information on:
 - (A) The concentration of pollutants listed in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter; and
 - (B) A description of how the pathogen requirements in section 11-62-48(a) are met.
- (2) The preparer of wastewater sludge which meets the class B pathogen requirements in 40 CFR §503.32(b) shall develop and retain for five years information on:
 - (A) The concentration of pollutants listed in Appendix D, Table IV dated [April 15, 1997] July 1, 2014, and located at the end of this chapter;

- (B) A description of how the pathogen requirements in 40 CFR §503.32(b) are met; and
 - (C) A description of how one of the vector attraction reduction requirements of 40 CFR §503.33(b)(1) through (8) is met, when one is met.
- (3) The preparer shall sign and complete certification form, form A entitled Certification Form - Land Application dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter, in Appendix E, items 1, 2, and 3, and retain the form for five years; and
 - (4) The preparer shall develop and retain for five years information on the volume of wastewater sludge prepared for land application, names of persons taking wastewater sludge from the facility, the date and time the wastewater sludge was taken, and the amount taken.
- (j) Recordkeeping, appliers of non-exceptional quality wastewater sludge to the land.
 - (1) The applier shall meet the information requirements of 40 CFR §503.17(a)(3)(ii)(B) and (C); or §503.17(a)(4)(ii)(B), (C), (D), and (E);
 - (2) The applier shall sign and complete the certification form, form A entitled Certification Form - Land Application, dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 4, 5, and 6, and retain the form for five years; and
 - (3) The applier shall develop and retain for five years the following information:
 - (A) The location, including street address and tax map key number, of the site on which wastewater sludge is applied;
 - (B) The number of acres in each site on which wastewater sludge is applied;
 - (C) The date and time the wastewater sludge is applied to each site;

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(D) The amount of wastewater sludge applied to each site; and

(E) A nutrient balance.

(k) Reporting. The test results and records required in subsections (f), (i), and (j) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.

(l) Notification to other states. Any person who prepares wastewater sludge that is land applied in another state shall provide written notice, prior to the initial land application, to the permitting authority for the state in which the bulk in which the wastewater sludge is to be applied to the land in accordance with 40 CFR §503.12(i). [Eff and comp 12/09/04; am and comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12, 503.13(b), 503.14, 503.15(a), (c), 503.16(a), 503.17, 503.18, 503.32, 503.33(b))

§11-62-44 Land application of domestic septage to agricultural land, forest, or reclamation site.

(a) No person shall apply domestic septage to land unless the land is agricultural land, forest, or a reclamation site if the annual application rate (AAR) exceeds 1/0.0026 the amount of nitrogen (N) in pounds per acre per 365 day period needed by the crop or vegetation growth on the land.

$$\text{AAR} = \frac{\text{N}}{0.0026} \quad \text{Equation (1)}$$

(b) Pathogens. The pathogen requirements of
(1) 40 CFR §503.32(c)(1); or
(2) 40 CFR §503.32(c)(2), including the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv), shall be met for domestic septage.

(c) Vectors. One of the vector attraction reduction requirements in 40 CFR §503.33(b)(9), (10), or (12) shall be met for domestic septage.

(d) Monitoring. If either the pathogen requirement in subsection (b)(2) or vector attraction reduction requirement in 40 CFR §503.33(b)(12) applies, each container of domestic septage shall be monitored for compliance with those requirements. The director may specify more monitoring, to better protect human health or the environment.

(e) Recordkeeping.

- (1) The applier shall meet the information requirements of 40 CFR §503.17(b)(2), (3), (4), (5), (7), and (8);
- (2) The applier shall develop and retain for five years the location, including street address and tax map key number, of the site on which septage is applied; and
- (3) The applier shall sign and complete the certification form, form A entitled Certification Form - Land Application dated [April 15, 1997] July 1, 2014, and located at the end of this chapter, in Appendix E, items 7, 8, 9, and 10, and retain the form for five years.

(f) Reporting. The test results and records required in subsection (e) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.

(g) Spacing and site restrictions.

- (1) Horizontal distances. The land application of domestic septage shall meet the minimum horizontal limits in Appendix D, Table VI dated [April 15, 1997] July 1, 2014, and located at the end of this chapter.
- (2) Vertical separation. The land application of domestic septage shall be at least five feet above the seasonal high groundwater table.
- (3) The site restrictions in:
 - (A) 40 CFR §503.32(b)(5); or
 - (B) The pathogen requirement of 40 CFR §503.32(c)(2) and the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv)

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shall be met for domestic septage.

(h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) for wastewater sludge shall be met for domestic septage, and domestic septage shall not be applied to the land so that the septage or any pollutant from septage enters state waters. [Eff and comp 12/09/04; am and comp]
(Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12(c), 503.13(c), 503.14, 503.15(b), (d), 503.16(b), 503.17, 503.18, 503.32, 503.33)

§11-62-45 REPEALED [R]

§11-62-46 Pathogens. (a) Wastewater sludge - class A. (1) The requirements of this subsection shall be met for a wastewater sludge to be classified exceptional quality sludge or class A with respect to pathogens.

(2) One of the class A requirements in paragraphs (3), (4), (6) or (7) shall be met, or with the prior approval of the director paragraph (5) shall met. The requirements in paragraphs (3) through (7) shall be met before or at the same time that the vector attraction reduction requirements in 40 CFR §503.33 are met, unless one of the vector attraction reduction requirements in 40 CFR §503.33(b)(6) through (8) is met.

- (3) Class A - alternative 1. The requirements of 40 CFR §503.32(a)(3) apply, except that the requirements of §503.32(a)(3)(i) are replaced with those of paragraph (8).
- (4) Class A - alternative 2. The requirements of 40 CFR §503.32(a)(4) apply, except that the requirements of §503.32(a)(4)(i) are replaced with those of paragraph (8).
- (5) Class A - alternative 3. The requirements of 40 CFR §503.32(a)(6) apply, except that the requirements of §503.32(a)(6)(i) are

- replaced with those of paragraph (8).
- (6) Class A - alternative 4. The requirements of paragraph (8), and subsection (d), Process to Further Reduce Pathogens (PFRP), apply.
 - (7) Class A - alternative 5. The requirements of paragraph (8) apply and, as determined by the director, a process equivalent to one in subsection (d), Process to Further Reduce Pathogens (PFRP), shall be used.
 - (8) Pathogen density at the time the wastewater sludge is used, disposed, or prepared for sale or give away in a bag or other container for land application, shall meet the following:

- (i) Unless otherwise specified by the director, seven samples shall be analyzed; and

- (ii) For each sample the fecal coliform shall be less than 1000 MPN per gram of total solids (dry weight basis) or for each sample the Salmonella sp. bacteria shall be less than three MPN per four grams of total solids (dry weight basis).

(b) Wastewater sludge - class B. The requirements of 40 CFR §503.32(b) shall be met for a wastewater sludge to be classified class B with respect to pathogens.

(c) Domestic septage. The requirements of 40 CFR §503.32(c) apply.

(d) Processes to further reduce pathogens (PFRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section B, Processes to Further Reduce Pathogens, apply, except for section B.1 which is replaced by paragraph (1).

(1) Composting.

(A) Windrow. The temperature of the wastewater sludge is maintained at 55 degrees Celsius or higher for at least fifteen consecutive days during the composting period. In addition, during the high temperature period, the windrow must be turned at least five

- times and turned at least once every three days.
- (B) Static aerated pile. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
 - (C) Within vessel method. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
- (2) Heat Drying. See Part 503, appendix B, section B.2.
 - (3) Heat Treatment. See Part 503, appendix B, section B.3.
 - (4) Thermophilic Aerobic Digestion. See Part 503, appendix B, section B.4.
 - (5) Beta ray irradiation. See Part 503, appendix B, section B.5.
 - (6) Gamma ray irradiation. See Part 503, appendix B, section B.6.
 - (7) Pasteurization. See Part 503, appendix B, section B.7.
 - (e) Processes to significantly reduce pathogens (PSRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section A, Processes to Significantly Reduce Pathogens, apply.
 - (1) Aerobic Digestion. See Part 503, appendix B, section A.1.
 - (2) Air Drying. See Part 503, appendix B, section A.2.
 - (3) Anaerobic Digestion. See Part 503, appendix B, section A.3.
 - (4) Composting. See Part 503, appendix B, section A.4.
 - (5) Lime Stabilization. See Part 503, appendix B, section A.5. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, Appendix B, 40 CFR §503.32)

§11-62-47 Vector attraction reduction. (a) Requirements for land application [and surface disposal].

- (1) One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met before exceptional quality wastewater sludge is land applied.
- (2) The requirements of 40 CFR §503.33(a)(1), (4), and (5) apply.

(b) Vector attraction reduction requirements. The requirements of 40 CFR §503.33(b) apply. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, 40 CFR §503.33)

§11-62-48 Sampling method. Samples of wastewater sludge that is applied to the land, [placed on a surface disposal site,] fired in a wastewater sludge incinerator, or disposed into a solid waste landfill or any other wastewater system shall be collected and analyzed using the methods specified in 40 CFR §503.8. [Eff and comp 12/09/04; comp] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §503.8)

SUBCHAPTER 5

WASTEWATER MANAGEMENT PERMITS AND REGISTRATION

§11-62-50 Registration and permits. (a) Owners and operators are not required under this subchapter to register or obtain any permit coverage for their:

- (1) Individual wastewater systems (e.g., cesspools, septic tanks, and household aerobic units);
- (2) Land on which exceptional quality wastewater sludge is applied;
- (3) Land application or land placement operations involving only exceptional

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- quality wastewater sludge; [or]
- (4) Operations, such as businesses, that haul only exceptional quality wastewater sludge;
or
 - (5) Non-domestic wastewater treatment works, unless [the] deemed necessary by the director.
- (b) Owners or operators or both of the following shall register with the department:
- (1) Land on which non-exceptional quality sludge is applied or placed, with or without the landowner's permission;
 - (2) Land on which non-exceptional quality sludge is stored for less than two years, if the land is different from the treatment works which generated the sludge;
 - (3) Land application or land placement operations for non-exceptional quality wastewater sludge, whether or not the wastewater sludge is applied or placed on land with the landowner's permission;
 - (4) Operations, such as businesses, that haul wastewater or wastewater sludge, or both, including grease haulers and cesspool pumpers, except those operations that only haul exceptional quality sludge; and
 - (5) Other facilities, operations, or land, if directed by the director.

[(c) Owners or operators or both shall obtain general permit coverage for their wastewater systems not covered by section 11-62-41(a)(2) through (4) or subsection (d).

- (d)](c) Owners or operators or both shall obtain an individual permit for their:
- (1) Treatment works that generate wastewater sludge that is directly land applied;
 - (2) If different from the generator, facilities or operations that treat or prepare wastewater sludge that is land applied or surface disposed;
 - (3) Treatment works not located in the State but generate wastewater sludge that is directly land applied in the State;
 - (4) Facilities or operations not located in the

State that treat or prepare wastewater sludge that is land applied or surface disposed in the State; and

[(5) Land used for the surface disposal of wastewater sludge; and]

[(6)](5) Other facilities, operations, or land, if directed by the director.

[(e)] (d) The department may accept and issue consolidated registrations[, general permit coverage notices,] and individual permits (collectively "authorizations"), and for the consolidated authorizations the department may charge the fee for only the most expensive authorization. The department may also charge the fees for all or some of the authorizations. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50; 40 CFR §§501.15, 503.3(a))

§11-62-51 Fees. (a) Registration. Every registrant shall pay a filing fee according to this subsection. The filing fee shall be submitted with the registration and shall not be refunded nor applied to any later registration after filing or denial of a registration. Fees shall be made payable to the State of Hawaii.

- (1) For a new operation, facility, or land, the fee is \$30;
- (2) For major changes in the registration of an operation, facility, or land, the fee is \$30;
- (3) For renewal, the fee is \$10;
- (4) To change only ownership shown in a registration, the fee is \$5; and
- (5) To make other changes in a registration, the fee is \$10;

(b) Individual permits. Every person applying for an individual permit, its modification, or renewal shall pay a filing fee according to this subsection. This filing fee shall be submitted with the application for the permit or permit modification and shall not be refunded nor applied to any subsequent individual after final issuance or denial. Fees shall

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be made payable to the State of Hawaii.

- (1) To apply for an individual permit for a new or existing operation or facility, the fee is \$1000;
- (2) To apply to modify an individual permit to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$1000;
- (3) To renew an individual permit for an existing operation or facility, the fee is \$1000;
- (4) To transfer ownership or to modify an individual permit to show only a change in ownership, the fee is \$25; and
- (5) To apply to modify an individual permit to cover a change other than those covered above, the fee is \$100.

[(c) General permit coverage. Every person submitting a notice of intent to be covered by a general permit, or seeking modification or renewal of such coverage shall pay a filing fee according to this subsection. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent general permit coverage after final issuance or denial of general permit coverage. The filing fee may be applied to any subsequent individual permit if the director requires or the person seeks an individual permit instead of general permit coverage. Fees shall be made payable to the State of Hawaii.

- (1) To submit a notice of intent for a new or existing operation, facility, or land, the fee is \$100;
- (2) To submit a notice of intent to modify general permit coverage to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$100;
- (3) To submit a notice of intent to modify general permit coverage to cover a change in

- the location of the covered operation or facility the fee is \$100;
- (4) To transfer ownership or to modify general permit coverage to show only a change in ownership, the fee is \$25; and
 - (5) To submit a notice of intent to modify general permit coverage to cover a change other than those covered above, the fee is \$25.

(d)](c) Late fees. Every person who fails to submit complete forms for a new or renewed registration[,]or a complete application for a new or renewed individual permit[, or a complete notice of intent for new or renewed general permit coverage] when required by this chapter, shall pay a late fee. Fees shall be payable to the State of Hawaii. Late submission of required fees and registration forms, notice of intent, or individual permit application does not excuse a person from liabilities for any violations due to the lack of a required registration[,] or individual permit [or general permit coverage].

(1) The fee for submitting a registration form late is \$5;

[(2) The fee for submitting a notice of intent late is \$25;] and

[(3)] (2) The fee for submitting an application for an individual permit late is \$250.

[(e)](d) Relation to other fees. The foregoing fees are subject to section 11-62-50(e) and do not include any public participation costs (for notices, hearings, etc.) that the would-be registrant or permittee may be required to pay under other sections.

[Eff and comp 12/09/04; am and comp]
(Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-13, 342D-50)

§11-62-52 Signatories and certification requirements. (a) Unless otherwise specified, each registration, notice of intent, permit application, and any information required to be submitted to the director shall be signed and certified as required by 40 CFR §122.22.

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(b) Each person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other documentation submitted or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter is subject to the penalties and remedies in section 11-62-72. [Eff and comp 12/09/04; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Parts 122, 501, 40 CFR §§122.22, §501.15(a)(4), (b)(11))

§11-62-53 Wastewater management registration.

(a) Timing. Completed registrations forms required under section 11-62-50 shall be submitted as follows.

- (1) For existing lands, facilities, and operations, not later than ninety days after the effective date of this rule; and
- (2) For new lands, facilities, and operations, no later than one hundred eighty days before such lands, facilities, or operations are used or begin activity.

(b) Registration information and forms.

Registrants shall complete and submit one original and one copy of the form(s) furnished by the director. Registrants shall provide at least the following information:

- (1) Activities conducted by the applicant which require registration;
- (2) Name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
- (3) Owner's name, mailing address, telephone number, ownership status, and status as federal, state, private, public, or other entity; and
- (4) Operator's name and certification number under chapter 11-61, if applicable.

(c) The director may require the submission of additional information after registration forms have

been submitted.

(d) Records. Registrants shall keep records of all data used to complete registrations and any supplemental information submitted under this section for at least five years from the date the registrant submits the registration form, unless otherwise specified by the director.

(e) Fees. Each registrant shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land registered, except as the director may provide under section 11-62-50(e).

(f) Term. Registrations expire on November 15 of each even-numbered year.

(g) Renewals. Renewal registration forms shall be submitted by November 15. If a renewal registration form is not submitted on time, it may be submitted after payment of the current annual fee and a late payment fee. If a renewal registration form is submitted more than ninety days after it is due, then the registrant shall supply all the information required for a new registration regardless of whether there have been any changes to report.

(h) Automatic filing. Registrations shall be deemed filed automatically sixty days after submission, or on the next working day after sixty days expire, unless the director suspends registration.

(i) Filing suspension. If the director considers a registration form incomplete, lacking payment of all or part of the fee, otherwise deficient, or considers more information necessary, the director shall order that the land, operation, or facility shall not be registered until the registrant has supplied the missing information or otherwise corrected the deficiency. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13)

§11-62-54.01 Wastewater management individual permits. (a) Timing. Applications for individual permits required under section 11-62-50 shall be submitted as follows:

- (1) For existing lands, facilities, operations,

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- and lands, not later than one year after the effective date of this section; and
- (2) New facilities, operations, and lands, not later than one hundred eighty days before the facilities, operations, or lands are used or begin activity. The director may waive this one hundred eighty day requirement by issuing the permit before the one hundred eighty days expire[;].
- (b) Information and forms. Applicants for individual permits shall complete and submit one original and one copy of the form(s) furnished by the director. Applicants shall provide at least the type of information required by 40 CFR Part 501 and the following information:
- (1) The type of activities conducted by the applicant which requires a permit to be obtained;
 - (2) The name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
 - (3) The owner's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
 - (4) The operator's name, address, telephone number, ownership status, status as federal, state, private, public or other entity, and operator's certification number under chapter 11-61, if applicable;
 - (5) A listing of all environmental permits received or applied, including all federal, state, or local permits;
 - (6) A topographical map or other map if a topographical map is unavailable extending one mile beyond the property boundaries of the sludge management facility, depicting the treatment and disposal sites, the location of all water bodies, and the locations of potable water wells within one-quarter mile of the property boundaries;
 - (7) Any sludge monitoring data and for land application [and surface disposal sites],

- any available groundwater monitoring data, with a description of the well locations and approximate depth to the groundwater;
- (8) A description of the applicant's sludge use and disposal practices, including where applicable, the location of any sites where the applicant transfers wastewater sludge for treatment, disposal, or both, as well as the name of the applier who applies the wastewater sludge to the land if different from the applicant, and the name of any distributors when the sludge will be distributed, if different from the applicant;
 - (9) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is, or will be managed. Applicants intending to apply wastewater sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:
 - (A) Describes the geographical area covered by the plan;
 - (B) Identifies the site selection criteria;
 - (C) Describes how the site will be managed;
 - (D) Provides for advanced notice to the director of specific land application sites; and
 - (E) Provides for advance public notice and notice to landowners and occupants adjacent to or abutting the proposed land application site;
 - (10) Annual sludge production volumes; and
 - (11) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503.
- (c) The director may require the submission of additional information after an individual permit application has been submitted.
- (d) Records. Applicants shall keep records of all data used to complete permit applications and any

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supplemental information submitted under this section for a period of at least five years from the date the application is submitted, unless otherwise specified by the director.

(e) Fees. Every applicant for an individual permit shall pay the filing fee specified in section 11-62-51 for each facility, operation, or land to be permitted, except as the director may provide under section 11-62-50(e).

(f) Processing suspension. If the director considers permit application incomplete, lacking payment of the fee, otherwise deficient, or considers more information necessary, the director shall order that the permit application shall not be processed or a permit issued until the applicant supplies the missing information or otherwise corrects the deficiency. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a), (d))

§11-62-54.02 Draft individual permits. After an application for a new, modified, or renewed permit is complete, the director shall tentatively decide to prepare a draft individual permit or deny the application. If the director tentatively proposes to revoke and reissue a permit, the director shall prepare a draft individual permit. A draft permit shall contain the necessary conditions to implement the requirements of this chapter, 33 U.S.C. §1345, and the incorporated sections of 40 CFR Parts 501 and 503. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d) (3))

§11-62-54.03 Fact sheets. (a) The director shall prepare a fact sheet for every draft individual permit for a major facility, operation, or activity, and when required by 40 CFR §501.15(d) (4).

(b) The director shall send the fact sheet to the applicant and, upon request, to any other person.

(c) Fact sheets shall include at least the information required by 40 CFR §501.15(d)(4)(i). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(4))

§11-62-54.04 Public notices of draft individual permits; public comments and hearing requests. (a)

The director shall notify the public that a draft individual permit has been prepared and that the public has thirty days to comment on it. The comment period may be extended at the discretion of the director. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR 501.15(d)(5)(iii)(A).

(d) Costs. All publication and mailing costs associated with notifying the public of a draft permit shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to provide and pay for public notice as required by the director is a basis to deny issuance of a permit.

(e) Public comments and hearing requests. During the public comment period, any person may submit comments in writing and may ask in writing for a public hearing. A request for hearing shall state the nature of the issues that the hearing should cover. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5), (6))

§11-62-54.05 Public meetings or hearings on individual permits. (a) The director shall hold a public meeting or hearing if the director determines that there is a significant degree of public interest in a draft individual permit, based on hearing

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requests.

(b) The director may hold a meeting or hearing at the director's discretion, when such a meeting or hearing may help the director's decision on an individual permit application or for another reason which the director considers to be in the public interest. [Eff and comp 12/09/04; comp] (Auth: 342D-4, 342D-5, 342D-6) (Imp: 342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 40 CFR Part 501, 40 CFR §501.15(d)(7))

§11-62-54.06 Public notice of public meetings or hearings on individual permits. (a) The director shall notify the public that a meeting or hearing on an individual permit matter has been scheduled. The notice shall be given at least thirty days before the hearing. The director may require the permit applicant to have the notice published.

(b) Methods. The director shall notify [to] the public by at least the methods specified in 40 CFR §501.15(d)(5)(ii).

(c) Content. The public notice shall include at least the information required by 40 CFR §501.15(d)(5)(iii).

(d) Costs. All publication and mailing costs associated with notifying the public of a public meeting or hearing shall be paid by the permit applicant(s) to the appropriate publishing agency or agencies determined by the director. Failure to provide and pay for public notice as required by the director is a basis to deny issuance of a permit. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5))

§11-62-54.07 Response to comments. When a final individual permit is issued, the director shall issue a written response to written comments as required by 40 CFR §501.15(d)(8). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5,

342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(8))

§11-62-54.08 Issuance of individual permits; duration, conditions. (a) Duration. The director may issue an individual permit for any period not exceeding five years, may renew such permit for any additional periods not exceeding five years each, and shall not modify an individual permit to extend its maximum period.

(b) Each individual permit shall contain conditions and requirements at least as stringent as:

- (1) Those conditions contained in 40 CFR §501.15(b);
- (2) The wastewater sludge standards in subchapter 4;
- (3) The treatment requirements in subchapter 2;
- (4) The application rates in sections 11-62-27;
- (5) The standard permit conditions stated in [appendix] Appendix A entitled Wastewater Management Individual [and General] Permit Standard Conditions dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter; and
- (6) Other requirements deemed necessary by the director. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 501, 503, 40 CFR §§501.15(a)(5), (b), 503.3(a), 503.10(b), (c), 503.13, 503.32, 503.33)

§11-62-54.09 Schedules of compliance.

Individual permits may contain schedules of compliance that are at least as stringent as those allowed by 40 CFR §501.15(a). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5)

(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a)(6))

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§11-62-55.01 REPEALED [R]

§11-62-55.02 REPEALED [R]

§11-62-55.03 Requiring an individual permit.
[Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit or seeking coverage under 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 wastewater system is not in compliance with the conditions of the general permit;
- (2) Circumstances have changed since the notice of intent was submitted so that the wastewater system is no longer covered by the general permit;
- (3) (1) The wastewater system generates wastewater sludge that is land applied [or placed into a surface disposal site]; and
- (4) (2) Other relevant factors. [Eff and comp 12/09/04; am and comp]
(Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 122, 40 CFR §122.28(b)(3)(i))

§11-62-55.04 REPEALED [R]

§11-62-55.05 REPEALED [R]

§11-62-55.06 REPEALED [R]

§11-62-55.07 REPEALED [R]

§11-62-55.08 REPEALED [R]

§11-62-56 Standard permit conditions. Standard permit conditions for individual [and general] permits are contained in [appendix] Appendix A entitled Wastewater Management Individual [and General] Permit Standard Conditions dated [April 15, 1997,] July 1, 2014, and located at the end of this chapter. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b))

§11-62-57.01 Transfer of permits. An individual permit [and general permit] coverage may be transferred for the reasons and under the procedures specified in 40 CFR §501.15(c)(1), which allows for transfers by modification or automatically. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, §501.15(c)(1))

§11-62-57.02 Modification or revocation and reissuance of permits. (a) Each permit [and general permit] coverage shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing, except for minor modifications.

(b) Individual permits [and general permit coverage] may be modified, or revoked and reissued, for the reasons specified in 40 CFR §501.15(c)(2) and section 342D-6(e), HRS, and the director shall follow the procedures in 40 CFR §501.15(c)(2) and (d)(2) and section 342D-6(e), HRS, except for minor modifications, which shall follow the procedures specified in [appendix] Appendix A.

