Small Business Regulatory Review Board Meeting

February 19, 2026

10:00 a.m.

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov
Tel: 808 798-0737

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Jonathan Shick
Chairperson
O'ahu

Sanford Morioka
Vice Chairperson
O'ahu

Mary Albitz
2nd Vice Chairperson
Maui

James (Kimo) Lee
Hawai'i

Leelen Park
Hawai'i

Tessa Gomes
O'ahu

Cynthia Hobson
O'ahu

Nikki Ige
Kaua'i

Dr. Jennifer Salisbury
Maui

Director, DBEDT
Voting Ex Officio

AGENDA
Thursday, February 19, 2026 ★ 10:00 a.m.
No. 1 Capitol District Building
250 South Hotel Street, Conference Room 436
Honolulu, HI 96813

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

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

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

https://us06web.zoom.us/j/88400776199?pwd=4wAvlu4jf7kz65ioBZWDXgpG4KlKJ8.1

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

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

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, February 18, 2026, so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: Agendas & Minutes – Small Business Regulatory Review Board (hawaii.gov) and in-person at 250 South Hotel Street, Room 506, Honolulu, HI 96813 during regular business hours. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

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

I. Call to Order

II. Approval of January 15, 2026 Meeting Minutes

III. Old Business

A. Re-review and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Land and Natural Resources – *Discussion Leader – Jonathan Shick*

1. Hawaii Administrative Rules (HAR) Title 13 Chapter 60.4, **West Hawaii Regional Fishery Management Area, Hawaii**
2. HAR Title 13 Chapter 75, **Rules Regulating the Possession and Use of Certain Fishing Gear**
3. HAR Title 13 Chapter 77.1, **Aquarium Fishery Management**

IV. New Business

A. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 220, **Office of Language Access Rules of Practice and Procedures**, promulgated by Department of Health (DOH) – *Discussion Leader – Sanford Morioka*

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, and Chapter 55 **Appendices B, E, F, G, and K**, promulgated by DOH – *Discussion Leader – Sanford Morioka*

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 11 Chapter 58.1, **Solid Waste Management Control**, promulgated by DOH – *Discussion Leader – Sanford Morioka*

V. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force's most recent meeting pursuant to Act 133 to identify actions taken challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental permit processes; and appropriates funds
2. Discussion and Update of the Board's Maui Island meeting scheduled for March 19, 2026
3. Becker Communications Inc., regarding the Board's Small Business Outreach
4. Presentations to Industry Associations
5. Staff's Small Business Outreach

VI. Legislative Matters

A. Discussion and Action on the following:

1. **House Bill 1612 – Relating to Economic Development –** Establishes a business competitiveness goal for the State to achieve a ranking of being in the top thirty states in the United States for business climate by 2045, with interim goals. Requires the Department of Business, Economic Development, and Tourism to submit annual reports on progress in meeting the business competitive goals. Appropriates funds.

2. **Senate Bill 2263 – Relating to Business Competitiveness** – Establishes a goal for the State to achieve a ranking among the top 10 states in the nation for business competitiveness by 2045. Establishes a ranking metric and interim goals. Requires the Department of Business, Economic Development, and Tourism to establish a working group to develop and recommend policies that improve Hawaii's business competitiveness. Requires annual reports to Legislature. Appropriates moneys.
3. **Governor's Message 612** Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Leelen Park**, for a term to expire June 30, 2029
4. **Governor's Message 613** Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Cynthia Hobson**, for a term to expire June 30, 2029

VII. Next Meeting: Thursday, March 19, 2026 at 10:00 a.m., held via Zoom and at Kalana O Maui Building, 200 S. High Street, 9th Floor, Wailuku, Maui, HI 96793

VIII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and jetaime.k.ariola@hawaii.gov as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice is available in alternate/accessible formats.

II. Approval of January 15, 2026 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MEETING MINUTES - DRAFT
January 15, 2026

I. CALL TO ORDER: Chair Shick called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:
- Jonathan Shick, Chair
- Mary Albitz, Second Vice Chair
- Dr. Jennifer Salisbury
- Cynthia Hobson
- David Sikkink
- James (Kimo) Lee
- Leelen Park

ABSENT MEMBERS:
- Sanford Morioka, Vice Chair
- Tessa Gomes
- Nicolle Ige

STAFF: DBEDT
Jet'aime Ariola

Office of the Attorney General

II. APPROVAL of DECEMBER 11, 2025 MINUTES

Ms. Albitz motioned to approve the December 11, 2025 meeting minutes, with removing Leelen Park from members present. Mr. Park seconded the motion and the Board members unanimously agreed.

III. OLD BUSINESS

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 156 and Adopt Chapter 156.1, Communicable Diseases, promulgated by Department of Health

Mr. Dave Johnston, Epidemiologist with the DOH Disease Outbreak Control Division, provided a detailed overview of the rulemaking. He explained that the rules update DOH's list of reportable diseases and reporting requirements, and that extensive stakeholder outreach was conducted prior to the public hearing. Outreach included consultations with healthcare associations and laboratories, distribution of draft rules for comment, and incorporation of stakeholder feedback.

The public hearing was held on October 22, 2025. No oral testimony was received, and one written testimony was submitted by the Pew Charitable Trusts, an organization that had participated in the stakeholder engagement process. Following the hearing, DOH made minor technical revisions, including clarifying definitions, updating disease terminology in exhibits, and correcting non-substantive language.

Board members commended DOH for its proactive stakeholder engagement efforts and thorough outreach.

Ms. Albitz moved to forward the rules to the Governor for adoption. Mr. Lee seconded the motion. The motion passed unanimously.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement to Proposed New Temporary Hawaii Administrative Rules (HAR) Title 18 Chapter 237, General Excise Tax and Chapter 237D, Transient Accommodation Tax Law, promulgated by Department of Taxation

Ms. Eliza Watson, Administrative Rules Specialist, from the Department of Taxation explained that the proposed temporary rules clarify requirements enacted by Act 76, Session Laws of Hawaii 2024, relating to rent collection agreements. The rules clarify reporting obligations for third-party rent collectors, such as property managers, and establish procedures for the issuance and appeal of citations.

Ms. Watson emphasized that the rules do not change tax rates or increase fees but instead clarify compliance and reporting requirements. A $500 fine may be imposed for noncompliance. Board discussion focused on the limited impact to small businesses, noting that compliance would avoid penalties.

Mr. Sikkink moved to send the proposed rules to public hearing. Ms. Hobson seconded the motion. The motion passed unanimously.

B. Discussion and Action on the Small Business Impact Statement to HAR Title 15 Chapter 307, State Assisted Land and Housing Development Program, promulgated by Hawaii Housing Finance and Development Corporation / Department of Business, Economic Development and Tourism

Mr. Albert Palmer of HHFDC explained that the proposed amendments implement Act 38, Session Laws of Hawaii 2024, update the agency's fee schedule, and make technical, non-substantive corrections. He noted that the fee schedule was last updated in 2010 and that the fees are intended to support program administration and compliance monitoring.

Board members discussed the potential impact on small businesses, including single-purpose development entities and developers that may qualify as small businesses. HHFDC indicated that fee increases are minimal relative to overall project costs.

Mr. Sikkink moved to send the proposed rules to public hearing. Ms. Hobson seconded the motion. The motion passed unanimously.

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V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force's most recent meeting pursuant to Act 133 to identify actions taken, challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental permit processes; and appropriates funds

   SPEED Task Force member Dr. Salisbury provided an update on the Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force. She reported that the permitted interaction groups (PIGs) concluded their work and submitted recommendations, which were accepted or restated by the Task Force. The next Task Force meeting will occur after the 2026 legislative session.

2. Discussion and Update of the Board's Maui Island meeting scheduled for March 19, 2026 – including Mayor's Proclamation and Presentation

   Staff provided an update on planning for the Board's March 19, 2026 meeting on Maui, including coordination with the Mayor's Office, travel logistics, budgeting considerations, and outreach support from Becker Communications. Board members were asked to confirm in-person attendance for upcoming meetings.

3. Becker Communications Inc., regarding the Board's Small Business Outreach

   Becker Communications Inc. has confirmed they will be attending the March 19th SBRRB meeting in person to represent DBEDT and manage all social media coverage. SBRRB staff drafted a press release to announce the meeting and will be collaborating with Laci and the Director's Office to finalize the details.

4. Presentation to Industry Associations

   Board members are looking to fill their calendars for the new year. Ms. Albitz is planning to attend a Chamber and Hawaiian Airlines luncheon on the 23rd. Chair Shick will forward the Chamber's full schedule to identify additional opportunities for appearances and networking during Chamber weeks.

5. Staff's Small Business Outreach

   Ms. Ariola will follow up with BDSD regarding the Annual Small Business Fair hosted by DBEDT.

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VI. **NEXT MEETING** – Thursday, February 19, 2026 at 10:00 a.m., via Zoom and in Conference Room 436 at No. 1 Capitol District Building, 250 S. Hotel Street, Honolulu, HI 96813.

VII. **ADJOURNMENT** – Second Vice Chair Albitz motioned to adjourn the meeting and Ms. Hobson seconded the motion; the meeting adjourned at 10:33 a.m.

DRAFT

III. Old Business

A. Re-review and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Land and Natural Resources – *Exhibit 1*

1. **Hawaii Administrative Rules (HAR) Title 13 Chapter 60.4, West Hawaii Regional Fishery Management Area, Hawaii**
2. **HAR Title 13 Chapter 75, Rules Regulating the Possession and Use of Certain Fishing Gear**
3. **HAR Title 13 Chapter 77.1, Aquarium Fishery Management**

RECEIVED
By SBRRB at 6:32 am, Nov 12, 2025

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 11/10/2025

Department or Agency: Department of Land and Natural Resources

Administrative Rule Title and Chapter: HAR ch. 13-60.4, 13-75, and 13-77.1

Chapter Name: See attached draft rules.

Contact Person/Title: Kealiʻi Sagum, Regulatory/Compliance Program Specialist

E-mail: kealii.sagum@hawaii.gov Phone: 808-830-4856

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

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

☑ Yes ☐ No

If "**Yes**," provide details: Viewing at the DAR Office and https://dlnr.hawaii.gov/dar/rules-and-public-notices/

I. Rule Description:

☑ New ☐ Repeal ☑ Amendment ☑ Compilation

II. Will the proposed rule(s) affect small business?

☑ Yes ☐ No

(If "**No**," no need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

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

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

   These rules will have a significant effect on commercial aquarium fishers and a minimal administrative effect on commercial aquarium dealers that purchase fish from commercial aquarium fishers.

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

   State of Hawai‘i aquarium fish permit fee: $100.00/yr.
   Indirect costs (increased reporting frequency): Nominal
   Commercial aquarium dealer registration and export reporting: Nominal

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

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

      There is currently no permit fee (last increase: n/a)

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

      $100/yr permit fee (percentage increase: n/a)

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

      Implementing a new permit system; fee req‘d to cover admin costs.

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

      Consistent with other similar commercial licenses/permits.

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

   Because HEPA compliance is required to be eligible for a permit, there is a finite number of permits that can be issued. There has been only one EIS that has been accepted and it contemplated 7 permittees. Therefore, DAR will only be able to issue up to 7 permits per year; at $100/permit, that‘s $700/yr in total yearly revenue on these permits. Additionally, each permittee will be required to have a commercial marine license which is an additional $100/yr. Commercial aquarium dealers will need to have a commercial marine dealer license which is also $100/yr. The revenue will be used to administer the license but will likely not even cover all of the admin costs, not even taking into account enforcement and monitoring costs.

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

   We have been in close contact with the West Hawai‘i commercial aquarium fishers and have developed these rules in consultation with them. They are aware and supportive of the permit system (including the fees and additional reporting).

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

   The alternative would be to operate as we have always been, but these rules are meant to provide structure and a holistic permit framework where there previously was none.

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

   We have been in close contact with the West Hawai‘i commercial aquarium fishers and have developed these rules in consultation with them. They are aware and supportive of the permit system (including the fees and additional reporting).

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

   We have been in close contact with the West Hawai‘i commercial aquarium fishers and have developed these rules in consultation with them. They are aware and supportive of the permit system (including the fees and additional reporting).

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

      Yes. We have gone through multiple iterations of these rules based on feedback received from the commercial aquarium fishers.

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

   Yes. Commercial aquarium fishing is a highly controversial topic. Heightened scrutiny on the fishery has required increased restrictions and more strict regulations than we have for other fisheries.

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

   a. Description of the public purposes to be served by the proposed rule.
      This rule will provide a clear permit structure in rule providing stability for commercial aquarium fishers while also ensuring accountability and transparency for the highly controversial commercial aquarium trade.

   b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
      HRS §188-31 allows for the issuance of permits to use fine mesh nets and traps to collect fish for aquarium purposes but does not provide a framework for those permits nor does it articulate specific T&Cs.

   c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
      HRS §188-31 allows for the issuance of permits to use fine mesh nets and traps to collect fish for aquarium purposes but does not provide a framework for those permits nor does it articulate specific T&Cs.

   d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
      The state law was meant to provide authority to DLNR to issue the permits; previously we have just issued the permits via the statute but are now establishing a framework for the issuance of those permits.

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

* * *

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 18 Chapter 235, Income Tax Law (Subchapter 3 Individual Income Tax Law), promulgated by Department of Taxation (DoTax)

Discussion leader Mr. Sikkink reminded the board members that these tax rules were brought forth to the Board in August by Mr. Garrison Kurth, DoTax Administrative Rules Specialist, who will discuss the current rule proposal.

Mr. Garrison Kirth stated that the proposed amendments update the State's income tax withholding tables pursuant to Act 46 (2024). The public hearing notice was published, the hearing was conducted on October 30, and no public testimony was submitted. The Attorney General has approved the final rule language. The rule changes reflect updated withholding formulas and will simplify annual updates for employers.

Ms. Albitz motioned to send the proposed new rules to the Governor for adoption. Ms. Jennifer Salisbury seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 15 Chapter 217, Kakaako Mauka Rules, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

HCDA representatives Mr. Ryan Tam and Mr. Craig Nakamoto summarized the rule amendments intended to align HCDA's development standards with Honolulu Ordinance 16-21 regarding real property tax exemptions for qualified Central Kaka'ako industrial businesses. Approximately 77 parcels currently participate in the program.

Mr. Park motioned to send the proposed new rules to the Governor for adoption. Ms. Ige seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Land and Natural Resources (DLNR)

Chair Jonathan Shick announced that multiple testimonies had been received and invited DLNR to present an overview of the proposed rule package before public testimony.

Mr. Keali'i Sagum, Regulatory Compliance Program Specialist for the Division of Aquatic Resources (DAR), presented the rulemaking proposal, accompanied by David Sakoda, DAR Fisheries Program Manager. Mr. Sagum explained that the amendments consolidate aquarium-related rules from Chapters 60.4 and 75 into a new chapter, HAR 13-77.1, which establishes a statewide commercial aquarium permit framework and updates West Hawai'i aquarium management rules. Mr. Sagum reviewed the restructuring of the existing West Hawaii Regional Fishery Management Area (WHRFMA) rules, changes to gear references, and the creation of a two-component permit system consisting of a State of Hawai'i Aquarium Permit and a Geographical Endorsement. Mr. Sagum discussed the eligibility

criteria—no aquatic resource violations within five years, HEPA compliance, and a valid commercial marine license—and explained the general permit terms including a $100 annual permit fee, non-transferability, required catch-to-dealer transfers, container labeling, and new reporting requirements such as an at-sea report prior to landing and a final report within one day.

Mr. Sagum further reviewed the proposed West Hawai‘i geographical endorsement, explaining that only the West Hawai‘i region is addressed in this rule package and that collection in any other region would require future rulemaking. Mr. Sagum outlined carry-over provisions from existing rules (e.g., nighttime restrictions) and the newly proposed annual catch limits for five whitelist species: Lau‘ipala (100,000 per year), Potter’s Angelfish (1,068), Mā‘i‘i (800), ‘Ula‘e (344), and Thompson Surgeonfish (182). He summarized vessel registration requirements, statewide expansion of identification and safety rules, commercial aquarium dealer registration, export reporting requirements, and compliance expectations for both permitted collectors and dealers. Mr. Sagum then compared pre-closure regulations to the proposed framework, highlighting HEPA compliance requirements, expanded reporting, new criminal history restrictions, and significantly reduced species lists and catch limits. Mr. Sagum concluded by summarizing small business impacts, noting that while new administrative and HEPA-related burdens will exist, aquarium fishers engaged in the rule development process have expressed support for the increased structure and annual catch limits.

Following the presentation, public testimony was taken. Former DAR biologist Alton Miyasaka testified first, emphasizing his long tenure with the aquarium fishery program and expressing concerns about the feasibility of daily reporting requirements and the proposed 5% variance limit. He stated that dealer timing, transport conditions, and existing industry practices could create discrepancies beyond the control of fishers. He also expressed concerns about the practical impacts of annual catch limits on West Hawai‘i’s relatively young reef system and asked the board to consider those operational realities.

Mike Nakauchi, a small business owner, dive instructor, and cultural practitioner. Mr. Nakauchi strongly opposed reopening aquarium collecting, stating that West Hawai‘i reefs have declined significantly over the past 40 years due to bleaching events and cumulative extraction impacts. He argued that the proposal contradicts cultural stewardship values, would burden taxpayers with enforcement costs, and benefits only a small number of collectors while threatening thousands of tourism-reliant businesses. Mr. Nakauchi stated that the West Hawai‘i Fisheries Council was not consulted and that the majority of community and scientific testimony submitted to BLNR opposed reopening the fishery.

On the call, Ron Robinson testified briefly in opposition, stating that seven small businesses should not outweigh the interests of the broader community and that sustainable decision-making requires denying aquarium collection.

Rene Umberger, representing For the Fishes, submitted testimony asserting that the Small Business Impact Statement (SBIS) was incomplete and materially misleading. She cited cost estimates from a peer-reviewed analysis indicating that aquarium fishery administration costs $300,000–$500,000 annually, excluding enforcement, and argued that DLNR did not provide accurate cost figures. She noted that DOCARE enforcement costs were omitted entirely,

despite the agency's direct involvement in prior aquarium poaching cases. She requested that the Board require DAR to prepare a corrected SBIS before allowing the rule package to advance.

Additional testimony from Kawika Rotol, a West Hawai‘i marine tourism operator, emphasized observed long-term declines in reef fish abundance and size, and argued that the SBIS ignored impacts on ocean tourism businesses and failed to account for significant state enforcement and administrative costs. He stated that reopening the fishery would harm already-fragile reefs and place disproportionate costs on the public while benefiting out-of-state markets.

Further testimony came from Raina Ni‘ihau, who reiterated opposition to the proposed rules and noted the lack of demonstrated local demand for aquarium fish. She stated that the trade primarily serves out-of-state markets and that Hawai‘i should not authorize extraction that provides limited public benefit while posing significant ecological risks.

Testimony continued from participants expressing similar concerns, including cumulative impacts to West Hawai‘i's reef system, strain on DOCARE enforcement capacity, gaps in the SBIS, and the limited number of businesses benefitting from the proposed rules. Testifiers urged the Board to find the SBIS incomplete and require revisions.

Board members expressed that significant information was missing from the SBIS, including enforcement cost estimates, cross-industry economic analysis, and biological impact clarity. Members stated they did not have sufficient information to determine small business impacts.

Chair Shick motioned to recommend deferring the proposal until additional studies and reports are resubmitted to this Board. These studies and reports include, but are not limited to, the following: 1) Environmental Impact Statement; 2) Biological Impact Report, 3) Cultural Impact Report, 4) Studies on how much fish come out of the farm-raised industry versus wild collection; 5) Economic costs for enforcement; and 6) Five-year study from the Legislature. Additionally, Chair Shick recommended that DLNR conduct further stakeholder consultation to better address the concerns of the small businesses, along with a stakeholder summary of the feedback. Mr. Park seconded the motion, and the Board members unanimously agreed.

B. <u>Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 3, Chapter 80-86, Rules of the Liquor Commission, and Proposed Adoption of Chapter 80.1-86.1, Rules of the Liquor Commission, promulgated by Liquor Commission, City and County of Honolulu</u>

Ms. Anne Hirai from the Liquor Commission presented a comprehensive overhaul of the rules, including renumbering, technical revisions, updated delivery rules, and modernization aligned with the Commission's online permitting system. Two stakeholder meetings were held with feedback incorporated. Second Vice Chair Albitz noted that based on prior discussions, the proposed rules appear straightforward and do not negatively impact small businesses. Ms. Hirai explained that the Commission's last full restructuring of its rules occurred in 1993, with major amendments in several subsequent years, making this current overhaul significant. The effort aligns with the rollout of the Commission's new online licensing and database

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Josh Green, M.D.
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James Kunane Tokioka
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Dane K. Wicker
DBEDT Deputy Director

Members

Jonathan Shick
Chairperson
O'ahu

Sanford Morioka
Vice Chairperson
O'ahu

Mary Albitz
2nd Vice Chairperson
Maui

James (Kimo) Lee
Hawai'i

Leelen Park
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Cynthia Hobson
O'ahu

Nicolle Ige
Kaua'i

Dr. Jennifer Salisbury
Maui

David Sikkink for
Director, DBEDT
Voting Ex Officio

MEMORANDUM – REVISED

TO: Ms. Dawn Chang, Director
Department of Land and Natural Resources (DLNR)

FROM: Jonathan Shick, Chair Jonathan Shick
Small Business Regulatory Review Board

DATE: December 3, 2025

SUBJECT: Proposed Amendments to Hawaii Administrative Rule (HAR) Title 13 Chapter 60.4 West Hawaii Regional Fishery Management Area, Hawaii, Chapter 75 Rules Regulating the Possession and Use of Certain Fishing Gear, Chapter 77.1 Aquarium Fishery Management – Before Public Hearing

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The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Please be advised that at the November 20, 2025 SBRRB meeting, the members heard from David Sakoda, Fisheries Program Manager from the Division of Aquatic Resources (DAR), and Kealii Sagum, Regulatory/Compliance Program Specialist, as well as several testifiers in opposition of the above-captioned HAR proposed changes before the public hearing.

Upon hearing from DLNR and the testifiers, the SBRRB recommended that the proposal be deferred until additional studies and reports are resubmitted to this Board. These studies and reports include, but not limited to, the following: 1) Environmental Impact Statement; 2) Biological Impact Report, 3) Cultural Impact Report, 4) Studies on how much fish come out of the farm-raised industry versus wild collection; 5) Economic costs for enforcement; and 6) Five-year study from the Legislature.

The SBRRB additionally recommends that DLNR conduct further stakeholder consultation to better address the concerns of the small businesses, along with a stakeholder summary of the feedback.

Thank you for your anticipated cooperation.

c: Honorable Governor Josh Green, M.D.
Mr. David Sakoda, Fisheries Program Manager, DAR, DLNR
Mr. Kealii Sagum, Regulatory/Compliance Program Specialist, DAR, DLNR

UPDATED:
February 10, 2026

SMALL BUSINESS REGULATORY REVIEW BOARD REQUEST FOR MORE INFORMATION ON COMMERCIAL AQUARIUM FISHERY IN WHRFMA (DECEMBER 3, 2025)

DLNR 13-60.4 75
77.1 Division of Aquat

1) **Environmental Impact Statement (EIS) (and Cultural Impact Assessment)**
    a. *June 8, 2021*
        i. Pet Industry Joint Advisory Council's (PIJAC's) Revised Final EIS (RFEIS) Published in Environmental Notice
    b. *June 25, 2021*
        i. DAR Submittal to BLNR (Item F-3) Recommending Acceptance of PIJAC's RFEIS
        ii. Testimony, Letter, Out of State (In order received)
        iii. YouTube Recording of Meeting (Discussion starts at 01:01:07)
    c. *October 3, 2022*
        i. Notice of Statutory Acceptance

2) **Biological Impact Report**
    a. *March 2024*
        i. Data Review and Management Brief for the West Hawai'i Commercial Aquarium Fishery (updated July 2024)
    b. *April 12, 2024*
        i. DAR Submittal to BLNR (Item F-2), "Informational Briefing on Existing Fisheries Data and Management Considerations Related to the West Hawai'i Commercial Aquarium Fishery"
        ii. Testimony (In order received)
        iii. YouTube Recording of Meeting (Discussion starts at 00:50:25)

3) **Cultural Impact Report**
    a. See links in #1.

4) **Studies on how much fish come out of the farm-raised industry versus wild collection**
    a. There are no studies or published information regarding the number of farm-raised marine aquarium fish produced in Hawaii. Currently, no wild collection is occurring.

5) **Economic costs for enforcement**

Schaar and Cox
Marine Policy Paper.p

The Schaar and Cox paper (linked above) estimated "DAR's 2019 management cost for Hawai'i's marine aquarium fishery including salaries of employees who work directly with the fishery, aquarium fish surveys and any other costs associated with the fishery that DAR funds. DAR officials provided a low estimate of USD 300,000 annually covering the time spent by 20 or more individuals in the aquarium fishery along with their supplies and equipment. Their high estimate of USD 500,000 annually includes costs, such as fringe benefits that are not included DAR's annual 2019 budget, but are found in DLNR's overall budget. For Scenario C (statewide aquarium collection ban), these management costs should be eliminated overtime."