(c) All applications under section 342D-7, HRS, for a variance from the requirements of subchapter 4 shall be treated as an application for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years and may be renewed upon application. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4,

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342D-5, 342D-6, 342D-7) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 40 CFR Part 501, §501.15(c)(2), (d)(2))

§11-62-57.03 Termination of permits. (a) On the expiration date specified in the individual permit, the permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each individual permit [and general permit] coverage shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) Individual permits [and general permit coverage] may be terminated [may be] or denied for [the] any of the reasons specified in 40 CFR §501.15(c)(3) and section 342D-6(e), HRS, and under the procedures specified in 40 CFR §501.15(d)(2) and section 342D-6(e), HRS. [Eff and comp 12/09/04; am and am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §§501.15(c)(3), (d)(2))

§11-62-57.04 Renewal of permits. (a) Permittees seeking individual permit [or general permit coverage] renewal shall submit a renewal application [or notice of intent] at least one hundred eighty days before the individual permit [or general permit coverage] expires.

(b) An application for individual permit renewal is subject to all of the requirements for an application for a new permit, including a draft permit and fact sheet, public notice, and a possible public hearing, but excepting deadlines and fees specific to new permits.

[(c) An application for general permit coverage renewal is subject to all of the requirements for new general permit coverage, excepting deadlines and fees specific to new general permit coverage.]

(d) [(c)] The director may administratively extend the existing permit [or general permit coverage] pending the renewal of a wastewater management permit.

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[(e)](d) Individual permits [and general permit coverage] may be renewed for the reasons and under the procedures specified in section 342D-6(c), HRS, and renewal may be denied for noncompliance with the permit. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b)(14))

§11-62-58 Conflict of interest. (a) Any board or body who reviews or approves applications [or notices of intent] for new, modified, or renewed individual permits [or general permit coverage] shall not include as a member any person who receives, or has during the previous two years received, a significant portion of that person's income directly or indirectly from permit holders or applicants for a permit.

(b) For this section the definitions of 40 CFR §501.15(f)(1) shall apply. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-3, 342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 40 CFR Part 501, 40 CFR §501.15(f))

SUBCHAPTER 6

WASTEWATER AND WASTEWATER SLUDGE PUMPERS AND HAULERS

§11-62-60 Applicability. This subchapter applies to all persons who own or conduct operations that haul or pump wastewater or wastewater sludge, including septage and grease, and including cesspool pumping firms (collectively "pumpers"). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-61 Registration requirements. In addition to meeting the registration requirements of

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sections 11-62-50(b)(4) and 11-62-53, each pumper shall submit with its registration:

- (1) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm attesting that:
 - (A) The owner has read, understands, and shall follow all applicable rules regarding the collection, disposal, monitoring, recordkeeping, and reporting of pumping and hauling wastewater and wastewater sludge, including septage from individual wastewater systems and other wastewater systems; and
 - (B) The owner has and will continue to provide employees of the pumping and hauling firm with adequate training in the proper pumping, collection, hauling, and disposal of wastewater and wastewater sludge;
- (2) Copies of authorization to dispose of wastewater and wastewater sludge into any state, county, federal, or private facility or site; and
- (3) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm describing the firm's prior and current involvement in the activity of cesspool pumping. [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

§11-62-62 Recordkeeping and reporting. [(a)]
In addition to meeting the requirements of section 11-62-53(c) and (d), each pumper shall maintain the following types of records and information. Such information shall be made available upon request to any state, county, or federal wastewater agency regulating or managing wastewater:

- (1) Number of wastewater systems, including individual wastewater systems and grease traps pumped;

- (2) Names of the owner of each wastewater system and grease trap pumped;
- (3) Location (street address or tax map key or both) of each wastewater system and grease trap pumped;
- (4) Date of pumping;
- (5) Type of wastewater or wastewater sludge pumped;
- (6) Volume of wastewater or wastewater sludge pumped;
- (7) Results of any test analyses performed on the wastewater or wastewater sludge;
- (8) Disposal site of the pumped wastewater or wastewater sludge; and
- (9) Date of such disposal.

[(b) Reports or copies of forms containing the tabulated information required in subsection (a) shall be submitted to the director no later than thirty daysafter the last day of the following months - March, June, September, and December.

- (1) Each report shall tabulate information for the preceding three months;
- (2) Special reports covering shorter periods than three months shall be submitted on request by the director or a county, state, or federal agency responsible for wastewater or wastewater sludge management or control;
- (3) The "wastewater pumping and hauling report form" as furnished by the director shall be the format used by the wastewater sludge pumping and hauling firms to report information to the director; and
- (4) The owner or operator of wastewater sludge pumping and hauling firm shall sign and certify the reports in accordance with section 11-62-52.] [Eff and comp 12/09/04; am and comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342D-55)

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SUBCHAPTER 7

VARIANCES, PENALTIES, AND SEVERABILITY

§11-62-71 Variances. (a) Variances and variance applications shall comply with section 342D-7, HRS.

(b) Variance application forms shall be provided by the department. All applications for variances shall be submitted with a filing fee of \$300 for each application. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) for each variance application. If a public hearing is required, the applicant shall pay all fees assessed for publishing the public hearing notice(s).

(c) Applications for renewal of variances shall be submitted one hundred eighty days before the expiration of the variance on forms provided by the department. A filing fee of \$150 shall be submitted with each application for renewal. Additionally, the applicant shall pay all fees assessed for publishing the legal notice(s) and public hearing notice(s). Failure to renew a variance within the specified time will result in the termination of the variance and require the applicant to apply for a new variance. [Eff 12/10/88, am 8/30/91; §11-62-41; ren, am and comp 12/09/04; comp] (Auth: HRS §§321-11, 342D-4, 342D-5, 342D-7, 342D-13) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-7, 342D-50)

§11-62-72 Penalties and remedies. Any person who violates any provision of this chapter shall be subject to the penalties and remedies for violations provided for in chapters 321, 322-part I, 342D, and 342H, HRS. [Eff 12/10/88; §11-62-42; ren, am and comp 12/09/04; comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-

11, 322-1 to 322-4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-62-73 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby. [Eff 12/10/88; §11-62-43; ren and comp 12/09/04; comp] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-19, 342D-50)

§11-62-74 Public participation in enforcement. The department shall provide for public participation in enforcement relating to violations of subchapters 4 and 5 at least to the extent specified in 40 CFR §501.17(d)(2). [Eff and comp 12/09/04; comp] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR Part 501, 40 CFR §501.17(d)(2))

SUBCHAPTER 8

FIELD CITATIONS

§11-62-81 Purpose. This subchapter authorizes field citations to effectively and quickly settle easily verifiable violations of chapters 322 and 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. [Eff and comp 12/09/04; comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, and 342D-31) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

§11-62-82

§11-62-82 Offer to settle; [penalties.] settlement amounts. (a) 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, may issue a field citation by personal service or certified mail to:

- (1) Any person or owner who causes or allows a wastewater system to create or contribute to a wastewater spill, overflow, or discharge onto the ground or into surface waters, in violation of section [11-62-06(g)(6);] 11-62-06(f)(5) or (6);
- (2) Any person or owner who uses or occupies a building not connected to a wastewater system in violation of section 11-62-06(a); [or]
- (3) Any person or owner who constructs, modifies, or uses any individual wastewater system without approval by the director or a county authorized by the director to approve and regulate individual wastewater systems, in violation of section 11-62-08(b) or 11-62-31.1(f) [.] ; or
- (4) Any person or owner who does not respond within thirty days to an operation and maintenance inspection report issued by the Department.

(b) A field citation shall [assess] indicate the following [penalties for violations:] settlement amounts:

- (1) [Any person who violates section 11-62-06(g)(6) shall be fined \$100 for a first violation, and \$250 for a subsequent violation;] \$200 for a first violation, and \$500 for a subsequent violation for:
 - (A) Violating sections 11-62-06(a), (f)(1)-(4) and (f)(6)-(9), 11-62-08(b) or 11-62-31.1(f);
 - (B) Failing properly to operate or maintain an aerobic treatment unit;
 - (C) Failing to provide an effective contract for an aerobic treatment unit;

- (D) Failing to respond to department inspection reports, if the report states a response is required;
 - (E) Having a cesspool without a concrete cover;
 - (F) Not having a secured manhole cover for the cesspool; or
 - (G) A collapsed cesspool.
- [(2) Any person who violates section 11-62-06(a) shall be fined \$100 for a first violation, and \$250 for a subsequent violation; and
- (3) Any person who violates section 11-62-08(b) or 11-62-31.1(f) shall be fined \$100 for a first violation, and \$250 for a subsequent violation.]
- (2) \$500 for a first violation, and \$2,000 for a subsequent violation for violating section 11-62-06(f) (5) or (10); and
- (3) \$1,000 for a first violation, and \$2,500 for a subsequent violation for constructing an individual wastewater system without department approval to construct.
- [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50)

§11-62-83 Resolution of field citation. (a) A person issued a field citation may accept the citation by[,]:

- (1) Signing the field citation;
- (2) Paying the full amount [assessed] indicated by the field citation. Payment shall be made payable to the "State of Hawaii" by check, cashier's check, [or] money order [made payable to the State of Hawaii;] or as otherwise specified by the director;
- (3) Mailing or delivering the signed citation and full payment to the wastewater branch in

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Honolulu, or the district health office for the county where the violation occurred. The department must receive the signed filed citation and full payment within twenty days after the person receives the field citation; and

- (4) Correction within seven days or unless otherwise specified on the field citation any violation of section [11-62-06(g)(6)] 11-62-06(f)(6).

(b) By signing the field citation, the person to whom it was issued agrees to:

- (1) Give up the person's right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
- (2) Pay the [penalty assessed;] amount indicated; and
- (3) Correct the violation.

(c) If the field citation is not accepted in compliance with subsection (a), the director may seek for that cited violation any remedies available under this chapter, chapters 321, 322, 342D, HRS, or any other applicable law. For all other violations the director retains authority to seek any available remedies. [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-62-84 Form of citation. The department shall prescribe a field citation form." [Eff and comp 12/09/04; am and comp] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

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

3. Additions to update source notes to reflect these amendments and compilation are not underscored.
4. These amendments to and compilation of chapter 11-62, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

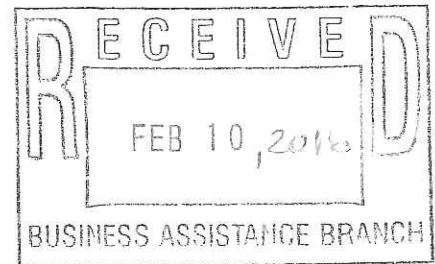
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

VIRGINA PRESSLER, M.D.
Director of Health

APPROVED AS TO FORM:

EDWARD G. BOHLEN
Deputy Attorney General

CHAPTER 11-62 APPENDIX A



INDIVIDUAL PERMIT
STANDARD CONDITIONS

July 1, 2014

Appendix A, Individual standard conditions

1. Duty to comply
2. Compliance with sludge standards
3. Compliance with wastewater effluent standards
4. Compliance with water quality standards
5. Clean Water Act (CWA) penalties
6. Signatory and certification requirement
7. Duty to reapply
8. Need to halt or reduce activity not a defense
9. Duty to mitigate
10. Proper operation and maintenance
11. Permit actions
12. Property rights
13. Duty to provide information
14. Inspection and entry
15. Sampling requirements and definitions
16. Monitoring and recordkeeping
17. Notice requirements
18. Reopener clause
19. Transfers by modification
20. Automatic transfers
21. Minor modification of permits
22. Modification or revocation and reissuance of permits
23. Termination of permits
24. Availability of reports
25. Civil and criminal liability
26. State law
27. Severability

The following conditions apply to individual permits unless otherwise specified. "Permittee" refers to a person to whom an individual permit has been issued.

CHAPTER 11-62 APPENDIX A

1. **Duty to comply.** Permittees shall comply with and are subject to §11-62-06(q).
2. **Compliance with sludge standards.** Permittees shall comply with HAR chapter 11-62, subchapter 4.
3. **Compliance with wastewater effluent standards.** Permittees treating wastewater shall comply with §11-62-26 and, if applicable, §11-26-27.
4. **Compliance with water quality standards.** Permittees shall not cause or contribute to any violation of applicable sections of HAR chapter 11-54.
5. **Clean Water Act (CWA) penalties.** The monetary fines and imprisonment terms referred to in 40 CFR §§501.15(b)(3), on CWA §309; 501.15(b)(11)(ii), on false statement, representation, or certification; and §501.15(b)(10), on falsification, tampering with, or rendering inaccurate any monitoring device or method; all apply, in addition to any state penalties.
6. **Signatory and certification requirements.** Each permit application, report, notice, and any information submitted to the director shall be signed and certified as required by §11-62-52.
7. **Duty to reapply.** Permittees shall comply with §11-62-57.04.
8. **Need to halt or reduce activity not a defense.** 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.

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9. **Duty to mitigate.** Permittees shall comply with §11-62-06(j).
10. **Proper operation and maintenance.** Permittees shall comply with §11-62-06(e).
11. **Permit actions.** 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.
12. **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.
13. **Duty to provide information.** The permittee shall furnish to the director, within a reasonable time, any information which the director 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, upon request, copies of records required to be kept by this permit.
14. **Inspection and entry.** The permittee shall allow the director, or an authorized representative, 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;

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- c. Inspect at reasonable times any facility, 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 Clean Water Act, any substances, parameters, or practices at any location.

15. Sampling requirements.

- a. Sampling points. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before final use, disposal, or discharge. Monitoring points shall not be changed without notification to and the approval of the director. No use, disposal, or discharge is authorized which does not totally pass through the final monitoring point.
- b. Calibration. The permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants, sludge, and other items specified by the director under this permit, at intervals which will ensure the accuracy of measurements, but no less than the manufacturer's recommended intervals or one year intervals (whichever comes first). [Records of calibration shall be kept pursuant to section 13(b) of this general permit.]

16. Monitoring and recordkeeping.

- a. Monitoring results shall be reported at a frequency specified here or elsewhere in the

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permit, whichever is greater. The frequency of sampling shall be dependent on the size of the wastewater system, nature and effect of the wastewater, reclaimed water, and wastewater sludge use and disposal practices. At a minimum, the frequency shall be as required by §§11-62-26(a), 11-62-26(c), 11-62-28(a), and subchapter 4.

- b. Representative sampling. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activities listed in §§11-62-26(a), 11-62-26(c), 11-62-28(a), and subchapter 4.

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 mean including weekends and storms and may mean taking more samples than the minimum number specified elsewhere in the permit. The burden of proving that sampling or monitoring is representative shall be on the permittee.

- c. Record retention. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip

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chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5) years from the date of the sample, measurement, report or application. This period may be extended by request of the director of health at any time.

- d. Records' content. Records of monitoring information shall include:
 - (1) The date, exact place, and time of sampling or measurements;
 - (2) The name of individual(s) who performed the sampling or measurements;
 - (3) The date(s) analyses were performed;
 - (4) The name of individual(s) who performed the analyses;
 - (5) The analytical techniques or methods used and if available, references and written procedures for these techniques or methods; and
 - (6) The results of such analyses, including bench sheets, instrument readouts, etc., used to determine these results.

- e. Monitoring procedures. Unless other procedures have been specified in this permit, monitoring shall 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 503.

17. Notice requirements.

- a. Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility, or significant changes planned in the

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- permittee's sludge use or disposal practice, where such alterations, additions, or changes may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional 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 any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
 - c. Transfers. This permit is not transferable to any person except after notice to the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA.
 - d. Other noncompliance reporting. The permittee shall report all instances of noncompliance. Reports of noncompliance shall if applicable follow the spill protocol of appendix C otherwise shall be submitted with the permittee's next self monitoring report or earlier if requested by the director or if required by an applicable standard for wastewater sludge use or disposal or condition of this permit.
 - e. 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

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director, it shall promptly submit such facts or information.

18. Reopener clause.

- a. If the standards for wastewater and wastewater sludge applicable to the permittee's use, disposal, or discharge method are promulgated under the Clean Water Act, the Hawaii Revised Statutes, or the Hawaii Administrative Rules before the expiration date of this permit, and those standards are more stringent than the wastewater or wastewater sludge pollutant limits or acceptable management practices authorized in this permit, or controls a pollutant or practice not limited in this permit, this permit may be promptly modified or revoked and reissued to conform to the standards for wastewater or wastewater sludge use, disposal, or discharge by no later than the compliance deadline specified in the regulations establishing those standards, whether or not this permit has been modified or revoked and reissued.
- b. This permit shall be modified or revoked and reissued at any time if, on the basis of any new data, the director determines that continued wastewater or wastewater sludge use, disposal, or discharge may cause unreasonable degradation of the environment.
- c. The permittee shall comply with new standards for wastewater sludge use or disposal adopted in 40 CFR 503 during the term of the permit, if they are more stringent than the terms of the permit and chapter 11-62, even if this permit has not yet been modified to incorporate the standards.

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19. **Transfers by modification.** Except as provided in condition 20 of these standard conditions, 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 to identify the new permittee and incorporate such other requirements as may be necessary to assure compliance with the CWA.
20. **Automatic transfers.** As an alternative to transfers under condition 19 of these standard conditions, the director may authorize automatic transfer of any permit issued under this rule to a new permittee if:
- a. The current permittee notifies the director at least 30 days in advance of the proposed transfer date in condition 20.c. of these standard conditions;
 - b. The notice includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The director does not notify the existing permittee and the proposed new permittee of the director's intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement of condition 20.b of these standard conditions.
21. **Minor modification of permits.** Upon the consent of the permittee, the director 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 §11-62-57.02. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and

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public notice as required. 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; and
- d. Allow for a change in ownership or operational control of a facility where the director 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 permittee has been submitted to the director.

22. **Modification or revocation and reissuance of permits.** Permittees shall comply with and are subject to §11-62-57.02, except for minor modifications.
23. **Termination of permits.** Permittees are subject to §11-62-57.03 and general permittees are also subject to §11-62-55.03.
24. **Availability of reports.** Except for data determined to be confidential under HRS §342D-14, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the director. As required by this rule, permit applications, permits, and effluent and wastewater sludge data shall not be considered confidential.

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25. **Civil and criminal liability.** Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.
26. **State law.** Nothing in this permit shall be constructed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.
27. **Severability.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, if held invalid, the application of such provision to other circumstances, and remainder of this permit, shall not be affected thereby.

CHAPTER 11-62 APPENDIX B

RESPONSES FOR WASTEWATER
SPILLS, OVERFLOWS, AND DISCHARGES
("SPILLS")

July 1, 2014

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1. Points of contact

| Agency | Phone | Fax |
|--|----------|----------|
| Clean Water Branch (CWB) | 586-4309 | 586-4352 |
| Wastewater Branch (WWB) | 586-4294 | 586-4352 |
| <u>Environmental Health Programs (EHP)</u> | | |
| Hawaii District Health Office | 933-4371 | 933-4669 |
| Kauai District Health Office | 241-3323 | 241-3480 |
| Maui District Health Office | 984-8234 | 984-8237 |
| State Hospital Operator (SHO) | 247-2191 | |
| Communications Office | | 586-4444 |

2. Spills from any facility into state waters, excluding R-1 water from recycled water systems

- a. Applicability. Any wastewater spill which enters into state waters from a public or private wastewater system.
 - (1) "State waters" has the meaning defined in HRS section 341-D, and includes drainage ditches, whether or not water is always flowing in them.
 - (2) Exclusion. Spill of R-1 water covered by Appendix J to HAR chapter 11-5, "NPDES General Permit Authorizing Discharges of R-1 Water from Recycled Water Systems". That general permit does not cover spills from treatment works.
- b. Immediate notice to DOH. If a spill occurs during working hours:
 - (1) The wastewater system owner or its agent (owner/agent) shall immediately notify the CWB of any spill into state waters; and
 - (2) If a spill occurs on the neighbor islands, the owner/agent shall also immediately notify their respective

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district environmental health program chief.

If a spill occurs during non-working hours:

- (1) Contact the state hospital operator;
and
 - (2) The next working day notify the CWB and the respective district EHP chief with a follow-up call.
- c. Press Release. The owner/agent shall immediately send out a press release for spills of a thousand gallons or more and for lesser spills if they present a substantial threat to public health. A press release shall comply with section 7. A press release is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.
- d. Disinfection. The owner/agent shall disinfect wastewater which is continuously being spilled into nearshore waters if sufficient disinfection contact time is available. Best judgment should be used in determining the amount of chlorine added to the discharge if chlorine is used as a disinfectant. Disinfection is not required if the owner/agent demonstrates that the spill was either R-1 or R-2 water and that BMPs as approved by the director were implemented.
- e. Warning signs. The owner/agent shall immediately post warning signs in the area(s) likely to be affected by the spill and where public access is possible. Posting of warning signs is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.

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The director shall also assure that a sufficient number of warning signs have been posted and the locations are adequate. Authorization to remove the signs shall also come from the director.

- f. Monitoring. The owner/agent shall conduct bacterial monitoring for any spill greater than 100 gallons or when public health may be threatened in accordance with section 8. Monitoring is not required if the owner/agent demonstrates that the spill was R-1 water and that BMPs as approved by the director were implemented.
- g. Reporting. The owner/agent shall report to the CWB under section 9.a.

3. Spills into state waters of R-1 water from recycled water systems

- a. Applicability. Any spills of R-1 water covered by Appendix J to HAR chapter 11-55, "NPDES General Permit Authorizing Discharges of R-1 Water from Recycled Water Systems."
 - (1) "State waters" has the same meaning defined in HRS section 342D-1, and includes drainage ditches, whether or not water is always flowing in them.
 - (2) Exclusion. The general permit does not cover spills from treatment works.
- b. Requirements. Among other things, the general permit requires filing a Notice of Intent before any discharge, compliance with standard conditions in appendix A of chapter 11-55, implementation of best management practices (BMPs), monitoring of discharges, avoiding violations of water quality criteria, and specified reporting. The full

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statement of requirements appears in the general permit.

4. Spills to ground only - with public access

- a. Applicability. Any wastewater spill from a wastewater system onto the ground and that does not enter state waters but is in an area which is or may be accessible to the public.
- (1) In this appendix, the public includes hotel, apartment, and condominium residents and guests, or condominium apartment owners at their own condominium, and management personnel and building or facility staff, unless the person is specifically an operator of the wastewater system or a manager of the property.
 - (2) In this appendix, areas inaccessible to the public include areas:
 - (a) Confined within a fenced or walled (six foot high with locked gate or door) area; and
 - (b) Contact with the spill is limited to wastewater system operating personnel and management personnel for the property owner or lessee.
 - (3) Exclusion. Spills of R-1 water provided the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.
- b. Immediate notice to DOH. If a spill of a thousand gallons or more occurs during working hours:

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- (1) On Oahu, the wastewater system owner/agent shall immediately notify the WWB; or
- (2) On the neighbor islands, the owner/agent shall immediately notify their respective district EHP chief.

If a spill of a thousand gallons or more occurs during non-working hours:

- (1) Contact the state hospital operator; and
 - (2) The next working day notify the WWB or on the neighbor islands, the respective district EHP chief with a follow-up call.
- c. Press release. The owner/agent shall immediately send out a press release for spills of a thousand gallons or more, and for lesser spills if they present a substantial threat to public health. A press release shall comply with section 7.
- d. Disinfection. The owner/agent shall disinfect the wastewater that is spilled onto the ground if the wastewater remains ponded on the ground for any sufficient length of time or if the discharge continues for any significant duration. Disinfection is not required if the owner/agent demonstrates that the spill was R-2 water and that BMPs as approved by the director were implemented.
- e. Warning signs. The owner/agent shall immediately post warning signs in the vicinity of the spill area.
- f. Clean up. All spill sites shall be cleared of all debris and standing wastewater, and disinfected pursuant to section 4.d.

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In areas containing standing wastewater which cannot be removed, the owner/agent shall limit public access by having barricades or other means.

- g. Reporting. The owner/agent of a public or private wastewater system shall report to the WWB as follows:
 - (1) For spills of a thousand gallons or more, the owner/agent shall report to the WWB under section 9.a.
 - (2) For spills less than a thousand gallons, immediate notice and reporting are not required. A tabulated summary of all spills less than a thousand gallons each shall be submitted to the WWB on a quarterly basis in accordance with section 9.b.
 - (3) Exfiltration. Reporting of leaks or breaks in pipelines discovered during inflow/infiltration repair work is not required. These situations are considered exfiltration.

5. Spills to ground only - with no public access

- a. Applicability. All wastewater spills from any public or private wastewater system that does not enter state waters and are in areas inaccessible to the public.
 - (1) The public and inaccessibility are described in section 4.a.
 - (2) Exclusion. Spills of R-1 water provided the owner/agent demonstrates the spill was of R-1 water and that BMPs as approved by the director were implemented.
- b. Immediate notice to DOH. If a spill of a thousand gallons or more, and for spills over 50 gallons occurring more than twice

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within a 12 month, from the same cause and/or location, period within the confines or fence line of a wastewater system, the owner/agent shall notify the WWB within 24 hours.

- c. Reporting. For spills of a thousand gallons or more, and for spills over 50 gallons occurring more than twice within a 12 month period, from the same cause and/or location, within the confines or fence line of a wastewater system, the owner/agent shall report to the WWB under section 9.a.
- d. Recording. The owner/agent shall record and tabulate the date and time of the spill, the amount released, the cause(s) for the spill, clean up efforts, and remedial actions taken to prevent future spills for all spills greater than 50 gallons as they happen. The owner/agent shall keep the records and tabulations on site and make the records and tabulation available to the director for inspection and copying.

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6. Spills to ground only - R-1 and RO water only

- a. Applicability. Spills of R-1 or RO water provided the owner/agent demonstrates the spill was of R-1 or RO water and that BMPs as approved by the director were implemented.
- b. Notice to DOH.
 - (1) For spills of a thousand gallons or more occurs, the wastewater system owner/agent shall notify the WWB at least by phone by the end of the next working day. The notice shall provide the information required by section 6.d(1), below.
 - (2) For spills of less than a thousand gallons, but more than fifty gallons, next day notice is not required, but the wastewater system owner/agent shall record the information and report as required by section 6.d.
- c. Warning signs. For spills greater than fifty gallons, the owner/agent shall immediately post warning signs in the vicinity of the spill area.
- d. Reporting. The owner/agent of a wastewater system shall report in writing to the WWB as follows:
 - (1) Information of each spill shall include at least the spill's date, time, location, quantity, the reason for the spill, and any corrective action.
 - (2) For spills more than fifty gallons, a tabulated summary shall be submitted to the WWB each year with the summary report required by section 11-62-28.

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7. **Press release**

The press release shall describe the location of the spill, the amount of wastewater released, what caused the spill, and what is being done to correct the situation. Also, include a contact person and telephone number (including an after hours/weekend contact). At a minimum, the press release shall be faxed, emailed or telephoned to the following:

- a. Associated Press (for radio dissemination);
- b. Major statewide and island newspapers;
- c. Major television news stations;
- d. Department of Health, Communications Office, Oahu
- e. CWB if into state waters, otherwise WWB; and
- f. For neighbor island spills, also include faxing the press release to the respective island DHOs.

8. **Monitoring of state waters**

Monitoring shall begin as soon as possible and be conducted in the receiving water area affected by the spill. Bacterial monitoring is not required if the owner/agent demonstrates that the spill was of R-1 water and that BMPs as approved by the director were implemented.

For spills entering fresh or brackish waters, the bacterial monitoring shall consist of sampling for the following indicator organisms:

- a. Enterococci; and
- b. Clostridium perfringens.

For spills entering marine waters, the bacterial monitoring shall consist of sampling for the following indicator organisms:

CHAPTER 11-62 APPENDIX B

- a. Enterococci; and
- b. Clostridium perfringens.

Results of the bacterial monitoring shall be submitted to the director in care of the CWB immediately. Monitoring shall continue until notification to stop is received from the director. With the approval of the director, on a case by case situation, some protocol requirements such as sampling or sign posting may be waived.

The director shall also be informed of the sampling stations and may modify the number of stations and site selection.

The director may require additional bacterial monitoring by the owner/agent to supplement their existing monitoring program, as may be necessary or appropriate.

9. Reporting

- a. When required above, the owner/agent shall submit a written report of the details of the spill within five (5) working days of the incident to the director in care of the CWB or WWB as applicable. The director may waive the five day written reporting requirement on a case by case basis provided that the director receives a request for waiver prior to the due date of the report.

The report shall include the date and time of the spill, the amount released, the cause(s) of the spill, location where the spill entered state waters (storm drains, ditches, streams, etc.), clean up efforts, remedial actions to prevent future spills, a summary of the monitoring data, a map of the

CHAPTER 11-62 APPENDIX B

sampling locations and public notification procedures if applicable.

- b. For spills not reported under section 9.a. and when required above, the owner/agent shall tabulate the following information: the date and time of the spill, the amount released, the cause(s) for the spill, clean up efforts, and remedial actions taken to prevent future spills. The owner/agent shall submit each quarter's tabulation to the WWB within 30 days after the quarter.

10. Modifications by the director

With the approval or under the direction of the director, response requirements may be increased, changed, reduced, or eliminated. For example, the director may require the owner/agent to post additional Warning Signs as needed or may assist in the removal of warning signs.

CHAPTER 11-62 APPENDIX C

FALLING HEAD TEST PROCEDURE

July 1, 2014

- A. Preparing Percolation Test Hole(s)
 - 1. Dig or bore a hole, four to twelve inches in diameter with vertical walls to the approximate depth of the soil absorption system (bottom of trench or bed).
 - 2. Scratch the side wall and bottom to remove any smeared soil and remove loose material.
 - 3. Place one inch of coarse sand or gravel on bottom to protect bottom from scouring action when the water is added.
- B. Determine Percolation Rate
 - 1. If soil is mostly clay, go to step D.
 - 2. Place twelve inches of water in hole and determine time to seep away. Record this time on the site evaluation form.
 - 3. Repeat step B.2. above. Also record this time on the site evaluation form.
 - 4. If the time of the second test is less than ten minutes go to step C, if not skip to step D.
- C. Sandy (granular) Soils
 - 1. Establish a fixed reference point, add water to six inches above gravel and measure water level drops every ten minutes for 1 hour.
 - 2. Use a shorter time interval if first six inches seeps away in ten minutes or less.
 - 3. After each measurement, the water level is readjusted to the six inch level. At no time during the test is the water level allowed to rise more than the six inches above the gravel.
 - 4. Record time intervals and water drops on site evaluation form.
 - 5. Use final water level drop interval to calculate percolation rate. (step F)

CHAPTER 11-62 APPENDIX C

- D. Other soils (non-granular, e.g. silt, loams and clays)
1. Maintain at least twelve inches of water in the hole for at least four hours to presoak soil.
 2. Do not remove water remaining after four hours.
 3. Permit soil to swell at least twelve hours. (Dry clayey soils should be soaked and permitted to swell for longer periods to obtain stabilized percolation rates).
 4. After swelling, remove loose material on top of gravel.
 5. Use fixed reference point, adjust water level to six inches above gravel and measure water level drop.
 6. If the first six inches of water seeps away in less than thirty minutes, measure water level drops every ten-minutes and run for one hour.
 7. If the first six inches of water takes longer than thirty minutes to seeps away, use thirty minute time intervals for four hours or until two successive drops do not vary by more than one-sixteenth inch (stabilized rate).
 8. After each measurement, the water level is readjusted to the six inch level. At no time during the test is the water level allowed to rise more than the six inches above the gravel.
 9. Record time intervals and water drops on site evaluation form.
 10. Use final water level drop interval to calculate percolation rate. (step F)
- F. Use final drop interval to calculate percolation rate and record on site evaluation form:

$$\frac{\text{Time Interval}}{\text{Water Level Drop}} = \text{Perc rate}$$

CHAPTER 11-62 APPENDIX D - TABLES

TABLE I
July 1, 2014

| Type of Establishment | Gallons Per Person Per Day (Unless Otherwise Noted) |
|---|---|
| Airports (per passenger) | 5 |
| Camps: | |
| Campground with central comfort stations | 32 |
| With flush toilets, no showers | 25 |
| Construction camps (semi-permanent) | 50 |
| Day camps (no meals served) | 15 |
| Resort camps (night and day) with limited plumbing | 50 |
| Luxury camps | 100 |
| Church | |
| With kitchen | 10 |
| Without kitchen | 5 |
| Cottages and small dwellings with seasonal occupancy (2 persons per bedroom minimum) | 100 |
| Country clubs (per resident member) | 100 |
| Country clubs (per non-resident member present) | 25 |
| Dentist per chair | 200 |
| Doctor per patient | 5 |
| Dwelling (2 persons per bedroom minimum) | 100 |
| Factories (gallons per person, per shift, exclusive of industrial waste) | 35 |
| Hair salons and barber shops, | |
| Barber shops (per chair) | 50 |
| Beauty salons (per chair) | 125 |
| Hospitals (per bed space) | 250 |
| Hotels with private baths (2 person per bedroom minimum) | 100 |
| Institutions other than hospitals (per bed space) | 125 |
| Laundries, self-service (per machine) | 300 |
| Mobile home parks (per space) | 250 |
| Motels with bath, toilet, and kitchen waste (per bed space) | 60 |
| Picnic parks (toilets wastes only) (per picnicker) | 5 |
| Picnic parks with bathhouses, showers, and flush toilets | 50 |
| Restaurants | |
| Per day per seat | 50 |
| Per meal without public restrooms | 5 |
| Per meal served with toilets | 10 |
| Additional kitchen wastes per take out meals | 3 |
| Additional for bars and cocktail lounges, per seat | 15 |
| Schools: | |
| Boarding | 100 |
| Day, without gyms, cafeteria, or showers | 15 |
| Day, with gyms, cafeteria, and showers | 25 |
| Day, with cafeteria, but without gyms or showers | 20 |
| Service station (per vehicle served) | 10 |
| Swimming pools and bathhouses | 10 |
| Theaters: | |
| Movie (per auditorium seat) | 5 |
| Drive-in (per car space) | 5 |
| Workers (in addition to above): | |
| Construction (at semi-permanent camps) | 50 |
| Day, at schools and offices (per shift) | 20 |
| Employee (per shift) | 20 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE II
July 1, 2014

| Minimum Horizontal Distance From | Cesspool (ft) | Treatment Unit (ft) | Seepage Pit (ft) | Soil Absorption System (ft) |
|---|------------------|---------------------------|------------------------|--------------------------------------|
| Wall line of any structure or building | 5 | 5 | 5 | 5 |
| Property line | 9 | 5 | 9 | 5 |
| Stream, the ocean at the shoreline certification, pond, lake, or other surface water body | 50 | 50 | 50 | 50 |
| Large trees | 10 | 5 | 10 | 10 |
| Treatment unit | 5 | 5 | 5 | 5 |
| Seepage pit | 18 | 5 | 12 | 5 |
| Cesspool | 18 | 5 | 18 | 5 |
| Soil absorption system | 5 | 5 | 5 | 5 |
| Potable water sources serving public water systems | 1000 | 500 | 1000 | 1000 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE III
July 1, 2014

| Percolation Rate (min/inch) Less than or equal to | Required Absorption Area (ft ² /bedroom or 200 gallons) | Percolation Rate (min/inch) Less than or equal to | Required Absorption Area (ft ² /bedroom or 200 gallons) |
|---|---|---|---|
| 1 | 70 | 31 | 253 |
| 2 | 85 | 32 | 257 |
| 3 | 100 | 33 | 260 |
| 4 | 115 | 34 | 263 |
| 5 | 125 | 35 | 267 |
| 6 | 133 | 36 | 270 |
| 7 | 141 | 37 | 273 |
| 8 | 149 | 38 | 277 |
| 9 | 157 | 39 | 280 |
| 10 | 165 | 40 | 283 |
| 11 | 170 | 41 | 287 |
| 12 | 175 | 42 | 290 |
| 13 | 180 | 43 | 293 |
| 14 | 185 | 44 | 297 |
| 15 | 190 | 45 | 300 |
| 16 | 194 | 46 | 302 |
| 17 | 198 | 47 | 304 |
| 18 | 202 | 48 | 306 |
| 19 | 206 | 49 | 308 |
| 20 | 210 | 50 | 310 |
| 21 | 214 | 51 | 312 |
| 22 | 218 | 52 | 314 |
| 23 | 222 | 53 | 316 |
| 24 | 226 | 54 | 318 |
| 25 | 230 | 55 | 320 |
| 26 | 234 | 56 | 322 |
| 27 | 238 | 57 | 324 |
| 28 | 242 | 58 | 326 |
| 29 | 246 | 59 | 328 |
| 30 | 250 | 60 | 330 |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE IV
July 1, 2014

| Pollutant | Pollutant Ceiling Concentration Limit (dry weight basis, mg/kg) |
|------------|---|
| Arsenic | 20 |
| Cadmium | 15 |
| Chromium | 200 |
| Copper | 1500 |
| Lead | 300 |
| Mercury | 10 |
| Molybdenum | 25 |
| Nickel | 420 |
| Selenium | 25 |
| Zinc | 2000 |

TABLE V
July 1, 2014

| | |
|--|------------------|
| Amount of Wastewater Sludge (Metric Ton per 365 day period, dry weight basis) | Frequency |
| Greater than zero but less than 290 | Once per year |
| Equal to or greater than 290 but less than 1500 | Once per quarter |
| Equal to or greater than 1500 but less than 15,000 | Once per 60 days |
| Equal to or greater than 15,000 | Once per month |
| Amount of Wastewater Sludge (English Ton per 365 day period, dry weight basis) | Frequency |
| Greater than zero but less than 320 | Once per year |
| Equal to or greater than 320 but less than 1650 | Once per quarter |
| Equal to or greater than 1650 but less than 16,500 | Once per 60 days |
| Equal to or greater than 16,500 | Once per month |

CHAPTER 11-62 APPENDIX D - TABLES

TABLE VI
July 1, 2014

| Horizontal Distance From | Feet |
|--|------|
| Waters of the United States, state waters, the ocean at the vegetation line, or any other surface water body | 50 |
| Property line | 50 |
| Occupied building or dwelling | 500 |
| Potable water source serving public water systems | 1000 |

TABLE VII
July 1, 2014

| Pollutant | Pollutant Ceiling Concentration Limit (dry weight basis, mg/kg) |
|-----------|---|
| Arsenic | 20 |
| Chromium | 200 |
| Nickel | 420 |

CHAPTER 11-62 APPENDIX E

CHAPTER 11-62 FORM A
CERTIFICATION FORM - LAND APPLICATION
July 1, 2014

Instructions:

1. Each form must be signed and dated to be valid.
2. The certifier shall print or type his name below the signature line and print or type the certifier's title, if any, where indicated.
3. When the certifier checks a box or fills in a line other than the signature or date lines, the certifier shall initial below the check or the line, unless the certifier uses preprinted versions of the form which delete the boxes and lines which must be initialed.

For preparers only, I certify, under penalty of law, that:

1. The pollutant concentration ceiling limits in Table IV of chapter 11-62, HAR have been met.

2. The following pathogen requirements have been met:

a. The Class A pathogen requirements of §11-62-46(a), HAR, specifically §11-62-46(a) (____); or

b. The Class B pathogen requirements of 40 CFR §503.32 (b), specifically §503.32(b) (____) and notification each land owner and land applier of wastewater sludge which I have prepared, of the spacing and site restrictions in §11-62-43(g), HAR; and the

CHAPTER 11-62 APPENDIX E

management requirements
in §11-62-43(h), HAR.

3. Vector attraction reduction:
- a. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (1) through (8), has been met, specifically §503.33(b) (____); or
 - b. I have not met the one of the requirements of 40 CFR §503.33(b) (1) through (b) (8), and I informed the land applier and the owner of the land application site that one of the vector attraction reduction requirements in 40 CFR §503.33(b) (9) or (b) (10) must be met;

For appliers of wastewater sludge only, I certify, under penalty of law, that:

4. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (9) or (b) (10) has been met, specifically §503.33(b) (____);

5. The spacing and site restrictions in §11-62-43(g) have been met; and

6. The management requirements in §11-62-43(h), HAR have been met.

For appliers of septage only, I certify, under penalty of law, that:

7. One of the pathogen requirements in 40 CFR §503.32(c) (1) or (c) (2) has been met, specifically §503.32(c) (____);

CHAPTER 11-62 APPENDIX E

- 8. One of the vector attraction reduction requirements in 40 CFR §503.33(b) (9), (b) (10), or (b) (12) has been met, specifically §503.33(b) (____);
- 9. The spacing and site restrictions in §11-62-44(g), HAR have been met; and
- 10. The management requirements in §11-62-44(h), HAR have been met.

I certify, under penalty of law, that the information that will be used to determine compliance with the foregoing requirements was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

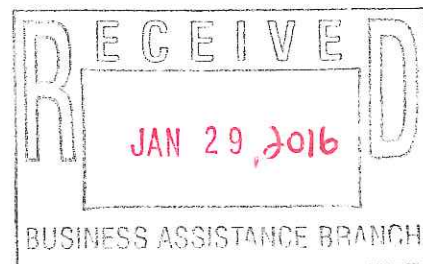
Date

Name

Title: _____

Exhibit 2

**RULES & REGULATIONS
OF THE
LIQUOR CONTROL COMMISSION
OF THE
COUNTY OF KAUAI**



EFFECTIVE:

RULES & REGULATIONS
KAUAI LIQUOR CONTROL COMMISSION

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RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION
COUNTY OF KAUAI

RULE 1
DEFINITIONS

Rule 1.1. Definitions. Words used in these rules and regulations in the singular include the plural, and vice versa; words of any gender include any other gender. Words defined in Section 281-1, Hawaii Revised Statutes, as amended, shall have the same meaning wherever used herein.

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license; renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statement to the commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the Department or Commission.

"Blue card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an on-premises establishment.

"Catering" means a privilege extended to a restaurant (class 2), hotel (class 12), caterer (class 13), brewpub (class 14), or condominium hotel (class 15) licensee to provide liquor service off of its license premises in conjunction with its food service.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill, which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Complimentary liquor" means packaged or individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium Hotel Guest Room" means (1) a condominium hotel guest room that is a unit, as defined in Section 514B-3, HRS, which is used to provide transient lodging for periods less than thirty days under a written contract with the owner of a unit in a condominium hotel operation; or (b) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for period less than 30 days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"dBA" means a unit for measuring sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Dancing" means "to move your body in a way that goes with the rhythm and style of music that is being played."

"Department" means the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Decibels" means the unit for measuring the volume of sound equal to 20 times the logarithm to the base 10 of the ratio of the pressure to the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Director" means the director of the Department of Liquor Control of the County of Kauai, State of Hawaii.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function as defined above, shall be considered "on duty".

"Entertainer" means any person who performs a service usually or normally done, on or within licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated.

"Guest Room" means a room for the lodging of transient guests which is offered for adequate pay for period less than 30 days.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another simulating sexual contact.

"Manager" means any person who has a valid blue or red card and who is registered as a manager or assistant manager by the licensee.

"Non-standard bar" means an on premise license that is authorized to have live entertainment with or without dancing by patrons.

"Off premises license, licensee, or establishment" means a retail dealer, license, licensee, or business.

"On premises license, licensee, or establishment" means any license, licensee, or business authorized to sell liquor for consumption on the premises.

"Private party" means a gathering of persons for a special occasion; such as a wedding, an anniversary, a luau, etc., where food and drinks are served.

"Red Card" means a card issued by the department to a person 21 years of age or older who has scored at least 85% on a written exam administered by the department for an off-premises establishment.

"Showroom Facility" is defined as a location having a staged performance with seated guests.

"Strip show," means a burlesque act in which a performer removes his or her clothing piece by piece.

"Unreasonable noise" means noise emanating from liquor-licensed premises that exceed the maximum allowable decibel level as prescribed in rule 7.4(b).

RULE 2 **RULES OF PRACTICE AND PROCEDURE**

Rule 2.1. Methods whereby public may obtain information. The public may obtain information as to matters within the jurisdiction of the commission by inquiring at the office of the County Clerk of the County of Kauai, State of Hawaii, where there are on file all rules of the commission; or at the department. All rules, orders, or opinions of the commission are on file and available for public inspection at said office, copies of compilations of rules and supplements thereto are available to the public at a price to be fixed by the County Council to cover mailing and publication costs.

Such inquiry may be made in person at said office during business hours, or by submitting a request for information in writing to the department.

Rule 2.2. Petition for adoption, amendment, or repeal of rules. (a) Any interested persons may petition the commission requesting the adoption, amendment, or repeal of any rule of the commission.

(b) The petition shall be typewritten and shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; and
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The commission shall within thirty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with the Hawaii Administrative Procedure Act for the adoption, amendment, or repeal of the rule, as the case may be.

Rule 2.3. Declaratory ruling by the commission. (a) Any interested person may petition the commission for a declaratory order as to the applicability of any statute, ordinance, or of any rule or order of the commission.

(b) The petition shall be typewritten and shall contain:

- (1) The name, address, and telephone number of the petitioner;

- (2) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A complete statement of facts;
- (5) A statement of the position or contention of the petitioner; and
- (6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

(c) Any petition which does not conform to the foregoing requirements may be rejected.

(d) The commission may for good cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future; or
- (2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief; or
- (3) The issuance of the declaratory ruling may adversely affect the interests of the County of Kauai or any of its officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- (4) The matter is not within the jurisdiction of the commission.

(e) Where any question of law is involved, the commission may refer the matter to the county attorney. The commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) Upon the disposition of his petition, the petitioner shall be informed in writing thereof by the commission.

(g) Orders disposing of petitions shall have the same status as other commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to a different fact situation or where additional facts not considered in the order exist.

Rule 2.4. Rules of practice. (a) Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, or the revocation or suspension of a license, or other disciplinary action by the commission, which by law is required to be determined after an opportunity for a hearing, the following shall apply:

- (1) The applicant or licensee shall be notified in writing of the hearing and of his opportunity to be heard. Such notice shall conform to the requirements of the Hawaii Administrative Procedure

Act, and shall be sent not less than two calendar days before the date of the hearing in the case of license applications and not less than five calendar days before the date of the hearing in the case of disciplinary actions. Such notice shall be in addition to any notice required by law to be published in a newspaper.

- (2) The hearing shall be conducted in conformity with the applicable provisions of the Hawaii Administrative Procedure Act.
- (3) The determination shall be subject to such limitations or standards as may be prescribed by law.
- (4) If the commission decides in favor of the applicant or licensee, the commission shall promptly notify the applicant or licensee.
- (5) If the commission decides against the applicant or licensee, it shall issue an appropriate decision and order. Such decision and order shall be accompanied by separate findings of fact and conclusions of law. The commission shall within a reasonable time send a certified copy of the findings of fact, conclusions of law, decision and order to the applicant or licensee.

(b) Any of the foregoing procedures may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(c) The department shall adopt rules by which contested case hearings will be conducted. Parties to a contested case hearing shall be provided with such rules ten (10) days prior to the date of the contested case hearing.

(d) Judicial review shall be as provided by law.

Rule 2.5. License application; notice of hearing; affidavits. (a) All applications for new licenses and all notices of public hearing sent and affidavits filed by applicants in connection with such applications, shall be in respective forms prescribed therefore from time to time by the department.

(b) An applicant for a new license or a transfer of license other than a special or temporary license shall file as part of its application:

- ~~(1) A statement of its financial condition dated within the last twelve months which shall be verified by oath of the applicant as being full, true, and correct, or an audited report of its financial condition which was prepared by a certified public accountant;~~
- (1) ~~(2)~~ Tax clearance from the state department of taxation and the federal internal revenue service;
- (2) ~~(3)~~ Personal history of all persons named in the application in the form prescribed by the department;

- (3) ~~(4)~~ If the applicant is a partnership, a partnership agreement;
- ~~(5)~~ If the applicant is a corporation, the articles of incorporation which has been filed and accepted by the state department of commerce and consumer affairs; and
- ~~(6)~~ If the applicant is a limited liability company, its articles of organization which has been filed and accepted by the state department of commerce and consumer affairs;
- ~~(7)~~ A floor plan which shall be drawn to scale and showing the detailed description of the proposed premises; and
- ~~(8)~~ Lease or rental agreement, if applicable.

(c) An applicant for a new license other than a ~~[vessel,]~~ transient vessel, tour or cruise vessel, or special license shall also file as part of its application:

- (1) A map drawn to scale showing all properties within five hundred (500) feet of the proposed premises; which shall also designate all properties within one hundred (100) feet of the proposed premises; and
- (2) A list of names and mailing addresses of property owners and lessees of record of the properties within five hundred (500) feet of the proposed premises; which list shall also designate all property owners and lessees of record within one hundred (100) feet of the proposed premises.

(3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 as prescribed for by HRS Section 281-31 (r) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses prior to the issuance of a new license.

(d) An application for transfer of license shall also file as part of its application:

- (1) A statement of the price to be paid for the purchase of the licensed business; and
- (2) Tax clearances for the transferor from the state department of taxation and the federal internal revenue service.

(3) Proof of liquor liability insurance coverage in an amount of \$1,000,000 for both the transferor and transferee as prescribed for by HRS Section 281-31 (r) except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses.

(e) An applicant for a transfer of a class 5 and class 11 licenses shall also comply with requirements of Section 281-57 of the Hawaii Revised Statutes.

(f) A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind and category issued by the commission at least one year immediately prior to the date of filing of the application for a temporary license; the application must be filed within 90 days of the surrender of the previous license or the closing of business.
 - (2) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises.
 - (3) If the issuance of a temporary license is based upon a transfer or new license application, the temporary license shall terminate upon the issuance or denial of the transfer or new license application.
 - (4) Where a temporary license is issued and the application for an original license is denied or withdrawn, or the temporary license is canceled, the temporary licensee shall be responsible for filing a gross sales report together with percentage fee due for the duration that the temporary license was in effect.
- (g) Applicant for a special license shall file as part of its application:
- (1) A floor plan which shall be drawn with measurements and showing the detailed description of the proposed premises;
 - ~~(2) Tax clearances from the state department of taxation and the federal internal revenue service;~~
 - (2) ~~(3)~~ A roster of all persons selling liquor, including their ages, and the name and age of the person in charge of those selling liquor;
 - (3) ~~(4)~~ The name ~~[and age]~~ of the person in charge of security ~~[and names of those providing security]~~;
 - (4) ~~(5)~~ The property owner's permission to sell ~~[dispense]~~ liquor for consumption on its property.
 - (5) ~~(6)~~ Method of disposal for the remaining liquor inventory.
- (h) An applicant for a ~~[vessel or]~~ transient vessel license shall file as part of its application:
- (1) A list of dates, ports of call, times of arrival and departure.
- (i) An applicant for a transient vessel, per day, license shall file:
- (1) One application for each vessel, and the application may be filed annually;
 - (2) Tax clearances shall be applicable to all applications for the Transient Vessel licenses that are filed by the agent or owner during that fiscal year; and.

- (3) The application shall include a list of dates, ports of call, times of arrival and departure and payment of fee per port of call.