This analysis is flawed in that management costs would not be eliminated over time. The DAR positions, supplies, and equipment would continue to be funded, though their work would focus on other non-AQ activities. Similarly, DOCARE conducts enforcement of all natural resource laws, including AQ regulations. Eliminating the lawful AQ fishery would not result in the state spending less on enforcement. DOCARE would continue to conduct enforcement activities with existing personnel resources, including enforcement against illegal aquarium collecting activities. More recently, DAR has estimated that the cost to DAR to manage the West HI AQ fishery is approximately $50k/year, mostly from staff time and supplies. However, as we note, eliminating the aquarium fishery would not result in fiscal savings to the State.

6) **Five-year study from the Legislature**
    a. November 2024 Findings and Recommendations of Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA)
    b. November 2019 Findings and Recommendations of Effectiveness of the WHRFMA
    c. December 2014 Findings and Recommendations of Effectiveness of the WHRFMA
    d. January 2010 Findings and Recommendations of Effectiveness of the WHRFMA
    e. December 2004 Findings and Recommendations of Effectiveness of the WHRFMA

ADDITONAL RELEVANT LINKS

1) **Request to BLNR for Approval to Hold Public Hearings**
    a. *October 24, 2025*
        i. DAR Submittal to BLNR (Item F-2) Requesting Approval to Hold Public Hearings on "Draft Administrative Rules Updating and Consolidating Aquarium Fishery Regulations into a New Chapter, Hawaii Administrative Rules ("HAR") Chapter 13-77.1, "Aquarium

Fishery Management" and Amending HAR Chapters 13-75, "Rules Regulating the Possession and Use of Certain Fishing Gear", and 13-60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i", for Clarity and Consistency"

ii. Testimony (In order received) – 10/20 (1, 2, 3, 4, 5), 10/21, 10/22 (1,2), 10/23 (1,2), Late – 10/25

iii. YouTube Recording of Meeting (Discussion starts at 03:38:50)

RECEIVED
By SBRRB at 10:27 am, Feb 10, 2026

Summary of Testimony from Targeted Scoping with Hawai‘i Island Commercial Operators on Proposed Aquarium Fishery Rules

Zoom Meeting
January 15, 2026

Background

On January 15th, 2026, a virtual targeted scoping meeting for Hawai‘i Island commercial operators was hosted by the Department of Land and Natural Resources, Division of Aquatic Resources (DAR) in the evening from 5:00 pm – 7:00 pm. An email invitation was sent on January 5th to about 140 commercial operators that were registered in the system from the Aloha i ke Kai or the Hawai‘i Ocean Stewardship Fee Program (See Exhibit A). While nine commercial operators registered for the scoping meeting in advance, six participants representing seven businesses actually joined the meeting to provide testimony. A follow-up email was sent to the same list of operators on February 2nd providing a copy of the scoping meeting presentation and reminding operators that they could submit written testimony if they were unable to attend the meeting (See Exhibit B).

Summary of Testimony

All who provided testimony were in full opposition to the proposed aquarium fishery rules and did not support the aquarium industry. Several participants shared the sentiment that aquarium fishing results in detrimental impacts to Hawai‘i’s coral reef ecosystems and fish, which therefore would negatively impact their businesses due to visitors’ desire to see healthy coral reefs and abundant fish. One individual voiced concern over the cascading effects this might have on the State overall, as ocean tourism contributes significantly to Hawai‘i’s economy.

Other comments shared that did not directly relate to how the proposed aquarium fishery rules would affect their business were based around the cost of the permit, daily bag limits, annual catch limits, funding allocation, enforcement, poaching, marine debris from aquarium

fishers, anecdotal observations of certain aquarium species declining, and the outreach efforts from DAR. Two individuals felt that the cost of the permit was too little and wanted to increase the fee or implement a fee system where it is based on the aquarium business' earnings. Some also wanted the proposed bag and annual catch limits lowered, but also expressed the concern about poaching and people not following the rules. Several commented on the lack of enforcement, and advocated for more funding to support the Division of Conservation and Resources Enforcement as well as aquaculture businesses and other alternative methods to replenish reefs. Finally, many expressed disappointment around the lack of attendance at the scoping, and felt that many commercial operators did not hear about this meeting nor received the email invitation. There was frustration around DAR's outreach methods to promote this meeting, and one individual shared that many operators are reluctant to participate in this process due to fear of retaliation or revocation of their permit.

The Department also received 3 written testimonies regarding impacts of commercial aquarium collection on small business operations (See Exhibit C).

Exhibit A

From:	DLNR.AR.Rulemaking
To:	Sakoda, David
Cc:	DLNR.AR.OSUF
Bcc:	Sagum, Nicholas Kealii; Tsang, Anita O; kawika@maunalaniseaadventures.com; bogletree@aliioceantours.com; bookkeeper.kona@gmail.com; kkobayashi@kohanaiki.com; Kaimanaoceansafari@gmail.com; jim@seethroughsea.com; nyanagi75@gmail.com; amy@konaglassbottomboat.com; hawaiimarinelife@gmail.com; cornforth@captainzodiac.com; stevenmarjieh@gmail.com; Liam@seaquesthawaii.com; alohakonatours@gmail.com; dpajdeere@gmail.com; accounting@bodyglovehawaii.com; info@konasnorkeltrips.com; aaron@bigislandactivities.com; flykona@gmail.com; flykona@ufoparasail.net; dylan@seethroughsea.com; Pueo@Bigislanddivers.com; hanglooseboat@gmail.com; alika@konastyle.com; podsurgical@gmail.com; Customerservice@adventurexboattours.com; paul@moderngeographic.com; stephanie@bitemesportfishing.com; liquid@liquidhawaii.com; KSS@Bigislanddivers.com; kim@bitemesportfishing.com; holly@anelakaiadventures.com; oskayaks@gmail.com; chavezrnch@aol.com; tahnee@hawaiinautical.com; t.fales@oconnorbraman.net; sberg@atlantisadventures.com; Ljardine@oulifarms.com; nboyette@hualalairesort.com; natalie@hilooceanadventures.com; kohalakaipl@gmail.com; kohalabluesailhawaii@gmail.com; boatbookkeeper@gmail.com; glimpsemom@gmail.com; bulletsadventures@gmail.com; accounting@hawaiioceansports.com; hdc@aloha.net; adventuretimehawaii@gmail.com; kevin@kingkayakhawaii.com; aloha@lightsuphawaii.com; godiving@kohaladivers.com; jason.shively@liquid-robotics.com; fish@sirensportfishinghawaii.com; HonuIki@Bigislanddivers.com; janiceburke8@gmail.com; konacharterboat@gmail.com; captal@goosesedge.com; office@tropicalsunsportfishing.com; reynah@apbconstructiongroup.com; accounting@jacksdivinglocker.com; fbs4intrepid.kibou@gmail.com; teddyhoogs@gmail.com; cyruswidhalm@gmail.com; reelhavocsportfishing@gmail.com; captaindan@mantaadventures.com; mgr@mantaraydiveshawaii.com; bethbartell7@gmail.com; info@paradisesailinghawaii.com; janzberry12@gmail.com; bretjohns@hotmail.com; nakachimike@gmail.com; stevenfassbender@hotmail.com; alohakai@tropicalsunsportfishing.com; dmcswwa@hush.com; Jwb1266@gmail.com; fishcaptain@hawaii.rr.com; grobbkona1@outlook.com; thenittas@msn.com; marlinmagic@protonmail.com; jen@orcawhales.com; ap@konadivingcompany.com; darren@bitemesportfishing.com; gordon@gihomes.us; konafishing@bitemesportfishing.com; kamanu@interpac.net; info@oceanspirit.com; highnoon4@aol.com; jeff@konahonudivers.com; kai@pacificrimdivers.com; mike@beastmodesportfishing.com; podi5671@yahoo.com; oceanecokona@gmail.com; cherrysportfishing@yahoo.com; capt.Lisa@gmail.com; Tait@Bigislanddivers.com; andy@theoceanfloor.com; konaboatrentals@gmail.com; aaronpomerantz@yahoo.com; KS.808HI@GMAIL.COM; aloha@oceanbluekona.com; LEMASTER808@gmail.com; hullshirley@gmail.com; hawaiiislandandoceantours@gmail.com; bessexshawn@gmail.com; konacoastboat@gmail.com; accounting@konaoceanadventures.com; aggergaard@comcast.net; marikolurbiecki@me.com; admin@fair-wind.com; finance@fair-wind.com; holly@seaparadise.com; konaoceanx@gmail.com; office@dolphindiscoveries.com; fishnainoa@gmail.com; billfish60@gmail.com; ekaadventures@gmail.com; jefffay@hawaii.rr.com; konafishing.com@gmail.com; janzberry14@gmail.com; sales@mantaadventures.com; captmike@hawaii.rr.com; rob@macsoft.com; accounting@mauiyachtcharters.com; konashoredivers@outlook.com; mnl.accountsreceivable@auberge.com; jennifer@everythingellis.com; manager@liquidcosmosdivers.com; hiprivatecharters@gmail.com; chadbarga@gmail.com; jerry@malamachartershilo.com; laci@tryscubadiving.com; dawhaleboat@gmail.com; keithrobinson808@icloud.com; konacoastexpeditions@gmail.com; tywidhalm@gmail.com; kapii@ehuandkai.com; brookelandt@yahoo.com; masbennett@icloud.com; alohaoceanexcursions@gmail.com; mnl.accountspayable@auberge.com; info@konaoffshoreadventures.com
Subject:	NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai'i (1/15/26)
Date:	Monday, January 5, 2026 5:25:35 PM
Attachments:	AQ Rules PPT - WH Scoping 2026.01.15.pdf 2025.10.24 BLNR Submittal - AQ Rules.pdf Combined AQ Rules (CLEAN - RAMSEYER) - 13-77.1+13-60.4+13-75 - 10.30.2025.pdf

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Aloha,

We, at the Division of Aquatic Resources (DAR), are proposing draft rules to consolidate and formalize management of the aquarium fishery in Hawai'i by creating a permitting framework for West Hawai'i that could potentially be expanded through future rulemaking actions to include other portions of the State. On October 24, the Board of Land and Natural Resources (BLNR) unanimously approved DAR to conduct public hearings on the aquarium fishery management rulemaking proposal with amendments. However, we are reaching out because the Small Business Regulatory Review Board would like to get a better understanding of any potential negative effects these rules may have on other commercial ocean operators that conduct their business in West Hawai'i before making a recommendation on the proposal. As such, we have scheduled a virtual scoping meeting for Hawai'i island commercial ocean operators in the Aloha i ke Kai – Ocean Stewardship Fee program, such as yourself, where we will present the current draft of the proposed aquarium fishery rules, answer any

questions you may have on the proposal, and get your feedback on how you feel these rules may affect your business.

The meeting will be held **next week THURSDAY, JANUARY 15, 2026 at 5:00 p.m.**

If you wish to attend, PLEASE REGISTER BY CLICKING THIS LINK.

For your reference, please see the attached submittal to the BLNR with background information on the aquarium fishery, as well as the current draft of the rules that has been updated to incorporate edits made by the BLNR.

For your review, we have also included a PDF copy of the slides we will be presenting at next week's meeting.

If you are **unable** to attend but would like to provide feedback via email, you may respond to this email directly and we will include your feedback in our summary when we report back to the Small Business Regulatory Review Board. Please make sure to include the following information:

1. Full name
2. Business name
3. Aloha i ke Kai account ID number
4. Primary location(s) you conduct your business (please be as specific as possible)
5. A clear description of how the rules will negatively impact your business

Mahalo,

David Sakoda
Fisheries Program Manager
Division of Aquatic Resources
State of Hawaii, Department of Land & Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

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Exhibit B

From: DLNR.AR.Rulemaking
To: Sakoda, David
Cc: DLNR.AR.OSUF
Bcc: Sagum, Nicholas Kealii; Tsang, Anita O; kawika@maunalaniseaadventures.com; bogletree@aliioceantours.com; bookkeeper.kona@gmail.com; kkobayashi@kohanaiki.com; Kaimanaoceansafari@gmail.com; jim@seethroughsea.com; nyanagi75@gmail.com; amy@konaglassbottomboat.com; hawaiimarinelife@gmail.com; cornforth@captainzodiac.com; stevenmarjieh@gmail.com; Liam@seaquesthawaii.com; alohakonatours@gmail.com; dpajdeere@gmail.com; accounting@bodyglovehawaii.com; info@konasnorkeltrips.com; aaron@bigislandactivities.com; flykona@gmail.com; flykona@ufoparasail.net; dylan@seethroughsea.com; Pueo@Bigislanddivers.com; hanglooseboat@gmail.com; alika@konastyle.com; podsurgical@gmail.com; Customerservice@adventurexboattours.com; paul@moderngeographic.com; stephanie@bitemesportfishing.com; liquid@liquidhawaii.com; KSS@Bigislanddivers.com; kim@bitemesportfishing.com; holly@anelakaiadventures.com; oskayaks@gmail.com; chavezrnch@aol.com; tahnee@hawaiinautical.com; t.fales@oconnorbraman.net; sberg@atlantisadventures.com; Ljardine@oulifarms.com; nboyette@hualalairesort.com; natalie@hilooceanadventures.com; kohalakaipl@gmail.com; kohalabluesailhawaii@gmail.com; boatbookkeeper@gmail.com; glimpsemom@gmail.com; bulletsadventures@gmail.com; accounting@hawaiioceansports.com; hdc@aloha.net; adventuretimehawaii@gmail.com; kevin@kingkayakhawaii.com; aloha@lightsuphawaii.com; godiving@kohaladivers.com; jason.shively@liquid-robotics.com; fish@sirensportfishinghawaii.com; HonuIki@Bigislanddivers.com; janiceburke8@gmail.com; konacharterboat@gmail.com; captal@goosesedge.com; office@tropicalsunsportfishing.com; reynah@apbconstructiongroup.com; accounting@jacksdivinglocker.com; fbs4intrepid.kibou@gmail.com; teddyhoogs@gmail.com; cyruswidhalm@gmail.com; reelhavocsportfishing@gmail.com; captaindan@mantaadventures.com; mgr@mantaraydiveshawaii.com; bethbartell7@gmail.com; info@paradisesailinghawaii.com; janzberry12@gmail.com; bretjohns@hotmail.com; nakachimike@gmail.com; stevenfassbender@hotmail.com; alohakai@tropicalsunsportfishing.com; dmcswwa@hush.com; Jwb1266@gmail.com; fishcaptain@hawaii.rr.com; grobbkona1@outlook.com; thenittas@msn.com; marlinmagic@protonmail.com; jen@orcawhales.com; ap@konadivingcompany.com; darren@bitemesportfishing.com; gordon@gihomes.us; konafishing@bitemesportfishing.com; kamanu@interpac.net; info@oceanspirit.com; highnoon4@aol.com; jeff@konahonudivers.com; kai@pacificrimdivers.com; mike@beastmodesportfishing.com; podi5671@yahoo.com; oceanecokona@gmail.com; cherrysportfishing@yahoo.com; capt.Lisa@gmail.com; Tait@Bigislanddivers.com; andy@theoceanfloor.com; konaboatrentals@gmail.com; aaronpomerantz@yahoo.com; KS.808HI@GMAIL.COM; aloha@oceanbluekona.com; LEMASTER808@gmail.com; hullshirley@gmail.com; hawaiiislandandoceantours@gmail.com; bessexshawn@gmail.com; konacoastboat@gmail.com; accounting@konaoceanadventures.com; aggergaard@comcast.net; marikolurbiecki@me.com; admin@fair-wind.com; finance@fair-wind.com; holly@seaparadise.com; konaoceanx@gmail.com; office@dolphindiscoveries.com; fishnainoa@gmail.com; billfish60@gmail.com; ekaadventures@gmail.com; jefffay@hawaii.rr.com; konafishing.com@gmail.com; janzberry14@gmail.com; sales@mantaadventures.com; captmike@hawaii.rr.com; rob@macsoft.com; accounting@mauiyachtcharters.com; konashoredivers@outlook.com; mnl.accountsreceivable@auberge.com; jennifer@everythingellis.com; manager@liquidcosmosdivers.com; hiprivatecharters@gmail.com; chadbarga@gmail.com; jerry@malamachartershilo.com; laci@tryscubadiving.com; dawhaleboat@gmail.com; keithrobinson808@icloud.com; konacoastexpeditions@gmail.com; tywidhalm@gmail.com; kapii@ehuandkai.com; brookelandt@yahoo.com; masbennett@icloud.com; alohaoceanexcursions@gmail.com; mnl.accountspayable@auberge.com; info@konaoffshoreadventures.com
Subject: RE: NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai'i (1/15/26)
Date: Monday, February 2, 2026 9:59:00 AM
Attachments: AQ Rules PPT 2026.01.15 Aloha i ke Kai Scoping.pdf

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Aloha,

On January 15, 2026, the Division of Aquatic Resources held a virtual scoping meeting for Hawai'i island commercial ocean operators in the Aloha i ke Kai – Ocean Stewardship Fee program to gather feedback on proposed rules regulating the take of aquarium fish in West Hawai'i. We are specifically seeking feedback on any potential impacts these rules may have on your small business operations. Attached are the slides from the PowerPoint presentation that was given.

If you were **unable** to attend but would like to provide feedback via email, you may respond to this email directly and we will include your feedback in our summary when we report back to the Small Business Regulatory Review Board. Please make sure to include the following information:

1. Full name
2. Business name
3. Aloha i ke Kai account ID number

4. Primary location(s) you conduct your business (please be as specific as possible)
5. A clear description of how the rules will negatively impact your business

Please email us by February 8, 2026 to ensure your feedback is considered.

Mahalo,
David Sakoda

From: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Sent: Monday, January 5, 2026 5:26 PM
To: Sakoda, David <david.sakoda@hawaii.gov>
Cc: DLNR.AR.OSUF <alohaikekai@hawaii.gov>
Subject: NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai‘i (1/15/26)

Aloha,

We, at the Division of Aquatic Resources (DAR), are proposing draft rules to consolidate and formalize management of the aquarium fishery in Hawai‘i by creating a permitting framework for West Hawai‘i that could potentially be expanded through future rulemaking actions to include other portions of the State. On October 24, the Board of Land and Natural Resources (BLNR) unanimously approved DAR to conduct public hearings on the aquarium fishery management rulemaking proposal with amendments. However, we are reaching out because the Small Business Regulatory Review Board would like to get a better understanding of any potential negative effects these rules may have on other commercial ocean operators that conduct their business in West Hawai‘i before making a recommendation on the proposal. As such, we have scheduled a virtual scoping meeting for Hawai’i island commercial ocean operators in the Aloha i ke Kai – Ocean Stewardship Fee program, such as yourself, where we will present the current draft of the proposed aquarium fishery rules, answer any questions you may have on the proposal, and get your feedback on how you feel these rules may affect your business.

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For your reference, please see the attached submittal to the BLNR with background information on the aquarium fishery, as well as the current draft of the rules that has been updated to incorporate edits made by the BLNR.

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Business Regulatory Review Board. Please make sure to include the following information:

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5. A clear description of how the rules will negatively impact your business

Mahalo,

David Sakoda
Fisheries Program Manager
Division of Aquatic Resources
State of Hawaii, Department of Land & Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

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Exhibit C

From: Mendy Dant
To: DLNR.AR.Rulemaking; DBEDT SBRRB
Cc: Sakoda, David
Subject: [EXTERNAL] January 15, 2026 SBRRB & DAR
Date: Wednesday, January 14, 2026 5:53:54 PM

Date: January 14, 2026

Subject: Aquarium Fish Collection Opposition Testimony
January 15, 2026 DAR

Aloha Chair and Board Members,

My family owns and operates two ocean tourism businesses based in Keauhou Bay, Kona. Our family business is now in its 3rd generation. We have been here since 1971 and have seen a significant decline in coral and fish, making our reefs increasingly unhealthy. We strongly oppose the plan to reopen Hawaii reefs to the destructive aquarium trade.

Our concerns with aquarium fish collection are many. The destruction of our already weak shorelines' natural protection from storms, fewer habitats for the coral reefs, a loss that will not be replenished. The reef is a complex natural resource that depends on fish to stay healthy, and in return, we have the strength of our shorelines and a beautiful coral habitat to enjoy. Tropical fish should be seen and not disturbed, in my humble opinion.

In 2025, our two companies have paid $394,730 for DOBOR, DAR, and ST Parks permits. We also conduct clean-ups at Ka'awaloa and take 500 students out for snorkeling in Kealakekua Bay every year for $5.00 each, and have been doing so since 1991 under our permit requirements. There are many hundreds of similar businesses in Hawaii. Our industry supports our communities and employs thousands of individuals.

From my 50 years of experience going to MLCD Kealakekua Bay, I now see very few fish. We used to have many parrot fish, puffers, trumpets, eels, moorish idols, yellow tangs, long-nose butterflyfish, humu humu nuku nuku apua'a, cleaner wrasse, but not anymore. These fish are territorial, and if they are depleted from an MLCD, then you can imagine how few they are on the unprotected coastline.

Allowing the commercial take of herbivorous fish for the aquarium pet trade, which sends 99 percent of marine life out of the state, contradicts DLNR's priorities and mission to protect natural resources, which include our native herbivorous fish for Hawai'i's reefs.

Conversely, prohibiting the commercial take of herbivores and other marine fishes for aquarium purposes would firmly prioritize our marine life as essential and cultural

resources, and prevent treating them as mere commodities in the profit-driven aquarium pet trade.

Please carry out the long-standing policy directive to prioritize natural and cultural resources over commercial activities that cause excessive negative impacts to those resources and ensure our reefs and their creatures remain protected today and for future generations! Please!

Sincerely,

Melynda (Mendy) Dant
President

><(((º> ><(((º> ><(((º> ><(((º> ><(((º> ><(((º>

Mendy Dant
President
Fair Wind Cruises
Kona Sunrise Charters
Charisma Hawaii
78-6775 Box A Makenawai St
Kailua Kona, Hi 96740
C.808-345-6211
www.fair-wind.com

"You cannot get through a single day without having an impact on the world around you. You have to decide what kind of difference you want to make."

Jane Goodall

From: Kohala Divers
To: DLNR.AR.Rulemaking
Cc: Sakoda, David; DLNR.AR.OSUF
Subject: [EXTERNAL] Re: NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai'i (1/15/26)
Date: Monday, February 2, 2026 12:45:45 PM

1. Rebekah Kaufmann
2. Kohala Divers
3. **CUP 20-224516**
4. Kawaihae and Kohala Coast

I am writing to strongly oppose DAR's proposed rule package reopening Hawai‘i's reefs to commercial aquarium collecting. As owner of Kohala Divers, a PADI 5-Star Dive Center operating since 1984, I have witnessed how healthy reef ecosystems are essential to both our marine environment and our local economy.

Our Business Depends on Thriving Reefs

For over 40 years, Kohala Divers has brought thousands of visitors and residents to experience the underwater beauty of Hawai‘i's reefs. Our customers come to see vibrant, populated reefs teeming with the colorful fish that make Hawai‘i's waters world-renowned.
When reef fish populations decline, our business suffers directly:

- **Diminished customer experience**: Divers and snorkelers travel from around the world to see Hawai‘i's iconic reef fish in their natural habitat—not empty reefs stripped for the aquarium trade.
- **Loss of repeat business**: Our 75% customer retention rate is built on consistently excellent reef experiences. Degraded reefs mean disappointed customers who won't return or recommend us.
- **Undermined educational mission**: We offer PADI certification courses, coral monitoring through Reefchecker, and ocean stewardship programs. Depleted reefs undermine our ability to teach marine conservation.
- **Economic impact**: Our operation generates over $100,000 monthly during peak season, supporting numerous full-time and part-time staff and their families. The dive and ecotourism industry provides far more sustainable, long-term economic benefit than commercial aquarium collecting ever could.

My Request

Please send these rules back for redrafting to reflect the community's call to safeguard reef life—not revive the trade they sought to end.
Keep permitting authority with BLNR for full transparency and public accountability.
Protect Hawai‘i's reefs for the sustainable industries that depend on them, the communities that cherish them, and future generations.
The choice is clear: support a handful of collectors extracting hundreds of thousands of fish for private profit, or protect the reefs that sustain our tourism economy, cultural heritage, and marine ecosystems.
Mahalo for your consideration,

Rebekah Kaufmann
Owner, Kohala Divers & Siren Sportfishing

How would you rate my reply?
Great Okay Not Good

On Mon, Feb 2, 2026 at 10:00 AM HST, Dlnr.ar.rulemaking <dar.rulemaking@hawaii.gov> wrote:

> Aloha,
>
> On January 15, 2026, the Division of Aquatic Resources held a virtual scoping meeting for Hawai'i island commercial ocean operators in the Aloha i ke Kai - Ocean Stewardship Fee program to gather feedback on proposed rules regulating the take of aquarium fish in West Hawai'i. We are specifically seeking feedback on any potential impacts these rules may have on your small business operations. Attached are the slides from the PowerPoint presentation that was given.
>
> If you were **unable** to attend but would like to provide feedback via email, you may respond to this email directly and we will include your feedback in our summary when we report back to the Small Business Regulatory Review Board. Please make sure to include the following information:
>
> 1. Full name
> 2. Business name
> 3. Aloha i ke Kai account ID number
> 4. Primary location(s) you conduct your business (please be as specific as possible)
> 5. A clear description of how the rules will negatively impact your business
>
> Please email us by February 8, 2026 to ensure your feedback is considered.
> Mahalo,
>
> David Sakoda
>
> On Mon, Jan 5, 2026 at 5:25 PM HST, Dlnr.ar.rulemaking <dar.rulemaking@hawaii.gov> wrote:
>
> > Aloha,

We, at the Division of Aquatic Resources (DAR), are proposing draft rules to consolidate and formalize management of the aquarium fishery in Hawai‘i by creating a permitting framework for West Hawai‘i that could potentially be expanded through future rulemaking actions to include other portions of the State. On October 24, the Board of Land and Natural Resources (BLNR) unanimously approved DAR to conduct public hearings on the aquarium fishery management rulemaking proposal with amendments. However, we are reaching out because the Small Business Regulatory Review Board would like to get a better understanding of any potential negative effects these rules may have on other commercial ocean operators that conduct their business in West Hawai‘i before making a recommendation on the proposal. As such, we have scheduled a virtual scoping meeting for Hawai'i island commercial ocean operators in the Aloha i ke Kai - Ocean Stewardship Fee program, such as yourself, where we will present the current draft of the proposed aquarium fishery rules, answer any questions you may have on the proposal, and get your feedback on how you feel these rules may affect your business.