When inclement weather forces a vessel to shift its port of call to the island of Kauai, and the vessel has a valid transient vessel license issued by another jurisdiction within the State of Hawaii, said license shall be valid in the County of Kauai, provided that notification of such change of port is sent to the Department prior to arrival.

(j) An applicant for a tour or cruise vessel license shall file as part of its application:

- (1) Commercial permit;
- (2) Mooring permit; and
- (3) Coast Guard certification.

Tour or cruise vessel license, exception. A tour or cruise vessel licensee may, with the approval of the commission, sell and serve liquor to ticketed passengers while on board the vessel during the loading of passengers for a period of time as determined by the commission.

(k) All applicants shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

Rule 2.6. Renewal of license. Applications for renewal of licenses, except temporary licenses, shall be submitted no earlier than June 1 and no later than June 30 of each year. Current tax clearances from the state department of taxation and the federal internal revenue service, ~~and~~ a deposit to cover the basic fee as prescribed by Rule 4.1 and proof of liquor liability insurance coverage in the amount of \$1,000,000 except for Manufacture, Wholesale, Tour or Cruise and Transient Vessel licenses as prescribed for by HRS, Section 281-31 (r) shall be submitted as part of the application.

An application for renewal of a temporary license shall be submitted prior to the expiration date of the license. A deposit to cover the temporary license fee as prescribed by Rule 4.1 shall be deposited as part of the application.

Rule 2.7. Deposit with application. A deposit to cover the cost of publishing the notice of public hearing must accompany all applications for a license.

Rule 2.8. Filing fee with application~~[-]~~, exception. A filing fee in the sum of one hundred dollars (\$100.00) shall be paid with any application for an initial issuance of a license or for a transfer of a license, except for Transient Vessel, per day and Special license applications the filing fee shall be the cost of the basic license fee as prescribed for in rule 4.1.

The filing fee shall become a realization of the county where the application is denied or withdrawn.

Rule 2.9. Knowledge of liquor laws, rules and regulations. (a) No license shall be issued or

renewed until the commission is satisfied that the applicant is familiar with the liquor laws of Hawaii and with the rules and regulations of the commission.

(b) Every licensee shall ensure that its employees involved with the sale of liquor are familiar with the rules of the commission and liquor laws of Hawaii.

Rule 2.10. Rehearing on application. An applicant desiring a rehearing after his application has been refused must file a petition with the commission within fifteen days from the date of such refusal.

Rule 2.11. Application for individual permits to receive shipments of liquor. (a) Any unlicensed person who is of legal age to purchase liquor may apply at the department on the form prescribed by the department and with the payment of a permit fee of ten dollars (\$10.00) or as required by Section 281-33.1(d) of the Hawaii Revised Statutes, whichever is greater, for a permit to receive a shipment of liquor from outside the state, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

(b) The application form shall include the following information:

- (1) A description of the liquor as to type, brand or trade name, domestic or imported, and quantity; and
- (2) Whether the liquor is an unsolicited gift, unavailable in the state, or part of the applicant's household goods.

Rule 2.12. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Kauai shall obtain a Direct Wine Shipper Permit from the Department of Liquor Control, County of Kauai. The permit may be granted by the Director to any person holding:

1. A general excise tax license from the State of Hawaii department of taxation; and
2. Either:
 - A. A class 1 license to manufacture wine under section 281-31; or
 - B. A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:

1. An application form;
2. Copy of the State of Hawaii Department of Taxation general excise tax license;
3. Copy of the class 1 license to manufacture wine under section 281-31 or the license to manufacture wine issued by another state; and
4. [Payment of an annual] [p]Permit fee of \$48.00. [~~For purposes of this rule, permit fees shall be prorated.~~]

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale and shall:

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY".
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment.
3. Report no later than January 31 of each year to the Department the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and,
5. Be subject to audit by the liquor commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a direct wine shipper permit by providing the liquor commission with a renewal application, a copy of the current license to manufacture wine and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

Rule 2.13. Application for a permit for trade shows, tasting event or other exhibitions. (a) Any trade exhibitor or trade organization, may apply for a permit to have liquor for display and sampling on a not-for-sale basis at trade exhibitions. The director may permit the exhibitor or organization to receive liquor that is not available in the state from outside the state.

(b) The application for the permit shall include the following information:

- (1) The name and address of the applicant;
- (2) The location of the trade show;
- (3) The dates and hours of the trade show;
- (4) An inventory list of the liquors to be displayed and sampled, its value and the procedure to be used to dispose of any liquor remaining at the end of the function; and
- (5) Property owner's permission and floor plan detailing where the trade show, tasting event or exhibition will be taking place.

(c) The dispensing of liquors for consumption is permitted between the hours of 8:00 a.m. to 11:00 p.m. on any day of the week.

(d) Liquor shall be consumed within the approved area that the holder of the permit has

exclusive control and clear view of, and any liquor being consumed shall not be removed from the area.

(e) Guidelines for sample servings are four ounces of beer per customer, two ounces of wine per customer, and one-half ounce of distilled spirit per customer, except as otherwise approved by the director.

(f) Samples shall be served in its original form.

(g) An industry member may assist a [retail] licensee who conducts a product tasting event provided that in no case shall the industry member assume duties normally conducted by an employee of the [retail] licensee.

Rule 2.14. Applications for warehousing liquor off the licensed premises. Liquor may be warehoused off the licensed premises within an appropriately zoned area in the county with the written approval of the commission. An application for warehousing off the licensed premises shall include as part of the application:

- (1) Floor plan drawn to scale;
- (2) Lease agreement, if applicable;
- (3) List of all licensed premises which will be using the warehouse, if the applicant holds more than one liquor license; and
- (4) Street address and tax map key of warehouse location.

Rule 2.15. Application and cost for a duplicate license. (a) A license that has been lost, destroyed, or mutilated will be replaced upon application from the licensee. A licensee shall submit an affidavit stating the cause of the loss, destruction, or mutilation of the license when applying for a duplicate license.

(b) A duplicate license shall be issued at no cost to the licensee if the director is satisfied that the license was lost, destroyed, or mutilated by circumstances beyond the control of the licensee.

(c) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to replace a license that was lost, destroyed, or mutilated because of negligence on the part of the licensee.

Rule 2.16. Authority vested to the director. (a) In the event that any licensee or any person submits a written application for a permit or renewal of an existing license or permit and the application cannot be brought before the commission at a regular meeting prior to the date of the event or function, the director may approve the application provided that all other applicable requirements of the liquor laws and the commission's rules and regulations have been met.

(b) The director may issue a notice of violation hearing to any licensee for any violation of the commission's rules and regulations or the liquor laws.

(c) When all applicable requirements of the liquor laws and the commission's rules and regulations have been met, the director shall have the authority to issue, suspend or revoke the following

permits and issue the following licenses:

Permits for: All games, game machines; karaoke machines; temporary increase or decrease of premises; alteration of premises. Karaoke permit shall be limited to licensees whose category of license provides for live entertainment with applicable conditions, as it may exist.

Licenses: Special license, Transient Vessel, per day[;] license[s].

Rule 2.17. Emergency rules and regulations. In the event of a national, statewide, or local emergency, the commission may adopt emergency rules and regulations, with the approval of the Mayor, for the protection of life and/or property. All emergency rules and regulations shall be scheduled for public hearing at the earliest possible date.

If the commission is unable to hold a meeting to meet the emergency, the Mayor may authorize the director to act for the commission.

Rule 2.18. Free one-day special license. (a) Notwithstanding any other rule to the contrary, the director may issue a free one-day special license of any class and kind at no cost to any nonprofit organization for a fundraising event from which no member is entitled to or takes, directly or indirectly, any share of the profits there from. Issuance of such license shall not exempt the licensee from any other provision of the liquor laws.

(b) An applicant for this free one-day special license shall file an application on the form prescribed by the department.

(c) The applicant shall obtain the property owner's permission to dispense and/or retail liquor on its property.

(d) The director may issue a free one-day special license to any applicant if the event for the license is to occur prior to a commission meeting.

RULE 3 **RULES OF GENERAL APPLICATIONS**

Rule 3.1. Posting of license and availability of rules and regulations and Liquor Laws of the State of Hawaii. (a) The original liquor license shall be conspicuously posted on the licensed premises.

(b) Every licensee shall have a current copy of the rules and regulations of the commission and a copy of the liquor laws of the State of Hawaii available at all times on the licensed premises for examination by employees and customers. A copy viewed on a computer is not acceptable unless the computer is located in a general sales area accessible to all employees and customers.

(c) Licensees and employees shall familiarize themselves with said rules and laws.

Rule 3.2. Alteration of premises. A licensee shall obtain approval from the commission prior to making any substantial physical alteration, such as adding or removing walls, changes in entrances and/or

exits, relocating wet bars, changing floor levels, etc., to its licensed premises.

Rule 3.3. Unauthorized liquor. The possession of any liquor by a licensee on any licensed premises, other than that authorized by the license, is prohibited. The finding of such unauthorized liquor on the licensed premises will be considered prima facie evidence of illegal possession thereof by the licensee.

Rule 3.4. Surrender of license. The holder of any license must immediately surrender its license to the commission upon suspension or revocation thereof, or within five days after closing his business if it be otherwise discontinued.

Rule 3.5. Free goods prohibited, exception. No licensee shall directly or indirectly offer, furnish, deliver, or give away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer which is tied in to the sale of liquor, except "pupus" (appetizers) offered in on premises establishments and advertising specialties which are available to all consumers are exempt from this provision.

Rule 3.6. Advertisements, posters, and signs. (a) No licensee shall, directly or indirectly, cause obscene, lewd, or immoral matter to be shown, displayed or distributed either on or from the premises.

(b) Any exterior poster or sign advertising liquor by brand name either in whole or part and maintained on the exterior of a licensed premises shall conform to the sign ordinances of the County government.

Rule 3.7. Attire and conduct of persons within a licensed premises, exception. No licensee shall at any time:

- (1) Employ or use any person or permit any person to remain in or upon the licensed premises while such person is unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areole or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, except as provided by Rule 8.5;
- (2) Permit any person to perform or simulate sexual acts in its licensed premises.
- (3) Permit the showing of film, still pictures, or electronic reproductions depicting:
 - (a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) Nudity or scenes wherein a person displays the anus, genitalia or female breast below the top of the areole;
 - (c) Any person being touched, caressed or fondled on the anus or genitalia; and
 - (d) Scenes wherein artificial devices or inanimate objects are employed to depict, or

drawing are employed to portray, any of the prohibited activities described above.

Rule 3.8. Sales to persons below the legal age to purchase liquor prohibited. No licensee shall sell or furnish any liquor to any person who is below the legal age to neither purchase liquor nor accept any payment, including the signing of any charge slip, from any person who is below the legal age to purchase liquor for any liquor sold.

Rule 3.9. Warehousing of liquor off the licensed premises. (a) Any licensee with warehousing off his licensed premises shall keep within the warehouse invoices for all liquor received at the warehouse, and a record of all liquor distributed from the warehouse. All records shall be kept for no less than three years.

(b) Any liquor distributed from the warehouse must be delivered directly to the licensed premises of the licensee.

(c) If a warehouse building is used by more than one licensee, each licensee's space shall be separated with permanent partitions.

Rule 3.10. Pool buying. The agent of a pool buying agreement shall file a copy of the agreement with the department and receive its approval prior to exercising the agreement. The agreement shall name the licensee who is to be the agent, the address of the delivery location, and a list of participants, their license number and street addresses.

A pool buying agreement shall expire on June 30 of each year or upon the addition of a new party to the agreement, whichever occurs first.

The agent shall inform the department of the date of transaction made under the pool buying agreement prior to the transaction date. Each pool buying transaction shall be completed on the day transacted which means that all members of the pool must take possession and pay for their merchandise on the day that the agent receives the liquor at his premises.

Where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensee.

The agent shall provide a list to the wholesaler and/or manufacturer of all members of the pool buying agreement and a list of purchases to be made by each member.

The wholesaler and/or manufacturer shall prepare separate invoices for each member of the pool buying agreement.

Participants of the pool buying agreement shall maintain records of its liquor purchases pursuant to the pool buying agreement within the licensed premises for a period of three years and the records shall be made available forthwith for inspection by the department or its authorized personnel.

Nothing in this section shall be deemed to exempt any licensee entering into any pool buying

agreement from any antitrust laws, liquor laws, or rules of the commission.

Rule 3.11. Waiving of rights to a violation hearing. A licensee who is cited by the commission as having violated any one of the following rules:

- (1) Rule 3.1. Posting of license and availability of rules and regulations;
- (2) Rule 3.2. Alteration of premises;
- (3) Rule 3.6. Advertisements, posters, and signs;
- (4) Rule 7.9 Manager registration;
- (5) Rule 7.11. Bar employee records;
- (6) Rule 7.13. Fight and disturbance reports;
- (7) Rule 8.4. Minimum requirements of a hotel condominium licensee
- (7)(8) Rule 9.1. Membership list of club; and
- (8)(9) Rule 10.3. Manager registration.

may waive its right to a hearing and admit to the charge prior to the hearing without appearing before the commission.

For the first violation of any one of the above-mentioned rules, the licensee shall pay a penalty of ~~fifty~~ **one hundred fifty** dollars ~~[(50.00)]~~ **(\$150.00)** to the department at the time that the licensee admits to the charge.

For the second violation within a twelve-month period, whether the violation is of the same rule or any other rule mentioned above, the licensee shall pay a penalty of ~~[one hundred dollars]~~ **three hundred dollars** ~~[(100.00)]~~ **(\$300.00)** to the department at the time that the licensee admits to the charge.

The licensee may not waive its right to a hearing pursuant to this rule and shall be required to appear before the commission where the licensee has committed more than two rule violations of the commission's rules within the previous twelve-month period.

Rule 3.12. Commission orders. All licensees shall comply with all lawful orders of the commission.

Rule 3.13. Contests and prizes, prohibitions. (a) No licensee shall promote or permit any contests which involve the consumption of liquor.

(b) No licensee shall at any time give any liquor as a prize for any contest.

Rule 3.14. Suspension or revocation of blue card or red card. The Commission may at any time for good cause suspend or revoke a blue card or red card.

Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises. The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

Rule 3.16. Legal age to sell liquor. The legal age for an employee to begin selling liquor is 18 years old.

Rule 3.17 Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

**RULE 4
LICENSE FEES, GROSS SALES REPORTS**

Rule 4.1. License fees. The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

| <u>Class</u> | <u>Kind</u> | <u>Basic Fees</u> |
|---|---|-------------------|
| 1. Manufacturers (including rectifiers) | (a) Beer | \$ 408 |
| | (b) Wine | \$ 408 |
| | <u>Wine manufactured from agricultural products grown in the State</u> | <u>\$ 120</u> |
| | (c) Alcohol | \$ 204 |
| | (d) Other Liquors | \$ 648 |
| | <u>Distilled spirits manufactured from agricultural products grown in the State</u> | <u>\$ 180</u> |
| 2. Restaurant | (a) General | \$ 480 |
| | (b) Beer & Wine | \$ 180 |
| | (c) Beer | \$ 120 |
| 3. Wholesale dealer | (a) General | \$1,200 |
| | (b) Beer & Wine | \$ 324 |
| | (c) Alcohol | \$ 18 |
| 4. Retail dealer | (a) General | \$ 480 |
| | (b) Beer & Wine | \$ 180 |

| | | |
|--------------------------------------|-----------------|-------------------|
| | (c) Alcohol | \$ 18 |
| 5. Dispenser | (a) General | \$ 480 |
| | (b) Beer & Wine | \$ 180 |
| | (c) Beer | \$ 120 |
| 6. Club | | \$ 240 |
| 7. Vessel <u>repealed</u> | | \$ 240 |
| 8. Transient Vessel, per day | | \$ 33 |
| Transient Vessel, per year | | \$ 900 |
| 9. Tour or Cruise Vessel | | \$ 240 |
| 10. Special, per day | (a) General | \$ 33 |
| | (b) Beer & Wine | \$ 24 |
| | (c) Beer | \$ 16 |
| 11. Cabaret | | \$ 600 |
| 12. Hotel | | \$ 900 |
| 13. Caterer | | \$ 120 |
| 14. Brewpub | | \$ 900 |
| <u>15. Condominium Hotel</u> | | <u>\$ 900</u> |
| <u>16. Winery</u> | | <u>\$ 900</u> |
| <u>18. Small craft producer pub</u> | | <u>\$ 900</u> |

The fee for a temporary license of any class and kind shall be sixty dollars (\$60.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional sixty dollars (\$60.00) for a renewal of not more than sixty days of the license.

Rule 4.2. Fees for solicitors' and representatives' permits. The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

Rule 4.3. Special license sales report. Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the license.

Rule 4.4. Percentage Fee. Licensees in Classes 2, 4, 5, 6, 9, 11, 12, ~~and~~ 13, ~~and~~ 14, ~~and~~ 15

and 18, and classes 1, [and] 3 and 16 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{\text{TFGS}} = \text{Percentage Fee}$$

EE = Estimated Expenditures (current fiscal year)
BF = Basic Fees (current fiscal year)
C = Carryover (excess fees from prior fiscal year)
TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall file with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

Rule 4.5. License Fees; When Due; How Received. (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term

shall be forfeited.

Rule 4.6. Payment of fees upon transfer of license. (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales ~~[together with]~~ and payment of its percentage fees due. The past fiscal year's percentage figure shall be used to calculate the percentage fee owed by the transferor. The transferor shall be notified of the percentage fee due and the transfer shall not be completed until the percentage fee is paid.

(b) Final report and percentage by transferee; when. If the transferor fails to submit a final report of gross liquor sales and/or fails to pay the percentage fees upon transfer of such a license, the transferee shall be responsible for any percentage fee based on the total gross liquor sales for the entire term for which the license was exercised by the transferor.

~~[Gross sales of liquor under a temporary license shall be included as part of the sale of the transferee.]~~

Rule 4.7. Gross liquor sales report, percentage fee, and records. (a) Filing. Licensees holding Classes 2, 4, 5, 6, 9, 11, 12, 13, ~~[and]~~ 14, 15, 16 and 18 and Classes 1, ~~[and]~~ 3 for retail liquor sales to any person for private use and consumption, shall file, on a form provided by the Department, a report showing the true and accurate gross sales of liquor including complimentary liquor as defined in Rule 1 for the license year.

Gross sales of liquor under a temporary license shall be included as part of the transferee's or new licensee's gross sales report for the fiscal year.

Reports shall be completed and filed with the department as follows:

- (1) On or before July 31, a final gross sales report for that license year.
- (2) Within 30 days of the closing of business or cancellation or revocation of the license, a final gross sales report.
- (3) At such other time as the Commission or Director may direct.

For purposes of this rule, reports postmarked on the due date shall be acceptable. Where the due date falls on a holiday or weekend, the report shall be delivered to the office of the Department on the first working day thereafter.

(b) Percentage fee due; when. The percentage fee based on gross sales of liquor shall be due and payable in full on September 30.

In case of revocation or cancellation of such license, the percentage fee chargeable against such license shall be the past fiscal year's percentage figure and the percentage fee due shall become due and payable within 30 days from the date of the Notice of Percentage Fee Due.

Any licensee who fails to pay its percentage fee on the due date ~~[shall]~~ may be issued a notice of

violation for every day payment has not been made and be subject to penalties as stated in Section 281-91, Hawaii Revised Statutes.

(c) Percentage fee amount due; when. All licensees required to pay an annual percentage fee as prescribed in rule 4.4 shall be mailed a Notice of Percentage Fee Due stating the amount due to the department by the due date.

~~[For fiscal year ending June 30, 2005, the percentage fee for classes 2 and 4 licenses shall not exceed \$10,000. This maximum percentage fee will only be applicable for fiscal year ending June 30, 2005.]~~

~~[For fiscal year ending June 30, 2005, the percentage fee for a class 12 license shall not exceed \$30,000. This maximum percentage fee will only be applicable for fiscal year ending June 30, 2005.]~~

~~[Beginning July 1, 2005,]~~ Any [any] licensee whose annual percentage fee exceeds ~~[\$12,000]~~ \$5,000 may [shall] pay to the department either in full or in two equal payments with the first payment being due no later than September 30 and the final payment being due no later than January 31 of the same fiscal year.

(d) Records and accounts. All licensees shall keep, within the State of Hawaii, a set of books or records, which show all income, purchases and expenses of the liquor licensed business for a period of three years. These books and records, including but not limited to daily sales records, employee time sheets, and invoices, shall be made available for inspection and/or auditing by the department within forty-eight (48) hours from the time the licensee is notified by the department.

RULE 5 **TERM OF LICENSE AND PERMIT**

Rule 5.1. Terms of licenses and permits. (a) Every license issued, except classes 8 and 10 and temporary licenses, shall expire at 12:00 midnight on June 30 next succeeding its issue.

(b) Transient vessel, special, temporary licenses, and solicitors' and representatives' permits shall expire at 12:00 midnight on the expiration day of the licenses.

(c) All liquor licenses not exercised within one hundred eighty (180) days of approval by the commission shall, except for good cause, become void.

(d) A licensee who applies for a license to change its class or category of license shall exercise the new license within seven (7) days of approval by the commission or it will become void.

RULE 6 **HOURS OF BUSINESS**

Rule 6.1. Hours during which licensed premises may be open for transaction of business are as follows:

- (a) Dispenser, restaurant, [~~brewpub~~], club, tour or cruise vessel[~~, and vessel~~]: Every day from 6:00 a.m. to 2:00 a.m. the following day. For Restaurant class from 6:00 a.m. to 11:00 p.m. for retailing of "growlers".
- (b) Cabaret, hotel, [and] transient vessel and condominium hotel: Every day from 6:00 a.m. to 4:00 a.m. the following day. Exception: Cabaret in a location zoned other than resort shall be from 6:00 a.m. to 2:00 a.m. the following day.
- (c) Retail dealers: Every day from 6:00 a.m. to 11:00 p.m.
- (d) Wholesale dealers and manufacturers: Every day from 6:00 a.m. to 11:00 p.m.
- (e) Caterer: Every day from 6:00 a.m. to 12:00 midnight.
- (f) Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- (g) Free One-Day Special Retail Dealer: From 6:00 a.m. to 11:00 p.m.
- (h) Free One-Day Special Dispenser: From 6:00 a.m. to 12:00 midnight.
- (i) Brewpub: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.
- (j) Winery: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.
- (k) Small Craft: Every day from 6:00 a.m. to 2:00 a.m. for dispensing, 6:00 a.m. to 11:00 p.m. for retailing.

Rule 6.2. Sales, service, or consumption before or after hours of business , exception.

There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after hours established by the commission, except that employees who were on duty at the legal closing time in on premises establishments may consume liquor immediately after closing with the permission of the licensee, and at no cost, if no other person is in the liquor service area of the premises.

RULE 7
RELATING TO ON PREMISES ESTABLISHMENTS

Rule 7.1. Number of drinks per person and liquor content of drinks, exception. (a) The stacking of liquor for consumption by patrons is prohibited. For the purpose of this rule, [~~a beer served with a straight or unmixed drink shall be considered to be one drink. Also, for the purpose of this rule,~~] the word "stacking" is defined as more than two standard servings to a customer at one time. This rule shall not apply to authorize showroom facilities as defined in rule 1, which may serve the minimum drinks at the same time to lessen disturbance to the show.

A standard serving shall be a drink containing distilled spirits ~~[in a container]~~ and mixes not to exceed 10 ounces, five ounces of wine or twelve ounces of beer. A drink in excess of a standard serving shall be limited to one drink per person at one time.

Distilled spirits containing no mixes shall be limited to not more than two ounces per person at one time.

A pitcher of beer or mixed drink containing distilled spirit, not to exceed 48 ounces, may be served to no less than two or more persons when seated together.

Distilled spirits may be served from its original package of up to 1 liter in capacity for any special occasion upon obtaining a permit from the director.

A bottle of wine, not to exceed 750 milliliters, may be served to one person at one time with a meal as it applies to a hotel, ~~[or]~~ restaurant, club, cabaret, condominium hotel, brewpub class licensee engaged in meal service as provided for in section 281-31 ~~[(q)]~~ (r) of the Hawaii Revised Statutes. The law allows for a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. A ~~[hotel or restaurant class]~~ licensee wishing to exercise ~~[exercising]~~ this privilege shall inform the customer of the State of Hawaii "open container" law as stated in sections 291-3.1, ~~[and]~~ 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes.

(b) A drink consisting of one or more kinds of liquor and water or any other mix which is served, sold, or offered for sale by any on premises licensee, or prepared for such purpose, shall contain not less than one fluid ounce of liquor; except when selling a specialty drink which requires less than one ounce of liquor; in which case the licensee shall present to the patron a recipe or have in plain view of the patron ordering the drink a menu which specifies the amount of liquor in the drink.

When liquor is poured into a service glass by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mix or water has not been added.

(c) A straight drink shall have not less than one fluid ounce of liquor.

Rule 7.2. Sanitary conditions. (a) All licensed premises, including all furnishings, equipment, and paraphernalia within the premises, shall be kept in a strictly clean and sanitary condition, and all drinking glasses must be uncracked and effectively sterilized.

(b) All on premises establishments shall have access to adequate toilet facilities, which have been approved by the State Department of Health. Special license establishments shall have toilet facilities as may be required by the commission.

Rule 7.3. Draught beer. Draught beer sold or served shall be freshly drawn. The selling and serving of stale or slop beer is prohibited.

Rule 7.4. Condition of premises. (a) The main entrance of an on premises establishment must be kept unlocked whenever there is any non-employee or any employee who was not on duty at the closing time in the premises.

(b) Entrance to booths must be open and unobstructed.

(c) Lighting in all parts of the licensed premises shall be sufficient to make easily discernible the appearance and conduct of all persons in the premises and the main entrance of licensed premises shall be well and properly lighted.

(d) All interior rooms or enclosed areas in a Restaurant, Dispenser, Brewpub, or Cabaret licensed premises where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. Tinted windows are prohibited.

(e) No licensee that is authorized for on-premise consumption shall have an opening, transparent window or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.

(f) Paragraph (d and e) above to the contrary notwithstanding, the commission may waive this requirement for good cause. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.

(g) An on premises establishment shall be constructed in such a way that the sound from the licensed premises shall not disturb the nearby residents with unreasonable noise in excess of the following noise levels in decibels (dBA) for more than ten percent of the time within any 20-minute period at the boundary line of the complainant's property which is closest to the licensed premises. For this purpose, any sound having duration of less than one second shall be deemed to last one second.

| <u>Zoning Districts</u> | <u>7 a.m. to 10 p.m.</u> | <u>10 p.m. to 7 a.m. the following day</u> |
|---------------------------------------|------------------------------|--|
| Residential (R-1 to R-6) | 55 dBA | 45 dBA |
| Open (O) | 55 dBA | 45 dBA |
| Residential (R10 & R20) | 60 dBA | 50 dBA |
| Resort (RR10 & RR20) | 60 dBA | 50 dBA |
| Commercial (Neighborhood and General) | 60 dBA | 50 dBA |
| Agricultural | 70 dBA | 70 dBA |
| Industrial (Limited and General) | 70 dBA | 70 dBA |

Where the allowable noise level between two adjacent zoning districts differ, the lower allowable noise level shall be used. This rule shall be enforced if a complaint of noise from the premises is received by the department from any resident or property owner with rental units within the area.

Rule 7.5. Music, dancing, and entertainment , exception. (a) In any on premises

establishment, radios, television sets, jukeboxes, and any other system of providing recorded background music in the premises may be installed and operated without commission approval, provided that the sound does not disturb the neighborhood. Programs that are not offensive to common propriety and programs that are rated G or PG may be shown within the premises.

(b) Impromptu entertainment which is unpaid and unscheduled entertainment by a person who is not less than eighteen years of age is permitted without commission approval if said entertainment is not offensive to common propriety and the sound does not disturb the neighborhood.

(c) Any and all games and other forms of entertainment provided by management, such as music, shows, and game machines are prohibited except where and when specifically permitted by the commission in writing.

(d) A standard bar or a dispenser, category (C) or a restaurant, category (2) without dancing premises that wishes to have dancing in its premises as part of its normal operations shall be subject to Section 281-51 to 281-60 of the Hawaii Revised Statutes.

(e) In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than one hundred fifty (150) square feet suitable for ballroom dancing. The designated area may be utilized for other purposes when not used for dancing. However, when used for dancing, the designated area must be totally cleared of all obstructions and utilized only for dancing.

(f) Dancing by customers is permitted only on a designated dance floor approved by the Commission. Licensees shall not allow any form of lap dancing by customers or its employees.

(g) Paragraph (c) above to the contrary notwithstanding, no permit shall be required by a hotel or condominium hotel licensee for live entertainment, games, movies, etc., if the entertainment, games, movies, etc., are not offensive to common propriety.

Rule 7.6. Repealed.

Rule 7.7. Clearing of tables at closing time. Any and all vessels containing liquor shall be removed from all areas of the licensed premises which is open to the public no later than the legal closing time for liquor sales, except as permitted by Rule 6.2.

Rule 7.8. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age and who is duly registered by the licensee as a manager and approved by the commission must be in active charge of any on premises establishment at all times when there is anyone who is not an employee in the premises.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test in the English language covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a blue card. Any blue card issued on or after April 15, 1983 shall be valid for a period of five years from the date of issuance. Any blue card issued

prior to April 15, 1983 shall remain valid until the holder, on or after April 15, 1983, changes his place of employment and is registered as a manager by the licensee of his new place of employment. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 7.9. Manager registration. (a) The manager on duty is strictly accountable for the conduct of all employees, including other management personnel, and for the sales of liquor in the licensed premises.

(b) An on premises licensee shall notify the commission of the employment of a manager prior to his employment by submitting a notice of employment of such person to the department. A manager must have a valid blue card prior to his employment as manager. A person does not qualify as a manager unless he is registered as a manager by the licensee.

(c) The commission may require the licensee to suspend or terminate the employment of any employee for good and sufficient reason. Good and sufficient reason shall include but not be limited to conviction for an offense against the public health and morals as set out in the Hawaii Penal Code.

(d) Every on premises licensee shall submit a **typewritten** list of all its management personnel to the department no later than July 31 of each year on the forms provided by the department.

Rule 7.10. Bar employee records. An on premises licensee shall have available at all times in the licensed premises a current record showing all bar employees, including management personnel, who are on duty.

Rule 7.11. Employees drinking on duty and entertaining patrons prohibited. In an on premises establishment, no employee, while on duty and within the premises, shall consume liquor or sit or dance with or play games with patrons. This restriction shall not apply to the overall manager who is in active charge of the premises if he does not work at selling or serving liquor.

For the purpose of this rule, "while on duty" shall mean from the time an employee starts work on any day until the employee is through for that day. It shall include any time during a split shift, a meal break and a rest break.

Rule 7.12. A person below the age of eighteen years in an on premises establishment prohibited, exceptions. (a) A person below the age of eighteen years is not permitted in an on premises establishment where liquor sales account for seventy-five percent (75%) or more of the total revenues of the establishment, excluding revenues from coin operated machines and logo items or when there is a show or televised program that exposes to view the female breast below the top of the areole, or a strip tease show, or a show that is offensive to common propriety.

The revenue figures for the immediate past calendar month shall be used to determine if a licensed premises is qualified to have persons below the age of eighteen years in its premises. A new licensee or a licensee who changes its operation to include sales of other merchandise shall be automatically qualified to permit persons below the age of eighteen years in its premises during its first month of operation.

(b) A minor below the age of 18 years shall not be permitted in any area of any licensed premises where liquor is served after 12 o'clock midnight. This paragraph shall not apply to such minor who is attending a private party with a parent or a guardian.

(c) The commission may exempt any licensee from this rule upon application and review of a proposed special event.

Rule 7.13. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in his licensed premises. The report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.

The report shall include the name of the licensee and business, the date and time of the incident, the location of the incident, the name(s) of person(s) involved, the condition of those involved, the details of the incident and action taken by the licensee to prevent or suppress the occurrence. The report shall be signed by the licensee or its authorized agent.

For the purpose of this rule, the word "disturbance" shall mean any incident of quarrelsome behavior that causes the licensee, his employees, or police officers to evict a person from the premises or to request a person to leave the premises. Also for the purpose of this rule, the word "fight" shall mean a physical confrontation.

Rule 7.14. Review by patron of charge slip for liquor purchased. Any on premises licensee who does not collect payment for each drink as it is served shall upon request, inform the patron the amount owing each time liquor is served.

Rule 7.15. Practices that promote excessive consumption of liquor prohibited. (a) Licensees shall use good judgment in serving liquor to patrons to prevent excessive consumption of liquor by patrons.

(b) No alcoholic beverage shall be sold unless the consuming patron consents to accept said beverage prior to service.

(c) No licensee shall sell to any person an unlimited quantity of liquor during any set period of time for a fixed price. This paragraph shall not apply to private functions for which a hosted bar is utilized such as a wedding receptions, or public functions such as luaus and brunches where liquor is inclusive, or other similar events where liquor service is incidental to food service.

(d) Before serving liquor in an on-premises establishment the licensee shall have received a bona fide and specific order before preparing and serving the order from its service bar.

RULE 8 **RELATING TO CABARET, [AND] HOTEL [LICENSES] AND CONDOMINIUM HOTEL LICENSEES**

Rule 8.1. Minimum requirements of cabaret license. (a) A cabaret license shall be general

only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. A cabaret establishment shall have an adequate kitchen facility where hot meals are prepared and available to patrons from the time the premises is open for business to midnight unless the premises closes before midnight. A dance floor of not less than one hundred fifty (150) square feet suitable for dancing and clearly designated for such purpose or professional entertainment shall be provided for the benefit of the patrons.

(b) No cabaret licensed premises shall remain open after 2:00 a.m. without dancing or professional entertainment being provided. [~~Neither a paid person who operates a system of recorded music nor a paid person who serves as a master of ceremonies shall be considered a professional entertainer.~~] The commission reserves the right to regulate and control professional entertainment in cabarets. The licensee will be strictly accountable for the conduct of all entertainers in the licensed premises.

Rule 8.2. Cabaret license not issued, when. No application for a new cabaret license which is to be located in an area which is not a resort zoned area shall be approved if there is any residential property located within 500 feet of the proposed premises.

Rule 8.3. Minimum requirements of hotel license. (a) Minimum requirements for hotel license shall be an establishment consisting of one or more buildings which contain (1) at least forty rooms in which sleeping accommodations are provided and offered for adequate pay to transients[;] or timeshare ownerships. [; or permanent guests;] [and (2) a suitable and adequate kitchen and dining room where at least one meal is prepared and served daily to hotel guests and other customers. For the purpose of this rule, anything that can be eaten quickly and without formality to appease the appetite shall not constitute a meal. The commission reserves the right to define a meal.]

~~[Rule 8.4. Catering privilege.]~~ (b) A hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.4. Minimum requirements of condominium hotel license. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in HRS Sec. 281-1, containing: at least forty condominium hotel guest rooms. Room service, self-service, and service at private parties within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee shall notify the Liquor Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

(e) A condominium hotel licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor while performing food-catering functions, subject to Rules 12.2 to 12.4.

Rule 8.5. Strip shows, exotic dancers. Rule 3.7 to the contrary notwithstanding, cabaret and hotel licensed premises may allow scheduled entertainers whose breasts and/or buttocks are exposed to view to perform, if they perform on a stage that is not less than twelve inches above the immediate floor level and not less than six feet from the nearest patron, but at no time under any circumstances shall an entertainer expose his or her genitals, pubic hair, or anus, or perform or simulate sexual acts in the licensed premises. A tip of money or other gifts on the performer's person during the performance while in such attire that exposes to view the female breast below the top of the areole and/or performer's buttocks is prohibited. The licensee shall submit the names of all entertainers who are to perform to the department not less than twenty-four hours prior to their performance and the performers shall be 18 years of age or older. The licensee shall not permit any nude impromptu entertainment under this rule.

Rule 8.6. Mini bars in guest rooms and room service. A hotel or a condominium hotel licensed premises shall be restricted from selling liquor in its original package except via mini bars installed in ~~[hotel]~~ guest rooms and room service. Said service shall be initiated at the request of an occupant twenty-one years of age or older. ~~[and consumption shall be restricted to the hotel guest room.]~~

Rule 8.7. Recognizable security person. (a) Every cabaret and hotel licensee shall have recognizable security personnel within the premises to prevent anyone from selling, distributing, or using illegal drugs within the premises where liquor is being sold during the time the premises is open for business after 2:00 a.m.

(b) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(c) No licensee shall promote, encourage or permit any person on the licensed premises to possess, distribute or use illicit or illegal drugs.

Rule 8.8. Change of Hotel or Cabaret license. Any hotel class or cabaret class license failing to meet the minimum requirements of a hotel class or cabaret class license, respectively, may be reclassified by the commission to a dispenser or restaurant class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 9 **RELATING TO THE CLUB LICENSE**

Rule 9.1. Membership list of club. Each licensed club shall keep a complete list of its members,

which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.

Rule 9.2. Guest-card privileges of club. Any individual enjoying guest-card privileges of a club and to whom liquors may be sold must be a bona fide guest of the club. ~~provided, however, that no person who is a legal resident of the county of Kauai shall be deemed to be a guest enjoying the privileges of the membership of a club.~~ Each club shall keep records as to registration of all such bona fide guests, which records shall be produced whenever required by the commission, or by any member thereof, or by any investigator. Guest-card privileges extended to such guest shall be limited, in each case, to not more than four weeks within any twelve consecutive months.

RULE 10 **RELATING TO MANUFACTURERS, WHOLESALERS, AND RETAILERS**

Rule 10.1. Retail dealer licensed premises. (a) If the retail dealer licensed premises remains open to the public during the hours when the sale of liquor is prohibited, the licensee shall post conspicuous signs about all areas displaying liquor giving notice that the sale of liquor is prohibited.

(b) An off premises licensee shall have available at all times in the licensed premises a current record showing all employees, including management personnel, who are on duty.

(c) Drive-in retail sale is prohibited. Customers making a purchase at a retail dealer's premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift or carry purchases of liquor because of a disability.

(d) A Retail Dealer licensee may make deliveries of liquor to private residences or businesses with a bona fide order from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point.

Rule 10.2. Manager on duty, qualifications. (a) A person who is not less than twenty-one years of age and who is duly registered by the licensee as a manager and approved by the commission must be in active charge of any off premise establishment at all times that liquor can be legally sold.

(b) To become eligible for approval as a manager, the applicant shall take a written or oral test in the English language covering all applicable laws relating to liquor and the rules and regulations of the commission and receive a score of eighty-five percent (85%) or more correct. Upon successful completion of the test; presentation of proper identification showing the applicant's date of birth; and commission review of eligibility and approval; the applicant shall be issued a red card. Any red card issued shall be valid for a period of five years from the date of issuance. The commission may require the applicant to appear before the commission for a personal interview and evaluation as to eligibility prior to granting final approval of the applicant as a manager.

Rule 10.3. Manager registration. (a) An off premises licensee shall notify the commission of the employment of a manager prior to employing the individual by submitting a notice of employment of such

person to the department. A manager must have a valid red card prior to employment as a manager. A person does not qualify as a manager unless the licensee registers the individual as a manager.

(b) Every off premises licensee shall submit a typewritten list of all its managers to the department no later than July 31 of each year on the forms provided by the department.

Rule 10.4. Prohibition against peddling, exception. Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing liquor from licensed premises for delivery to a customer under a manufacturer's or wholesale or retail dealer's license, the licensee must have received a bona fide and specific order therefore. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefore, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquor at retail in their original package or dispense liquor for consumption on the premises.

Rule 10.5. Record keeping by wholesalers. All wholesale dealers shall keep a separate and distinct book account, wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made and the quantity of liquor sold to each licensee, and shall, upon the specific request therefore, submit to the commission a list of such sales data as may be required from time to time.

Rule 10.6 Manufacture, Wholesale or Retail Dealer licensee; Free One-Day Special license, exception. (a) The rules of the commission do not prohibit a manufacturer, wholesaler or retail dealer licensee from giving financial or other forms of event sponsorship assistance to any bona fide nonprofit organization owning and exercising a Free One-Day Special license issued by this department for purposes of charitable fundraising.

(b) An industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the site of the special licensed premises, and may assist in the connection and maintenance of the draft kegs and its tapping accessories, but may not assist the licensee in the selling, serving, or furnishing of liquor to patrons.

RULE 11 RELATING TO RESTAURANT LICENSE

Rule 11.1 Minimum requirements for a restaurant license. A restaurant license may be issued to an establishment which is regularly used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenues must derive from the sale of foods.

Rule 11.2. Catering privilege. A restaurant licensee may provide off premises catering between 6:00 a.m. and 12:00 midnight daily for the sale of liquor authorized by its license while performing food catering functions, subject to Rules 12.2. to 12.4.

Rule 11.3. Categories of license. A restaurant license shall be either category [1] **A** or category [2] **B**, a premises in which live entertainment or recorded music is provided. A category [2] **B** premises shall be further described as a premises with dancing or a premises without dancing. A licensee who wishes to change from one category to a different category will be required to apply for a new license.

Rule 11.4. Change to a restaurant license. (a) A license of a different class, which qualifies for a restaurant class license, may be issued a restaurant, category [1] **A** or [2] **B** license by the commission. The category assigned will be according to the permitted activities of the license to be changed.

(b) Any restaurant class license failing to meet the minimum requirements of a restaurant class license may be reclassified by the commission to a dispenser class license. The category of license assigned will be decided by the commission based upon the permitted activities of the license to be reclassified.

RULE 12 **RELATING TO CATERER LICENSE**

Rule 12.1. Minimum requirements for a caterer license. A [caterer] **general** license may be issued to any **applicant operating a kitchen facility where food is prepared for the sale of liquor while performing food catering functions off of the licensed premises subject to rule 12.2 to 12.4.** [~~cabaret, brewpub or dispenser general licensee who serves food as part of its operation and generates at least 30% of its gross revenue from the sale of foods for the sale of liquor while performing food catering function~~].

Rule 12.2. Notification of catering function. The licensee shall notify the department of all catering functions that will be held away from the licensee's premises at least five days prior to the function on the form provided by the department. The notification shall include a written statement from the owner or representative of the property **giving the applicant permission to sell liquor for consumption on its property** [~~that such function will be subject to the liquor laws and the inspection by investigators~~].

Rule 12.3. Location of catering function, restrictions. (a) The commission may deny the use of any specific location for catering functions for good cause as stated in paragraph (c) below.

(b) The licensee may provide catering service to any location if the property owner is not compensated for the use of the property and there is no charge to anyone to attend the function.

(c) If the property owner of the location for the catering event is compensated for the use of the property or if the caterer is the property owner, [~~or if there is a charge for anyone to attend the function~~] the property **owner shall acknowledge that the property is properly** [~~must be~~] zoned [~~resort or commercial~~] or be a government facility where liquor may be sold. The property may be used for catering functions **provided** [~~as long as~~] the department does not receive any complaints, such as noise, dust, traffic, **parking**, etc., [~~about the~~] **as the result of the** catered[ing] function[s].

Rule 12.4. No host bar prohibited. The caterer shall not at any catered function which is held away from its licensed premises open or operate a no host bar. A no host bar means a bar where each person who orders a drink is charged for the drink.

RULE 13
SEVERABILITY

Rule 13.1. Severability. If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.

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Exhibit 3

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 182

STATE ELECTRICAL CODE

Repealed

§§3-182-1 to 3-182-5 Repealed. [R]

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 14

STATE BUILDING CODE COUNCIL

CHAPTER 182.1

STATE ELECTRICAL CODE

Subchapter 1 Rules of General Applicability

- §3-182.1-1 Purpose
- §3-182.1-2 Scope
- §3-182.1-3 Definitions
- §3-182.1-4 Adoption of the National Electrical Code
- §3-182.1-5 Permit authorization

Subchapter 2 Amendments to the 2014 NFPA 70,
National Electrical Code

- §3-182.1-6 Title
- §3-182.1-7 Ground-fault circuit interrupter
protection for receptacles on 15 kW or
smaller portable generators.
- §3-182.1-8 Receptacle identification
- §3-182.1-9 Receptacles
- §3-182.1-10 Rating
- §3-182.1-11 Receptacle outlets not part of permanent
wiring
- §3-182.1-12 Applications of listed coaxial cables in
buildings

SUBCHAPTER 1
 RULES OF GENERAL APPLICABILITY

§3-182.1-1 Purpose. The purpose of this chapter is to adopt the State Electrical Code as required by section 107-25, Hawaii Revised Statutes (HRS).
 [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-2 Scope. This chapter sets forth minimum requirements for the practical safeguarding of persons and property from hazards arising from the installation and use of electricity not regulated by the Public Utilities Commission of the State of Hawaii. [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-3 Definitions. In this chapter, unless the context otherwise requires:

"Article" means an article of a chapter of the National Electrical Code.

"Building official" means the officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

"Chapter" means this chapter.

"NEC" means the National Electrical Code, NFPA 70, 2014 edition, as copyrighted by the National Fire Protection Association.

"NFPA" means the National Fire Protection Association. [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-4 Adoption of the National Electrical Code. The "National Electrical Code, 2014 Edition",

§3-182.1-4

published by the National Fire Protection Association is made a part of this chapter. [Eff]
(Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-5 Permit authorization. Each county, by ordinance, may require that a permit be obtained from the building official for any area regulated by this chapter. [Eff] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

SUBCHAPTER 2

AMENDMENTS TO THE 2014 NFPA 70, NATIONAL ELECTRICAL CODE

§3-182.1-6 Title. Section 90.1.1 is added to read as follows: "This code shall be known as the State Electrical Code, may be cited as such, and will be referred to in this chapter as this code."
[Eff] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-7 Ground-fault circuit interrupter protection for receptacles on 15 kW or smaller portable generators. Section 445.20 is amended to read as follows: "445.20. Ground-Fault Circuit Interrupter Protection for Receptacles on 15 kW or Smaller Portable Generators. All 125-volt, single-phase, 15- and 20-ampere receptacle outlets that are a part of a 15-kW or smaller portable generator either shall have ground-fault circuit-interrupter protection for personnel integral to the generator or receptacle or shall not be available for use when the 125/250-volt locking-type receptacle is in use. If the generator was manufactured or remanufactured prior to January 1, 2015, listed cord sets or devices

incorporating listed ground-fault circuit-interrupter protection for personnel identified for portable use shall be permitted. If the generator does not have a 125/250-volt locking-type receptacle, this requirement shall not apply." [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-8 Receptacle identification. Section 517.41(E) is revised by deleting the second paragraph in this section. [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-9 Receptacles. Section 520.45 is revised by adding "Section 406.15 shall not apply." after the second sentence in this section. [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-10 Rating. Section 530.21(A) is revised by adding "Section 406.15 and" to the last sentence to read as follows: "Section 406.15 and Table 210.21(B)(2) shall not apply. [Eff _____] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-11 Receptacle outlets not part of permanent wiring. Section 590.6(A)(1) is amended to read as follows: "(1) Receptacle Outlets Not Part of Permanent Wiring. All 125-volt, single-phase, 15-, 20-, and 30-ampere receptacle outlets that are not a part of the permanent wiring of the building or structure and that are in use by personnel shall have ground-fault circuit-interrupter protection for personnel. In addition to this required ground-fault circuit-interrupter protection, listed cord sets or

§3-182.1-11

devices incorporating listed ground-fault circuit-interrupter protection for personnel identified for portable use shall be permitted." [Eff]
(Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

§3-182.1-12 Applications of listed coaxial cables in buildings. Two rows in Table 820.154(a) are revised to read as follows:

| Applications | | Cable Type | | | |
|--|------------------------------------|---------------|-------|------|-------|
| | | CATVP | CATVR | CATV | CATVX |
| In Other Spaces Used for Environmental Air as Described in 300.22(C) | In plenum communications raceways | Y* | N | N | N |
| | In plenum cable routing assemblies | NOT PERMITTED | | | |

[Eff] (Auth: HRS §107-29) (Imp: HRS §§107-24, 107-25)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

The repeal of chapter 3-182 and the adoption of chapter 3-182.1, Hawaii Administrative Rules, on the Summary Page dated _____ were adopted on _____, following a public hearing held in Honolulu, Hawaii on _____, after public notice was given in the Honolulu Star Advertiser on _____.

The repeal of chapter 3-182 and the adoption of chapter 3-182.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

DOUGLAS MURDOCK, State Comptroller
Department of Accounting and
General Services

DAVID Y. IGE
Governor
State of Hawaii

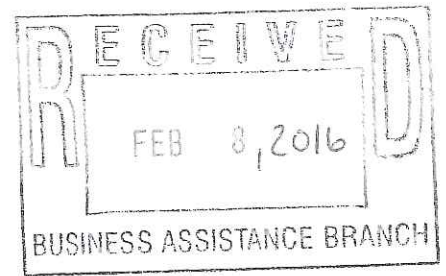
Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

Exhibit 4



Department of Health

Rules Amending Title 11
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, 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 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 |
| 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 |

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- 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, [2012]2015 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

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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.

"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

§11-55-01

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 dessicant, that:

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a 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).

"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 [§125.91(a)(4)]§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

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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([e]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.

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"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

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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 [an authorization issued to the owner or operator by the department to comply with the NPDES general permit] 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).

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"Pest" means the same thing as defined in section 11-54-4([e]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.

"Pesticide" means the same thing as defined in section 11-54-4([e]f)(1).

"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 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,

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- 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)](m)(2) or (3) 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

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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; 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 6/15/09; am and comp 10/21/12; am and comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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-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. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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,

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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 system, 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. 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). 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 one hundred eighty days before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty 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

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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) 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.

(c) 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) 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

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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;

- (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) 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) (Reserved)

(g) 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) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 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 6/25/09; am and comp 10/21/12; am and comp 12/6/13; 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. 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. 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; am and comp 09/22/97; comp 01/06/01; am and comp

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11/07/02; comp 08/01/05; am and comp
10/22/07; comp 6/25/09; comp 10/21/12; comp
12/6/13; 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. 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. 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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,

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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. [Eff 11/27/81; am and comp 10/29/92; 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 6/15/09; comp 10/21/12; comp 12/6/13;

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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; §§122.22, 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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 be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
 - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
 - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or

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- (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.
- (2) Notice shall be mailed 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C.

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§§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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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, 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))

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§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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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, 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

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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; 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 6/15/09; comp 10/21/12; comp
12/6/13; 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).

(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. 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

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hearing. [Eff 11/27/81; am and comp 10/29/92; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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 at least once in a newspaper of general circulation within the geographical area of the discharge;
- (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 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,

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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,

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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. [Eff 11/27/81; am and comp 10/29/92; 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 6/15/09; comp 10/21/12; am and comp 12/6/13; 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.