The meeting will be held **next week THURSDAY, JANUARY 15, 2026 at 5:00 p.m.**

If you wish to attend, PLEASE REGISTER BY CLICKING THIS LINK.

For your reference, please see the attached submittal to the BLNR with background information on the aquarium fishery, as well as the current draft of the rules that has been updated to incorporate edits made by the BLNR.

For your review, we have also included a PDF copy of the slides we will be presenting at next week's meeting.

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3. Aloha i ke Kai account ID number
4. Primary location(s) you conduct your business (please be as specific as possible)
5. A clear description of how the rules will negatively impact your business

Mahalo,

David Sakoda
Fisheries Program Manager
Division of Aquatic Resources
State of Hawaii, Department of Land & Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 330

Honolulu, HI 96813

NOTICE: This information and attachments are intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged and/or confidential. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited and may be punishable under state and federal law. If you have received this communication and/or attachments in error, please notify the sender via email immediately and destroy all electronic and paper copies.

From: Liquid Cosmos Divers
To: DLNR.AR.Rulemaking
Cc: Sakoda, David; DLNR.AR.OSUF
Subject: [EXTERNAL] Re: NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai'i (1/15/26)
Date: Monday, February 9, 2026 1:29:33 PM

Aloha DLNR,

My name is Jessica Glazner and I am the business owner of Liquid Cosmos Divers (Aloha I Ke Kai Number T0000801). We operate scuba diving charters out of Kawaihae South Harbor and frequent both the north and south Kohala coastlines from Māhukona down to Kīholo Bay. I was unable to make the scoping meeting and would like to provide my feedback here. I feel that I have an important perspective to provide feedback for several reasons. First, I have been diving full time on the Kohala coast for nearly 10 years, and, in particular, we do a lot of drift diving so I am one of the only people on our coastline that is regularly observing the reef away from the day-use moorings (where most dive and snorkel tours occur). Additionally, I am a Ph.D. student at HIMB (I study the effects of nutrient enrichment on corals) and have a rigorous scientific background that allows me to provide you with observational data that is rooted in my experience as a biologist. I have also conducted many fish and benthic surveys along the Kohala coast with TNC and supported coral conservation work with DAR.

I am deeply concerned about the proposed aquarium fishery rules for many reasons.

- First, I have a concern about the claim "Though some risk cannot be avoided, overall risks of major population and ecosystem impacts are LOW" (slide 5). How was this decided? We know that aquarium fishing is destructive to coral, even with appropriate gear there is going to be damage to corals that are already under significant pressures. Additionally, there is SIGNIFICANT research demonstrating the importance of reef fish for corals and ecosystem functioning. Namely, yellow tang, who make up the majority of the allowed catch, are vitally important herbivores that maintain grazing pressure on macroalgae which is necessary for coral health and survival. Importantly, I have watched the yellow tang population EXPLODE over the last 2 years along the Kohala coast. We are seeing huge recruitments of juveniles year round, I see between 50-300 juveniles on nearly every dive. This is deeply concerning because this tells me that there was intense pressure on this population pre-closure and we are just seeing their population start to recover.
- I have significant concerns about poaching. We know this was a major problem pre-closure and I have very little faith in the State to be able to prevent this if this fishery is re-opened. This coastline is too remote for either the state or us commercial operators to be able to catch poachers, but we know that if the fishery is open, there will be people taking advantage of it. In this case, we have to assume that the catch will be significantly higher than the proposed catch limits, thereby causing more harm than is expected to the ecosystem.
- The State claims this will be "the most intensely managed fishery in the state." Why? Why expend our limited resources on something that benefits so few? We need you for so many other things that are not getting done, and I am extremely displeased that any of our limited resources would go to managing this fishery. For example, our harbor (Kawaihae) has extreme infrastructure issues. We have been waiting for our road to be fixed for almost 2 years (causing significant damage to our trailer driving over the bumpy dirt road every day), the plumbing is inadequate and we are without water for several months out of the year (completely unacceptable), and the north harbor still

doesn't have a breakwall. I recognize that fisheries and infrastructure are run by different departments, but we desperately need the funding to go to our infrastructure problems that are affecting both commercial operators and local fishers, and not to managing the aquarium fishery that literally none of us want operating out of our harbor.

- I am concerned with the low annual permit fee. Why is it only $100? We pay a minimum of $300 per MONTH for our commercial permit so $100 per year does not feel fair, especially considering the costs the state will accrue by managing this fishery. The permit fee needs to cover these costs, I do not want my business permit fees or taxes to be used for managing this fishery when that money is needed elsewhere.
- Tourism is the biggest economic driver in the state. Why would you do anything to jeopardize that? This is not 'diversifying' our economy, this is just blatantly doing something to harm the income of our state. I can tell you that many of my divers are unhappy with the state of our reefs and some are not visiting as frequently because the reefs are degraded. Tourists are spending BILLIONS each year to come see Hawai`i's reefs, they want to see abundant fish and healthy corals. We should be doing everything we can to protect our reefs (not just for the tourists, but they are the main economic reason) to ensure the longevity of our state's economic health.
- Finally, the community has spoken up in opposition of this fishery for many many years. Why is the state continuing to push these rules forward with the potential for re-opening? The main supporters are international aquarium traders, so why are you trying to benefit them, at the detriment to local businesses and community members?

In sum, the aquarium fishery threatens our business in two main ways, 1) through reduced tourism caused by degraded ecosystems, and 2) limited resources being utilized to manage this fishery that are desperately needed elsewhere.

I am in great opposition to the proposed aquarium fishery rules and ask the state to completely ban the aquarium fishery. We have continued to make our voices heard by opposing these rules, it is time you listen to the local community and make decisions that reflect what the majority wants.

Please let me know if I can provide any additional information. Thank you for your time.
Jessica Glazner

Liquid Cosmos Divers

Jess Glazner & Mike Rudenko
808-300-6834
manager@liquidcosmosdivers.com
liquidcosmosdivers.com
@liquidcosmosdivers

On Mon, Feb 2, 2026 at 10:00 AM DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov> wrote:

> Aloha,

On January 15, 2026, the Division of Aquatic Resources held a virtual scoping meeting for Hawai'i island commercial ocean operators in the Aloha i ke Kai – Ocean Stewardship Fee program to gather feedback on proposed rules regulating the take of aquarium fish in West Hawai'i. We are specifically seeking feedback on any potential impacts these rules may have on your small business operations. Attached are the slides from the PowerPoint presentation that was given.

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5. A clear description of how the rules will negatively impact your business

Please email us by February 8, 2026 to ensure your feedback is considered.

Mahalo,

David Sakoda

From: DLNR.AR.Rulemaking <dar.rulemaking@hawaii.gov>
Sent: Monday, January 5, 2026 5:26 PM
To: Sakoda, David <david.sakoda@hawaii.gov>
Cc: DLNR.AR.OSUF <alohaikekai@hawaii.gov>
Subject: NOTICE - Scoping Meeting on Proposed Aquarium Fishery Rules for West Hawai'i (1/15/26)

Aloha,

We, at the Division of Aquatic Resources (DAR), are proposing draft rules to consolidate and formalize management of the aquarium fishery in Hawai'i by creating a permitting framework for West Hawai'i that could potentially be expanded through future rulemaking actions to include other portions of the State. On October 24, the Board of Land and Natural Resources (BLNR) unanimously approved DAR to conduct public hearings on the aquarium fishery management rulemaking proposal with amendments. However, we are reaching out because the Small Business Regulatory Review Board would like to get a better understanding of any potential negative

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Mahalo,

David Sakoda
Fisheries Program Manager
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My name is Bob Hajek, and I am the former spokesperson for The West Hawaii Association

of Aquarium Fishermen, which was formed in 2007 out of a need to represent tropical fish collectors who were not being represented by anyone.

On behalf of the 15 members who currently make up West

Hawaii's only aquarium fishermen association that represents the opinions,

interests and rights of the local tropical fish collecting industry, I'd like to

thank you for giving us the time to express ourselves with respect to the

proposed rules, before you today.

With all due respect to the Review Board, the scope of this rules package seems

to fall outside of the realm of your understanding to deny or defer a management plan.

This is because the state, DLNR and other relevant state bodies, have spent, in many cases, decades amassing hundreds of files, thousands of pages of information and studies, and establishing legal parameters in some very complex and elaborate issues.

This situation is no exception. This is an extremely complicated matter. The state has already decided on many of the points being brought up here today.

SBRB is being asked to apply pressure to reject already passed rules ! I don't think the Review Board should want get involved with this, at all, frankly. The only impacted people are the fishers, the packers and warehouse workers in addition to all the supplemental industries that derive income from the fishery indirectly.

Please feel free to contact me anytime for any elaborations or additional information that you might like, to help you make as informed a decision as you can possibly make. There is only one decision open the fishery

Thank you for your time and consideration . . .Bob

Aloha Board Members DAR and DLNR,

As an ex tropical fish collector and wholesaler, I urge you to accept the passage of the rules package that is now being presented.
For 40 years, I owned Coral Fish Hawaii in Aiea, Hawaii. We prided ourselves in not only supplying quality marine fish, but also educating many local residents on the benefits of having and maintaining aquariums. Most of our customers were not divers and could not experience the incredible aquatic life that exists in the waters that surround our islands.
Unfortunately, My life and my company came to an abrupt end when our permits were taken away. The science that had been conducted over two decades that had proved the fishery sustainable had been ignored and public opinion had been swayed by misinformation led by animal rights activists.
Again, I urge you to please pass this rules package so that the few divers in the EIS can again start collecting marine fish. The people of Hawaii have a right to see and experience marine tropical fish again thru aquariums once again.

Randy Fernley

Aloha SBRB,

My name Danny Cotrell, I'm a diver from Waianae. This aquarium fishery has sustained my family and I for most of my adult life. I raised my kids on it and since it's been closed we have had hard times. It's hard for find jobs, especially good ones. Fishing has let me work on the water which is what I like do. I don't think we need more rules because the fishery is solid. Even the scientists agree with us. But if more rules is what it takes to give me back my life I can live with them. These tourism guys making one stink are mostly from the mainland and they like try to get control of the ocean for just their business. Not fair and selfish. Not Aloha

thanks
Danny

Small Business Review Board and DLNR:

I am writing to share the personal and financial hardship I have experienced as a result of the loss of my income and work in the aquarium fishery, and to provide perspective on the very real impacts these changes have had on small operators like myself. The unexpected loss of my ability to work and earn a living did not just affect my business on paper. It rippled through every facet of my life with severe consequences. I went from being able to comfortably meet my financial obligations, including my mortgage and basic living expenses, as well as the health care I was providing for my elderly mother, to then having to scramble to f ind alternate income which has never even come close to being comparable to the income I lost. Since losing this income, it has been a constant struggle to afford my mortgage and a fight to keep my house, I've lost my health insurance, and I certainly have not been able to maintain the health care I had been providing for my ailing mother. And so much more. It is not as simple as "just go get another job", as I've heard so many dismissively say in light of the sudden closure. When you have worked hard and built your life around a specialized job and an income you've come to rely on for nearly two decades, this becomes far more difficult and complicated than most realize. There are only seven potential permittees. It has been a process lasting over eight years just to get to this point. And it is of utmost importance to all of us to have the new rules package passed now. I understand that other stakeholders have raised concerns about impacts to their businesses. However, I ask the Board and DLNR to also recognize that small aquarium fishing businesses and individual permit holders have suffered serious, consequential harm—harm that directly affects our ability to house ourselves, care for our families, and maintain basic health needs and f inancial stability. This is not about minimizing the concerns of others, but to ensure that the real and human cost to small operators like myself is fully considered in your review. The work we do, while regulated by the rules set forth by DAR, has supported our families and members of the community for years. The ongoing loss of this work continues to have devastating personal impacts. It is urgent to pass the rules package so we can move forward. Thank you for your time and for considering the perspective of those of us whose livelihoods and families have been directly affected.

Sincerely,

Luci Price

Aloha Members of the Small Business Regulatory Review Board, my name is keynin kretz. I lost my job after the aquarium fishery closed. I was a fish packer for RT distributors while I attended the University of Hawaii.

After the shutdown, I was faced with high living costs associated with living in Hawaii and ultimately was forced to moved back to Idaho.

I love the ocean and every experience I was given from Ron tubbs the owner of RT distributors. He showed me the beauty of the deep ocean ecosystems, I hope to one day be able to dive back into the ocean and see those ecosystems again!

Keynin Kretz

My name is Mamoa Ntiua, I am from Christmas Island. My husband collects fish from Christmas Island to help and support our family and also our child.
Without wholesalers in Hawaii we cannot sell our fish. We depend on fish from Kona as a way to sell our countries fish worldwide. A loss of even one wholesaler could hurt us. Some of my family members who depend on this income to pay for their life saving medical and food for their families.
About eighty percent of our countries economy depends on tropical fish. All these tropical fish are sold to the Hawaiian Marine Fish Wholesalers. Our whole economy depends on Hawaii's Tropical Fish Industry. In the south Pacific fifty nine million dollars is gained from tropical fish sales annually. Please do not restrict and take away this opportunity away from us for this industry. Like Hawaii our fishing industry has sustained catches for 30 years and more. Aquarium Fish industry is sustainable unless ecology groups are allowed to shut us down. Thanks you for your time.

Respectfully, Mamoa Ntiua

Aloha DLNR and DAR

I am reaching out to tell you about my impacts from this process which are real.

I was a born-on Kauai but raised on Maui. My dad was a fisherman and I have been fishing all my life providing food and money for my family.

I was an aquarium fisherman and had my life change in a blink of an eye. I had no more job, I could not assist my dad who was recovering from a stroke and my wife lost her job as a aquarium fish packer.

I could no longer afford to live in Hawaii and we had to move to Washington. We had to sell our boat and cars and thankfully we only rented because the housing market was not good.

Being both born and raised in Hawaii, everyone I know has to work multiple jobs to make ends meet. Fishing was a respected profession in Hawaii my whole life until these antifishing people started attacking the aquarium fishery. Honestly as someone who did all kinds of fishing-it is the best fishery. Not only because of the science but because pound for pound it is the most economical fishery that provides good paying jobs and the most return for resource use.

I personally know over 150 people that were impacted by this shut down. These were all local families. Everyone has multiple generations living in the same household all working to support the family. Many moms worked as fish packers because the hours were flexible and they could bring their kids. I seen teens driving shipments, uncles picking up fish from the harbor, and everyone working together for a good fishery that doesn't remove much fish but provides for many.

I suggest you listen to DAR and look at the real impacts that happened when fishery gets shut down and not these wealthy mainland tour operators and eco nuts.

Chris Davis and Kayla Marie

I dove fish for a long time. I had a good job and lost everything when the lawsuit happened. I could not afford to pay for the EIS and all the courts stuff to try and fish again. It's the best fishery and was the only time I had enough money and time for my family. I want to fish again but I don't think you ever going to let it happen
Taetuna

DLNR and Dar and Board

I am writing to you today to support the aquarium fishery.

I was not an aquarium collector, but I took care of the fish at the warehouse. I lost my job when the fishery closed.

I was paying for college from this fishery. I had to quit college because I could not afford tuition. I had planned to get a marine science degree but the impacts from the fishery shutdown are far greater than just the fisherman.

I tried to work in aquaculture, but they had immediate impacts as well and were not hiring. They are still not hiring because they are finding it difficult to obtain fish because of the permitting required and even knowing how to obtain the fish.

I encourage you to re-open this fishery because it has beneficial impacts that are far bigger than just a few fisherman. It is a local industry that provides better jobs than Costco and Target.

Sincerely

Pete Savona

To whom it may concern,

I’m in support of the chapter ninety one ‘rules making’ process for the aquarium fishery, moving forward. These proposed rules will further regulate the fishery in way that ensures sustainability, while at the same time provide much needed jobs for local people. I used to own and operate an aquarium business in Kona for many years and it provided many good, high paying jobs to people that would otherwise struggle in our tight local economy. I support small business, I support the fishery, and most importantly, I support the fishermen.

Thanks for your time and consideration
Scott Brien
Kailua-Kona, HI

I lost two businesses, my retirement, and the value of those businesses after the aquarium fishery closed. The first business loss was in 2017, when West Hawaii shut down its fishery, and my Oahu business in 2020. Many employees lost their jobs, most of them Hawaiians, here in Waimanalo, where I am located.

Many aquarium fishermen and divers working as independent contractors also lost their jobs. My business alone, RT Distributor's Inc., gross sales ranging from 800,000 to 1.2 million per year from 1985 to 2017. All funds went to residents and local businesses. Since the shutdown, I've watched many local former aquarium fishermen, workers and other aquarium-fishing business owners struggle to pay bills and feed their families, lose their homes to foreclosure, file for bankruptcy, and had to move away from expensive Hawaii.

I've always loved the ocean and started snorkeling and diving in my teens in Hawaii. In 1979, I asked an aquarium fish wholesaler if they needed fish, and the journey began. It has never been about money, but about the love of the ocean and the live animals we fed, cared for, and loved. My whole adult life has been mainly as an aquarium fisherman. It paid for my college, paid for my mother's cancer treatments, and supported my family and workers.

We also imported and exported fish from other South Pacific areas. Meaning, hundreds of other international Pacific fishery employees also depended on me to buy their fish and to support their families! Those numbers do not even include the customer list, which included more than 1,200 companies and individuals who bought fish from us, their business employees, and families.

Sustainable fish were always abundant, and science supported the sustainability of fisheries. One researcher said we took only a drop in the bucket, and it was true. DAR (Division of Aquatic Resources) reported that we were the most valuable near-shore fishery in the state. DAR regularly worked with us on regulations, including a Rules package to establish fish size limits, catch gear, and quantity catch limits.

Until: Along came very vocal individuals who wanted no fishers anywhere near "their" snorkeling grounds, at first on Maui. Immediately, Snorkel Bob said he would "*make sure the fishery was shut down"*, and from that day on, they defamed us, calling us "Reef rapers, worse than child molesters," and on and on, which he printed in his books and announced in the media. It gained traction with his daily tourist group customers being misled by his misinformation. So, we lost our jobs due to a misinformation campaign based on statements from our user group's opposition at legal hearings against DLNR. Those hearings did not include fishery members or scientists, and there was no fishery legal representation at the time. The opposition, through unscientific and outright false statements, duped the judges into issuing an EIS requirement.

I could take losing my job and the jobs of many others if there were any truth to the opposition's claims. Or if we had affected tourism, but we had left tourist areas to the tourists on all the islands. We worked with dive shops and tour operators and had many friends in the tourism industry on Oahu and the Big Island. But the Maui activists and new operators in West Hawaii began to turn against our sustainable fisheries after many years of public propaganda. Outsiders considered us a threat to their business because of inaccurate statements by activists about the aquarium fishery and the misrepresentation of ecological impacts.

My story is one of sustainable business losses, centered on the planet's most reproductive renewable species, marine reef fish, used sustainably. Truly ecologically friendly!
Please consider the economic, life-altering losses of those in the aquarium fishery, in what many prominent Hawaii State and world-renowned scientists called a “model”, “sustainable”, and the “most valuable fishery” in the state.
“Model” for taking only smaller fish from small open Fish Replenishment Areas (FRA) and leaving all the big breeders, Large closed FRA areas for untouched tourist groups, “Sustainable” with no fish population long-term impacts reported over decades of fish counts and DAR reviews, and “valuable” with as much as 400 times the value per fish biomass than eating fish.
Please aid the passage of a rules package for the return of the long-overdue aquarium fishery permits in Hawaii. Hawaii needs exports, sustainably based businesses, and renewable resource use.
Thanks, Ron Tubbs B.S.N.D.

Reviewing Board

I worked as an aquarium fish driver. I picked up fish from the boat ramp, and also drove them to the airport. I lost my job when the fishery closed. I had to move back home with my family and work a job at a hotel. I watch thousands of tourists stomp all over our coral reefs and then have to listen to people say it is because of the aquarium fishery.

The fishery has been shut down for so long and they continue to blame everything from fish populations to coral damage on a fishery that does not exist. Every week there is a newspaper article and its always a new lie or spin of research

Please stop listening to these people and open the fishery.

Ashley Smart

Kailua Kona

Hello,
I am a retired diver out of Waianae. I used to catch fish on the West side and sell my catch to a few shops in the area. This process has taken too long and cost too much and I've given up. I still support the fishermen and I know from decades of diving it's a good fishery with little to no impact. I support DLNR/DAR proposal

Mahalo
Dennis Yamaguchi

Aloha Board

My name is Kamanao Casuga from the Milolii fishing village in South Kona

I dove tropicals for years and years as did many other Hawaiians in the village. I worked for Pete Basabe and many others did too. I grew up fishing and poking fish. Naturally catching trops was a good fit for me and gave me the freedom to work on the water and not go broke. We don't harm anything or anyone and all these people saying we break coral or take all the fish are wrong. Why don't the science guys agree with them but agree with us? Because we are right and they are wrong. People talking about culture don't speak for me….that is my culture and I dive fish. All these people do is make up whatever they can to just ban something they don't understand and they don't care who they hurt to achieve their plans. It's not pono. Support the fishers and our businesses

Mahalo

K. Casuga

DLNR and DAR

I support this fishery and recommend you pass the rule package.

I worked as a husbandry technician. In simple terms, I took care of the fish. I fed them, provided medical treatment, if necessary, monitored water quality and worked with the fisherman daily.

I loved my job, and I lost it because of the closure.

I cannot imagine a reason you will not support this fishery if you do your own homework and stop listening to the rhetoric from the animal rights groups.

Now I hear that it is a tour group issue. Do your homework and learn they have their own areas closed to fishing.

It was a cultural issue, but many locals were in the fishery and industry.

It was a sustainability issue, but we have more science than you will ever read.

It was a conflict issue, but the video shows them harassing a fisherman.

Every time you give them more process, they will come up with a new argument.

I have moved careers but I want to see this open and maybe someone else can benefit from the opportunities it provided me.

Jessie Cox

DLNR

We must consider that, if we continue to ensure the sustainable use of our coastal resources through appropriate management action, the marine aquarium fishery in the Hawaiian Islands will serve as a model to the greater Pacific region where collection of ornamental species is practiced. Since Hawaiian aquarium fishes are captured using small-mesh fence and hand nets and not destructive methods so if a complete shutdown of the fishery were to occur, a great shift in demand would follow,supporting Indo-Pacific nations whose policies continue to allow the employment of unsustainable fishing practices. This would only accelerate the destruction of coral reefs worldwide.

The cost of implementing a fish study's was 5 million spent counting fish in Kona. All the studies done so far indicate a low vulnerability for nearly all of the species of aquarium fish collected. None of the species has a high vulnerability rating!

The closure of the aquarium fishery has created a big problem for fishers and workers in the fishery, the fishermen on Oahu and west Hawaii have tried eating fish but they are less abundant and of lower value making it difficult to make a living.

The clusre of the fishery was flawed and unscientific and has led to much greater problems.

Thanks for your time, please do the right thing, return the aquarium fishery,

Aaron Pagan

Small Business Review Board and DLNR

Aquarium Fishing

To Whom it may concern,

The 8-year closure of the Aquarium Industry has created a severe hardship for both fishermen and other businesses in the community who provide support and supplies. It has been clearly proven that the industry does not affect any other ocean user group and should be allowed to reopen.

Aloha,

Jay Lovell

DAR and DLNR

I met my husband in the 60s on the west side of Oahu, he was an aquarium fisherman. He had many friends that were aquarium fisherman and back then it was cool.

After Hurricane Iniki, we moved to Kona. Not because they decimated the fish populations but because the reefs needed to recover from a natural disaster.

This was the pono thing to do as a fisherman, rotate fishing grounds and let the ocean heal.

We moved our facility to Kona and integrated into the community. We raised our family in South Kona and had many great years.

The “impacts’ started in the late 90s when tour operators thought they should have exclusive rights to the ocean. There was conflict but not on an emotional, cultural, or scientific issue-only financial interest.

Act 306 sought to resolve the conflict and brought all stake holders to the discussion table. The tour operators and community groups got exclusive areas where no aquarium fishing was allowed. A management study plan was enacted and the West Hawaii Regional Fishery Management Area was born.

West Hawaii was peaceful for many years until animal right activists from Maui started pushing for bans at the legislature. Former groups that opposed aquarium fishing soon realized the sustainable nature of the fishery based on the management plan and continuous monitoring and worked with the fishery to further management to enhance the resource.

A lawsuit was launched that shut down all aquarium fishing in West Hawaii. The rest of the State continued fishing, and within a year another lawsuit shut the statewide fishery down for environmental review.

The fisherman completed an Environmental Assessment and then two EIS, fought in courts, won at the Supreme Court and are still not fishing.

Now this Board stands in the way. Please pass this and let people get back to their lives.

J. Perino

Land Board and Reviewers

I dove fish my whole life. I lost my job when DAR shut us down. I went to work construction but was layed off during covid. I have bounced around all sorts of jobs and nothing is as enjoyable as when I fished. I don't understand why I am still having to write in letters on the same topics as I was doing in the nineties.

The fishery is great and the people that don't like it are miserable.

I support opening the fishery and think you should to.

Scott Mudd

Small Business Review Board and DLNR

Aquarium Fishing

To Whom it may concern,

Ever since it was determined the HEPA laws apply to the ocean, we have worked with the state to comply. As of yet, no other ocean user group has even started the process. The Aquarium Industry completed the HEPA process years ago, clearly showing that we are not depleting the resource and yet we are still not allowed to go back to work. This has resulted in severe financial hardship for those associated with the industry. The industry helps to support many business in the community and brings in millions of dollars a year to the state. Local people need good paying jobs in order to be able to continue to live here in our Hawaii home. Please allow us the ability to go back to work. Do not allow one user group the take precedent over others.

Thanks you for your time.

Aloha,

Jim Lovell

My name is Paul Kimsel and I am a trop diver on the west side of Oahu. For years I dove fish making a good honest living. With this employment, I sold fish to several different local dealers around the island. My dive partner Danny and I both made good money and raised up our ohanas. Now we have to do multiple jobs and pay for our EIS and show up constantly giving testimony support for something that never should have happened in the first place. I don't think Hawaiians should have to beg for catch fish in the ocean. When did being a fishermen become bad? I am a waterman, my family was too…I was born for this. It's in my blood. You guys need to focus on getting this moving and stop with the delays. My business and my family are being affected while all these EarthJustice activists withe their fake tears cry about this Hawaiian wanting to fish. Tired of it already. I support DAR guys rules

Paul Kimsel

Aloha board,
I am Johnny Isham and I stay Waianae. Me and my brothers was raised diving fish, it's a family business. My dad taught me and I dive now with Jerry and Kelly. We all gots wifes and kids and try for make ends meet but it's tough. Currently I'm working at a car parts store and barely getting by. I may have to take my family and move to mainland if things dont get better. My family has been here for generations and it would be a shame to go. Do what's right and see that we are the ones who have done what's been asked. I support the rules by the science board

Thank you

Sent from my iPhone

I lost two businesses, my retirement, and the value of those businesses after the aquarium fishery closed. The first business loss was in 2017, when West Hawaii shut down its fishery, and my Oahu business in 2020. Many employees lost their jobs, most of them Hawaiians, here in Waimanalo, where I am located.

Many aquarium fishermen and divers working as independent contractors also lost their jobs. My business alone, RT Distributor's Inc., gross sales ranging from 800,000 to 1.2 million per year from 1985 to 2017. All funds went to residents and local businesses. Since the shutdown, I've watched many local former aquarium fishermen, workers and other aquarium-fishing business owners struggle to pay bills and feed their families, lose their homes to foreclosure, file for bankruptcy, and had to move away from expensive Hawaii.

I've always loved the ocean and started snorkeling and diving in my teens in Hawaii. In 1979, I asked an aquarium fish wholesaler if they needed fish, and the journey began. It has never been about money, but about the love of the ocean and the live animals we fed, cared for, and loved. My whole adult life has been mainly as an aquarium fisherman. It paid for my college, paid for my mother's cancer treatments, and supported my family and workers.

We also imported and exported fish from other South Pacific areas. Meaning, hundreds of other international Pacific fishery employees also depended on me to buy their fish and to support their families! Those numbers do not even include the customer list, which included more than 1,200 companies and individuals who bought fish from us, their business employees, and families.

Sustainable fish were always abundant, and science supported the sustainability of fisheries. One researcher said we took only a drop in the bucket, and it was true. DAR (Division of Aquatic Resources) reported that we were the most valuable near-shore fishery in the state. DAR regularly worked with us on regulations, including a Rules package to establish fish size limits, catch gear, and quantity catch limits.

Until: Along came very vocal individuals who wanted no fishers anywhere near "their" snorkeling grounds, at first on Maui. Immediately, Snorkel Bob said he would "*make sure the fishery was shut down"*, and from that day on, they defamed us, calling us "Reef rapers, worse than child molesters," and on and on, which he printed in his books and announced in the media. It gained traction with his daily tourist group customers being misled by his misinformation. So, we lost our jobs due to a misinformation campaign based on statements from our user group's opposition at legal hearings against DLNR. Those hearings did not include fishery members or scientists, and there was no fishery legal representation at the time. The opposition, through unscientific and outright false statements, duped the judges into issuing an EIS requirement.

I could take losing my job and the jobs of many others if there were any truth to the opposition's claims. Or if we had affected tourism, but we had left tourist areas to the tourists on all the islands. We worked with dive shops and tour operators and had many friends in the tourism industry on Oahu and the Big Island. But the Maui activists and new operators in West Hawaii began to turn against our sustainable fisheries after many years of public propaganda. Outsiders considered us a threat to their business because of inaccurate statements by activists about the aquarium fishery and the misrepresentation of ecological impacts.

My story is one of sustainable business losses, centered on the planet's most reproductive renewable species, marine reef fish, used sustainably. Truly ecologically friendly!
Please consider the economic, life-altering losses of those in the aquarium fishery, in what many prominent Hawaii State and world-renowned scientists called a “model”, “sustainable”, and the “most valuable fishery” in the state.
“Model” for taking only smaller fish from small open Fish Replenishment Areas (FRA) and leaving all the big breeders, Large closed FRA areas for untouched tourist groups, “Sustainable” with no fish population long-term impacts reported over decades of fish counts and DAR reviews, and “valuable” with as much as 400 times the value per fish biomass than eating fish.
Please aid the passage of a rules package for the return of the long-overdue aquarium fishery permits in Hawaii. Hawaii needs exports, sustainably based businesses, and renewable resource use.
Thanks, Ron Tubbs B.S.N.D.

Hawai‘i Small Business Regulatory Review Board

February 6, 2026

RE: Aquarium Fishery

Dear Chair and Members of the Board,

I am writing to provide comments regarding the impacts associated with the continued closure of the

commercial aquarium fishery in Hawai‘i, particularly as those impacts affect small businesses and

individual owner-operators.

The commercial aquarium fishery in Hawai‘i has historically consisted almost entirely of small businesses,

sole proprietors, and family-run operations and these businesses rely on predictable access to permits and

a stable regulatory framework. The prolonged closure of the fishery has therefore resulted in significant

economic harm to a class of small businesses with limited ability to diversify or absorb sustained revenue

losses.

Economic impacts include the complete loss of income for permitted aquarium collectors and associated

small businesses, including gear suppliers, transport services, maintenance providers, and aquarium service

companies. Many affected operators have invested years in specialized equipment, training, and compliance

obligations that are not readily transferable to alternative fisheries or industries. As a result, the closure has

rendered these capital investments effectively stranded, with no reasonable opportunity for cost recovery.

These businesses depend on lawful, sustainably collected Hawai‘i reef fish and the loss of supply has

disrupted established commercial relationships and reduced revenues across the broader small-business

supply chain.

In addition to these economic impacts, it is important to note that the Department of Land and Natural

Resources' Division of Aquatic Resources (DAR) has repeatedly testified before boards, courts, and the

Legislature, and has submitted extensive scientific data demonstrating that the aquarium fishery will be

highly regulated, actively managed, and conducted at a low level of biological impact. DAR has

documented the use of gear restrictions, species restrictions, catch limitations, spatial closures, reporting

requirements, and enforcement mechanisms, as well as long-term monitoring data indicating sustainability

under these conditions. Small businesses in this sector relied on these agency findings and representations

when making capital investments and business decisions, and the continued closure has occurred despite

statutory compliance and a proposed regulatory framework that DAR itself has characterized as

precautionary, science-based, and low risk.

From an government economic impact perspective, it is important to distinguish between baseline

governmental costs and incremental costs attributable to a specific regulated activity. Enforcement by the

Division of Conservation and Resources Enforcement (DOCARE), along with fisheries research,

environmental monitoring, and resource management conducted by the Division of Aquatic Resources

(DAR), constitute baseline obligations of the State that are incurred regardless of whether the commercial

aquarium fishery is open or closed. DAR manages all marine fisheries and nearshore resources statewide—

commercial and non-commercial—and these core functions continue under any regulatory scenario.

Consequently, the closure of the aquarium fishery does not eliminate these baseline costs, nor does it

materially reduce the State's ongoing enforcement or monitoring responsibilities. In contrast, the economic

losses experienced by small businesses because of the closure represent incremental, closure-specific

impacts borne exclusively by private parties, without a corresponding reduction in public sector

expenditures.

The closure has also had disproportionate effects on owner-operators who have generationally participated

in the aquarium fishery. Unlike larger firms, these small businesses do not have the ability to shift product

lines or relocate operations. In many cases, the closure has resulted in permanent exit from the industry,

loss of livelihoods, and erosion of specialized local expertise developed over decades.

Importantly, these economic impacts have occurred in the absence of a regulatory pathway that allows small

businesses to resume operations under clearly defined, enforceable conditions. From a small business

perspective, prolonged regulatory uncertainty functions as a de facto prohibition, even where future

reopening is theoretically possible. This uncertainty itself imposes costs that are material, ongoing, and not

recoverable.

Given the Small Business Regulatory Review Board's statutory role in evaluating the effects of government

action on small businesses, I respectfully request that the Board consider whether the impacts of the

aquarium fishery have been adequately evaluated, disclosed, and mitigated, and whether the proposed rules

to govern commercial aquarium collection would reduce harm to small businesses while still achieving

regulatory objectives and the State's environmental goals, including sustainability and public trust

stewardship.

Thank you for the opportunity to provide comments on this matter and for your continued attention to the

interests of Hawai‘i's small business community.

Mahalo,

Lisa Cates

I support the rules and the fishery.

I was put out of business with the shutdown. I was an aquarium fisherman my whole life.

Something close to 125 divers in Kona lost their fishing permits when the courts shut them down. My story is one of many in addition to the warehouses and dealers. I would suggest expanding the fish species and number of fisherman when you pass these rules.

I am too old to ever fish commercially again, but it is a great career that benefits many compared to other commercially fisheries that only benefit the individual fisherman.

Please pass this

Paul Masterjohn

To the Members of the Small Business Review Board and DLNR,

I'd like to take this opportunity to explain the hardship I've experienced due to losing my job as a result of the aquarium fishery shutdown, and to stress the importance of passing the rules package. Before the shutdown, I had regular employment and it provided the primary source of income for my family. But the sudden loss of this work left me with no immediate means of supporting my family and covering the financial responsibilities we had all been accustomed to. This impacted my children's schooling, our rent and the most basic monthly expenses needed to get by. Trying to find replacement work that provided just as good of an income was very difficult and as a result, I was forced to temporarily seek work outside of the State. This has meant being away from my family and home not by choice, but out of necessity. I look forward to being able to resume work in the aquarium fish industry and I truly hope the new rules package will be passed soon.

I respectfully ask that you consider the real life impacts that these decisions have had on workers like me and our families.

Thank you,

Steve Jacobs

Dlnr and reviewing board

I have already lost $75, 000 contracts due to People for the Ethical Treatment of Animals (P.E.T.A.). They have unfairly targeted the aquarium businesses. Please do not give the ECO groups Hawaii's fisheries. They will not stop and nothing you can do will satisfy them except to close down a business. God gave the right to maternally care for his creatures and given by the fact that they will be taken away. These creatures would be able to have a safer home by which my family, my friends, my business associates, and I are willing to provide.

Respectfully,
Greg Tides.

Board and DLNR

I am born and raised in Waianae Hawaii and moved to Kona in my twenties. I got a job working cleaning tanks for a tropical fish warehouse in the Kaloko Industrial area. After a few years I was promoted warehouse manager, where I stayed until the shutdown. I worked there for 15 years and I took care of my wife and raised my children. Since this happened it's been difficult finding a job that pays as well and it's frustrating. I hear some of these people that oppose the fishery and the trop divers and I shake my head. This issue has been settled. It's a good fishery that produces good careers for local people like me. I think the proposal for rules is heavy handed with big cuts on fish quantities. From what I understand the science supports us so I don't even get why we need additional rules since we have so many already. But overall I support the rules to move this forward. Please support aquarium businesses and local families

Aloha,
Adam Snodgrass
Kona, Hawaii

Aloha DLNR , DAR, and SBRB

I am a of Hawaiian ancestry and I oppose shutting down where my family has been able to fish forever to give the ocean to a bunch of mainland tourists. There are no scientific based studies to support the claims that fish counts are down.
Just the opposite years of DNLR catch reports show sustainable, renewable fisheries in Hawaii. The strictest laws are already in effect with nearly 10% of Oahu already in some type of preserve.
Corals are in great shape growing 3 to 5 inches per year.
Fish counts are up according to Great American fish count species recognition done across our state. Whale counts, monk seal counts are up. Turtle counts are up. DNLR has done a great job putting new laws in place and is working on several new laws which are scientific based. Many marine biologists oppose this bill. The only supporters are those who bend the truth or click on Snorkel Bob's website form letter from the mainland.

Please do not close our Ocean just as tourism and the economy are in a major decline. Please do not give our oceans to the rich tourist tour groups leaving us without fish to sell to feed our families.
Thanks,
Brian Persinger

DNLR/DAR/SBRB

I run Pisces Pacifica here on Oahu. We are an aquarium dealer that buys fish from our local fishers/divers and shoreline gatherers. For years I have purchased fish as well as invertebrates from my local community. This aquarium fishery is actually a vibrant local industry that supports not only the fishermen but businesses like mine and many other types of associated small support businesses. It's actually a very impressive network of people and I would estimate, statewide, this fishery creates north of 500 jobs for people within our community. I myself employ around 8 people and I'm just one small company. I think this fishery is very well managed and it has proven itself sustainable time and time again. I'm surprised at this point that anyone can be fooled by the deception of these activists who seem to be denial of science and now want to make cultural arguments. I'm born and raised here and grew up around the water. Yellow tang is makes up the vast majority of the fishery and guys claiming that's a culturally significant fish is something new that I'm not familiar with. This isn't a kole, it isn't a manini. In fact, all the culturally deemed fish have been either voluntarily removed or restricted by the BLNR. All that's left are unreasonable people affecting my business, my employees and my community. I urge you to put an end to this.

Mahalo for your time and consideration,

Jeff Prebbles
Pisces Pacifica

My name is Rufus Kimura, a lifelong resident of Waianae, Oahu, until recent circumstances forced me to relocate. I am writing this testimony to highlight the devastating and ongoing negative impacts of Hawaii's ban on commercial aquarium fish collection on my small business, my employees, and our local economy. As a former owner of a tropical fish import/export company based in Waianae, I urge the Board to consider these effects and advocate for science-based reforms that could revive this sustainable industry.

For over 25 years, my company provided a vital lifeline to the Westside community. Starting from humble beginnings—collecting specimens after school to fund my education at Leeward Community College and the Albertson College of Idaho—I built a business that, at its peak, directly employed 8-10 full-time divers and warehouse packers. These were good-paying jobs, all filled by local residents from Waianae and Nanakuli, many of whom faced limited opportunities in an area plagued by poverty, drug issues, and unemployment. Our operations not only supported families but also contributed to the local economy through purchases from suppliers, shipping services, and related vendors on Oahu. We operated responsibly, adhering to regulations and promoting ocean stewardship, which aligned with skills I honed as a Honolulu Fire Department Search and Rescue Specialist.

The state's ban on aquarium fish collection, enacted without issuing valid permits, shattered this enterprise overnight. Without the core revenue from sustainable collecting, I had no choice but to shut down operations entirely. This resulted in the immediate unemployment of my entire team—

hardworking individuals who relied on these jobs to support their households in one of Oahu's most economically challenged regions. Many have struggled to find comparable work, exacerbating homelessness and financial instability in Waianae. Personally, the loss of supplemental income forced me to sell my home, resign from the Fire Department after 20+ years, and move to Alaska for commercial fishing opportunities. This displacement not only upended my life but also removed a small business that generated steady economic activity for Oahu.

The ban's effects will continue to ripple outward. Without this industry, former employees face prolonged joblessness, potentially increasing reliance on public assistance and straining community resources. The loss of aquarium collecting eliminates a niche market that could be managed sustainably, as seen in Alaska's fisheries, where science-based allocation supports diverse user groups without depletion. On Oahu, this means forfeited tax revenues, reduced tourism-related exports, and the erosion of cultural practices tied to ocean husbandry.

Reviving aquarium collection could restore jobs, bolster small businesses, and ensure locals aren't further priced out of paradise. Mahalo for your consideration.

Sincerely,

Rufus Kimura

Former Waianae Tropical Fish Exporter

To: Small Business Review Board and DLNR

I worked as a full time Aquarium fisherman. The EIS lawsuit and Aquarium fishery closure has forced me to go on unemployment. My aspirations of building a career in the Aquarium business to provide for my children and family was stolen from me by the EIS lawsuit and Aquarium fishery closure. I am Native Hawaiian and believes that Hawaiian culture “does allow” for Aquarium fish collecting in Hawaii.
Chelsey Faavasi

Aloha DLNR and DAR

I write to support the aquarium fishery.

My neighbor was an aquarium dealer and I learned so much from him and his facility. I can not swim, and was able to take my grandchildren to his place and experience the ocean on land.

When the fishery was closed, he had to sell his home and the learning experiences lost. While some people do not like aquariums we can not make decisions on personal preferences.

We are having too many people leave the island due to affordability and job availability. It is unimaginable that the State is even contemplating not opening this fishery.

The impacts are minimal from the fishery perspective but the human impacts from the closure are unimaginable. I watched my neighbors family fall apart, his staff and ohana that worked their whole lives.

Lives were changed over night with the shut down, and you can change lives for the better by passing the rules

Donna Melo-Holtman

To Department of Land and Natural Resources

I have been an aquarium fisherman since the early 2000s. I lost my job due to the court ruling and have struggled since. I now work three jobs just to stay in Hawaii in hopes of the fishery re opening. The entire process has not only drained me financially, but emotionally as well.

I encourage you to allow the rule package to pass and hope this will be one less step in a eight year process.

Eric Moennich

Board,

I support the rules being proposed for the Aquarium diving. I was born and raised in Waialua and my husband, RD operated a fairly large fish export business in Haleiwa that's now out of business. It's hard to believe that people, and businesses are saying these rules affect them more than the people in this industry. It's aquarium rules! Many people were put out business by what happened. We want to put our interests and our businesses back together again. Please pass this

Thanks
Rhonda Fisher

Sent from my iPhone

Aloha Members of the Small Business Regulatory Review Board,

I love and care for tropical fish 24/7. I own an aquarium fish shop and rely on these fish to feed my family and pay my bills, as well as my suppliers. You may see those making aquariums and order aquarium supplies for these fish and also rely on their business. This billion dollar industry needs your support in this time of economic down turn.

We take very good care of our tropical fish. there's many different lines of tropical fish specialty foods. Our fish are well fed and taken care of. None suffer and very few die. We have a 99% arrive alive rate and have been in business for 21 years read

Thanks for listening to what I had to say. I gladly appreciate it.

Sincerely Yours,

Milly All Seas Fisheries

Aloha, my name is Bobby Goodwin. Im a Hawaiian and a fish collector. I was born and raised in Waianae. Many locals use this fishery for income and many locals have been impacted by the closure. Open this back up asap. Support

BG

To DLNR and Review Board

I have a small retail business that specializes in the providing marine aquariums and its livestock to the general public. I also belong to 501 C(3) charity organizations which are organized to educate the public on the maintenance and care of marine aquariums and the related livestock. We participate in assisting schools and charities to have and care for marine aquariums as a source of a learning tool and appreciation of aquatic life.

The Aquarium industry has been hard hit in the recent recession as has many industries. The source of supply from Hawaii is very important to the trade and terminating the supply would have drastic negative effects to our business, the US economy and the businesses of Hawaii. You would be putting these businesses in Hawaii out of business over night. In addition, you will be hurting the entire U.S. economy. Without livestock, there is no need for aquariums and all of the manufactured products and related jobs that this industry provides.

Now that the economy is beginning to recover, this action will certainly be a step in creating significant further recession for us all. Taking this action is instantly cutting off the income of many Hawaiian residents and their fellow Americans.

Certainly, there are other means in order to address any problems that may be at hand. I have seen much of the information presented and believe it to be incorrect. I request that you make further study of the problems, gather the facts, and work to a mutual solution that will be beneficial to all concerned in the future.

Thank you for your assistance and consideration.

Thank You

Mal Smith

“Hawaii Aquarium Fishery Economic Value with Sustainability”

When the Hawaii Aquarium Fishery was active, up to 2017, it was the most valuable and most sustainable fishery in the State of Hawaii. **2026**

Aquarium Fish are Ambassadors for Tourism

Hawaii's colorful reef fish are "**ambassadors**" for the state's marine ecosystems, exported globally to aquariums and private collectors, raising awareness and promoting tourism, science, sustainability, and fishery husbandry worldwide.

Tourism

Dive shops and Ocean Tour Operators have benefited greatly from the aquarium fishery connection. From sharing great dive spots and sealife locations with tour operators over the years, increasing their experience. Many divers purchase used boat motors from whale and dolphin operators when purchasing new motors, thereby financially supporting these operators' businesses. We have towed tour operators into the harbor and pulled tour boats off the reef countless times.

Fishers, over the years, have avoided and have freely given some of the best fishing spots solely to tour operators, despite laws allowing them to fish there. Filling tanks multiple times a week at dive shops, buying expensive dive gear, and supporting the dive shops' operations are invaluable to tour businesses. This aquarium fishery business provides dive shops with a more stable source of income during periods of economic downturn, such as 9/11 and COVID-19. Tourism declined after the shutdown of the aquarium fishery; see the data below.

Tourists worldwide see Hawaiian fish in Public aquariums that showcase Hawaii’s beauty, alluring tourists to Hawaii. These same aquaria learn and educate others about reef biology and marine biology through fishery husbandry.

Who Benefits?

The Hawaii businesses that have greatly benefited from the tropical fish industry are: boat dealers, boat repair shops, outboard motor mechanics, dive shops, fishing supply stores, aquarium pet stores, pet store wholesalers, box suppliers, bag suppliers, oxygen gas suppliers, aquarium maintenance companies like those in Hospitals and doctor offices, tourist aquariums in Hotels, Sea Life Park, Waikiki Aquarium, gas stations, computer repair, office supply, interisland cargo shippers, Fish and Wildlife inspections fees, USDA inspections fees, Department of Agriculture fees, DNLR permit fees, and many more.

All public and private aquaria, aquaculture facilities, and even fishponds in the state rely on live fish.

Natural Energy Center Kailua Kona and it's numerous facilities. Sea Life Park, Waikiki Aquarium, Oceanic Institute, Nui Nui Fisheries, Aulani Disney Resort, Maui Ocean Center, UH Hilo Pacific Aquaculture and Coastal Resource Center (PACRC), Kaua'I Ocean Center, Mokupapapa Discovery Center Hilo, Doctor and Hospital, and Aquariums like Shriners for Children.

All fishponds must rely on wild-caught fish kept alive, and aquarium fishers have supplied broodstock to many fish ponds and aquaculture facilities over the years. Some fish entered the gates and then grew to adult food size; however, with current runoff and pollution, an increasing amount of wild-caught broodstock will be needed.

No one knows the fishing grounds and techniques better than aquarium fishers, who provide egg-viable, swim-bladder-intact, healthy brood stock for fish ponds. **Fishponds (Loko I'a):** Ancient Hawaiians constructed nearly 500 walled, brackish, or saltwater ponds for aquaculture, providing a steady food source. One of the 500 pond examples is the Huilua Fishpond.

Following the closure of the fishery in 2017, these businesses lost millions in income. Just one of the 15 aquarium fish wholesalers reported a gross yearly income of over 1.2 million, most of which was allocated to air cargo fees for out-of-state shipments.

Air Cargo support for the Airlines. Just one example is Hawaiian Airlines, which experienced severe financial distress, culminating in a $1.9 billion

acquisition by Alaska Air Group, finalized after the carrier suffered over $1 billion in losses since 2019 due to the pandemic, high fuel costs, engine issues, and the Maui wildfires.

Despite being acquired, Hawaiian continued to lose approximately $518,000 daily in 2025, posting a $189 million loss for the year, which significantly dragged down Alaska Air Group's overall profitability.

In late 2025, monthly imports could exceed $200 million while exports were under $40 million, highlighting the imbalance. Significantly less cargo leaves Hawaii, and the HERO reports below stress the importance of increased sustainable renewable exports from the State and its dangerously high dependence on imports. The aquarium fishery could help fulfill those states' needs.