[Eff 11/27/81; am and comp 10/29/92; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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.

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(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).

(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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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 submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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 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;

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- (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 HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR 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

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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; 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 6/15/09; am and comp 10/21/12; comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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

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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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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)

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§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(1), 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

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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; and
- (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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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:

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- (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; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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-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. 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). 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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

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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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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 one hundred eighty 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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(1), 122.44, 123.25(a))

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§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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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-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

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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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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(1)(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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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:

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- (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; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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))

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§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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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);
- (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;
- (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;
 - (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;
 - (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water;
 - (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity;
 - (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;
 - (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;
 - (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;

- (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);
- (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; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated August 2012. [Eff and comp 10/29/92; 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 6/15/09; am and comp 10/21/12; am and comp 12/6/13; 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;; 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 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp 12/6/13; 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.

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§§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 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; 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 6/15/09; am and comp 10/21/12; am and comp 12/6/13; 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

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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; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; 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; §122.28(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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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

§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).

(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).

(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).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(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;

(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

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- submitted no later than 30 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) Automatically designated small municipal separate storm sewer systems. Any discharge from a [n existing regulated small] municipal separate storm sewer system which is [qualified]required to [obtain]seek 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.]

- (3) Discretionary designation of small municipal separate storm sewer systems. If required by the director, 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], that meet any of the designation criteria in

§11-55-34.08(m) (3) (A)-(C) shall submit a notice of intent. The notice of intent shall be submitted within thirty days of notice of designation from the department.

(A) The director determines that the storm water discharge from the unregulated small municipal separate storm sewer system 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; or

(B) The director determines that the small municipal separate storm sewer system has high population and high population density as determined by the latest Decennial Census by the Bureau of the Census. High population means a population of 10,000 or more. High population density means a density of 1,000 residents per square mile or greater. Also to be considered in this definition is a high density created by

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a non-residential population, such as
tourists or commuters; or

(C) The small municipal separate storm sewer
system discharges to a Class 1 or Class
AA water or to a State water for which a
Total Maximum Daily Load (TMDL) has been
adopted by DOH and approved by the EPA
and the small municipal separate storm
sewer system has been assigned a
Wasteload Allocation (WLA).

(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. [Eff and comp 10/29/92; am 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 6/15/09; am and comp 10/21/12; am and comp 12/6/13; 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 upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not

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submit NOIs prior to the expiration date will not be administratively extended.

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.

(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 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 6/15/09; comp 10/21/12; am and comp 12/6/13; 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

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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; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; am and comp 12/6/13; 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; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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,

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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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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; 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 6/15/09; comp 10/21/12; comp 12/6/13; 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

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remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; 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. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§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 6/15/09; comp 10/21/12; comp 12/6/13; 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. 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) Offer to settle.

(A) 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) 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;
- (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;
 - (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 or best management practices plan or other plan;
 - (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
 - (v) Any person who fails to retain on-site or at a nearby office or field office:
 - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
 - 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, [or]
 - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion[;], or
 - d) discharge monitoring reports;

- (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.
- (B) A field citation shall indicate the following amounts:
- (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) [[shall be fined \$100]]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.

(2) Resolution of field citation.

- (A) A person issued a field citation may accept the citation by:
 - (i) Signing the field citation;
 - (ii) 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) 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) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
 - (i) Give up the right to a contested case hearing under chapter 91 or

- 342D, HRS, or otherwise challenge the field citation;
- (ii) Pay the amount indicated; and
 - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), 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) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; 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)
2. Material, except source notes, to be repealed is bracketed. New material is underscored.
 3. Additions to update source notes to reflect these amendments and compilation are not underscored.
 4. These amendments to and compilation of chapter 11-54, 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.

VIRGINIA PRESSLER, M.D.
Director of Health

APPROVED AS TO FORM:

Edward G. Bohlen
Deputy Attorney General

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY

This General Permit is effective on

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

1. Coverage under this General Permit
 - (a) This general permit covers only once through cooling water discharges of a total flow of less than one million gallons per day (mgd) to state waters. "Once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.
 - (b) This general permit covers all areas of the State except [for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."] as specified in section 11 54 5.2(a).
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of once through cooling water into a sanitary sewer system[and];

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(2) Discharges of once through cooling 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 discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system[.]; and

(3) Discharges of pollutants that do not have effluent limits as provided by the Notice of General Permit Coverage or Table 34.3.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires [three]five years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.

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

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

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- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(4) are adopted, whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) 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) The average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. The

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owner or its duly authorized representative shall provide the best estimate for new discharges;

- (4) Source(s) of the once-through cooling water;
 - (5) Quantitative data of the pollutant(s) or parameter(s) as specified in 40 CFR §122.21(h)(4)(i);
 - (6) The name of the cooling water additives, if any used;
 - (7) The best estimate of the date on which the facility will begin to discharge; and
 - (8) A brief description of any treatment system used or to be used. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

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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 34.3. (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

Samples taken in compliance with the monitoring requirements shall be taken at the following point(s):

- (A) The permittee shall collect influent samples downstream from any additions to the source water and prior to the cooling system.
- (B) The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

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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 which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e) (3) and

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

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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 date, duration (in hours), starting and ending times, and volume of each discharge shall be collected for intermittent discharges.
- (d) There shall be no visible oil sheen in the effluent.
- (e) There shall be no discharge of waste from the physical cleaning of the cooling system.
- (f) There should be no discharge of compounds used in closed-loop systems.

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

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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 34.3 and other requirements of this general permit.

- (2) The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; influent and effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

(b) Additional Monitoring by the Permittee

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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 34.3 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
 - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State

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Hospital Operator at (808) 247-2191
outside of regular office hours.

- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) 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) 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 once through cooling 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 description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

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

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

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

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

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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 shall be retained 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

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

14 Forms

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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 34.3

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR DISCHARGE OF ONCE THROUGH COOLING WATER
LESS THAN ONE (1) MILLION GALLONS PER DAY

| Effluent Parameter | Effluent Limitation {1} | Minimum Monitoring Frequency | Type of Sample |
|------------------------------------|-----------------------------------|------------------------------|------------------------|
| Flow (MGD) | {2} | Continuous | Recorder/ Totalizer |
| Temperature (°C) | [30] ±1 <u>from ambient</u> | Once/Quarter {11} | Grab |
| Total Residual Oxidants (mg/l) {3} | 0.013{4} 0.019{5} | Once/Quarter {11} | Grab |
| Total Suspended Solids (mg/l) | 5 {6} | Once/Quarter {11} | Grab {7} |
| Oil and Grease (mg/l) | 15 | Once/Quarter {11} | Grab {8} |
| pH (standard units) | {9} | Once/Quarter {11} | Grab {10} |

MGD = million gallons per day

°C = degrees celsius

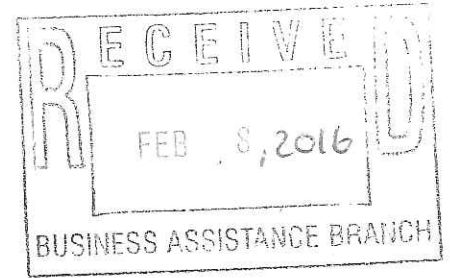
mg/l = milligrams per liter

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 8(c) of this general permit.

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- {2} Report. The permittee shall monitor and report the analytical result.
- {3} Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.
- {4} Applicable to discharges that enter saline waters as per chapter 11-54.
- {5} Applicable to discharges that enter fresh waters as per chapter 11-54.
- {6} The total suspended solids limits are net increase restrictions of the effluent above that of the influent.
- {7} Both the influent and effluent shall be monitored concurrently.
- {8} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {9} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {10} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {11} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.



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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF HYDROTESTING WATERS

This General Permit is effective on

and expires [~~three~~] five years from this date,
unless amended earlier.

1. Coverage under this General Permit

- (a) This general permit covers discharges from facilities or activities which involve [a release or]the single or intermittent discharge of hydrotesting waters to state waters. "Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.
- (b) This general permit covers all areas of the State except [for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."]as specified in section 11 54 5.2(a).
- (c) This general permit covers discharges of hydrotesting waters from an authorized discharge point(s) or outfall(s) subject to the effluent limitations set forth in Section 6 of this general permit.

2. Limitations on Coverage under this General Permit

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- (a) This general permit does not cover the following:
- (1) Discharges of hydrotesting waters into a sanitary sewer system[and];
 - (2) Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system[.];
 - (3) Discharges of process wastewater not generated explicitly from hydrotesting purposes;
 - (4) Discharges of pollutants that do not have effluent limits as provided by the Notice of General Permit Coverage or Table 34.4;
 - (5) Discharges of hydrotesting water commingled with other pollutants or waste streams prior to discharge to receiving waters;
 - (6) Discharges of hydrotesting water in non-compliance with the conditions of this general permit or any Notice of General Permit Coverage issued under this general permit;
 - (7) Discharges of hydrotesting water from discharge point(s) or outfall(s) not

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authorized by the corresponding Notice of General Permit Coverage.

(8) Storm water, non-hydrotesting process wastewater, or other waste product produced indirectly by the hydrotesting activities.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(5) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires [~~three~~]five years after the effective date or when amendments to section 11-55-34.02(b)(5) are adopted, whichever is earlier.

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

- (1) [~~Three~~]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,

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Brief description of the project including an overview of the hydrotesting activities; an estimated timetable for major construction activities; dates on which the hydrotesting activities are projected to occur; estimated average and maximum daily flow rates; and a list of pollutants that may be present in the hydrotesting water and an explanation of its origins;
 - [(3) Water quality analysis of the hydrotesting water including any toxic pollutants believed to be present in the hydrotesting water. For the hydrotesting of transmission lines, the water quality analysis for the source

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water may be substituted for the water quality analysis of the hydrotesting water; and]

3. List of pollutants with the potential to be discharged with the Hydrotesting water. The list of pollutants must include a list of any chemicals or other pollutants which the hydrotesting water may contact, any chemicals used (e.g. dye, disinfectant, treatment, etc.) during the hydrotesting activities, quantities of chemicals to be used during hydrotesting activities, and any pollutants required for the treatment of the hydrotesting water prior to discharge. For the hydrotesting of transmission lines, the water quality analysis for the source water may be substituted for the water quality analysis of the hydrotesting water;
- (4) Hydrotesting best management practices plan, including good housekeeping and mitigative measures to prevent pollutants that may be present in the hydrotesting water from entering state waters, to ensure that the hydrotesting water discharge will meet the conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters.[The hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.]

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- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

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

6. Effluent Limitations [and Monitoring Requirements for Transmission Line Testing] for the Discharge of Hydrotesting Waters

- (a) [If a water quality analysis of the hydrotesting water was not provided with the notice of intent, then the] The water quality of the hydrotesting water discharged shall be limited and monitored by the permittee as specified in this section and in Table 34.4 and effluent limits set forth in a Notice of General Permit Coverage associated with the discharge. (Effluent limitations for saline water apply only when discharges to saline

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water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

The discharge shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

The permittee shall comply with any plans submitted with the NOI unless changes are made to improve discharge quality or to stop, prevent, or mitigate violations of this general permit or any Notice of General Permit Coverage issued under this permit.

Written notification of changes which affect the quality or quantity of pollutants discharged by the hydrotesting activities associated with this general permit must be submitted to the DOH-CWB no less than 48 hours prior to discharge.

[(1) Sampling Point

The permittee shall collect representative discharge samples at the end of the 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.

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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 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(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

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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. If the test result is not detectable, the permittee shall 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.

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of hydrotesting water discharged and submit the calculations.

(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

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

[7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, hydrotesting, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.]

7. Inspections of Discharge and Receiving waters

- (a) Inspections of discharge: The permittee shall inspect effluent, control measures and any applicable best management practices immediately before, during and after discharges. The inspections shall document whether the activities associated with the hydrotesting is violating conditions of this general permit, Notice of General Permit Cover, or if the discharge meets basic water quality criteria(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

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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).

- (b) Inspections of receiving waters: The permittee shall inspect receiving waters, immediately before, during and after discharges. The inspections shall document whether the activities associated with the hydrotesting is violating conditions of this general permit, Notice of General Permit Cover, or if the discharge is causing or contributing to the receiving water failing to meet basic water quality criteria(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).
- (c) Inspections of associated activities: The permittee shall conduct daily inspections of any directly associated ground disturbing or industrial activities associated with the hydrotesting water discharge whether or not discharges occur. The inspections shall document whether adequate Best Management Practices are implemented to prevent the discharge of pollutants other than hydrotesting waters to state waters.
- (d) All inspections conducted pursuant to this Section will include the following information in addition to what is listed in Section 7(a-c):

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- a. Name of project/facility;
- b. Notice of General Permit Coverage, File Number
- c. Date of inspection;
- d. Purpose of inspection;
- e. Time of inspection;
- f. Name of inspector;
- g. Title of inspector;
- h. Category of Best Management Practice Inspected;
- i. Whether corrective actions are required;
- j. Whether reporting to the DOH-CWB is required;
- k. Whether there is a violation of the effluent limits set forth in Section 6, above; and,
- l. Signature of the inspector.

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.

8. Hydrotesting Water Discharge Monitoring Requirements

- (a) The permittee shall monitor the quality and quantity of discharge to determine compliance with effluent limits specified in Section 6 of this general permit and any associated Notice of General Permit Coverage issued under this general permit.
- (b) Representative Sampling: The permittee shall collect samples which are representative of the quality and quantity of the discharge.

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At a minimum, samples must be collected in accordance to the following provisions:

- (1) Sampling Points: samples shall be collected at the discharge point(s) or outfall(s) authorized by the Notice of General Permit Coverage issued under this general permit. The discharge samples shall be collected prior to entering the receiving state water or separate storm water drainage systems but downstream from all treatment and potential pollutant inputs.

- (2) Types of Samples
 - (1) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

 - (2) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

- (3) Test Procedures

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- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(c) Quantity of Flow

The permittee shall estimate or calculate the quantity of hydrotesting water discharged and submit the calculations.

(d) Recording of Results

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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.

[8]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 discharge monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.4 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) 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]4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data;

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effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

([4]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) 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]b) 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

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its duly authorized representative becomes aware of the circumstances:

- (A) Violation of an effluent limitation specified in Table 34.4 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; and
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;

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- (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.
 - (E) Total volume of discharge which was in non-compliance with the issued Notice of General Permit Coverage.
- (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]c The permittee shall notify the director of the start of the hydrotesting activities in writing within one week before the start of the hydrotesting activities.

10. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, hydrotesting, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4, non-compliance with any provision of this general permit or Notice of

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General Permit Coverage issued under this general permit.

[9]11. Submittal Requirements

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

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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

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fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

[10]12. Additional Conditions

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

[11]13. 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]14. Falsifying Report

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

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15. 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.

16. 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 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

| Effluent Parameter | Minimum Monitoring Frequency | Effluent Limitations {1} | Limit Type | Type of Sample |
|---------------------------------------|----------------------------------|--------------------------|-------------------|-------------------------|
| Quantity of Discharge (gallons) | Once/ Discharge | {2} | Monthly Total {3} | Calculated or Estimated |
| Total Suspended Solids (mg/l) | Once/ Discharge | {[2]4} | Monthly Maximum | Grab {[3]5} |
| Turbidity (NTU) | Once/ Discharge | {[2]4} | Monthly Maximum | Grab {[3]5} |
| Minimum pH (standard units) | Once/ Discharge | {[4]6} | Monthly Minimum | Grab {[3]5}, {[5]7} |
| Maximum pH (standard units) | Once/ Discharge | {6} | Monthly Maximum | Grab {5}, {7} |
| Total Residual Chlorine (µg/l) {[6]8} | Once/ Discharge | 19{[7]9} 13{[8]10} | Monthly Maximum | Grab {[3]5} |
| Toxic Pollutants (µg/l) {[9]11} | [Once/ Discharge] Weekly {12} | {[10]13} | Monthly Maximum | Grab {[3]5}, {[11]14} |

mg/l = milligrams per liter
µg/l = micrograms per liter
NTU = nephelometric turbidity units

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NOTES:

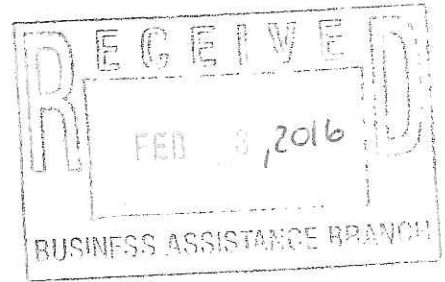
- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section [8(c)]9(b) of this general permit.
- {2} At this time, only monitoring and reporting is required.
- {3} The Quantity of Discharge shall be reported as a monthly total. For each discharge that occurs in the monitoring month, the quantity of the discharge shall be monitored and calculated. A sum of the volumes of all discharges shall be calculated for the month and reported.
- {[2]4}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 only monitoring and reporting is required.
- {[3]5}The Permittee shall sample the discharge after dechlorination and/or filtration within the first five minutes of discharge.
- {[4]6}The maximum and minimum pH values of the effluent shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {[5]7} The pH shall be measured within fifteen minutes of obtaining the grab sample.

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- {[6]8} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.
- {[7]9} This limitation applies when hydrotesting water is discharged into fresh waters.
- {[8]10} This limitation applies when hydrotesting water is discharged into saline waters.
- {[9]11} 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.
- {12} The permittee shall monitor toxic parameters at a minimum frequency of once per week, unless the director specifies a greater frequency.
- {[10]13} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {[11]14} 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 grab or composite sample

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allowed by the selected analytical method in 40
CFR 136.



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**NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES ASSOCIATED WITH
CONSTRUCTION ACTIVITY DEWATERING**

This General Permit is effective on

and expires [~~three~~ five] years from this date,
unless amended earlier.

1. Coverage under this General Permit
 - (a) This general permit covers discharges from the dewatering process of construction activities of any size, including treated storm water discharges, upon compliance with the applicable general permit requirements.
 - (b) This general permit covers all areas of the State except [for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."]as specified in section 11 54 5.2(a).
2. Limitations on Coverage under this General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of construction dewatering effluent into a sanitary sewer system;
 - (2) Storm water discharges associated with construction activities for which the director has issued a notice of general

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permit coverage under another general permit;

- (3) Return flow or overflow from dredged material dewatering process that are regulated by the U.S. Army Corps of Engineers under Section 404 of the Act;
 - (4) Discharges of construction dewatering 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;
 - (5) Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; [and]
 - (6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit[.]; and
 - (7) Discharges of pollutants that do not have effluent limits as provided by the Notice of General Permit Coverage or Table 34.5.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in

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accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires [~~three~~five] years after the effective date or when amendments to section 11-55-34.02(b)(6) are adopted, whichever is earlier.

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

- (1) [~~Three~~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)(6) are adopted,

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

4. Notice of Intent Requirements

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

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- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) [Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;] Site characterization report including the history of the land use at the proposed construction site and surrounding area, the potential pollution source(s) at the proposed construction site and surrounding area, the potential pollutant(s) present at the proposed construction site which has the potential to be discharged;
 - (3) [Site characterization report including the history of the land use at the proposed construction site and surrounding area, the potential pollution source(s) at the proposed construction site and surrounding area, the potential pollutant(s) present at the proposed construction site and surrounding area, any proposed corrective measures, and pollutants that may be in the discharge;] An analysis of the source water quality as specified by the director. The source water quality data may be collected from sites allowed by the director. The analysis shall:

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- (A) Include an explanation addressing the selection of the toxic pollutants provided and an evaluation of the source water quality data collected with respect to the applicable numeric criteria and numeric standards for the toxic pollutants specified under section 11-54-4;
 - (B) Be based on the history of the land use as reported in paragraph 4(b) (3) or as believed to be present in the discharge;
 - (C) Use test methods as specified in section 8(b) (3) (B); and,
 - (D) Be submitted to the director with the notice of intent;
- (4) [Brief description of the project including the total disturbance area of the project; the portion of the project involving construction dewatering; an estimated timetable for major activities (including the date when the contractor will begin site disturbance); the date when the contractor will begin the construction dewatering process; estimates of the quantity, rate, and frequency of the proposed discharges; and the time frame of the proposed discharges;]
Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;

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- (5) [An analysis of the source water quality as specified by the director. The source water quality data may be collected from sites allowed by the director. The analysis shall:
- (A) Include an explanation addressing the selection of the toxic pollutants provided and an evaluation of the source water quality data collected with respect to the applicable numeric criteria and numeric standards for the toxic pollutants specified under section 11-54-4 (any specific pollutant not disclosed is not authorized to be discharged),
 - (B) Be based on the history of the land use as reported in paragraph 4(b)(3) or as believed to be present in the discharge,
 - (C) Use test methods as specified in section 6(a)(4)(B), and
 - (D) Be submitted to the director with the notice of intent;]

Construction pollution prevention plan to prevent or reduce the pollution of state waters due to other discharges. The construction pollution prevention plan shall include:

- (A) Prohibited practices,

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(B) Other management practices to prevent or reduce the pollution of state waters, and

(C) 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 construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

- (6) [Dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. The site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;]

For construction projects which are one acre or more, submit a county approved

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site-specific erosion control plan with the notice of intent or thirty days before the start of construction dewatering activities, as applicable.

- (7) [Dewatering system maintenance plan to ensure that the dewatering effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The dewatering system maintenance plan shall include:
- (A) Schedule of activities,
 - (B) 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;
 - (iv) Maintenance program;
 - (v) Sediment handling and disposal plan;
 - (vi) Monitoring and visual inspection program;
 - (vii) Cessation of discharge plan; and

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(viii) Effluent control plan, and

(C) Treatment requirements.

The site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;]

The director may require additional information to be submitted.

(8) [Construction pollution prevention plan to prevent or reduce the pollution of state waters due to other discharges. The construction pollution prevention plan shall include:

(A) Prohibited practices,

(B) Other management practices to prevent or reduce the pollution of state waters, and

(C) 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 construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days

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before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and]

Brief description of the project including the total disturbance area of the project; the portion of the project involving construction dewatering; an estimated timetable for major activities (including the date when the contractor will begin site disturbance); the date when the contractor will begin the construction dewatering process; estimates of the quantity, rate, and frequency of the proposed discharges; and the time frame of the proposed discharges;

[(9) For construction projects which are one acre or more, submit a county approved site-specific erosion control plan with the notice of intent or thirty days before the start of construction dewatering activities, as applicable.]

[(c) The director may require additional information to be submitted.]

[[d]c)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

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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] for the Discharge of Dewatering Effluent

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (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 end of the effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of Samples

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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 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(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

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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. 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 timely inspect the receiving state waters, effluent, and control measures and best management

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

The discharge shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

- (c) The permittee shall comply with any plans/specifications submitted with the NOI unless changes are made to improve discharge quality or to stop, prevent, or mitigate violations of this general permit or any Notice of General Permit Coverage issued under this permit.
- (d) Written notification of changes which affect the quality or quantity of pollutants discharged by the dewatering activities associated with this general permit must be submitted to the DOH-CWB no less than 48 hours prior to discharge.
- (e) The permittee shall at a minimum, implement Best Management Practices to prevent the discharge of pollutants from storm water discharges other than the dewatering effluent discharge authorized by this general permit. The Best Management Practices shall include:

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- (1) Implementation of sediment control devices and practices for the perimeter of the construction activity, internal sediment control devices for areas within the construction site where sediment is prone to transport, discharge point specific sediment control devices and practices for locations where sediment discharges to State waters.
- (2) Implementation of erosion control products and/or practices for areas of concentrated flows, slopes where erosion will occur due to the absence of stabilization or cover, stockpiles too large to cover daily and where stabilization is required to prevent the mobilization of sediment.
- (3) Implementation of materials management practices to prevent materials being stockpiled, stored or otherwise maintained on site from discharging. This includes Best Management Practices to prevent building materials such as metals, aggregate, soil, fill, and concreted products from discharging to State waters.
- (4) Implementation of isolation and containment products and/or practices for pollutant sources such as petroleum hydrocarbon products, chemical additives, liquids, and other process wastewater (e.g., wash water, grey water and black water).

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7. [Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement a new or revised dewatering system maintenance plan as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.]

Inspections of Discharge, Receiving Waters, and Construction Activities

- (a) Inspections of discharge: The permittee shall inspect effluent, treatment systems and any applicable best management practices immediately before, during and after discharges. The inspections shall document whether the activities associated with the dewatering is violating conditions of this general permit, Notice of General Permit Cover, or if the discharge meets basic water quality criteria (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).
- (b) Inspections of receiving waters: The permittee shall inspect receiving waters, immediately before, during and after discharges. The inspections shall document whether the activities associated with the dewatering is violating conditions of this general permit, Notice of General Permit Cover, or if the discharge is causing or

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contributing to the receiving water failing to meet basic water quality criteria (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).

- (c) Inspections of associated construction activities: The permittee shall conduct daily inspections of any directly associated ground disturbing or industrial activities associated with the dewatering effluent discharge whether or not discharges are actively occurring. The inspections shall document whether adequate Best Management Practices for each category of construction site pollution sources are implemented to prevent the discharge of pollutants other than dewatering effluent waters to state waters.
- (d) All inspections conducted pursuant to this Section will include the following information in addition to what is listed in Section 7(a-c):
- a. Name of project/facility;
 - b. Notice of General Permit Coverage, File Number
 - c. Date of inspection;
 - d. Purpose of inspection;
 - e. Time of inspection;
 - f. Name of inspector;
 - g. Title of inspector;

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- h. Best Management Practice Category Inspected (e.g. sediment control, erosion control, materials management, housekeeping, etc.);
- i. Whether corrective actions are required;
- j. Whether reporting to the DOH-CWB is required;
- k. Whether there is a violation of the effluent limits set forth in Section 6, above; and,
- l. Signature of the inspector.