We haven't even touched the surface of the impact that would be felt on the 302-billion-dollar U.S. pet industry. Many companies produce products that benefit from the collection of tropical fish. The following businesses impacted are Aquarium manufacturers, filter manufacturers, aquarium ornament manufacturers, filter, pump, UV sterilizers, protein skimmers, sand filters, pipes, plumbing, fish foods, pet stores, mainland distributors, other countries directly selling into other countries, and the US, Aquarium fish book printers and distributors, all major mainland air carriers, etc.

https://www.hawaii.edu/news/2024/07/02/economic-diversification-opportunities-uhero/

Where can Hawaiʻi diversify its economy? UHERO finds areas

UH News » Research » Where can Hawaiʻi diversify...

Hawaiʻi's economy depends heavily on tourism, and is therefore vulnerable to sudden drops in visitor numbers as well as inconsistent and slow growth in tourism revenue for the past 30 years.

A new report, 2024, by the University of Hawaiʻi Economic Research Organization (UHERO) identifies potential opportunities to diversify the state's

economy by analyzing the variety of industries across counties in the U.S. and Hawai‘i.

“Based on industries already in Hawai‘i, the study shows Hawai‘i has great potential for ocean-based industries—such as fishing, fish farming and hatcheries, boat building, port and harbor operations, and seafood packaging. Diversifying into these industries can create long-term stability and support growth beyond tourism”.

Sustainability is Key to Hawaii’s future. As the most isolated island in the world, Hawaii is too dependent on tourism, the military, and other non-sustainable, unreliable economic sources. UHERO Forecast for the State of Hawai‘i: Mild recession and weak recovery in 2026 - UHERO

The value of Hawaii’s nearshore oceans is worth 15.3 billion dollars in highly renewable resources in 2024, with a current 50% estimated increase every 20 years, which means one of The state of Hawaii’s most valuable resources is our Ocean. *Tourism impacts are Hawaii’s biggest ocean ecological offender and the largest source of Carbon Footprint and is not sustainable*.

Reports show global aquaculture production (including aquatic plants) in 2016 was 110.2 million tonnes, with the first sale value estimated at US $244 billion. Three years later, in 2019 the reported output from global aquaculture operations was over 120 million tonnes valued at US $274 billion. Managing fisheries to their safest environmental output, improved ocean marine management science, and Aquafarming should be Hawaii’s "Blue Revolution" to ensure a sustainable future. *Without decades of expertise and the ability to catch broad stock on a regular basis, aquaculture in Hawaii will not exist with aquarium fishers*.

The aquarium fishery, with its higher biomass value and sustainable, highly renewable resources, should be utilized to its fullest to aid the state's plan for a sustainable future.

University of Hawai‘i Economic Research Organization report in 2024 by

UHERO.

- “Hawaiʻiʻs economy depends heavily on tourism and is therefore vulnerable to sudden drops in visitor numbers and inconsistent and slow growth in tourism revenue for the past 30 years”. The University of Hawaiʻi Economic Research Organization (UHERO) analyzes the variety of industries across counties in the U.S. and Hawaiʻi to identify potential opportunities to diversify the state's economy.

What UHERO found based on industries already in Hawaiʻi, the study shows Hawaiʻi has great potential for ocean- based industries—such as *fishing, fish farming* and hatcheries, boat building, port and harbor operations, and seafood packaging. Diversifying into these industries can create long-term stability and support growth beyond tourism.

With science supporting the sustainability of the aquarium fishery an approval of fishery permits could aid the state in its greatly needed shift to sustainable renewable resource uses.

Out of the national 277-billion-dollar pet industry, Hawaii pet owners spent 355 million dollars on pets in 2021. Providing 21.8 million state tax revenues and 27.3 million local tax revenues. Hawaii residents have 1.7 pets per household on average. Nearly 57% of Hawaii households have one pet. That is 11% of U.S. household’s fish. Taping into the sustainable renewable income aquarium fishing can provide sustainable economic benefits. **Marine fish used as pets are worth per fish as much as % 400 more than those similar fish used for food purposes.** Pet fish leave breeders' sizes to make it a “**Model Fishery**.” Declines in food fish near shore near human-populated areas have not been seen in reef fish used for aquarium purposes.

Hawaii Controls It’s Own Future

Demographic studies have shown that in the future, many of our global, nonrenewable resources, such as oil and minerals, will be depleted as the world population increases, leaving states to rely more on their own resources.

In years to come, it will be crucial for Hawaii to rely more on its own renewable marine resources. Restricting access to marine resources without fully considering the impact of legislation on the future of Hawaii's fishermen and the State's economy would be a grave mistake.

To maintain our economy, we must utilize our renewable resources with wisdom.

https://dbedt.hawaii.gov/economic/databook/

https://dbedt.hawaii.gov/economic/databook/2020-individual/_23/

> Fish counts from 1999 to 2017 show an increase in fish counts according to the 2020 West Hawaii report to the Legislature, Overall Yellow Tang abundance in the 30'-60' depth range over the entire West Hawai'i coast is estimated to have increased by over 3.4 million fish from 1999/2000 to 2017/2018 (150% increase) to a current population of about 5.7 million fish within this depth range alone.

Why are declines in fish populations reported at tourism dive and snorkel sites? Are they really attributed to the aquarium fishery?

Tourism Effects on Fish Populations

News article discusses the loss of fish in tourist areas.

Ocean tourism has been linked to declines in ocean fish. Recent studies have shown that fish returned to Hanauma Bay when tourism ceased due to COVID-19. Now that tourism has returned to the bay, more research has shown that fish are disappearing again! The large groups of tourists have scared the fish out of these areas. A similar study was done on Maui

Graham, Andrew T. *The Effects of Human Presence on Fish Behavior at the Hanauma Bay Nature Preserve, Hawai'i During and Immediately Following the COVID-19 Pandemic Closure*. Diss. 2024.

Molokini also showed a decrease in fish populations due to tourism.

Weng, Kevin C., et al. "Decreased tourism during the COVID-19 pandemic positively affects reef fish in a high use marine protected area." *Plos one* 18.4 (2023): e0283683.

We found that when tourism shut down due to COVID restrictions in 2020, fish biomass increased and predatory species increased usage of shallow habitats, where tourists typically concentrate. When tourism resumed, fish biomass and habitat use returned to pre-pandemic levels. These displacement effects change fish community composition and biomass, which could affect key processes such as spawning, foraging and resting, and have knock-on effects that compromise ecosystem function and resilience. Management of non-consumptive uses, particularly in heavily visited MPAs, should be considered to sustain these ecosystems.

The large groups of tourists have scared the fish out of these areas. Large groups of tourists snorkeling and diving significantly affect fish feeding and reproductive behavior, thereby influencing fish populations. Unlike tourists, fishermen do not frequent the same areas repeatedly in large numbers; they rotate their sites to prevent overfishing. Are tourism impacts being used to blame the aquarium fishery? Aquarium fishermen do not go to tourist areas. The 20-year fish replenishment aquarium fish counts from West Hawaii show an increase in overall fish populations; why are tourist areas experiencing fewer fish?

To address this, tourist dive sites should be rotated to maintain high fish populations.

High sustainability and low environmental impacts of the fishery have been reported by state researchers; no coral or algal changes have been observed in the fishery's fishing areas. In fact, coral damage was greater in tourism areas, as reported in the West Hawaii Report to the Legislature (link above).

Populations of the most targeted fishery and their value.

So on Oahu alone, 414 billion 550 million new yellow tang fry <98ft times 1% survival adult stage per year, divided by two for one male and one female pair, results in an estimated 4 billion 145 million potential new adult stage yellow tangs on Oahu reefs every year. The estimate does not account for reduced fecundity at larger sizes or for increased populations at depths greater than 98 feet. It also does not account for the much greater populations that we know exist and extend deeper than 98 feet, so these figures are very conservative.

With a conservative maximum sustainable yield of 25%, catch that would equal 1 billion 36 million sustainable catches, with a 2024 value of $169.00 per tank-raised yellow tang. Here are some numbers for just one fish in the trade.

That would mean a potential income of $175 billion in highly renewable, sustainably caught fish for yellow tangs on Oahu alone.

This total would be substantially higher in West Hawaii, which has a population of 5.7 million yellow tang. A sustainable catch of 1.425 million would be valued at $240 billion for West Hawaii.

Tourism Economic Impact of Aquarium Fishery, The Data

West Hawaii Tourist Accommodations for Hawaii County declined following the closure of the fishery in 2017. See totals in red. Similar declines are noted in overall tourism income for the years following the 2017 aquarium fishery closure.

The relevance of these declines may not be fishery-associated, but there is, definitively, no statistical evidence of any decline in economic value to the State from keeping the fishery closed.

Table 23.31-- VISITOR ACCOMMODATIONS, BY COUNTY: 1985 TO 2

[Number of units]

Year	State total	City & County of Honolulu	Hawaii County	Kauai County
1985	65,919	38,600	7,511	5,656
1986	66,308	39,010	7,280	5,922
1987	65,318	38,185	7,328	5,956
1988	69,012	37,841	8,823	7,180
1989	67,734	36,467	8,161	7,398
1990	71,266	36,899	8,952	7,546
1991	72,275	36,623	9,383	7,567
1992	73,089	36,851	9,170	7,778
1993	69,502	36,604	9,140	4,631
1994	70,463	36,194	9,595	5,870
1995	(NA)	(NA)	(NA)	(NA)
1996	70,288	36,146	9,558	6,760
1997	71,025	35,971	9,913	6,589
1998	71,480	36,206	9,655	6,969
1999	71,157	35,861	9,815	6,872
2000	71,506	36,303	9,774	7,159
2001	72,204	36,824	9,944	7,202
2002	70,783	36,457	9,297	7,037
2003	70,579	35,541	9,478	7,257
2004	72,176	35,769	9,857	8,105
2005	72,307	33,926	10,940	8,221
2006	72,274	33,606	10,831	8,266
2007	73,220	33,588	11,061	8,692
2008	74,177	34,081	11,240	9,203
2009	75,198	34,027	11,541	9,469
2010	74,988	33,782	11,479	9,344
2011	77,731	35,001	11,113	9,872
2012	74,650	35,326	10,594	8,289
2013	73,959	35,690	10,903	8,675
2014	73,716	35,864	10,666	8,492
2015	77,138	36,058	11,085	8,582
2016	79,092	37,400	11,349	8,444
2017	80,709	38,879	11,286	8,821
2018	80,751	39,089	10,811	9,022
2019	80,554	39,240	10,505	9,036
2020	81,188	38,806	11,123	9,250

NA Not available.

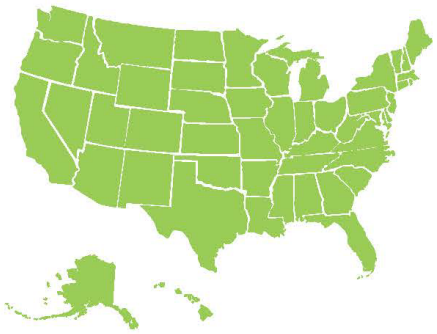
Source: Hawaii Tourism Authority, *2020 Visitor Plant Inventory,* "Table 1: Available Units by to 2020" <https://www.hawaiitourismauthority.org/research/visitor-plant-inventory/> accessed Ma

Thus, the loss of the Aquarium Trade harms tourism economically.

The loss of the Hawaii Aquarium Trade and its effects on the worldwide pet trade are even deeper. Here are some economic numbers behind the benefits of the aquarium trade.

ECONOMIC IMPACT OF THE U.S. PET SECTOR

The American pet sector that supports 2.75 million jobs nationwide. The U.S. pet sector contributes $303 billion directly and indirectly to America's economy and $217 billion in annual gross domestic product. The care and companionship of pets is integral to not only the emotional and physical well-being of people, but also to the strength and stability of our economy.



There are **131.4M** households in the U.S.

About **57%** own at least one pet

About **51%** own at least one dog

And **25%** own at least one cat

Average of almost **1.7** pets per household

$109.15B spent by United States pet owners on pets in 2024

$302.64B annual transactions in United States, with multiplier effects

1,273,464 jobs in pet-related goods and service industries

2,747,159 jobs linked directly or indirectly to pet support sector

$140.12B in earnings

$21.68B total estimated tax revenues generated by pet-related businesses

federal tax revenue	$3.85B
state tax revenue	$8.04B
local tax revenue	$9.79B

*Expenditures of United States pet-owning households include all related expenditures based on a survey of pet owners conducted by the American Pet Products Association and the American Veterinary Medical Association. Economic Impact Data sourced from: Knudson B, Miller S. The Economics of the US Pet Food and Pet Supply Industry. Product Center and Center for Economic Analysis, Michigan State University, March 2024. Pet ownership data sourced from: APPA National Pet Owners Survey: 2023-2024.

APPA American Pet Products Association · Pet Advocacy Network · pet food institute · PIDA Pet Industry Distributors Association · WPA World Pet Association

Sources:

An extensive, detailed environmental review is available upon request.

Source in-text links and now below:

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(https://www.iucnredlist.org/

Effectiveness of the West Hawai'i Regional Fishery Management Area (WHRFMA) that overall fish populations of targeted aquarium fish species increased significantly in West Hawaii over 20 years. “Overall Yellow Tang abundance in the 30’-60’ depth range over the entire West Hawai′i coast is estimated to have increased by over 3.4 million fish from 1999/2000 to 2017/2018 (150% increase) to a current population of about 5.7 million fish within this depth range alone. Over time, management and habitat increases due to coral growth contribute to increased fish populations. Overall Kole abundance in the 30’-60’ depth range over the entire West Hawai′i coast is estimated to have increased 118% (>5.1 million fish) during this time period with a current estimated population of almost 9.6 million fish. As with Yellow Tang, summer 2014 recruitment for Kole in many areas was very strong.

Recruitment at the Manuka survey site for example was 254% higher than on any other previous survey at the site over the last 20 years.” (WHRFMA)

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DAR BLNR Presentation 2024 https://youtu.be/djjtIsvg7qs?feature=shared

Oahu there is a much greater refuge area than West Hawaii. Sources; 2013 By Friedlander, Alan M. (Alan Marc) ; Donovan, Mary K. ; Stamoulis, Kostantinos ; ... https://repository.library.noaa.gov/view/noaa/907/noaa_907_DS1.pdf

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Cultural Significance

Attn: Small Business Review Board

Subject: proposed Aquarium fishing rules

Aloha Board,

My name is Bill Stockley and I was the owner/operator of Stockleys Aquarium in Kona. I ran a fish shop supplying hobbyists in our local community all sorts of fresh and saltwater fish from Hawaii and beyond. I used to buy fish from local divers to offer my customers some of the best fish in the world. Hobbyists can be our old kupuna who no longer can snorkel or dive or we would sometimes get in people that didn't go in the water much but really enjoyed the calming nature of fish. All the fishermen I would purchase fish from were consummate professionals with very high integrity. Through the years I've had to write in supporting testimony from baseless attacks by unreasonable environmental activists. I never really understood these people and their claims and interestingly enough, I've watched their claims ever evolve and shift around from tour operators, to animal welfare, to now cultural. I'm old now and I've seen it firsthand. These activist have affected my life and my business and not for the better, this much is certain. These arguments against the fishery aren't based in truth or reality. I FULLY support the science, and the proposed rules. No more delays!

Best Regards,
Bill
Kona,HI

To: Small Business Review Board and DLNR

I worked as a full time Aquarium fisherman. The EIS lawsuit and Aquarium fishery closure has forced m teo lose all of my income. I have had financial hardships since then. If the DLNR keeps the Aquarium fishery closed or refuses to create the rules for the Aquarium fishery I will continue to have employment and financial hardships. Meaning that I have had to rely on family to support me and use my savings money to pay for monthly expenses and all things. The DLNR Aquarium fishery closure and EIS process has been delayed far beyond the time needed to complete the lawsuit which makes it impossible for me to make back the loss of income by working extra during the remainder of my working life. The personal pain and stress of these losses has been made worse by the actions of the DLNR board members to coordinate with the people who created the EIS lawsuit on deciding actions of rule making, more fishery bans, taking away fish species delaying the completion of the process and threats of violence or harassment and hostility as the industry re-opens.

My impacts are real every day
Nick Ramirez

Attn Board

I was a fish dealer on the north shore of Oahu. My company, Vast Oceans would buy fish from various divers around the island as well as importing fish from neighboring islands. We created many good jobs and it was a great business. I'd like to remind you that this fishery is lawful and has a right to operate. This hang up with the SBRB is impeding a legal activity set forth by the legislature. Just because chapter 91 rules making is being proposed doesn't mean the fishery should be closed. The court order set forth by the state's Supreme Court has been remedied and technically DAR/DLNR is in violation by not issuing the permits. You guys should support our businesses and support science based management. I really don't care that other commercial scuba boats don't like the fishery. Frankly, they need some attention from decision makers as a giant, out of control and unregulated industry that is impacting our natural resources as well as burdening our boat launch facilities. They seem to think that only their commercial activities should be allowed and everyone else can pound sand. Many locals, and fishermen view them as an annoyance and as trouble makers. I support all the aquarium businesses in Hawaii and also these proposed rules.

Thankfully,
R.D. Fisher

I was a diver and worked in a fish shop in Kona for ten years. It paid well and I miss it all. I'm tired of this. There's no reason the fishery is closed. We have done everything and now you guys are standing in the way. This is political. If you support small business, why don't you support us? The rules are directed at us! Our business was the most impacted and we are the victims in all this. Instead you only care about the tourism guys who make millions hauling out tourists to their own private reefs where they step all over the coral. You think they matter more than us? This is crazy. Most these tourist guys are transplants running their companies. They're not even from Hawaii.

Locals need good jobs that are not based on tourism. Fisheries are good especially when they work like the AQ fishery. Look out for us for once…the real victims in all this

Christian David

Reviewing Board

I moved to Hawaii for college and started collecting fish to help with the costs.
It was a good job that allowed me to focus on my studies.
I had to write letters like this every year because the same groups would not be satisfied until they banned the aquarium fishery.
I was fortunate that I had a degree to fall back on although most fisherman did not.
The entire industry lost their jobs along with their way of life over night.
After all the process this fishery has gone through, I think it has been determined to be sustainable and of little impact.
I encourage you to listen to the science and stop listening to the special interest groups who only want exclusive rights to the oceans.

Open the fishery because it is the correct thing to do,
Matthew Reigle

Aloha,

My name is Areao Vitello. This is my testimony in support of aquarium fishery returning to Hawaii. I lived in Hawaii, and I am from Christmas Island, Kiribati, and have dual citizenship.

My family, once lived in Hawaii, and we all worked in the aquarium fishery business. We all had to move away because of the high cost of living there. I live in Oregon now, and my brother lives in Utah.

When the fishery closed down, and we lost our jobs, we tried Hilo, where the rent was cheaper, but eventually had to move from Hawaii. Packing fish for Oahu wholesalers and reselling Christmas Island fish to Hawaii wholesalers. It was good money, but when the Hawaii fishery closed, we all lost our jobs.

Please support the return of the fishery to Oahu and all of Hawaii; it will help many with much-needed jobs.

Thanks, Areao Vitello

To the Small Business Review Board,

Thank you for the opportunity to submit written testimony regarding the impacts of the closure of aquarium fishing. I am writing to share how this closure has directly and significantly affected small businesses, workers, and families who depend on this industry for their livelihoods.

The closure of aquarium fishing has caused immediate and severe economic hardship. This fishery supports not only aquarium fishers, but also a network of small businesses including dive partners, packers, dealers, transporters, and local suppliers. When the fishery was shut down, income stopped overnight for many of us, with no meaningful transition period or alternative work available. For small, family-run operations, this loss has been devastating.

Aquarium fishing is a highly regulated, science-based fishery that has operated sustainably for decades. Participants follow strict collection limits, location restrictions, reporting requirements, and best-practice handling methods. Many of us have invested years of training, permits, and equipment to comply with these rules. The closure disregards this history of compliance and sustainability and treats responsible small businesses the same as bad actors.

Beyond financial loss, the closure has caused emotional stress and uncertainty. Many individuals in this industry live paycheck to paycheck. Without the ability to fish, people are struggling to pay rent, support their families, and remain in Hawai'i. Some have already been forced to leave the industry entirely, resulting in the loss of specialized local knowledge and skills that cannot easily be replaced.

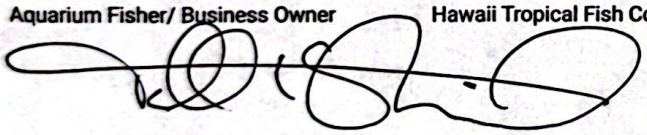
It is important to note that aquarium fishing represents a very small footprint in the marine environment compared to other ocean uses, yet the impacts of the closure on our community are disproportionately large. Decisions moving forward must consider both environmental protection and the survival of small businesses and working families.

For these reasons, I strongly urge the Small Business Review Board to recognize the serious economic and social impacts of the aquarium fishing closure and to support the passage of rules that allow for a fair, balanced, and lawful path forward. Small businesses deserve a voice in this process, and our impacts must be fully considered.

Thank you for your time and consideration.

Respectfully,

Todd Shiraki
Aquarium Fisher/ Business Owner Hawaii Tropical Fish Company\



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To the Small Business Review Board,

Thank you for allowing written testimony regarding the closure of aquarium fishing. I am submitting this testimony as the spouse of someone whose livelihood depends on this fishery, to share how this decision has affected our family and many others like ours.

The closure of aquarium fishing has had an immediate and overwhelming impact on our household. This industry is not a hobby or a side business—it is how our family pays rent, buys groceries, and plans for the future. When the fishery was shut down, our income was abruptly cut off, leaving us with little warning and no clear alternatives.

Like many families involved in this industry, we are part of a small, local business ecosystem. Aquarium fishing supports spouses, children, and extended families, as well as other small businesses that rely on this work. The closure has created ongoing stress, financial uncertainty, and fear about whether we can continue living and working in Hawai'i.

What makes this situation especially difficult is knowing that aquarium fishing has been conducted responsibly and sustainably for decades. Fishers operate under strict regulations, reporting requirements, and collection limits designed to protect marine resources. Our family has always supported responsible fishing practices and environmental stewardship, and it is painful to see those efforts disregarded.

The emotional toll of this closure cannot be ignored. Families are being forced to make impossible decisions—draining savings, postponing medical care, or leaving the industry entirely. These impacts go far beyond business losses; they affect mental health, family stability, and long-term security.

I respectfully ask the Small Business Review Board to fully consider the real-world impacts this closure has had on families and small businesses, and to support rules that create a fair and balanced path forward. Protecting the environment and protecting local families should not be mutually exclusive.

Thank you for your time and for considering the voices of those directly affected.

Respectfully,

Caelly Shiraki

Caelly Shiraki
Spouse of an Aquarium Fisher / Industry Hawaii Tropical Fish Company \

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Hello Small Business Review Board,

My name is Juan Ramirez ,and I am an employee of Hawaii Tropical Fish Company. I am writing to share how the closure of aquarium fishing has affected my job and livelihood.

This industry is my primary source of income. Since the closure, my work has been disrupted, creating financial uncertainty and stress for me and my family. Like many employees in this field, I rely on steady, lawful work to support myself and remain in Hawai'i.

Aquarium fishing has long operated under strict rules and regulations designed to protect marine resources. Employees take pride in following these rules and supporting sustainable practices. Passing the Department of Aquatic Resources rules package is important because it provides clarity, fairness, and a path forward for responsible workers and small businesses.

Thank you for considering how these decisions affect employees whose livelihoods depend on this industry.

Respectfully,
Juan R.

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To the Small Business Review Board,

My name is Cara Shiraki, and I am 12 years old. I am writing because the closure of aquarium fishing has affected my family and our life.

Aquarium fishing is how my family earns money. Since the closure, things have been harder and more stressful at home. My parents worry a lot about work and paying for things our family needs. It makes me sad to see how much pressure this has put on them.

I know my family cares about the ocean and follows rules to protect it. Aquarium fishing has always been an important and responsible part of our life. I hope decisions can be made that protect the ocean but also help families like mine.

Thank you for listening to my voice and considering how this closure affects kids and families.

Respectfully,

Cara Shiraki
Age 12
Child of an Aquarium Fisher
Hawaii Tropical Fish Company

Scanned with CamScanner

To the Small Business Review Board,

My name is Cade Shiraki, and I am 12 years old. I am writing to share why passing this year's Department of Aquatic Resources rules package is important to my family.

My family depends on aquarium fishing for our livelihood. The rules package matters because it helps create clear, fair rules that allow people to work responsibly while also protecting the ocean. Without these rules, families like mine face uncertainty and stress about our future.

I have grown up learning that caring for the ocean and following rules is important. The people in this industry want to do things the right way and support sustainable practices. Passing this rules package would help balance ocean protection with the ability for families to continue working.

Thank you for taking the time to consider how these decisions affect families and kids like me.

Respectfully,

Cade Shiraki (Cade Shiraki)
Age 12
Child of an Aquarium Fisher
Hawaii Tropical Fish Company

Scanned with CamScanner

To the Board

I packed fish in Milolii with my sister since we were teenagers. We don't have any jobs and guys in our village dove fish. We were lucky to be packers but all the court lawsuits closed the fish collecting and we lost our jobs. We had a good job that let us stay home and not have to drive so far. I wish you would let them fish again because we liked taking care of the fish.

Jordan and Jaylynn Alcoran

Ariola, Jetaime K

From: danhieux18@icloud.com
Sent: Tuesday, February 17, 2026 6:55 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Ban AQ fishing

Our reefs are not just scenery. They are living, breathing communities that protect our shorelines, feed our families, sustain our culture, and support our economy. Yet they are slowly unraveling before our eyes. I urge you to enact much stronger fines and enforcement measures to protect Hawai'i's grazing fish — especially those targeted by the aquarium trade — because without them, our reefs cannot survive.