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.

8. Dewatering Effluent Discharge Monitoring Requirements

- (a) The permittee shall monitor the quality and quantity of discharge to determine compliance with effluent limits specified in Section 6 of this general permit and any associated Notice of General Permit Coverage issued under this general permit.
- (b) Representative Sampling: The permittee shall collect samples which are representative of the quality and quantity of the discharge. At a minimum, samples must be collected in accordance to the following provisions:
 - (1) Sampling Points: samples shall be collected at the discharge point(s) or outfall(s) authorized by the Notice of General Permit Coverage issued under

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this general permit. The discharge samples shall be collected prior to entering the receiving state water or separate storm water drainage systems but downstream from all treatment and potential pollutant inputs.

(2) Types of Samples

(1) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

(2) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(3) 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, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(b) Quantity of Discharge

The permittee shall meter, measure, estimate or calculate the quantity of dewatering effluent discharged and submit volume with any relevant calculations.

(c) 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.

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[8]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 34.5 and other requirements of this general permit.
- (2) The permittee shall submit monthly monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) 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]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.

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(5) Total number of days discharge occurred. If discharges occurred overnight, or greater than 24 hours but less than 48 hours over a two day period, the discharge shall report the number of days discharged as two (2).

([4]6) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

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

[(b) Additional Monitoring by the Permittee

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]b) Reporting of Noncompliance, Unanticipated Bypass, or Upset

(1) The permittee or its duly authorized representative shall orally report any

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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 34.5 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;

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- (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.
 - (E) Total volume of discharge which was in non-compliance with the issued Notice of General Permit Coverage.
- (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 or at the director's discretion.

([d]c) The permittee shall notify the director of the start of the dewatering activities in writing within one week before the start of the dewatering activities.

10. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, dewatering, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4, non-compliance with any provision of this general

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permit or Notice of General Permit Coverage issued under this general permit.

[9]11. Submittal Requirements

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

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, 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

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fine or imprisonment for knowing violations."

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

[10]12. Additional Conditions

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

[11]13. 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]14. Falsifying Report

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

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15. 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.

16. 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 34.5

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR CONSTRUCTION DEWATERING DISCHARGES

| Effluent Parameter | Minimum Monitoring Frequency | Effluent Limitations {1} | Limit Type | Type of Sample |
|--|---------------------------------|--------------------------|------------------------|-------------------------|
| Quantity of Discharge ([GPD or gpm] gallons) | {3} <u>Continuous</u> {2} | {2 3} | <u>Total Volume</u> | Calculated or Estimated |
| Total Suspended Solids (mg/l) | {4} <u>Daily</u> | {2 4} | <u>Monthly Maximum</u> | Grab |
| Turbidity (NTU) | {4} <u>Daily</u> | {2 4} | <u>Monthly Maximum</u> | Grab |
| Oil and Grease (mg/l) | {4} <u>Daily</u> | 15 | <u>Monthly Maximum</u> | Grab {5} |
| Minimum pH (standard units) | {4} <u>Daily</u> | {6} | <u>Monthly Minimum</u> | Grab {7} |
| Maximum pH (standard units) | Daily | {6} | <u>Monthly Maximum</u> | Grab {7} |
| Toxic Pollutants {8} (µg/l) | {4} <u>Weekly</u> {9} | {9 10} | <u>Monthly Maximum</u> | {10 11} |

[GPD = gallons per day]
[gpm = gallons per minute]
mg/l = milligrams per liter
µg/l = micrograms per liter
NTU = nephelometric turbidity units

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NOTES:

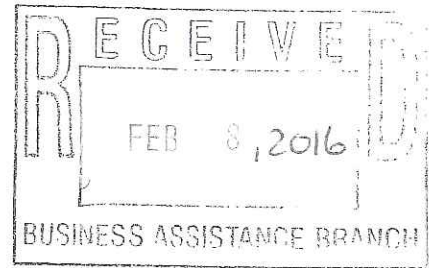
- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section [8(c)]9(b) of this general permit.
- {2} [The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.]Quantity of discharge shall be determined by calculating a sum of the volume of all discharges that occurred during the monitoring month.
- {3} [For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.]At this time, only Monitoring and reporting is required.
- {4} [For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.] The value shall not exceed the applicable water quality standard as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no water quality standard is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.

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- {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {6} The minimum and maximum pH values of the effluent shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {7} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 [only if they are identified as potential pollutants requiring monitoring in the notice of intent or]as identified by the director. [For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored.] The permittee shall measure for the total recoverable portion of all metals.
- {9} The permittee shall monitor toxic parameters at a minimum frequency of once per week, unless the director specifies a greater frequency.
- {[9]10} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {[10]11} The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all

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other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a grab or composite sample allowed by the selected analytical method in 40 CFR 136.



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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF STORM WATER AND
CERTAIN NON-STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

This General Permit is effective on

and expires [~~three~~five] years from this date,
unless amended earlier.

1. Coverage under this General Permit

- (a) This general permit covers storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards, to state waters from small municipal separate storm sewer systems.

[Non-storm]The following non-storm water discharges are authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards[, include]:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
- (6) Uncontaminated pumped ground water;

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- (7) Discharges from potable water sources and foundation drains;
 - (8) Air conditioning condensate;
 - (9) Irrigation water;
 - (10) Springs;
 - (11) Water from crawl space pumps and footing drains;
 - (12) Lawn watering runoff;
 - (13) Water from individual residential car washing;
 - (14) Flows from riparian habitats and wetlands;
 - (15) Dechlorinated swimming pool discharges;
 - (16) Residual street wash water; and
 - (17) Discharges or flows from fire fighting activities.
- (b) This general permit covers all areas of the State except for discharges [in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."] to natural freshwater lakes, saline lakes, or anchialine pools.

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(c) At the discretion of the director, this general permit may cover discharges from small MS4s designated in accordance with §11-55-34.08(m) (2) or (3).

2. Limitations on Coverage under this General Permit

(a) This general permit does not cover the following:

- (1) Storm water discharges into a sanitary sewer system;
- (2) Storm water discharges from construction activities greater than one acre which discharges into the permittee's small municipal separate storm sewer system;
- (3) Storm water discharges from industrial facilities as defined in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi) which discharges into the permittee's small municipal separate storm sewer system;
- (4) Storm water discharges from small municipal separate storm sewer systems which initially enter a separate storm water drainage system(s), 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;

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(5) Storm water discharges for which the Director has waived NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e);

(~~5~~6) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity; and

(~~6~~7) Storm water discharges the director finds more appropriately regulated under an individual permit.

(b) The director may require small MS4s outside of urbanized areas to apply for coverage under an individual permit, in accordance with section 11-55-04(a)(4).

(~~b~~c) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective when section 11-55-34.~~0~~2(b)(10) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires [~~three~~]five years after the effective date or when amendments to section 11-55-34.02(b)(10) are adopted, whichever is earlier.

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

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- (1) [~~Three~~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)(10) are adopted,

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Non-storm water discharge information;
 - (3) [~~Facility site map;~~]Permit boundary map delineating permit jurisdiction: At a minimum the map shall include the following:
 - (a) MS4 permit boundary based on 2010 Census data
 - (b) City/County Boundaries
 - (c) Main Arterial Streets
 - (d) Highways

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- (e) State waters
- (f) Phase I MS4 Permit Boundary (if applicable)

(4) Guidance document: The document shall at least include the following:

New Permittees:

- (a) Overall program planning organization chart including responsible persons.
- (b) Identification of all permit requirements and responsible implementing parties

Renewal Permittees:

- (a) Overall program planning organization chart including responsible persons.
- (b) identification of all permit requirements and responsible implementing parties
- (c) Identification and brief description of each BMP and associated measurable goal included in the Permittee's most current SWMP that constitutes a more specific local or tailored level of implementation that may be more protective of water quality than the minimum requirements of this Permit.
- (d) Identification of whether the Permittee will maintain, reduce, or cease implementation for each more protective, locally-tailored BMP.

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(e) For any more protective, locally-tailored BMP and associated measurable goal for which the Renewal Permittee will reduce or cease implementation, the Renewal Permittee shall demonstrate to DOH's satisfaction that the reduction or cessation is in compliance with this Permit and the maximum extent practicable standard, and will not result in increased pollutant discharges. The demonstration by the Permittee will be subject to public notice on the Permittee's website and a 30 calendar day public comment period before DOH's acceptance of reduction or cessation of BMPs. In no instance may the Renewal Permittee reduce or cease a BMP if it is required by the minimum standards set by this Permit.

The guidance document may be in spreadsheet, tabular or narrative format;

() An assessment of the effectiveness of the storm water management plan implemented during the previous permit term in reducing discharges of pollutants to the maximum extent practicable and protecting water quality, and any modifications to the plan proposed to be implemented for compliance with this general permit; and

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([5]6) Storm water management plan, which meets the applicable requirements as specified in section 6 of this general permit, and which has been updated based on the assessment required by section 4(b) ([4]5) of this general permit. The storm water management plan may be submitted to the director with the notice of intent or within one hundred twenty days after the issuance date of the notice of general permit coverage or by the date the applicant claimed automatic coverage as specified in section 11-55-34.09(e)(2), or for proposed small municipal separate storm sewer systems, by the date the permittee's small municipal separate storm sewer system becomes operational. The plan, and all subsequent revisions, shall be kept on-site or at a nearby office[or field office].

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

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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. Storm Water Management Plan Requirements

The permittee shall develop, implement, and enforce a storm water management plan designed to reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management plan shall include the minimum control measures identified below with implementation dates and rationales for each measure:

(a) Minimum Control Measures

(1) Public Education and Outreach

Develop and implement a public education program to distribute educational materials to users of the permittee's small municipal separate storm sewer system or equivalent outreach activities emphasizing the following:

- (A) Impacts of storm water discharges on water bodies,
- (B) Hazards associated with illicit discharges, and

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(C) Measures that users of the permittee's small municipal separate storm sewer system can take to reduce pollutants in storm water runoff, including, but not limited to, minimizing fertilizer application and practicing proper storage and disposal of chemicals and wastes;

(2) Public Involvement/Participation

Include users of the permittee's small municipal separate storm sewer system in developing, implementing, and reviewing the storm water management plan;

(3) Illicit Discharge Detection and Elimination

Develop, implement, and enforce a program to detect and eliminate illicit discharges that, at a minimum, includes the following:

(A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1 that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,

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- (B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b)(2)), and
 - (C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or reduce the amount of pollutants in these discharges;
- (4) Construction Site Runoff Control

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from construction activities disturbing one acre or more, including construction activities less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more and smaller projects that have the potential to discharge pollutants to the Permittee's Small MS4, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that require erosion and sediment controls,

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- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices,
- (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality,
- (D) Inventory of construction sites -
The Permittee shall develop and implement a system to track all construction projects occurring within its jurisdiction. This system shall track information on the project and contain, at a minimum:
 - 1. The basic site information including location, status, size of the project and area of disturbance;
 - 2. NPDES Permit or file number, if available;
 - 3. Relevant contact information for each project (e.g., name, address, phone, email, etc. for the site operators and contractor);
 - 4. Status of design and BMP plan review and approval, inspection dates, and if applicable, enforcement actions and whether the project has applied for

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coverage under HAR, Chapter 11-55, Appendix C, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Construction Activity (a.k.a. General Construction Activity Storm Water permit) (unless the project will disturb less than one acre of land) and satisfied any other applicable requirements of the NPDES permit program (i.e., an individual NPDES permit);

5. The location of the project with respect to all waterbodies, waterbodies listed as impaired under the CWA Section 303(d) and approved by EPA;
6. Project threat to water quality;
7. The required inspection frequency;
8. The project start and anticipated completion dates; and
9. The date the Permittee approved the erosion and sediment control plan in accordance with this section.

The system used to track/inventory construction sites shall be completed, up-to-date, and in use within 18 months of the effective date of this Permit.

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([E]F) Procedures for site plan review which incorporate consideration of potential water quality impacts,

([F]G) Procedures for receipt and consideration of information submitted by the public, [and]

([G]H) [Procedures for site inspection] Site Inspections - At a minimum the permittee shall: [and]

1. Develop and implement a standard inspection form(s) and reporting and corrective procedures for inspections, including use of an inspection checklist, or equivalent, and the Permittee shall track inspection results in a database or equivalent system. The inspection checklist shall, include at a minimum, but not be limited to identifying any deficiencies and the date of the corrective actions. If allowable due to security concerns, photos shall accompany the inspection checklist to document the deficiencies. The inspection form(s), inspection checklist, reporting and corrective procedures shall be submitted to DOH for review and acceptance with the SWMP.

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2. Prior to the initiation of ground-disturbing activities, except for activities associated with the installation of BMPs at a site, an engineer or qualified inspector shall inspect the site to verify BMPs as required by the BMP Plan and/or other documents have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity. The inspector shall be employed or retained by the Permittee and familiar with the project's site-specific BMP Plan and/or other equivalent document(s). Inspections shall include a review of site Erosion and Sediment Controls, good housekeeping practices, and compliance with accepted erosion and sediment control plans, construction BMPs Plans, and other similar documents and approved permits. The inspector shall also identify any site conditions having the potential for erosion and sediment runoff, including other pollutant discharges which may occur as a result of the project's construction activities and ensure that

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they are remedied by the appropriate party.

3. Construction projects shall be inspected at least quarterly by a qualified construction inspector who is independent (i.e., not involved in the day-to-day planning, design, or implementation) of the construction projects to be inspected. The Permittee may use more than one qualified construction inspector for these inspections. The reporting procedures shall include, at a minimum, notification of any critical deficiencies to the Small MS4 Coordinator and site personnel overseeing the project. The Permittee shall develop and implement written procedures for conducting inspections, identifying and requiring appropriate corrective actions, and follow-up inspections when deficiencies had been identified at an inspected project.

4. The Permittee shall identify construction projects for which more frequent inspections may be appropriate, and perform such inspections as necessary to

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ensure the correct implementation of BMPs and the protection of water quality. Prior to the initiation of ground-disturbing activities, the minimum inspection frequency and inspection priority shall be identified for each construction project.

Within 18 months of the effective date of this Permit, the Permittee shall develop written procedures for evaluating prioritization of construction sites. Prioritization criteria shall be based on project threat to water quality. Project threat to water quality includes soil erosion potential, site slope, projects size and type, sensitivity of receiving water bodies, proximity to receiving water bodies, and non-storm water discharges. Inspection frequencies shall be conducted based on the prioritization criteria described above.

5. At the conclusion of all construction projects, the Permittee shall inspect the project to ensure that all disturbed areas have been stabilized and that all

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temporary erosion and sediment control measures that are no longer needed have been removed.

([I]J) [enforcement] Enforcement of control measures - At a minimum the Permittee shall: [;]

1. Establish policies for enforcement and penalties for those in non-compliance with the requirements of the construction site management program, and
2. Develop and implement an Enforcement Response Plan to include written procedures for appropriate corrective and enforcement actions, and follow-up inspections when an inspected project is not in full compliance with its requirements, other permits, and any other applicable requirements under the NPDES permit program.

(H) Permits Verification. The Permittee shall not allow construction to commence on any project until it has verified that the project has been issued all relevant City (i.e., City Building and Site Development and Subdivision permits) and/or County permits and received from DOH a Notice of General Permit Coverage for the discharge of storm water

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associated with construction activities (unless the project will disturb less than one (1) acre of land), hydrotesting and/or dewatering effluent and satisfied any other applicable requirements of the NPDES permit program (i.e., an individual NPDES permit).

- (I) Training- The Permittee shall provide annual training on the Construction BMPs to Facility personnel and contractors with responsibilities directly related to construction storm water, including construction engineers, construction and maintenance inspectors, and plan reviewers. This training shall be specific to Facility activities (including the proper installation and maintenance of accepted BMPs), policies, rules and procedures; and
- (J) Education - The Permittee shall implement an education program as part of its ongoing SWMP to ensure that project applicants, contractors, and other responsible parties have an understanding of the storm water requirements they need to implement.
- (5) Post-Construction Storm Water Management in New Development and Redevelopment

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[Develop] The permittee shall develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small municipal separate storm sewer system from new development and redevelopment projects that disturb greater than or equal to one acre, including construction sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more[, that, at a minimum, includes the following:] and smaller projects that have the potential to discharge pollutants to the Permittee's Small MS4.

The Permittee's program must ensure that permanent controls are in place to reduce the discharge of pollutants to the MEP. The Permittee shall also develop criteria defining when types of permanent post-construction BMPs (i.e., LID techniques), must be included in a project design to address storm water impacts and pollutants of concern. For State waters on the State CWA Section 303(d) list or State established and EPA approved TMDLs, the pollutants of concern to be targeted shall include the parameters causing impairment. The program shall include, at a minimum, the following elements:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that address post-construction runoff

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from new development and redevelopment projects,

- (B) Standards - Within 18 months after the effective date of this Permit, the Permittee shall develop standards for addressing post-construction BMPs, including Low Impact Development (LID) requirements. LID refers to storm water management practices which seek to mimic a site's predevelopment hydrology by minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating storm water runoff close to its source. The standards shall be applicable to all construction projects disturbing at least 1 acre and smaller projects that have the potential to discharge pollutants to the Permittee's Small MS4. LID employs principles such as preserving and recreating natural landscape features and minimizing imperviousness to create functional and appealing site drainage that treats storm water as a resource, rather than a waste product. LID treatment measures include harvesting and use, infiltration, evapotranspiration, or biotreatment. The plan for the implementation of LID provisions in the Permittee's standards shall

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include at a minimum the following:

- Criteria for requiring implementation.
- Investigation into the development of quantitative criteria for a specific design storm to be managed by LID techniques. Examples of design storm requirements include: 24-hour, 85% storm through infiltration; on-site management of the first inch of rainfall within a 24-hour period; retention of the 100-year, 2-hour storm; or on-site management of the 24-hour, 95% storm.
- Requiring management practices to be prioritized to favor infiltration, evapotranspiration, or harvesting/reuse of stormwater followed by other practices that treat and release stormwater. This shall also apply to alternative offsite locations.
- Requiring 1.5 times the water quality volume for any treat and release practices.
- A list of the Permittee's preferred management practices with the intent to limit the types of maintenance activities having to be performed

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- Feasibility criteria for circumstances in which a waiver could be granted for the LID requirements.
- When a LID waiver is granted, alternatives such as offsite mitigation and/or non-LID treatment control BMPs shall be required.

([B]C) Require
[Structural]structural and/or non-structural best management practices to minimize water quality impacts and attempt to maintain pre-development runoff conditions[, and].

(D) Review of Plans for Post-Construction BMPs. The Permittee shall ensure that plan reviews for new developments and redevelopments include a review for post-construction BMPs and LID requirements to ensure compliance with this part of the permit. The plans shall clearly identify if the BMPs are intended to be permanent post-construction stormwater management structures. At a minimum, this will include the review of all plans disturbing at least one (1) acre, including smaller projects (e.g., retail gas stations, restaurants, auto repair shops, parking lots) that have the potential to discharge pollutants to the Permittee's MS4 for post-construction BMPs and LID

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requirements. Project documents for projects that will include installation of permanent post-construction BMPs and LID practices shall also include appropriate requirements for their future continued maintenance.

(E) BMPs, Operation and Maintenance, and Inspection Database. The Permittee shall develop and implement an effective system to compile a database of post-construction BMPs and the frequency of maintenance and inspection of the BMPs. The database shall include activities or projects which initially discharge into the Permittee's MS4 and shall begin in the plan review stage with a database or geographic information system (GIS). The Permittee shall also map post-construction BMPs on the GIS. In addition to the standard information collected for all projects (e.g., project name, owner, location, start/end date, etc.), the tracking system shall also include, at a minimum:

- Type and number of LID practices
- Type and number of Source Control BMPs
- Type and number of Treatment Control BMPs

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- Latitude/Longitude coordinates of controls using Global Positioning
- Systems (GPS) and NAD83 Datum
- Photographs of controls
- Operation and maintenance requirements, including frequency
- Frequency of inspections

([C]F) Procedures for long-term operation and maintenance of best management practices.

(G) Education and Training

- (a) Project Proponents - The Permittee shall provide education and outreach material for those parties with project design and construction storm water responsibilities on the selection, design, installation, operation and maintenance of storm water BMPs, structural controls, post construction BMPs, and LID practices. The outreach material may include a simplified flowchart for thresholds triggering specified requirements, a list of required permits, implementing agencies, fees, overviews, timelines and a brief discussion of potential environmental impacts

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associated with storm water runoff.

(b) Inspectors - All Permittee personnel and contractors responsible for inspecting permanent post construction BMPs and LID practices shall receive annual training.

(6) Pollution Prevention/Good Housekeeping

Develop, implement, and enforce an operation and maintenance program to prevent and reduce storm water pollution from [activities] the Permittee's jurisdiction, including, but not limited to, roads, parking lots, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance [that, at a minimum, includes the following:

- (A) Good housekeeping and other control measures, and
- (B) Employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented].

For Small MS4s designated in accordance with §11-55-34.08(m)(3), to comply with this minimum control measure, the Permittee is only required to include

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good housekeeping and other control measures, and employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented.

All other Small MS4s, at a minimum, shall include the following:

i) Debris Control BMPs Program Plan - Within 18 months of the effective date of this Permit, the Permittee shall develop a Debris Control BMPs Program Plan. The Debris Control BMPs Program Plan shall be implemented as part of the System Maintenance Program, and at a minimum include:

(a) Asset Management System and Mapping - The Permittee shall implement a comprehensive Asset Management System and map of its Small MS4, including structural and vegetative BMPs; and inventory of related appurtenances including maintenance equipment, to ensure appropriate debris removal and system maintenance. The asset management system shall, at a minimum, assign an identification number for each drain inlet, outfall, and BMPs, and map their location on the Geographic

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Information System (GIS).
The Permittee shall use this
asset management system to
establish priorities and to
schedule and track efforts of
appropriate system
maintenance and debris
removal program activities
such as street sweeping,
catch basin cleaning, and
green waste and accumulated
soil removal. The asset
management system shall
include justification of its
priorities on the basis of
potential impacts to water
quality.

The Asset Management System
and Mapping shall be
completed, up-to-date and
implemented within 18 months
of the effective date of this
Permit.

- (b) Inspection/Maintenance
Schedule The Permittee
shall include in its SWMP
procedures and a schedule for
inspections of major streets,
streets in the industrial and
commercial areas where storm
water runoff discharges into
the Small MS4, inlets/catch
basins, and other collection
system assets (i.e.,
collection system pipes and
BMPs).

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The need for sweeping and/or maintenance/cleaning shall, at a minimum, be determined based upon material accumulation rates and/or potential threat of discharge to State waters that may have an effect on water quality. The schedule shall provide that each major street mile, storm drainage feature, and BMP is inspected at least once during the term of this permit (maintenance/cleaning may be conducted in lieu of inspections to satisfy this requirement). Structural controls that were not previously inspected shall be inspected/cleaned within one (1) year after the effective date of this permit and placed on the priority based schedule. At a minimum all structural controls shall be inspected/cleaned once per permit term. The priority-based schedule shall be annually reviewed; updated as necessary; and the changes, along with explanations of the changes submitted within the Annual Report.

Within 18 months of the effective date of this Permit the Permittee shall have developed procedures for prioritizing inspections and

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maintenance and developed an initial schedule for inspections and maintenance.

- (c) Storm Drain Marking The Permittee shall evaluate the effectiveness of its storm drain marking (stenciling or placards) and revise it as necessary to meet its purpose. This program shall be a part of the Public Outreach component of the SWMP. The purpose of the storm drain markings shall be discussed within the SWMP. Within 5 years of the effective date of this permit, all storm water drains receiving runoff from industrial or commercial activities shall be marked (stenciling or placards), where feasible. Priority shall be given to the Permittee's major streets in industrial and commercial areas and areas with pedestrian traffic.

- (d) Maintenance of Structural Controls - The Permittee shall develop and implement an Action Plan to maintain, and improve, as necessary, structural BMPs. The Action Plan shall cover a 5 year period and be updated annually to include

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additional retrofit projects with water quality protection measures. At a minimum, annual updates to the Action Plan shall consider system inspection results, storm water monitoring data, recent construction, and required operations and maintenance. The annual updates to the Action Plan shall be included in the Annual Report with a description of the projects status. The Action Plan shall include, but not be limited to projects in compliance with any TMDL implementation and monitoring plan.

- (e) Trash Reduction Plan - The Permittee shall develop and implement, a trash reduction plan which assesses the issue, and identifies and implements control measures, and monitors these activities to reduce trash loads from the Small MS4. The plan shall specify the rationale for specific BMPs considered and implemented by the Permittee, and the method to access the effectiveness of the implemented BMPs. The plan shall include, at a minimum, roadside litter pickup, regularly scheduled

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litter container servicing,
and public outreach.

The Annual Report shall
include a summary of its
trash load reduction actions
(control measures and BMPs)
including the types of
actions and levels of
implementation, and a summary
of the effectiveness of the
implemented control measures
and BMPs as compared to a
baseline.