Even with the current aquarium collection ban in place, paired with fines that are simply too weak to deter violations, herbivorous fish populations have not rebounded in a statistically significant way. That should deeply concern all of us. A ban without meaningful enforcement is not protection — it is a promise left unfulfilled.

Herbivorous fish such as parrotfish, surgeonfish, and tangs are the reef's gardeners. Every day, they tirelessly graze on algae that would otherwise smother and suffocate corals. Without them, algae spreads rapidly, blocking sunlight, weakening coral growth, and preventing reefs from recovering after bleaching events, storms, and rising ocean temperatures. When we remove these fish, we tip the balance toward collapse.

The commercial aquarium trade has significantly depleted local populations of these essential species. Removing large numbers of grazing fish for export disrupts the delicate ecological balance that coral ecosystems depend on. What follows is not abstract or theoretical — it is visible. Coral decline. Biodiversity loss. Fewer fish. A reef that becomes quieter, emptier, less alive.

And when reefs suffer, Hawai'i suffers.

Our tourism economy depends on vibrant, thriving reefs. Visitors travel across the world to snorkel above colorful coral gardens and swim alongside abundant marine life. As reefs degrade, the experience diminishes. Visitor satisfaction declines. Local businesses — from dive shops to hotels to restaurants — feel the impact. Jobs are put at risk. Protecting grazing fish is not only an environmental necessity; it is an economic safeguard.

Stronger fines and real enforcement send a clear message that Hawai'i values its natural heritage. Implementing firm catch limits, expanding managed reef zones, and ensuring meaningful penalties for violations are practical, cost-effective steps that will protect both our marine ecosystems and our economic future.

If we fail to act decisively, we are not just losing fish. We are losing resilience. We are losing biodiversity. We are losing part of what makes Hawai'i extraordinary.

Future generations deserve to inherit reefs that are alive — not memories of what they once were.

Please stand for our reefs. Strengthen the fines. Protect our grazing fish. Let your actions reflect the value we place on Hawai'i's living treasures.

With respect and aloha from Pana'ewa and Miloli'i on the Big Island,

Bob Douglas
danhieux18@icloud.com
Instagram.com/danhieux
808 333-0402

Ariola, Jetaime K

From: Kayleigh Grant <kaimanaoceansafari@gmail.com>
Sent: Tuesday, February 17, 2026 7:24 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Written Testimony Regarding Proposed Aquarium Collection Rules

Aloha,

My name is Kayleigh Grant, and I am the owner and operator of a marine tour business based in West Hawai‘i called Kaimana Ocean Safari. My business depends entirely on the health, abundance, and natural integrity of our coral reef ecosystems. Every day, I take guests into the ocean to experience Hawai‘i’s marine life, and reef fish such as yellow tang are a major part of that experience.

The abundance of reef fish directly affects customer satisfaction, repeat bookings, and the overall economic viability of my business. Guests travel from around the world with the expectation of seeing vibrant, healthy reefs full of life. When reef fish populations are reduced, it diminishes the experience we are able to offer. This impacts not only my business, but also my employees, contractors, and the broader local economy that depends on marine tourism.

Healthy reef ecosystems are also critical to reef resilience. Herbivorous species like yellow tang play an essential role in controlling algae and maintaining coral health. Removing large numbers of these fish risks weakening reef systems that our tourism economy depends on.

In addition to ecological and economic concerns, I am troubled by the procedural inequities in how this process has been conducted. Marine tour operators were asked to disclose sensitive operational information while aquarium collectors were not subject to equivalent requests. This creates an uneven and unfair burden on small businesses like mine.

Furthermore, it appears collectors had significantly more advance notice and opportunity to prepare submissions, while marine operators and the public had

very limited time to respond. This raises serious concerns about whether the Board is receiving a balanced and equitable record reflecting the true economic impacts on marine tourism businesses.

Marine tourism is a sustainable, long-term economic driver for Hawai‘i that depends on preserving living reef ecosystems in their natural state. Policies that prioritize extractive uses over sustainable, non-extractive uses risk undermining small local businesses and the long-term health of our reefs.

I respectfully ask the Board to fully consider the economic importance of reef fish to Hawai‘i’s marine tourism industry and to ensure that small marine businesses are treated fairly and equitably in this process.

Mahalo for your time and consideration.

Mahalo and Aloha,

Kayleigh Grant
KaimanaOceanSafari.com
KaimanaOceanSafari@gmail.com
Mobile: 808-989-1337
IG: @mermaid.kayleigh
TikTok: @mermaid.kayleigh
FB: Kayleigh Nicole Grant

17 February 2026

Opposition to Aquarium Fish Collecting

Ronald Robinson, MD, MPH, MBA, FACHE

I am writing in strong opposition to commercial aquarium collecting.

I am a small business owner in Hawaii county (Big Island Aviation, LLC), and my business brings over $100,000 of annual impact to the county's economy. My business is tied directly to the health and biodiversity of Hawaii's reef environment.

I also serve as a volunteer for three marine non-profits (Malama Kai, Reef Check, Ocean Defenders Alliance) and am an avid recreational SCUBA diver, so I see the reef personally several times each week.

The scientific evidence is overwhelming that commercial aquarium collection damages the fragile reef ecosystem. (1,2) Each fish that remains on the reef delights hundreds of people. Each fish collected, if it survives, benefits a privileged few. In the 25 years I have been diving this reef I have seen fish populations decline due to environmental stress and the ongoing poaching of aquarium fish despite the recent ban on aquarium fish collection.

If commercial aquarium collectors seek to refute the established scientific literature and the obvious fish population declines noted by divers like myself, then they (not DAR) should bear the burden of proving that there is no negative impact of commercial aquarium collection on our shared reef. If commercial aquarium collection is approved, then the cost for monitoring and policing any approved commercial collection should be borne by the commercial aquarium collectors, not by the community.

I strongly oppose allowing a small group of selfish commercial aquarium collectors to negatively impact our shared coral reef resource.

Blast fishing is wrong – it was banned in 1940.

Cyanide fishing is wrong – it was banned in in the 1960's.

Commercial whaling is wrong – it was banned in 1986.

Commercial aquarium collecting is wrong – ban it now.

Do your kuleana – just say "NO!" to aquarium fish collecting.

(1) https://earth.org/the-destructive-truth-behind-aquariums/
(2) Tissot and Hallacher, 2003 (attached)

Ariola, Jetaime K

From: Brenna Lonergan <brennamarielonergan@gmail.com>
Sent: Tuesday, February 17, 2026 7:33 PM
To: DBEDT SBRRB
Subject: [EXTERNAL] Old Business, Items 1, 2, & 3

Aloha, My name is Brenna and I am the employee of Kaimana Ocean Safari submitting this testimony to raise serious concerns about both procedural fairness in this process and the real economic harm that proposed aquarium fish removals would cause to marine tour operators and the communities we support. First, participation conditions have not been equivalent. Marine tour operators were required to submit sensitive operational data, including account ID numbers and precise reef operating locations—information that was not requested of aquarium collectors. There are many discrepancies that raise serious concerns about procedural fairness and the neutrality of stakeholder engagement. Second, the proposed removal of up to 100,000 yellow tang and other reef fish would directly and negatively impact marine tour businesses. Reef fish abundance is central to the visitor experience. Guests book snorkeling, diving, and ocean tours to see healthy, vibrant reefs full of fish. Fish populations are in decline, customer satisfaction is dropping, bookings could decline, and repeat business suffers. This is not hypothetical—reef quality is a primary driver of demand for ocean-based tourism in Hawaiʻi. The economic ripple effects extend well beyond individual operators. Fewer bookings mean reduced hours or layoffs for employees, lost income for independent contractors such as captains and guides, and decreased business for local vendors, maintenance providers, and harbor services. These are local jobs and local families who depend on healthy reefs. In short, reef fish are not an expendable resource—they are the foundation of both reef ecosystems and the sustainable marine-tour economy. Any decision made without equal participation, full transparency, and a balanced assessment of economic impacts risks harming small businesses, workers, and the public trust. I urge the Board to pause, correct these procedural inequities, and ensure that decisions are grounded in fairness, sound science, and the full economic reality faced by marine tour operators. Mahalo for the opportunity to testify.
Brenna Marie Lonergan

Ariola, Jetaime K

From: Brian Hightower <hawaiimarinelife@gmail.com>
Sent: Monday, February 16, 2026 8:07 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Proposed aquarium rules

Statement from Hawaii Marine Life Charters
Owner: Brian Hightower
Location: Kona, Hawai'i Island

As the owner and operator of Hawaii Marine Life Charters, a small family-run snorkel tour company based in Kona, reef health is directly tied to the success and sustainability of our business.

Impact of Removing 100,000 Yellow Tang and Other Reef Fish

The removal of 100,000 yellow tang and other reef fish would have a significant and immediate impact on our operations. Reef fish are not just a visual attraction — they are a core part of the underwater experience our guests travel here to see. Species like the yellow tang are iconic to Hawai'i's reefs. Their bright color, schooling behavior, and abundance are often the highlight of a snorkel tour.

A noticeable decline in reef fish populations would:

Reduce the vibrancy and biodiversity guests expect

Change the overall reef ecosystem balance

Potentially contribute to long-term reef degradation

Our tours operate in areas such as Kealakekua Bay and along the Kona Coast where reef fish abundance is a major draw. A visible reduction in fish density would absolutely be noticed by returning visitors and first-time guests alike.

Influence on Customer Satisfaction, Bookings & Repeat Business

Reef fish abundance plays a direct role in:

Customer Satisfaction
Guests consistently mention the abundance of tropical fish in our 5-star reviews. When reefs are alive and thriving, guests leave inspired and emotionally connected to Hawai'i's marine environment.

Bookings
Travel decisions are increasingly influenced by social media photos, online reviews, and word-of-mouth. If reefs appear depleted, that affects destination appeal. A less vibrant reef experience could reduce booking demand over time.

Repeat Business & Referrals

We rely heavily on repeat visitors and referrals. Many of our guests return specifically because of the healthy reef ecosystems they experienced previously. If reef conditions decline, so does that loyalty.

Healthy reefs = strong reviews = steady bookings = long-term sustainability.

Economic Ripple Effects

Hawaii Marine Life Charters does not operate in isolation. Any negative impact to reef health would ripple outward to:

Our crew and employees

Local captains and marine staff

Fuel suppliers and marine service providers

Boat mechanics and maintenance contractors

Gear suppliers (snorkel equipment, wetsuits, etc.)

Local restaurants, hotels, and partner businesses

Travel agents and affiliates who sell our tours

Tourism in Kona is marine-based. When reef quality declines, visitor satisfaction drops, and the broader local economy feels the effects.

As a small business owner who has lived and operated on the Kona Coast for decades, I view reef fish not just as wildlife — but as a foundational economic asset for our community.

Closing Perspective

Sustainable reef management is essential for:

Environmental health

Cultural preservation

Local jobs

Small business survival

Protecting reef fish populations is not simply an environmental issue — it is an economic necessity for marine tourism operators like us and for the broader Kona community.

Aloha,
Brian Hightower
Owner & Operator

Ariola, Jetaime K

From: Bryan Fujikawa <bryan@konagrillhouse.com>
Sent: Wednesday, February 18, 2026 6:45 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Tropical Fish Collection

Subject: Opposition to Reopening the Tropical Fish Industry

Good Morning,

My name is Bryan Fujikawa, and I am writing to express my strong opposition to the reopening of the tropical fish industry in Kona. Having been born and raised in this beautiful community, I have witnessed firsthand the gradual degradation of our reefs over the years. Despite the closure of the industry in the mid-2000s, the reefs have yet to show significant signs of recovery, a stark reminder of the damage inflicted during the peak of fish collection.

During my time working for the airlines in the 1990s to early 2000s, I was alarmed by the sheer volume of fish being shipped out daily. The numbers were staggering, and it was a sobering realization to consider what our reefs would look like for future generations if this practice continued unchecked. Today, it pains me to see the state of our reefs; they resemble a desert rather than the vibrant ecosystems I once knew. The thought that my grandchildren and great-grandchildren may never experience the beauty of these underwater landscapes is heartbreaking.

The rationale behind the tropical fish collection often centers on economic gain, but I believe this perspective is fundamentally flawed. The fish collected for the aquarium trade serve primarily as decorative items, destined to sit in homes and offices, while local families rely on these same fish as a vital source of sustenance. It seems unjust that the priorities of a few should overshadow the needs of families who depend on access to these resources for their daily survival.

Moreover, it is concerning that the state is considering reopening an industry that has already shown signs of suffering. The lack of adequate resources for enforcement raises significant red flags. The permitting process is riddled with loopholes, making it likely that more divers will be at work than are authorized. This lack of oversight would inevitably lead to further depletion of our marine resources, pushing our reefs closer to irreversible damage.

In closing, I urge decision-makers to keep the tropical fish collection industry closed. The scars left by past practices have not healed, and reopening this industry would only exacerbate the damage done. Our reefs deserve the chance to recover, and future generations deserve the opportunity to experience the richness of our marine life as I once did.

Thank you for considering my perspective.

Sincerely,
Bryan Fujikawa

Sent from my iPhone

Ariola, Jetaime K

From: Calley O'Neill <Calley@CalleyONeill.com>
Sent: Monday, February 16, 2026 5:44 PM
To: DBEDT SBRRB
Cc: calley@calleyoneill.com
Subject: [EXTERNAL] Opposing West Hawai'i Aquarium Fish Collecting

WE strongly oppose any and all attempts of DAR to allow collection of Yellow Tangs and other reef fish off West Hawai'i.

It is hard to believe that this is once again being considered, as the impact on the reefs and the balance of fishes, the health of the reef and the huge impact for our visitors and local people snorkeling is 100% negative.

This is 2026 ~ conservation and preservation, protection and respect are the qualities we need in our leaders. This sounds pro-profits and short term gains for collectors and a short life for the fishes in aquariums. Please don't cave in to this disrespectful profit making action.

Please report back on the progress of this.

Malama Honua,

Calley

Calley O'Neill
The Rama Tree
PO Box 6571
Kamuela, Hawai'i 96743

Mobile: (808) 987-7003

www.CalleyONeill.com
www.TheRamaExhibition.org

IG @calley_oneill

https://www.patreon.com/CalleyONeill

Calley responds to emails weekday evenings. If you wish to reach her sooner, please call or text (808) 987-7003.

Ariola, Jetaime K

From: danhieux18@icloud.com
Sent: Tuesday, February 17, 2026 6:55 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Ban AQ fishing

Our reefs are not just scenery. They are living, breathing communities that protect our shorelines, feed our families, sustain our culture, and support our economy. Yet they are slowly unraveling before our eyes. I urge you to enact much stronger fines and enforcement measures to protect Hawai'i's grazing fish — especially those targeted by the aquarium trade — because without them, our reefs cannot survive.

Even with the current aquarium collection ban in place, paired with fines that are simply too weak to deter violations, herbivorous fish populations have not rebounded in a statistically significant way. That should deeply concern all of us. A ban without meaningful enforcement is not protection — it is a promise left unfulfilled.

Herbivorous fish such as parrotfish, surgeonfish, and tangs are the reef's gardeners. Every day, they tirelessly graze on algae that would otherwise smother and suffocate corals. Without them, algae spreads rapidly, blocking sunlight, weakening coral growth, and preventing reefs from recovering after bleaching events, storms, and rising ocean temperatures. When we remove these fish, we tip the balance toward collapse.

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And when reefs suffer, Hawai'i suffers.

Our tourism economy depends on vibrant, thriving reefs. Visitors travel across the world to snorkel above colorful coral gardens and swim alongside abundant marine life. As reefs degrade, the experience diminishes. Visitor satisfaction declines. Local businesses — from dive shops to hotels to restaurants — feel the impact. Jobs are put at risk. Protecting grazing fish is not only an environmental necessity; it is an economic safeguard.

Stronger fines and real enforcement send a clear message that Hawai'i values its natural heritage. Implementing firm catch limits, expanding managed reef zones, and ensuring meaningful penalties for violations are practical, cost-effective steps that will protect both our marine ecosystems and our economic future.

If we fail to act decisively, we are not just losing fish. We are losing resilience. We are losing biodiversity. We are losing part of what makes Hawai'i extraordinary.

Future generations deserve to inherit reefs that are alive — not memories of what they once were.

Please stand for our reefs. Strengthen the fines. Protect our grazing fish. Let your actions reflect the value we place on Hawai'i's living treasures.

With respect and aloha from Pana'ewa and Miloli'i on the Big Island,

Bob Douglas
danhieux18@icloud.com
Instagram.com/danhieux
808 333-0402

Ariola, Jetaime K

From: Douglas Perrine <douglasperrine@yahoo.com>
Sent: Monday, February 16, 2026 1:46 PM
To: DBEDT SBRRB
Subject: [EXTERNAL] testimony on proposed West Hawaii aquarium rules

Dear SBRRB members -

As a small business owner in West Hawaii, my business will be negatively impacted if the proposal by DAR to re-open our waters to collecting for the aquarium trade is accepted. I am a freelance nature photographer specializing in marine life, and with a particular interest in endemic reef fishes of Hawaii. My photographs not only earn income for myself through the sale of publishing rights, they also benefit local marine tourism operators by attracting visitors who want to view the beautiful fish that we have on our reefs.

Aquarium fish collecting harms my business in two ways: First, it removes fish from their habitat. This makes them unavailable for my photography, and also degrades the habitat, as those fish are unavailable to perform their ecosystem functions, such as consuming coral-smothering algae. Secondly, it alters the behavior of the remaining fish, teaching them to fear scuba-diving humans, such as myself. At the sight of an approaching diver, they dart into the reef to hide, making them unavailable for photographing or viewing.

The recovery period we have had since the end of legal commercial aquarium collecting has allowed a comparison with the "bad old days" during collecting. Not only are the most-collected fish (i.d. yellow tangs and kole) more abundant and flourishing in large photogenic schools, but the rare fish that had almost vanished from reefs within depth ranges for safe scuba diving can now be found and photographed again. Many of these are found only in Hawaii, such as the long-finned anthias, and Tinker's butterflyfish, and can now once-again serve as draws to attract fish-watchers to West Hawaii waters. Even though most of these are not listed on the permit application, past experience shows that the high prices they fetch make them irresistible to fish collectors, and that a legal collecting trade will serve as cover for poaching that will remove the accessible individuals from the high-priced rare species.

In addition to my own trade, marine tourism operators and aquaculture businesses will be harmed if aquarium collecting is re-opened, and there is a reasonable fear that reduction of herbivore populations will harm the reef ecology to the detriment of fishers and all coral reef recreationists.

These fish belong in their native habitat, where they can reproduce and continue their generations, and not in faraway aquaria where they will live lonely, shortened lives, and their genes will be lost to their home population.

Please reject the application from the DAR, which will be harmful generally to West Hawaii businesses and residents.

Mahalo for considering my mana'o
Doug Perrine

owner Doug Perrine Photography
http://www.dougperrine.com
76-223 Haoa St
Kailua Kona HI 96740
808-329-4523

Ariola, Jetaime K

From: kawika@maunalaniseaadventures.com
Sent: Tuesday, February 17, 2026 11:04 PM
To: DBEDT SBRRB
Cc: Kawika Ruddle (kawikar@msn.com)
Subject: [EXTERNAL] RE: Procedural Deficiencies and Incomplete Small Business Impact Review for Proposed Aquarium Rules

Aloha Chair and Members of the SBRRB,

My name is Kawika Ruddle. I am testifying on behalf of Mauna Lani Sea Adventures, a small, family-owned ocean tourism business that my father and I have operated on the Kohala Coast for over 40 years. Our business depends entirely on healthy reefs and abundant reef fish, and we carry a deep cultural and generational kuleana to mālama i ke kai.

I submit this **supplemental testimony** to address serious procedural and substantive deficiencies in the Small Business Impact scoping process conducted by the Division of Aquatic Resources (DAR).

1. Unequal outreach compromised the integrity of the scoping process

During the January 2026 scoping process, DAR applied materially different standards to aquarium collectors and to marine tour operators.

Aquarium collectors were contacted informally and collaboratively. They were not required to register, disclose permit or account numbers, identify specific reef locations, or provide structured business impact statements.

Marine tour operators, by contrast, were required to register in advance and disclose commercially sensitive information, including specific reef operating locations and account identifiers. This approach introduced a regulatory and enforcement tone that discouraged participation and was not applied equally across industries.

This uneven process directly shaped who participated and what information reached the Board.

2. Participation disparities reflect barriers—not absence of impact

DAR's submittal to the SBRRB includes approximately 72 pages of aquarium collector comments, but only a handful from marine tour operators.

This disparity does not reflect lesser impact. It reflects a process that imposed higher burdens and perceived risk on non-extractive, stewardship-based businesses. Many operators were understandably hesitant to disclose sensitive operating details in what felt like a compliance exercise rather than neutral engagement.

3. Entire categories of impacted small businesses were excluded

Most critically, the scoping process failed to identify and analyze the broader economic ecosystem that depends on healthy reefs, including:

- Hotels and resorts whose guests expect vibrant reefs
- Resort service providers such as laundry and maintenance businesses
- Local farmers, fishers, and food producers who supply those resorts
- Cultural practitioners and educational programs tied to reef health

When reef quality declines, visitor satisfaction declines. When visitation declines, hotels suffer. When hotels suffer, so do the dozens of small, local businesses that support them. This cascading economic impact was not evaluated at all.

The Board is therefore being asked to approve a rule package that privileges a very small number of aquarium collectors while ignoring the far-reaching consequences to Hawai‘i’s sustainable, non-extractive economy.

4. A constructive alternative exists—and was ignored

There is a sustainable alternative that aligns with both economic development and reef protection: aquaculture of captive-bred aquarium fish.

Operations such as Biota’s captive-breeding model demonstrate that aquarium demand can be met without removing fish from Hawai‘i’s reefs, while creating more jobs, technical positions, and local value-added economic activity than wild collection ever could.

Yet DAR’s process did not meaningfully explore this alternative or assess its potential to transition collectors into a model that benefits both people and reefs.

5. DAR’s actions conflict with its stated mission

DAR’s mission states that it exists *“to work with the people of Hawai‘i to manage, conserve and restore the state’s unique aquatic resources and ecosystems for present and future generations.”*

A process that:

- Applies unequal standards to stakeholders
- Excludes large sectors of the small business community
- Facilitates continued extraction of ecologically critical reef fish
- And ignores viable, job-creating alternatives

does not align with conservation, restoration, or intergenerational responsibility.

6. Request to the Board

I respectfully ask the SBRRB to withhold approval of DAR’s request until:

- The full stakeholder outreach record is provided
- Comparable outreach and disclosure standards are applied across industries
- The Small Business Impact review includes hotels, resorts, and their supporting local businesses
- Sustainable aquaculture alternatives are meaningfully evaluated

This is not about choosing winners and losers. It is about ensuring that a narrow extractive interest is not advanced at the expense of Hawai‘i’s reefs, its people, and its future.

Mahalo for your careful consideration and your commitment to fair and transparent review.

Mahalo,
Francis Ruddle, President
Kawika Ruddle, Vice President
Mauna Lani Sea Adventures, Inc.

Ariola, Jetaime K

From: Kayleigh Grant <kaimanaoceansafari@gmail.com>
Sent: Tuesday, February 17, 2026 7:24 AM
To: DBEDT SBRRB
Subject: [EXTERNAL] Written Testimony Regarding Proposed Aquarium Collection Rules

Aloha,

My name is Kayleigh Grant, and I am the owner and operator of a marine tour business based in West Hawai‘i called Kaimana Ocean Safari. My business depends entirely on the health, abundance, and natural integrity of our coral reef ecosystems. Every day, I take guests into the ocean to experience Hawai‘i’s marine life, and reef fish such as yellow tang are a major part of that experience.

The abundance of reef fish directly affects customer satisfaction, repeat bookings, and the overall economic viability of my business. Guests travel from around the world with the expectation of seeing vibrant, healthy reefs full of life. When reef fish populations are reduced, it diminishes the experience we are able to offer. This impacts not only my business, but also my employees, contractors, and the broader local economy that depends on marine tourism.

Healthy reef ecosystems are also critical to reef resilience. Herbivorous species like yellow tang play an essential role in controlling algae and maintaining coral health. Removing large numbers of these fish risks weakening reef systems that our tourism economy depends on.

In addition to ecological and economic concerns, I am troubled by the procedural inequities in how this process has been conducted. Marine tour operators were asked to disclose sensitive operational information while aquarium collectors were not subject to equivalent requests. This creates an uneven and unfair burden on small businesses like mine.

Furthermore, it appears collectors had significantly more advance notice and opportunity to prepare submissions, while marine operators and the public had

very limited time to respond. This raises serious concerns about whether the Board is receiving a balanced and equitable record reflecting the true economic impacts on marine tourism businesses.

Marine tourism is a sustainable, long-term economic driver for Hawai‘i that depends on preserving living reef ecosystems in their natural state. Policies that prioritize extractive uses over sustainable, non-extractive uses risk undermining small local businesses and the long-term health of our reefs.

I respectfully ask the Board to fully consider the economic importance of reef fish to Hawai‘i’s marine tourism industry and to ensure that small marine businesses are treated fairly and equitably in this process.

Mahalo for your time and consideration.