(ii) Chemical Applications BMPs Program
Plan - Within 18 months of the
effective date of this Permit, the
Permittee shall develop a Chemical
Applications BMPs Program Plan.
The Chemical Applications BMPs
Program Plan shall be implemented
as part of the System Maintenance
Program, and at a minimum include:

(a) Training - The Permittee
shall develop an Authorized
Use List of the chemicals the
Facility uses and implement
training for Facility
personnel and commercial
applicators, as necessary, to
ensure compliance with
federal and State laws and
regulations, including
certification and training
requirements, to minimize or
eliminate runoff of potential

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pollutants to the receiving waters.

- (b) Implement appropriate requirements for pesticide, herbicide, and fertilizer applications - The Permittee shall implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides, and fertilizers from residential, commercial, and industrial areas and activities to its Small MS4.

BMPs shall include, at a minimum: (1) training, educational activities, applicable certifications and other measures for commercial applicators; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) chemical application, as needed; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

The Permittee shall ensure that Facility personnel and contractors applying registered pesticides, herbicides, and fertilizers

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shall work under the direction of a certified applicator, follow the pesticide label, and comply with any other State or government regulations for pesticides, herbicides, and fertilizers. All Facility personnel or contractors applying pesticides, herbicides or fertilizers shall receive training on the BMPs annually.

(iii) Erosion Control BMPs Program Plan - Within 18 months of the effective date of this Permit, the Permittee shall develop an Erosion Control BMPs Program Plan. The Erosion Control BMPs Program Plan shall be implemented as part of the System Maintenance Program, and at a minimum include:

(a) Implement permanent erosion control improvements as necessary, ensuring that erosional areas with the potential for significant water quality impact, but with limited public safety concerns, are also considered a high priority for remediation. Identification of erosional areas with the potential for significant water quality impact shall include areas where there is evidence of rilling,

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gullyng, and/or other evidence of significant sediment transport, and areas in close proximity to receiving waters listed as impaired by either sediment, siltation and/or turbidity.

- (b) Require the implementation of temporary erosion control measures (e.g., erosion control blankets and/or fabrics, gravel bag placement and silt fencing/fiber rolls) on erosional areas with the potential for significant water quality impact if a permanent solution is not immediately possible. Notwithstanding any other implementation provisions, the SWMP shall require the implementation of such temporary erosion control measures on all applicable areas. For projects which require a CWA Section 401 Water Quality Certification (WQC), the WQC application shall be submitted to DOH within one (1) year of the effective date of this permit and be implemented with six (6) months of the WQC or other regulatory permit(s) issuance date.

- (c) Within 18 months of the effective date of this

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Permit, the Permittee shall develop a maintenance plan for vegetated portions of the drainage system used for erosion and sediment control, and LID features; including controlling any excessive clearing/removal, cutting of vegetation, and application of herbicide which affects its usefulness. The maintenance plan shall be implement as part of the Erosion Control BMPs Program Plan.

(iv) Maintenance Activities BMPs Program Plan - Within 18 months of the effective date of this Permit, the Permittee shall develop a Maintenance Activities BMPs Program Plan. The Maintenance Activities BMPs Program Plan shall be implemented as part of the System Maintenance Program, and at a minimum include:

(a) Facility-Wide Maintenance Activities - Within 18 months of the effective date of this Permit, the Permittee shall develop a written procedure to implement minimum BMPs for routine infrastructure maintenance activities that have the potential to impact the quality of receiving waters, and ensure the implementation of the

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applicable BMPs. Routine maintenance activities include, but are not limited to: vehicle and equipment maintenance, vehicle or equipment fueling, chemical storage, recycling, paving and road repairs, street cleaning, concrete work, curb and gutter replacement, buried utility repairs and installation, vegetation removal, painting and paving, debris and trash removal, and spill cleanup.

The procedures shall ensure that appropriate BMPs are verifiable through field inspections (i.e., field inspectors can quickly determine if the appropriate BMPs have been implemented).

- (b) Training - The Permittee shall develop and provide annual training for storm water pollution prevention to Facility maintenance personnel and contractors with the potential to impact storm water runoff. The training shall identify potential sources of pollution specific to Facility-wide maintenance activities, general BMPs that can be used to reduce and/or eliminate potential sources

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of pollutants, and procedures for establishing and implementing site-specific BMPs. The training shall educate Facility maintenance personnel that they serve a role in protecting water quality. Facility Maintenance personnel shall be made aware of the NPDES permit, the overall SWMP, and the applicable BMPs Program(s).

(7) Industrial and Commercial Activities Discharge Management Program - Within 18 months of the effective date of this Permit, the Permittee shall develop an Industrial and Commercial Activities Discharge Management Program to reduce to the MEP the discharge of pollutants from all industrial and commercial facilities and activities which discharge into the Permittee's Small MS4. The Industrial and Commercial Activities Discharge Management Program shall be implemented as part of the System Maintenance Program, and at a minimum include:

(i) Inventory and Map of Industrial and Commercial Facilities and Activities - The Permittee shall develop and maintain an industrial and commercial facilities and activities inventory (industrial and commercial inventory), of industrial and commercial

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facilities and activities discharging, directly or indirectly, to its Small MS4. Additionally, the Permittee shall maintain an updated map of the Small MS4 showing industrial and commercial facilities that discharge directly or indirectly into the storm drainage system.

The industrial and commercial inventory shall include the facility name, location, nature of business or activity, SIC/NAICS code(s) that best reflect the facility product(s) or service(s), principal storm water contact, receiving State water, and risk ranking of discharging pollutants to the MS4.

At a minimum, the industrial inventory shall include facilities and activities subject to NPDES permit coverage under HAR, Chapter 11-55, Appendix B, NPDES General Permit Authorizing the Discharge of Storm Water Associated with Industrial Activities (General Industrial Storm Water permit) or any other applicable NPDES permit has been obtained, including a permit or file number and issuance date or discharge to the MS4, and any other industrial facility that either the Permittee or DOH determines is contributing a

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substantial pollutant loading to the Small MS4.

At a minimum, the commercial inventory shall include facilities and activities such as car washes, gas stations, automobile maintenance shops, shopping centers, restaurants, and any other commercial facility that either the Permittee or DOH determines has the potential to contribute loading to the Small MS4.

The inventory of industrial and commercial facilities shall be completed and up-to-date within 18 months of the effective date of this Permit.

The map of industrial and commercial facilities shall be completed, up-to-date, and fully implemented within 18 months of the effective date of this Permit.

- (ii) Requirement to Implement BMPs - Require written approval for drainage connections and discharge of surface runoff into the Small MS4 and maintain a database of the approvals. The approval shall obligate the facility to implement appropriate BMPs.

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(iii) Inspection of Industrial and Commercial Facilities and Activities - The Permittee shall develop and implement an industrial and commercial inspection program which reflects the findings/outcomes of the investigations.

The Permittee shall ensure industrial and commercial facilities and activities identified in the industrial and commercial inventory required under Section 6(a)(7)(a) are inspected and re inspected as often as necessary based on its findings to ensure corrective action was taken and the deficiencies are resolved.

At a minimum, the Permittee shall inspect industrial and commercial facilities at least once over the permit term. For those facilities that the Permittee identifies poses a high risk of discharging pollutants to the Small MS4, the Permittee shall conduct the inspection during wet weather to determine whether the subject facility discharges pollutants to the MS4. For facilities the Permittee identifies as illicitly discharging pollutants to the Small MS4, the Permittee shall implement its Enforcement Policy for Industrial and Commercial

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Facilities and Activities and require implementation of BMPs to prevent future illicit discharges of pollutants.

The Permittee shall conduct inspections that at a minimum, appropriately identify deficiencies, assess potential impacts to receiving waters, evaluate the appropriateness and effectiveness of deployed BMPs, and require controls to minimize the discharge of pollutants to the Small MS4. The Permittee is encouraged to conduct the inspections consistent with the applicable portions (e.g., Chapter 11 - Storm Water) of the "NPDES Compliance Inspection Manual" (EPA 305-X-04-001), dated July 2004 to the maximum extent possible. Inspectors shall be properly trained to conduct the inspections, and shall use an inspection checklist, or equivalent, and photographs of significant non-compliance (where allowable) to document site conditions and BMP conditions. Records of all inspections shall be maintained for a minimum of 5 years, or as otherwise indicated.

- (iv) The Permittee shall submit an annual summary of inspection activities done within the previous period with the Annual Report. At a minimum the annual

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summary shall identify the industrial and commercial facilities inspected, the number of industrial and commercial inspections, significant inspection findings that remain unresolved for greater than 3 calendar months, and an overall assessment of the effectiveness of the Industrial and Commercial Activities Discharge Management Program.

(v) Enforcement Policy for Industrial and Commercial Facilities and Activities - The Permittee shall establish and implement policies for enforcement and penalties for industrial and commercial facilities/activities which have failed to comply. The policy shall be part of an overall escalating enforcement policy and must consist of the following:

- Conducting inspections.
- Issuance of written documentation to a facility representative within 30 calendar days of storm water deficiencies identified during inspection. Documentation must include copies of all field notes, correspondence, photographs, and sampling results if applicable.
- A timeline for correction of the deficiencies.

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- Provisions for re-inspection and pursuing enforcement actions, if necessary.

In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with its policies and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide e-mail notification to cleanwaterbranch@doh.hawaii.gov, Attn: Enforcement Section Supervisor within one (1) week of such determination. E-mail notification shall be followed by written notification and include a copy of all inspection checklists, notes, photographs, and related correspondence in pdf format (300 minimum dpi) within two (2) weeks of the determination. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, the Permittee shall provide email notification to DOH within one (1) week of such determination.

- (vi) Training - The Permittee shall provide annual training to Facility personnel responsible for conducting industrial and

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commercial facilities/activities inspections on how to conduct industrial and commercial inspections, BMPs and source control measures for industrial and commercial facilities, and inspection and enforcement techniques. The training shall also include being able to identify industrial activities (i.e., to be covered under the NPDES General Permit for Industrial Storm Water discharge) or other activities that are potential sources of pollutants so that they may be covered under this permit. This training shall be specific to Facility activities, policies, rules, and procedures.

(vii) Storm Water Pollution Control Plan (SWPCP) Review and Acceptance for Industrial Facilities - The Permittee shall:

(a) Verify the facility owner has received NPDES permit coverage for the discharge of storm water associated with industrial activity or provided proof of filing an NOI, or NPDES application; and

(b) Review and accept a Site-Specific Storm Water Pollution Control Plan (SWPCP) or other plans

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relating to pollution
prevention or similar
document(s).

(b) Measurable Goals

The permittee shall develop measurable goals to gauge permit compliance and program effectiveness for each minimum control measure identified above and to guide the overall program implementation. The permittee shall select measurable goals using an integrated approach that fully addresses the requirements and intent of the minimum control measure.

(c) Modifications

(1) Significant Modifications

- (A) Modifications to the storm water management plan that would result in a major reduction in the overall scope or level of effort or both of the storm water management plan must be made for cause and in compliance with 40 CFR §122.62 and 40 CFR Part 124.
- (B) The permittee shall report in writing any proposed modification described above to the Director of Health for approval at least thirty days prior to the initiation date of the modification.

(2) Other Modifications

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The permittee shall report and justify all other modifications made to the storm water management plan in the annual report for the year in which the modification was made.

7. Basic Water Quality Criteria and Inspections

- (a) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (b) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

8. TMDL Implementation and Monitoring

Total Maximum Daily Loads (TMDL) are numerical calculations of the maximum amount of a pollutant that a water body can assimilate and still meet water quality standards. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point sources (waste load allocations) and non-point sources (load allocations), background contribution, plus a margin of safety. Discharges from Small MS4s are point source discharges subject to TMDLs. This

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General Permit requires Permittees to comply with all applicable TMDLs approved pursuant to 40 Code of Federal Regulations section 130.7 that assign a specific waste load allocation to the Permittee. Only those Permittees that are assigned a specific waste load allocation in the TMDL as approved by the EPA and adopted by the department must comply with this section. Due to the high variance in the level of detail and specificity of TMDLs the director may require the permittee apply for an individual permit to provide clarity to the permittee regarding responsibilities for compliance.

For TMDLs approved and adopted prior to 2015, the permittee must comply with any assigned WLA(s) within one (1) year of the effective date of this general permit.

For TMDLs approved by the EPA and adopted by the department after 2015, the permittee must comply with any assigned WLAs within 5 (five) years of the TMDL approval.

The Permittee shall comply with the WLAs, consistent with the assumptions of the associated TMDL document. Compliance shall be evaluated on an annual basis after the applicable deadline with monitoring beginning the year following the deadline.

To determine compliance with WLAs, except for the North Fork of Kaukonahua Stream, the permittee must monitor every storm event and discharge point from its Small MS4 into the receiving water. For discharge to the North Fork of Kaukonahua Steam, every storm event and discharge point from the permittee's Small MS4 into the receiving water must be monitored until monitoring results for all intervals have been annually represented. In lieu of monitoring every discharge point, representative monitoring may be

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conducted for similar discharges. Justification of using representative monitoring must be provided to the department and accepted prior to implementation of a monitoring plan and shall not cause delay in beginning monitoring. As applicable, if monitoring results have already been recorded for an interval during the monitoring year, the permittee may choose not to have those samples evaluated. If the samples are evaluated, it must be recorded and the highest loading must be used for comparison with the applicable WLA.

A WLA Completion Report shall be prepared to demonstrate compliance with the applicable WLAs and submitted to DOH within 5 (five) years of the TMDL: approval and shall include, but not be limited to, monitoring data, calculations, a comparison of applicable WLAs and measured loadings, and summary of the evaluation methodology and findings. Refer to Part 10.c. of this permit for the requirements of the WLA Completion Report. A comparison of applicable WLAs and measured loading, consistent with its evaluation methodology established in its WLA Completion Report, shall be provided annually with the Annual Report.

[8]9. 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]10. Reporting Requirements

(a) Annual Report

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The submittal of the annual report by the permittee shall be postmarked or received by the department by the twenty-eighth day of January of the following year. The annual report shall cover each calendar year during the term of this permit and include the following:

- (1) Status of compliance with conditions of this permit;
- (2) Assessment of the storm water management plan, including progress towards implementing each minimum control measure;
- (3) Modifications made to the storm water management plan and implementation schedule during that calendar year, including justifications;
- (4) Summary of the storm water activities planned to be undertaken during the next calendar year; and
- (5) Major modifications made to the permittee's small municipal separate storm sewer system, including, but not limited to, addition and removal of outfalls, drainage lines, and treatment facilities.

(b) Planned Changes.

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

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(c) WLA Completion Report

The Permittee shall submit to DOH a WLA Completion Report for each TMDL approved after 2015 within 5 (five) years of the TMDL approval. The WLA Completion Report shall be made available on the Permittee's website for public review and comment. The report shall include at a minimum the following:

- (1) A map of the Small MS4 and drainage area, which identifies collection areas, all outfalls, monitoring locations, and receiving waters.
- (2) An inventory of the types of industrial and commercial activities, if any that may impact storm water runoff quality.
- (3) Detailed information on the activities to be implemented to maintain compliance with the applicable WLAs.
- (4) Monitoring data, calculations, a comparison of applicable WLAs and measured loadings, and summary of the evaluation methodology and findings.

[10]11. Submittal Requirements

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

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

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

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

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[11]12. Additional Conditions

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

[12]13. 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]14. Falsifying Report

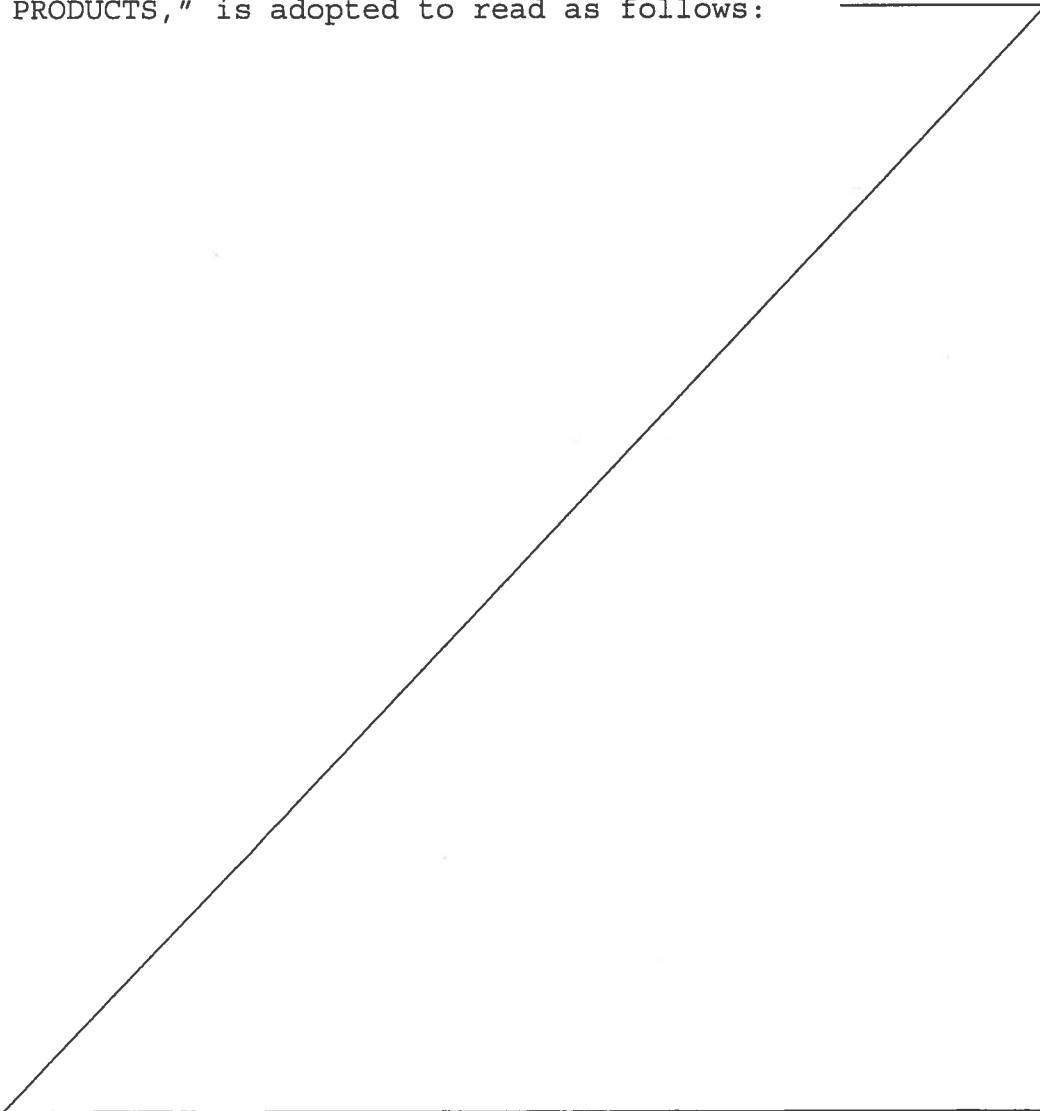
Knowingly making any false statement on any report required by this general permit may result in the imposition of criminal penalties as provided for in Section 309 of the Act and in section 342D-35, HRS.

DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-138
Hawaii Administrative Rules

<Date of Adoption>

1. Chapter 4-138, Hawaii Administrative Rules,
entitled "HAWAII-GROWN CACAO AND HAWAIIAN CHOCOLATE
PRODUCTS," is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 138

HAWAII-GROWN CACAO AND HAWAIIAN CHOCOLATE PRODUCTS

| | |
|----------|---------------------------|
| §4-138-1 | Definitions |
| §4-138-2 | Labeling requirements |
| §4-138-3 | Recordkeeping; inspection |
| §4-138-4 | Penalties |

§4-138-1 Definitions. As used in this chapter:

"Cacao" or "cacao nibs" means the roasted, cracked, winnowed pieces of the cacao beans.

"Cacao beans" means the fermented and dried seeds of the cacao plant.

"Cacao liquor" means the paste prepared by finely grinding cacao nibs.

"Chocolate" means the food prepared with cacao, and other essential ingredients such as cocoa butter, sugar, vanilla, lecithin and other flavoring.

"Department" means the department of agriculture.

"Geographic region" means the geographic areas designated as follows:

Hawaii is the State of Hawaii; Hawaii Island is the island of Hawai'i; Kauai is the island of Kaua'i; Maui is the island of Maui; Molokai is the island of Moloka'i; and Oahu is the island of Oahu.

"Hawaii cacao" or "Hawaii cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the State of Hawaii.

"Hawaii cacao beans" means cacao beans which are grown in the State of Hawaii.

"Hawaii chocolate" means chocolate prepared from Hawaii cacao.

"Hawaii cacao blend chocolate" means chocolate prepared from not less than fifty-one per cent Hawaii-grown cacao regardless of island.

"Hawaii Island cacao" or "Hawaii Island cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Hawai'i.

"Hawaii Island cacao beans" means cacao beans which are grown in the island of Hawai'i.

"Hawaii Island chocolate" means chocolate prepared from one hundred per cent Hawaii Island cacao.

"Kauai cacao" or "Kauai cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Kaua'i.

"Kauai cacao beans" means cacao beans which are grown in the island of Kaua'i.

"Kauai chocolate" means chocolate prepared from one hundred per cent Kauai cacao.

"Maui cacao" or "Maui cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Maui.

"Maui cacao beans" means cacao beans which are grown in the island of Maui.

"Maui chocolate" means chocolate prepared from one hundred per cent Maui cacao.

"Molokai cacao" or "Molokai cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Moloka'i.

"Molokai cacao beans" means cacao beans which are grown in the island of Moloka'i.

"Molokai chocolate" means chocolate prepared from one hundred per cent Molokai cacao.

"Oahu cacao" or "Oahu cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Oahu.

"Oahu cacao beans" means cacao beans which are grown in the island of Oahu.

"Oahu chocolate" means chocolate prepared from one hundred per cent Oahu cacao. [Eff]
(Auth: HRS §486-118) (Imp: HRS §486-118)

§4-138-2 Labeling requirements. (a) In addition to all other labeling requirements, no identity statement used for labeling or advertising cacao, chocolate, or other products produced in whole or in part from Hawaii cacao, shall contain the phrase "Hawaii cacao", "Hawaiian cacao", "Hawaii chocolate", or "Hawaiian chocolate", unless:

(1) The product contains cacao ingredients made from one or more various geographic regions mentioned above and from no other cacao or chocolate flavoring. The phrases "Hawaii cacao", "Hawaiian cacao", "Hawaii chocolate" or "Hawaiian chocolate" may be followed by the phrase "made with" or "contains", and list each geographic region identified in descending order of per cent by weight and expressed as a number followed by a per cent and ends with the word "cacao".

(b) Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required by federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight.

(c) It shall be a violation of this section to:

(1) Use a geographic region as defined in this chapter in labeling or advertising of a cacao or chocolate product if the product

- contains less than one hundred per cent cacao by weight from that geographic region, except that if the product contains one hundred per cent Hawaii cacao from more than one geographic region, a list of the geographic regions may be shown if it is preceded by the words "contains", or "made with", and each geographic region is identified in descending order of per cent by weight and expressed as a number followed by a per cent sign and ends with the word "cacao".
- (2) Misrepresent on a label or in advertising of a cacao or chocolate product, the per cent cacao by weight of any cacao from a geographic region defined in this chapter.
 - (3) Use a geographic region on the front label or any panel of a package or in the identity statement of a cacao or chocolate product, other than in a trademark or trade name as provided in this section or as authorized in subsections (a) and (b), unless one hundred per cent of the cacao contained in the product is grown in that geographic region.
 - (4) Use the term "Hawaii cacao blend", "Hawaii cacao blend chocolate" or similar language on a cacao or chocolate product if the product contains more than forty-nine per cent cacao produced or grown outside of Hawaii.
 - (5) Use more than one trademark or trade name on a cacao or chocolate product unless one hundred per cent of the cacao used in that product is grown in the geographic region specified by the trademark or trade name.
 - (6) Use a trademark or trade name that begins with the name of a geographic region on a cacao or chocolate product unless one hundred per cent of the cacao used in the product is grown in that geographic region or the trademark or trade name ends with words that indicate a business entity; or

- (7) Print the identity statement required in this chapter in a smaller font size than that used for a trademark or trade name that includes the name of a geographic region and in a location other than the front label of a package of a cacao or chocolate product. [Eff _____] (Auth: HRS §486-118)
(Imp: HRS §486-118)

§4-138-3 Recordkeeping; inspection.

Manufacturers and other persons who package cacao or chocolate products covered in this chapter shall maintain and make available to the department for inspection or copying, for a period of two years, records on the weight and geographic origins of cacao beans purchased and sold and any other record required by the department for the purposes of enforcing this chapter. Authorized employees of the department shall be allowed access to these records upon request during normal business hours. [Eff _____] (Auth: HRS §486-118) (Imp: HRS §486-118)

§4-138-4 Penalties. Any person who violates any provision of this chapter may be subject to the actions, procedures, and penalties provided in section 486-32, Hawaii Revised Statutes." [Eff _____] (Auth: HRS §486-118) (Imp: HRS §§486-32, 486-118)

2. The adoption of chapter 4-138, 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 Month xx, XXXX, and filed with the Office of the Lieutenant Governor.



Scott E. Enright
Chairperson
Board of Agriculture

APPROVED AS TO FORM:



Deputy Attorney General