Mahalo and Aloha,

Kayleigh Grant
KaimanaOceanSafari.com
KaimanaOceanSafari@gmail.com
Mobile: 808-989-1337
IG: @mermaid.kayleigh
TikTok: @mermaid.kayleigh
FB: Kayleigh Nicole Grant

Kona-Kohala
CHAMBER OF COMMERCE

February 17, 2026

RE: Re-review and Action on the Small Business Impact Statement and Proposed Amendments for West Hawai‘i.

Dear Chair Shick, Vice Chair Morioka, and members of the State of Hawai‘i Small Business Regulatory Review Board,

Since 1968, the Kona-Kohala Chamber of Commerce has advanced the quality of life in West Hawai‘i by supporting a strong, sustainable economy on Hawai‘i Island. Representing more than 460 member businesses and organizations, we serve as the leading voice for the West Hawai‘i business community and advocate for policies that support long-term community stability and regional economic resilience.

As a leading West Hawai‘i business association, we monitor the Department of Land and Natural Resources (DLNR) for decisions affecting Honokōhau Harbor, Kawaihae Harbor, and marine management areas in West Hawai‘i, ensuring policies reflect both environmental stewardship and the needs of commercial and recreational users.

For decades, West Hawai‘i has worked to balance environmental protection with responsible commercial activity. Significant regulatory actions in this arena carry serious economic implications. Abrupt or inadequately vetted rule changes could result in revenue loss, reduced employment opportunities, and increased operational uncertainty for existing small businesses already navigating high costs and regulatory complexity.

We are deeply concerned about the current rulemaking process underway at DLNR’s Division of Aquatic Resources (DAR) related to the aquarium fishery in West Hawai‘i. We believe the timeline and outreach for this phase of the process have not provided sufficient opportunity for meaningful engagement with small businesses in our region that may be directly or indirectly affected. Additionally, the economic ripple effects may extend beyond one sector and negatively impact related industries and small businesses throughout Hawai‘i.

We respectfully urge the State of Hawai‘i Small Business Regulatory Review Board ensure that adequate time is afforded for businesses to review, analyze, and respond to the proposed rules. **We ask that the Board not approve the Small Business Impact Statement and Proposed Amendments as presented at the February 19, 2026, meeting.**

Sincerely,

Wendy J. Laros, President and CEO
Kona-Kohala Chamber of Commerce

Kona-Kohala Chamber of Commerce
75-5737 Kuakini Highway, Suite 208 | Kailua-Kona, HI 96740
info@kona-kohala.com | 808-329-1758 | www.kona-kohala.com

Ariola, Jetaime K

From: Ms. KristaJoan <kristajoan@gmail.com>
Sent: Tuesday, February 17, 2026 3:26 PM
To: DBEDT SBRRB
Subject: [EXTERNAL] Old Business, Items 1, 2, & 3

Aloha,
Aquarium fishing is a short-sighted, self-serving, cruel pursuit that should be banned in the entire state of Hawai‘i. The aquarium fishermen can start a hatchery if they want. The State of HI should invest and encourage sustainable, ecology-centered jobs that educate people and increase ocean biodiversity and respect. Aquarium fishing is antiquated and unfairly turns priceless public resources into meager returns for a handful of individuals.
Could you imagine scooping native birds from endemic forests to ship to people in China, knowing over half will die in transport? I can‘t either!! Aquarium fishing is the same principle and needs to stop.
Mahalo for the opportunity to testify.
Krista Joan Donaldson
808-557-9085

Hawai‘i Small Business Regulatory Review Board
February 6, 2026

RE: Aquarium Fishery

Dear Chair and Members of the Board,

I am writing to provide comments regarding the impacts associated with the continued closure of the commercial aquarium fishery in Hawai‘i, particularly as those impacts affect small businesses and individual owner-operators.

The commercial aquarium fishery in Hawai‘i has historically consisted almost entirely of small businesses, sole proprietors, and family-run operations and these businesses rely on predictable access to permits and a stable regulatory framework. The prolonged closure of the fishery has therefore resulted in significant economic harm to a class of small businesses with limited ability to diversify or absorb sustained revenue losses.

Economic impacts include the complete loss of income for permitted aquarium collectors and associated small businesses, including gear suppliers, transport services, maintenance providers, and aquarium service companies. Many affected operators have invested years in specialized equipment, training, and compliance obligations that are not readily transferable to alternative fisheries or industries. As a result, the closure has rendered these capital investments effectively stranded, with no reasonable opportunity for cost recovery. These businesses depend on lawful, sustainably collected Hawai‘i reef fish and the loss of supply has disrupted established commercial relationships and reduced revenues across the broader small-business supply chain.

In addition to these economic impacts, it is important to note that the Department of Land and Natural Resources’ Division of Aquatic Resources (DAR) has repeatedly testified before boards, courts, and the Legislature, and has submitted extensive scientific data demonstrating that the aquarium fishery will be highly regulated, actively managed, and conducted at a low level of biological impact. DAR has documented the use of gear restrictions, species restrictions, catch limitations, spatial closures, reporting requirements, and enforcement mechanisms, as well as long-term monitoring data indicating sustainability under these conditions. Small businesses in this sector relied on these agency findings and representations when making capital investments and business decisions, and the continued closure has occurred despite statutory compliance and a proposed regulatory framework that DAR itself has characterized as precautionary, science-based, and low risk.

From an government economic impact perspective, it is important to distinguish between baseline governmental costs and incremental costs attributable to a specific regulated activity**.** Enforcement by the Division of Conservation and Resources Enforcement (DOCARE), along with fisheries research, environmental monitoring, and resource management conducted by the Division of Aquatic Resources (DAR), constitute baseline obligations of the State that are incurred regardless of whether the commercial aquarium fishery is open or closed. DAR manages all marine fisheries and nearshore resources statewide—commercial and non-commercial—and these core functions continue under any regulatory scenario. Consequently, the closure of the aquarium fishery does not eliminate these baseline costs, nor does it materially reduce the State’s ongoing enforcement or monitoring responsibilities. In contrast, the economic losses experienced by small businesses because of the closure represent incremental, closure-specific impacts borne exclusively by private parties, without a corresponding reduction in public sector expenditures.

The closure has also had disproportionate effects on owner-operators who have generationally participated in the aquarium fishery. Unlike larger firms, these small businesses do not have the ability to shift product lines or relocate operations. In many cases, the closure has resulted in permanent exit from the industry, loss of livelihoods, and erosion of specialized local expertise developed over decades.

Importantly, these economic impacts have occurred in the absence of a regulatory pathway that allows small businesses to resume operations under clearly defined, enforceable conditions. From a small business perspective, prolonged regulatory uncertainty functions as a de facto prohibition, even where future reopening is theoretically possible. This uncertainty itself imposes costs that are material, ongoing, and not recoverable.

Given the Small Business Regulatory Review Board's statutory role in evaluating the effects of government action on small businesses, I respectfully request that the Board consider whether the impacts of the aquarium fishery have been adequately evaluated, disclosed, and mitigated, and whether the proposed rules to govern commercial aquarium collection would reduce harm to small businesses while still achieving regulatory objectives and the State's environmental goals, including sustainability and public trust stewardship.

Thank you for the opportunity to provide comments on this matter and for your continued attention to the interests of Hawai‘i's small business community.

Mahalo,

Lisa Cates

Ariola, Jetaime K

From: Ocean Eco Tours <oceanecokona@gmail.com>
Sent: Tuesday, February 17, 2026 12:07 PM
To: DBEDT SBRRB
Subject: [EXTERNAL] SBRRB TESTIMONY

Dear DAR,

I am writing to submit my formal testimony in strong opposition to the proposed legislation that would allow the collection and sale of coral reef fish for the aquarium trade.

As the owner of Ocean Eco Tours, a small business on the Big Island of Hawaii, my livelihood depends entirely on the health and biodiversity of our local reefs. We specialize in ocean tours and coral reef snorkels, providing visitors the opportunity to experience Hawaii's unique marine ecosystem.

This proposed law poses a direct threat to our business and the local economy. People travel from around the world specifically to snorkel our reefs and see our beautiful fish in their natural habitat. Allowing the removal of these fish for commercial trade will inevitably lead to a decline in reef health and a diminished experience for tourists, resulting in a significant downfall for eco-tourism businesses like mine.

Beyond the economic impact, this practice is not sustainable for the long-term health of the reefs. Removing key species disrupts the delicate balance of the ecosystem, which is already facing numerous environmental pressures.

I urge you to protect our natural resources and the small businesses that rely on them by rejecting this proposal. We must prioritize the preservation of our reefs for the benefit of our environment, our community, and future generations.

Thank you for your time and for considering this testimony.

Sincerely,

Ocean Eco Tours

17 February 2026

Opposition to Aquarium Fish Collecting

Ronald Robinson, MD, MPH, MBA, FACHE

I am writing in strong opposition to commercial aquarium collecting.

I am a small business owner in Hawaii county (Big Island Aviation, LLC), and my business brings over $100,000 of annual impact to the county's economy. My business is tied directly to the health and biodiversity of Hawaii's reef environment.

I also serve as a volunteer for three marine non-profits (Malama Kai, Reef Check, Ocean Defenders Alliance) and am an avid recreational SCUBA diver, so I see the reef personally several times each week.

The scientific evidence is overwhelming that commercial aquarium collection damages the fragile reef ecosystem. (1,2) Each fish that remains on the reef delights hundreds of people. Each fish collected, if it survives, benefits a privileged few. In the 25 years I have been diving this reef I have seen fish populations decline due to environmental stress and the ongoing poaching of aquarium fish despite the recent ban on aquarium fish collection.

If commercial aquarium collectors seek to refute the established scientific literature and the obvious fish population declines noted by divers like myself, then they (not DAR) should bear the burden of proving that there is no negative impact of commercial aquarium collection on our shared reef. If commercial aquarium collection is approved, then the cost for monitoring and policing any approved commercial collection should be borne by the commercial aquarium collectors, not by the community.

I strongly oppose allowing a small group of selfish commercial aquarium collectors to negatively impact our shared coral reef resource.

Blast fishing is wrong – it was banned in 1940.

Cyanide fishing is wrong – it was banned in in the 1960's.

Commercial whaling is wrong – it was banned in 1986.

Commercial aquarium collecting is wrong – ban it now.

Do your kuleana – just say "NO!" to aquarium fish collecting.

(1) https://earth.org/the-destructive-truth-behind-aquariums/
(2) Tissot and Hallacher, 2003 (attached)

Ariola, Jetaime K

From: Sabrina Wren <sabrinaw@jacksdivinglocker.com>
Sent: Tuesday, February 17, 2026 9:33 PM
To: DBEDT SBRRB
Subject: [EXTERNAL] VOTE NO to new aquarium fish rules.
Attachments: IMG_2040.jpeg

Aloha, I hope this email finds you well.

My name is Sabrina. I am a scuba instructor at Jack's Diving Locker and as such I have an intimate understanding of the negative impacts that would follow allowing the removal of fish from Hawai'i reefs.

I know your time is valuable so I will make this brief.

1. The reef is already struggling. I have heard from many repeat customers that the reef looks much less healthy than it did compared to even a couple years ago. Removing fish will only make this worse.
2. Our customers, divers, are spending hundreds if not thousands of dollars purely on diving. These divers are here to see fish and by decreasing the abundance of fish and in return the health of the reef these divers will not come and invest time and money into the experience.
3. On a personal note, I rely on the reef for employment. Without the reef and the fish that call it home, I and many of my coworkers would be out of work.
4. There is no infrastructure in place to properly regulate collection. Without regulation there is no way to stop the taking of hundreds and thousands of fish from our reefs. 100,000 yellow tang is bad enough but there is nothing stopping them from taking more.
5. The Angelfish here are still recovering from aquarium fishing making them extremely shy and difficult to point out to customers. When approached the hide immediately. This could become an issue with all other fish if they are taught to fear divers.
6. Lastly it is just wrong. These fish belong in the waters of Hawai'i.

Thank you for taking the time to read my email. I have attached a photo of a beautiful female Whitley's Boxfish I saw a couple days ago. She was not shy at all and my divers had an amazing encounter with her. I hope the right decision is made to protect our beautiful island and ALL of it's residents.

Mahalo,
Sabrina

Kohala Coast
RESORT ASSOCIATION

February 17, 2026

Jonathan Shick, Chair
Small Business Regulatory Review Board
Department of Business Economic Development and Tourism
Hawaii State Capitol

Comments on HAR Title 13, Chapter 77.1 - Aquarium Fisheries Management

Dear Chair Shick, DBEDT Director Tokioka and Members of the Small Business Regulatory Review Board for the Department of Business Economic Development and Tourism,

On behalf of the Kohala Coast Resort Association, our 5,500 employees, and the nearly 20,000 Hawaii Island family members they directly support, thank you for the opportunity to provide comments on this important matter.

Our reefs are one of our most precious natural resources on Hawaii Island, and are a large reason that nearly 1.6 million visitors come to our island each year bringing billions to our economy. We believe it would be detrimental to take more than 100,000 yellow tang and more than 2,400 other types of reef fish away annually from this fragile ecosystem.

During the last decade, our reefs have been severely challenged due to coral bleaching, warmer temperatures, wastewater leaching and more robust hurricane seasons. Yellow tangs are an important part of a healthy reef environment as they are grazers who help keep algae down, so that coral polyps can find a place to settle and regrow.

Allowing less than a dozen small businesses to take from these resources in such large numbers is not sustainable, and could have severe impacts on our visitor industry – on businesses both large and small. And as the state's primary economic engine, we've seen how impactful tourism industry declines can be on other sectors – government, education, construction, and more.

Please, reconsider the impacts these rules would have on the other sectors that are so dependent on a healthy marine environment.

Sincerely,

Stephanie P. Donoho

Stephanie Donoho, Administrative Director
Kohala Coast Resort Association

Craig Anderson, Mauna Kea Resort –President
Charlie Parker, Four Seasons Hualalai – Vice President
Mark Goldrup, Waikoloa Beach Marriott – Secretary
Pete Alles, Mauna Lani, Auberge Resorts Collection – Treasurer
Pat Fitzgerald, Hualalai Investors and Mauna Lani Resort – Board of Directors
Daniel Scott, Rosewood Kona Village – Board of Directors
Samantha Jones, Fairmont Orchid – Board of Directors
Scott Head, Waikoloa Land Company – Board of Directors
Jim Russell, Hilton Waikoloa Village – Board of Directors
Rob Gunthner, Hilton Grand Vacations – Board of Directors

Hawaii Legislative Council Members

Joell Edwards
Wainiha Country Market
Hanalei

Russell Ruderman
Island Naturals
Hilo/Kona

Dr. Andrew Johnson
Niko Niko Family Dentistry
Honolulu

Robert H. Pahia
Hawaii Taro Farm
Wailuku

Maile Meyer
Honolulu

Tina Wildberger
Kihei Ice
Kihei

L. Malu Shizue Miki
Abundant Life Natural Foods
Hilo

Chamber of
Sustainable Commerce
808.445.7606
P.O. Box 22394
Honolulu, HI 96823

Small Business Regulatory Review Board
Thursday, February 19, 2026
10:00 a.m. No. 1 Capitol District Building 250 South Hotel Street,
Conference Room 436 Honolulu, HI 96813

Re: West Hawai'i Aquarium Fishing

Aloha,

On behalf of the Chamber of Sustainable Commerce, we express strong concern regarding any policy or action that would allow the large-scale removal of ~100,000 yellow tang (lau'ipala) and other reef fish from West Hawai'i's reefs—a decision that stands to negatively impact both our marine ecosystems and the local economy, especially the small businesses that depend on healthy reef environments.

The Chamber of Sustainable Commerce represents more than 580 small businesses, sole proprietors and entrepreneurs across Hawai'i committed to a triple bottom line: people, planet and prosperity.

The colorful fish and biodiversity of Hawai'i's coral reefs are more than ecological wonders—they are economic drivers. Research from the University of Hawai'i shows that reefs rich in species diversity and vibrant fish populations are closely tied to economic value, including tourism spending and local recreation that directly benefits small tourism and service businesses.

Healthy and abundant reef fish contribute significantly to the beauty, uniqueness, and visitor experience that draw people here. Their presence is a key part of the aha 'āina (sense of place) that motivates visitors to book snorkeling tours, dive charters, boat excursions, and stays in West Hawai'i—activities that internationally distinguish our islands from other destinations.

Small businesses in West Hawai'i—snorkel and dive tour operators, boat charters, surf schools, eco-tour companies, hotels, restaurants, and ground transportation providers—depend directly on the vibrancy of reef ecosystems for customer satisfaction. Visitors commonly rate snorkeling and

reef encounters as one of the highest memorable experiences during their trips. Visitors are drawn to live, healthy, fish-rich reef ecosystems; if fish abundance declines, satisfaction drops and it can undermine repeat bookings and referrals. Many small operators see peak bookings directly associated with the promise of abundant marine life. Tour operators in West Hawai'i rely on word-of-mouth and online reviews. Sightings of yellow tang and other reef fish feature prominently in trip reviews and marketing. Loss of fish can reduce bookings and revenue in a competitive tourism market.

When reef-based businesses lose revenue, that loss ripples through the local economy. Tour guides, support staff, boat maintenance contractors, equipment vendors, restaurants and lodging properties feel the contraction. Seasonal employees may see fewer hours; vendors sell less fuel, gear, food, and supplies; all of which compounds into reduced economic activity in our communities.

Hawai'i's ecosystem health translates into economic value through tourism and recreation. In contrast, practices that degrade fish populations or reef beauty will undermine the very asset our tourism and small business communities rely upon.

Beyond immediate economic impacts, removing tens of thousands of native reef fish undermines cultural values connected to the ocean and the aloha 'āina ethos that many visitors come here to honor. A diminished reef ecosystem affects keiki, kupuna, and future generations—not just financially, but culturally and ecologically.

In summary, maintaining reef fish abundance—including yellow tang and other species—is not only an ecological imperative but also a foundational economic asset for small businesses in West Hawai'i. Removing large numbers of fish will degrade visitor experiences, reduce bookings and customer satisfaction, strain employment opportunities, and create negative ripple effects through local supply chains and service sectors.

We ask that protections for our reef ecosystems and reef fish populations are prioritized, recognizing that healthy reefs and vibrant reef fish are directly tied to the wellbeing of West Hawai'i's small business economy and community resiliency.

Mahalo nui loa for your time and thoughtful consideration.

Ariola, Jetaime K

From: Teri Leicher <teri@jacksdivinglocker.com>
Sent: Tuesday, February 17, 2026 8:50 PM
To: DBEDT SBRRB
Cc: Jeff Leicher
Subject: [EXTERNAL] SBRRB regarding Aquarium fishing

Aloha,
My name is Teri Leicher.
I am an owner-operator of Jack's Diving Locker in Kailua-Kona and have been scuba diving, snorkeling and swimming along the Kona Coast regularly since 1982.
Prior to that, I grew up in Kailua, Oahu and worked for a dive shop where ... unless we were diving in Hanauma Bay, we would take wind up fish for folks to see. Live Fish were scarce in Waikiki

I am writing on behalf of my business, my customers, my friends, my family and especially our Keiki.
We are strongly against opening up the Kona Coast to any Aquarium trade.

REASONS NOT TO PERMIT COLLECTION OF WILD AQUARIUM FISHES:

1. Our Coral Reefs are still recovering from the 2015-16 Bleaching.

2. Many species are barely returning as our Coral Reefs still struggle to regrow.

3. The entire Reef and it's inhabitants are part Hawaii's fragile ecosystem. This includes the fish, the sea Urchins and the coral reefs. They need each other, living in a symbiotic relationship, in order to survive and thrive.
4. People who live in Hawaii as well as folks from all around the world come to Kona to enjoy looking at our healthy reefs. Taking away from our reefs is not a sustainable practice and will hurt numerous businesses over time. It will have a negative trickle-down effect.
5. Many of the species Aquarium Collectors want could be Bred in Captivity on land at NELHA. WHY NOT SUPPORT THIS? IT COULD BE A LUCRATIVE, NEW SMALL BUSINESS THAT DOES NOT TAKE FISH AWAY FROM OUR REEF ECOSYSTEM.

6. SOLUTION: Why not allow these permittees to work together with the help of DAR to obtain an SBA loan and possible grants to start an onshore fishery that would breed aquarium fish in captivity. This could be a very lucrative business that could help the State of Hawaii and be an educational draw for Kama'aina and visitors alike. Not to mention a future for job opportunities.

7. Or ... they can work with The Biota Group which breeds Yellow Tang in Captivity in conjunction with The Oceanic Institute of Hawaii Pacific University, in Waimanalo. Captive bred Yellow Tangs sell from $179.00 to over $300.00 per fish. That is a very sustainable business for The Aquarists and helps our environment by not taking away from it.

8. DAR says: "the new law states that the 7 permittees can only take a small amount of select species". One of the specials is yellow tang . When asked what the small amount was ... we were told, "ONLY up to 100,000 YELLOW TANK PER YEAR", total. ONLY?

9. Other species include our endemic Hinalea (saddle back wrasse), Bird Wrasse, Potters Angels (rarely seen since the bleaching), Thompsons surgeonfish (also scarce). Many of these fish are grazers. They have been helping our corals to recover by keeping algae's at bay.
10. Why would we allow a business that takes a resource away from Hawaii's , is not good environmentally ... and ... must be monitored to assure the laws are followed?
11. DAR will collect $100 per permit. There will be 7 permits offered ($700 total)

12. DAR says they will monitor catches and enforce the laws.
13. How can they pay for that with $700 per year? They say maybe General Fund? There are many agencies wanting to tap $ from the General Fund. OR our Ocean User Fee? That is supposed to be used for DAR to protect our resource ... not to have DAR create a problem that will need to monitor fish collection.

Let's look for solutions to create sustainable businesses that won't take away from our fragile reefs. Thank you for listening to our testimony Today.

Respectfully ,

Teri Leicher | Managing Partner
Jack's Diving Locker
75-5813 Ali'I Drive | Kailua Kona, HI 96740
tel (808) 329-7585 | fax (808) 329-7588
www.jacksdivinglocker.com

Teri Leicher | Managing Partner
Jack's Diving Locker
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DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77.1
Hawaii Administrative Rules

[INSERT DATE OF FINAL BLNR APPROVAL]

1. Chapter 13-77.1, Hawaii Administrative Rules, entitled "Aquarium Fishery Management", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 77.1

AQUARIUM FISHERY MANAGEMENT

Subchapter 1 General Provisions

§13-77.1-1 Applicability and scope
§13-77.1-2 Penalty
§13-77.1-3 Asset forfeiture
§13-77.1-4 Severability
§13-77.1-5 Definitions
§13-77.1-6 Prohibited activities; exemptions

§13-77.1-7 State of Hawai‘i aquarium fish permit
§13-77.1-8 Commercial aquarium collecting vessels; registration and marking requirements
§13-77.1-9 Commercial aquarium dealer registration and requirements

§13-77.1-10 Reserved

Subchapter 2 West Hawai‘i Aquarium Fishery

§13-77.1-11 Applicability
§13-77.1-12 West Hawai‘i prohibited activities
§13-77.1-13 West Hawai‘i geographical endorsement
§13-77.1-14 West Hawai‘i commercial aquarium species whitelist and annual catch limits (ACLs)

SUBCHAPTER 1

GENERAL PROVISIONS

§13-77.1-1 Applicability and scope. This chapter applies to the taking of marine life for aquarium purposes. [Eff] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-77.1-2 Penalty. (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter shall be subject to:

(1) Administrative penalties as provided by section 187A-12.5, HRS;
(2) Criminal penalties as provided by section 188-70, HRS;
(3) Revocation of their state of Hawai‘i aquarium fish permit, commercial marine license, commercial marine vessel license, commercial marine dealer license, or any other license or permit involved in the

violation or infraction pursuant to section 13-74-3; and

(4) Any other penalty as provided by law.

(b) In addition to any other penalties provided by law, any person whose permit has been revoked shall not be eligible to apply for another state of Hawai‘i aquarium fish permit until the expiration of one year from the date of revocation. [Eff] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-12.5, 187A-13, 190-5)

§13-77.1-3 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §199-7, ch. 712A)

§13-77.1-4 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff] (Auth: HRS §§187A-5, 190-3, 1-23) (Imp: HRS §§187A-5, 190-3, 1-23)

§13-77.1-5 Definitions. As used in this chapter, unless otherwise provided:

"Annual catch limit" or "ACL" is the maximum commercial harvest in a given fishing year established for any marine fishery subject to closure. The catch is measured in number of specimens collected through cumulative reported landings by state of Hawai‘i aquarium fish permittees.

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect,

capture or maintain marine life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold marine life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Marine life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Broodstock" means reproductively mature marine life that breed and produce offspring, usually collected for aquaculture or educational purposes.

"Commercial aquarium collection season" means the time period during which the taking of specimens of species of marine life, listed in a whitelist pursuant to subchapter 2, is allowed.

"Commercial aquarium collecting trip" means a one way or round trip in state marine waters aboard any aquarium collecting vessel where any taking of marine life for commercial aquarium purposes occurs, and generally includes when an aquarium collecting vessel has left port or shore until it puts into port or goes ashore, even if not to the point of origin.

"Commercial aquarium dealer" means any commercial marine dealer who purchases, obtains, exchanges, transfers, possesses, sells, or offers for sale any live specimen of marine life taken within the jurisdiction of the state for commercial aquarium purposes.

"Commercial aquarium purposes" means the taking or possession of marine life to hold alive in a state of captivity for profit, gain, or sale, or to barter, exchange, offer for sale, or purchase upon an offer for sale. For the purpose of this chapter,

"commercial aquarium purposes" does not include the taking of broodstock under a valid special activity permit issued by the department pursuant to section 187A-6, HRS, or any rule adopted thereunder; additionally, "commercial aquarium purposes" does not include the taking of marine life for educational or scientific purposes by non-profit organizations, educational institutions, or any other group or entity that charges only a nominal fee enough to cover administrative costs.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means a license issued by the department, pursuant to section 189-2, HRS, for the taking of marine life for commercial purposes as defined in section 189-2, HRS.

"Criminal aquatic resource violation" means a violation of any provision of Title 12, Subtitle 5, Hawaii Revised Statutes, "Aquatic Resources and Wildlife" or any rules adopted thereunder for which a person is found guilty of a petty misdemeanor or higher.

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

"Designee" means an individual on behalf of whom an organization applies for a state of Hawai‘i aquarium fish permit to allow that individual to take marine life for commercial aquarium fish purposes under the organization's approved final environmental assessment or final environmental impact statement relating to the taking of marine life for aquarium purposes.

"Division" means the division of aquatic resources.

"Environmental impact statement" or "EIS" means an informational document prepared in compliance with chapter 343, HRS, and chapter 11-200.1. The initial EIS filed for public review is referred to as the DEIS and is distinguished from the FEIS, which is the

document that has incorporated the public's comments and the responses to those comments. The FEIS is the document that shall be evaluated for acceptability by the accepting authority.

"Final environmental assessment" means the environmental assessment submitted by an approving agency following the public review and comment period for the draft EA and in support of a FONSI.

"Finding of no significant impact" or "FONSI" means a determination by an agency based on an EA that an action not otherwise exempt will not have a significant effect on the environment and therefore does not require the preparation of an EIS.

"Fine mesh aquarium net" or "fine mesh aquarium trap" means any trap or net with a mesh size smaller than what is allowed by law and is used to take marine life for aquarium purposes.

"Fine mesh hand net" or "fine mesh scoop net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle with a stretched mesh of less than two inches. The net is small enough to use with one hand by one person.

"Fishing gear" means a pole, line, hook, net, trap, spear, or other device that is designed to catch, take, or harvest marine life.

"Geographical endorsement" means an addition to the state of Hawai‘i aquarium fish permit that authorizes the holder to use their permit in a specific geographic region.

"HEPA exemption" means a finding by the department, in its capacity as an approving authority pursuant to chapter 343, HRS, and chapter 11-200.1, that a proposed applicant action is covered under one or more of the exempted specific actions listed in part 1 and general types of actions listed under part 2 of the department's exemption list, established pursuant to chapter 11-200.1, subchapter 8.

"Hīnālea ‘i‘iwi" means any fish known as *Gomphosus varius* or any recognized synonym. Hīnālea ‘i‘iwi are also known as bird wrasse.

"Initial application" means the first application submitted for a permittee where the permittee has not been previously issued a state of Hawai‘i aquarium fish permit pursuant to this chapter.

"Lau‘īpala" means any fish known as *Zebrasoma flavescens* or any recognized synonym. Lau‘īpala are also known as yellow tang.

"Live rock" means any natural hard substrate to which marine life is visibly attached or affixed.

"Mā‘i‘i‘i" means any fish known as *Acanthurus nigrofuscus* or any recognized synonym. Mā‘i‘i‘i are also known as brown surgeonfish.

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

"Non-commercial aquarium purposes" means the taking or possession of marine life to hold alive in a state of captivity for personal, cultural, or recreational use, and not for compensation of any kind.

"Party" means a named applicant on a final environmental assessment or final environmental impact statement that has been accepted pursuant to chapter 343, HRS, and chapter 11-200.1.

"Potter's angelfish" means any fish known as *Centropyge potteri* or any recognized synonym.

"Sell" means to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

"State of Hawai‘i aquarium fish permit" means a permit issued by the department to take marine life for commmercial aquarium purposes.

"State of Hawai‘i aquarium fish permittee" means any person with a valid State of Hawai‘i aquarium fish permit issued by the department to take marine life for commercial aquarium purposes.

"Thompson's Surgeonfish" means any fish known as *Acanthurus thompsoni* or any recognized synonym.

"Whitelist" means a list of species of marine life that may be taken for commercial aquarium purposes. [Eff] (Auth: HRS §§187A-5, 190-3) (Imp: HRS §§187A-5, 190-3)

§13-77.1-6 Prohibited activities; exemptions. (a) Except as provided in subsections (b) and (c), it is unlawful to take marine life for aquarium purposes without a valid state of Hawai‘i aquarium fish permit issued by the department pursuant to section 7.

(b) Any person may, without a valid state of Hawai‘i aquarium fish permit, take up to five specimens of marine life per person per day for non-commercial aquarium purposes, provided that the marine life is taken in compliance with all laws of the state including bag limits, size limits, open and closed seasons, gear restrictions, and licensing and permit requirements.

(c) The department may issue special activity permits pursuant to section 187A-6, HRS, or any rules adopted thereunder, to allow any action that would otherwise be prohibited by this chapter.

(d) No person aboard any vessel shall engage in commercial aquarium collecting activities unless the vessel complies with the restrictions and requirements of section 8. [Eff] (Auth: HRS §§187A-5, 188-53, 190-3) (Imp: HRS §§187A-5, 188-53, 190-3)

§13-77.1-7 State of Hawai‘i aquarium fish permit. (a) Applications for the issuance or renewal of state of Hawai‘i aquarium fish permits and geographical endorsements will be accepted by the division for a period of thirty days from the effective date of this chapter and from October 1 until November 30 of each year thereafter, provided that:

(1) Any application received outside of the aforementioned application periods will be denied and a new application will need to be submitted for the following application period;
(2) Upon receipt of an application, DAR will review each application within a reasonable time period and inform the applicant if more information is needed to satisfy all the application requirements;
(3) When all application requirements are fulfilled, DAR will provide a statement of preliminary approval indicating that the applicant has satisfied the department that they have met all the necessary application requirements and criteria to receive a state of Hawai‘i aquarium fish permit with any applicable geographical endorsement as requested in the application;
(4) After the close of each application period, DAR will conduct a final review of all applications received and will inform each applicant whether or not the application has been approved or denied within ten business days, clearly specifying the basis for which any denial was made;
(5) The state of Hawai‘i aquarium fish permit fee is $100, which shall be paid, as specified by the division, prior to issuance of a State of Hawai‘i aquarium fish permit to an approved applicant;
(6) Upon receipt of the appropriate fee payment, the division shall send each state of Hawai‘i aquarium fish permit and applicable geographical endorsement(s), including any applicable terms and conditions, to each approved applicant within five business days.

(b) In addition to the general license provisions in ch. 13-74, subchapter 1, the following terms and conditions apply for all state of Hawai‘i aquarium fish permits:

(1) A state of Hawai‘i aquarium fish permit:
    (A) Shall be valid for a period of not more than one year and shall expire on December 31 of each year;
    (B) Is non-transferable; and
    (C) May not be used by anyone other than the permittee named on the permit.
(2) Each valid state of Hawai‘i aquarium fish permit shall include at least one geographical endorsement issued pursuant to this chapter, and each state of Hawai‘i aquarium fish permit shall only be valid for use in the geographical region(s) covered under the geographical endorsement(s) attached to the state of Hawai‘i aquarium fish permit.
(3) Each geographical endorsement issued pursuant to this chapter shall include a clear description of the region covered under the geographical endorsement as well as any region-specific terms and conditions such as:
    (A) Gear restrictions;
    (B) Species whitelist;
    (C) Bag limits;
    (D) Size limits;
    (E) Open and closed seasons;
    (F) Annual catch limits;
    (G) Individual catch quotas; and
    (H) Any other region-specific term and condition as the department finds necessary to carry out the purpose of this chapter.
(4) Any state of Hawai‘i aquarium fish permit applicant wishing to take marine life for commercial aquarium purposes must satisfactorily demonstrate to the division that they:
    (A) Have a valid commercial marine license issued by the department pursuant to section 13-74-20, and section 189-2, HRS;

(B) Are a party of an approved environmental assessment with a finding of no significant impact (EA/FONSI) or an accepted environmental impact statement (EIS) relating to the taking of marine life for aquarium purposes covering the area of the geographical endorsement requested, provided that:

(i) If the applicant is a group or organization, the organization may, on an initial application for a state of Hawai‘i aquarium fish permit, name a designee to receive the permit under the organization's EA/FONSI or approved EIS;

(ii) It is the sole responsibility of the designee to ensure they satisfy all other application requirements; and

(iii) Upon approval of the application and issuance of a state of Hawai‘i aquarium fish permit, it is the sole responsibility of the designee to comply with all terms and conditions of the state of Hawai‘i aquarium fish permit and any attached geographical endorsement;

(C) Have not been convicted of a criminal aquatic resource violation within the past five years; and

(D) Possess facilities to and can maintain fish and other marine life alive and in reasonable health.

(5) Any person with a valid state of Hawai‘i aquarium fish permit and geographical endorsement issued pursuant to this chapter may use fine mesh aquarium nets and traps to take marine life for commercial aquarium purposes pursuant to the terms and conditions of their state of Hawai‘i

aquarium fish permit and geographical endorsement.

(6) All marine life collected for aquarium purposes must be documented in a written "at sea report" prior to the aquarium collecting vessel's final departure to the landing port, provided that:

(A) "At sea reports" must be submitted to the division electronically, in a manner specified by the division in the terms and conditions of the permit or geographical endorsement, prior to final departure to the landing port, except that in areas where there is no mobile connectivity, reports must be submitted as soon as mobile connectivity returns and prior to landing;

(B) For commercial aquarium collecting trips in which more than one state of Hawai‘i aquarium fish permittee participates, only one "at sea report" is required to fulfill the "at sea report" requirement for all permittees on the trip as long as the "at sea report" clearly states the name, permit number, and number of specimens of each species taken by each permittee that participated in the trip;

(C) Collectors may create their own reporting forms, provided that the reporting form includes the following information:

(i) Date of the commercial aquarium collecting trip;

(iii) Port of landing;

(iv) Vessel identification number;

(v) Commercial marine vessel license number, if applicable;

(vi) Vessel operator name and commercial marine license number,

if operator is not covered under a commercial marine vessel license;

(vii) Name and permit number of all state of Hawai‘i aquarium fish permittees participating in the commercial aquarium collecting trip;

(viii) Number of each whitelist species collected by each permittee; and

(ix) Any other additional information as requested by the division;

(D) Once reported at sea, all marine life, must be retained and remain in the possession of the reporting permittee until their transfer to a registered commercial aquarium dealer, except that dead marine life collected under the permit may be disposed of prior to the transfer, provided that all dead marine life is reported in accordance with subsection (b)(8); and

(E) The total number of fish reported at sea for each species shall not differ by more than five percent of the actual number landed.

(7) Within one calendar day after the end of each commercial aquarium collecting trip and before submission of a final aquarium catch report, all live marine life caught must be transferred to a registered commercial aquarium dealer.

(8) A final aquarium catch report with confirmed catch numbers shall be submitted within one calendar day after the end of each commercial aquarium collecting trip, provided that:

(A) The department shall provide the permittee with blank report forms or, if submitted electronically, with the necessary digital reporting form to fulfill the requirements of this section;

(B) Only reports submitted using the DAR-provided report form or digital reporting form will be accepted; and

(C) Reports shall include:

(i) All marine life taken, including organisms that died while in possession of the permittee;

(ii) Total number of mortalities by species while in the possession of the permittee; and

(iii) The name, contact information, and commercial marine dealer license number of each dealer sold to.

(9) Any net or container employed underwater to capture or hold marine life alive for aquarium purposes, must be labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment.

[Eff] (Auth: HRS §§187A-5, 188-31, 188-53, 190-3) (Imp: HRS §§187A-5, 188-31, 188-53, 190-3)

§13-77.1-8 Commercial aquarium collecting vessels; registration and marking requirements. (a) All commercial aquarium collecting vessels shall:

(1) Be registered every year with the division. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;

(2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure, provided that the "AQ" letters do not need to be displayed or visible when the vessel is not engaged in an commercial aquarium collecting trip. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three

inches wide in either black or a color that contrasts with the background;

(3) Fly a "stiffened" flag or pennant with the letter "A", as specified by the department, in a manner and location on the boat where the flag or pennant is clearly visible from all sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard, provided that the department shall make available for purchase the specified flag or pennant "at cost" to aquarium permittees;

(4) Display a dive flag at all times when divers are in the water; and

(5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(b) Neither a valid state of Hawai‘i aquarium fish permit nor a valid geographical endorsement authorizes assistance by non-permitted individuals during any aquarium collecting activities. However, non-permitted individuals may participate in a commercial aquarium collecting trip, provided that:

(1) Non-permitted individuals shall not engage in any aquarium collecting activities;

(2) For the purpose of accompanying a state of Hawai‘i aquarium fish permittee as a safety dive partner, up to one non-permitted individual is allowed in the water; and

(3) All non-permitted individuals must either have a valid individual commercial marine license or be covered by a valid commercial marine vessel license issued for the commercial aquarium vessel.

[Eff] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-77.1-9 Commercial aquarium dealer registration and requirements. (a) It is unlawful for any person to purchase, obtain, exchange, transfer, or sell any live specimen of marine life taken within the jurisdiction of the state for commercial aquarium purposes without first registering as a commercial aquarium dealer, provided that a state of Hawai‘i commercial aquarium permittee may sell their catch to a registered commercial aquarium dealer without registering as a commercial aquarium dealer.

(b) It is unlawful for any person to purchase, obtain, exchange, transfer, or sell any non-whitelist species of marine life taken within the jurisdiction of the state for commercial aquarium purposes.

(c) Only a person with a valid commercial marine dealer license issued pursuant to section 13-74-45 is eligible to register as a commercial aquarium dealer.

(d) A registered commercial aquarium dealer must comply with the requirements of section 189-11, HRS.

(e) When the commercial aquarium fishing season for a given species is closed due to an ACL being reached, no specimens of that species may be purchased, obtained, exchanged, transferred, possessed, or sold, provided that specimens obtained prior to the date of closure may be possessed and sold after the date of closure.

(f) Every registered commercial aquarium dealer shall include with their weekly commercial marine dealer report, required pursuant to section 13-74-46, a report of the total number of specimens of each species exported out of the state for commercial aquarium purposes. [Eff] (Auth: HRS §§189-10, 189-11, 187A-5, 188-31.5, 188-53, 190-3) (Imp: HRS §§189-10, 189-11, 187A-5, 188-31.5, 188-53, 190-3)

§13-77.1-10 Reserved.

SUBCHAPTER 2

§13-77.1-11 Applicability. This subchapter applies to the taking of marine life for aquarium purposes from the "West Hawaiʻi Regional Fishery Management Area, Hawaiʻi" (WHRFMA) as described in section 13-60.4-2. [Eff] (Auth: HRS §§187A-5, 188F-6, 190-3) (Imp: HRS §§187A-5, 188F-3, 190-3)

§13-77.1-12 West Hawaiʻi prohibited activities. (a) In addition to the restrictions and requirements in chapter 13-60.4 and any other restriction or requirement provided by law, it is unlawful to:

(1) Take marine life for commercial aquarium purposes within the WHRFMA without a valid:
   (A) State of Hawaiʻi aquarium fish permit issued pursuant to subchapter 1; and
   (B) West Hawaiʻi geographical endorsement issued pursuant to this subchapter; and
(2) Possess aquarium collecting gear, or take or possess any specimen of marine life for aquarium purposes between sunset and sunrise, provided that collecting gear or collected marine life may be possessed after sunset or before sunrise if notification by phone is made to the division's West Hawaiʻi office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or marine life and the location where the possession will take place. [Eff] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-3, 190-3)

§13-77.1-13 West Hawaiʻi geographical endorsement. (a) The department may issue a West Hawaiʻi geographical endorsement authorizing state of

Hawai‘i aquarium fish permittees to take marine life for commercial aquarium purposes within the WHRFMA, subject to the regulations in this subchapter. [Eff] (Auth: HRS §§187A-5, 188-31, 188-35, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-31, 188-35, 188F-3, 190-3)

§13-77.1-14 West Hawai‘i commercial aquarium species whitelist and annual catch limits (ACLs). (a) Except as prohibited in section 13-60.4-5, subsection (b), state of Hawai‘i aquarium fish permittees may take or possess within the WHRFMA, for commercial aquarium purposes, only specimens of the following whitelist of species, provided that the yearly amount taken for each species does not exceed the ACL for each species indicated below:

(1) 100,000 lau‘īpala (*Zebrasoma flavescens*);
(2) 1,086 Potter's angelfish (*Centropyge potteri*);
(3) 800 mā‘i‘i‘i (*Acanthurus nigrofuscus*);
(4) 344 hīnālea ‘i‘iwi (*Gomphosus varius*); and
(5) 182 Thompson's Surgeonfish (*Acanthurus thompsoni*).

(b) Take for commercial aquarium purposes of each whitelist species listed in subsection (a) shall be tallied beginning on January 1 of each year and end when the ACL is reached or on December 31 of each year, whichever occurs sooner, provided that:

(1) When the tallied yearly catch is within five percent of the ACL for any given species, the department shall notify all State of Hawai‘i aquarium fish permittees with a West Hawai‘i geographical endorsement and all registered commercial aquarium dealers that the commercial aquarium fishing season within the WHRFMA will soon close for the species whose ACL is close to being reached;
(2) Unless written notice is specifically requested, official notice of a season closure shall be made electronically by email to the email address on file with the

department no less than three days prior to the closure of the season;

(3) Upon timely receipt of a request for written notice of a season closure, notice shall be mailed to the address on file with the department, post-marked no less than three days prior to the closure of the season;

(4) Supplemental notice may be made by posting an announcement on the division's website;

(5) Following a species-specific closure for any of the species listed in subsection (a) due to commercial take of that species reaching or exceeding the established ACL, it is unlawful for any permittee to take or possess any live specimens of the closed species within the WHRFMA for the remainder of the calendar year; and

(6) If the yearly catch exceeds the ACL for any species, the number of specimens over the ACL shall be subtracted from that species' ACL for the following year."

[Eff] (Auth: HRS §§187A-5, 188-53, 188F-6, 189-2, 189-10, 190-3) (Imp: HRS §§187A-5, 188-53, 8188F-3, 189-2, 189-10, 190-3)

2. Chapter 13-60.4, Hawaii Administrative Rules, entitled "West Hawai‘i Regional Fishery Management Area, Hawai‘i", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI‘I REGIONAL FISHERY MANAGEMENT AREA, HAWAI‘I

§13-60.4-1	Intent and purpose
§13-60.4-2	Geographical jurisdiction of chapter provisions
§13-60.4-3	Definitions
§13-60.4-4	Activities prohibited within the West Hawai‘i regional fishery management area
§13-60.4-5	Activities prohibited within selected areas
§13-60.4-6	Lay net permit and use requirements
§13-60.4-7	Aquarium collecting permit and vessel registration requirements
§13-60.4-8	Penalty
§13-60.4-8.5	Asset forfeiture
§13-60.4-9	Severability

Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren, and comp 8/1/05; R 12/26/13]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai‘i regional fishery management area shall be to:

(1) Establish the West Hawai‘i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
(2) Ensure the sustainability of the State's nearshore ocean resources;
(3) Identify areas with resource and use conflicts;
(4) Minimize user conflicts and resource depletion in the West Hawai‘i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
(5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
(6) Identify areas and resources of statewide significance for protection;
(7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
(8) Facilitate the substantive involvement of

the community in resource management decisions for the West Hawai‘i regional fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff 12/26/13; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall apply to the West Hawai‘i regional fishery management area, bounded by the west coast of Hawai‘i Island, from Ka Lae, Ka‘ū (South Point) to ‘Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority.

(b) The following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the West Hawai‘i regional fishery management area (as depicted in the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

(1) Ka‘ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka‘ūpūlehu ahupua‘a and to the south by the southern side of Kikaua Point (south of Kūki‘o Bay);

(2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;

(3) Puakō-‘Anaeho‘omalu fish replenishment area, identified on shore to the north by the

southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of ʻAnaehoʻomalu Bay (Kapalaoa);

(4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwāloli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwaʻa Point and to the south by Noio Point;

(5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;

(6) Red Hill fish replenishment area, identified on shore to the north at Nenue Point and to the south by Keawakāheka Point;

(7) Nāpoʻopoʻo-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Puʻuhonua o Hōnaunau (Kiʻilae);

(8) Hoʻokena fish replenishment area, identified on shore to the north by Loa Point and to the south by Kaʻū Loa Point;

(9) Kaʻohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Kaʻū Loa Point, and to the south by signage north of ʻAuʻau Point;

(10) Miloliʻi fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;

(11) Kikaua Point-Mākoleʻā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākoleʻā Point (near Kekaha Kai State Park);

(12) Nenue Point–Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
(13) Hanamalo Point–Kanewa‘a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu‘a Bay, and to the south by Kanewa‘a Point, South Kona; and
(14) Kanonone–Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, Ka‘ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area.

The seaward boundary of each area shall be determined by an imaginary line drawn along the one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai‘i regional fishery management area:

(1) Lapakahi marine life conservation district, as described in chapter 13-33;
(2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
(3) Wailea Bay marine life conservation district, as described in chapter 13-35;
(4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
(5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
(6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
(7) Kīholo Bay fisheries management area, as described in chapter 13-60;
(8) Kailua Bay fisheries management area, as described in chapter 13-52;
(9) Keauhou Bay fisheries management area, as described in chapter 13-57;
(10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai‘i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai‘i regional fishery management area any activity otherwise prohibited by

law or rules adopted by the department of land and natural resource or any other department of the State. [Eff 12/26/13; am 7/29/16; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

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

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

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

"Deploy" means to place the specified gear in the water, in whole or in part.

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to deploy and retrieve the line, and the use of a landing net to land hooked fish.

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa‘ipa‘i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Natural fibers" means fibers derived wholly from plant materials including, olonā, linen, cotton, hemp, and sisal.

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

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

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"Whitelist" means a list of species of marine

life that may be taken for aquarium purposes. [Eff 12/26/13; am 7/29/16; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai‘i regional fishery management area. While within the West Hawai‘i regional fishery management area, no person shall:

(1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);

(2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than two inches in total length;

[~~(3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:~~

~~(A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the Division of Aquatic Resources West Hawai‘i (DAR-Kona) office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;~~

~~(B) Without holding a valid West Hawai‘i~~

~~aquarium permit issued pursuant to section 13-60.4-7(a);~~

~~(C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or~~

~~(D) While occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d);~~

~~(4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;~~

~~(5)~~] (3) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; or

[~~(6)~~] (4) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff 12/26/13; comp 3/11/23; am and comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may:

(1) Collect aquatic life for aquarium purposes; or

(2) Possess any aquarium collecting gear, or

take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

(1) Puakō-ʻAnaehoʻomalu fish replenishment area;

(2) Kikaua Point-Mākoleʻā netting restricted area (Kekaha Kai State Park);

(3) Nenue Point(Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;

(4) Hanamalo Point-Kanewaʻa Point netting restricted area;

(5) Kanonohe–Kalīpoa netting restricted area; and

(6) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Kaʻūpūlehu marine reserve no person may:

(1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus* (ʻōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi),

Pristipomoides zonatus (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpuʻupuʻu), *Aprion virescens* (uku), *Lutjanus kasmira* (taʻape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus spp.* (ʻahi and tombo), Family Istiophoridae (aʻu), *Acanthocybium solandri* (ʻono), *Coryphaena spp.* (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;

(2) Possess any specimen of marine life other than the species listed in subsection (d)(1) above;

(3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or

(4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Kaʻūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Kaʻūpūlehu community and other interested parties, whichever occurs later. [Eff 12/26/13; am 7/29/16; am and comp 3/11/23; comp](Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-60.4-6 Lay net permit and use requirements. (a) It is unlawful for any person within the West Hawaiʻi regional fishery management area to:

(1) Possess or use a lay net without first

obtaining a lay net permit pursuant to section 13-75-12.4;

(2) Possess or use more than one lay net;

(3) Possess or use a lay net:

(A) Longer than one hundred twenty-five feet in length or more than seven feet in stretched height;

(B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or

(C) With two or more joined lay nets with a combined total length of more than two hundred fifty feet;

(4) Possess or use a multi-panel lay net; or

(5) Possess or use a lay net that does not have at least four identification tags as specified by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person lay net fishing to:

(1) Use a lay net that is not marked by buoys as specified by the department. The buoys shall legibly display the lay net permit number of the person using the lay net, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;

(2) Use a lay net within one thousand two hundred feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;

(3) Use a lay net in water that is more than eighty feet in depth;

(4) Use a lay net for more than four hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;

(5) Leave a lay net unattended for any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;

(6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;

(7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or

(8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours.

(c) It is unlawful for any person to falsely identify any lay net.

(d) Persons using a vessel or float may use a total maximum of two hundred fifty feet of lay net, provided that at least two persons are present and associated with the same vessel or float.

(e) Any lay net within the West Hawai‘i regional fishery management area that does not have proper identification tags, as required in subsection (a)(1) and (a)(5), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.

(f) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and

three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession for commercial aquarium purposes under [~~an~~] a valid State of Hawai‘i aquarium fish permit [~~and~~] with a valid West Hawai‘i [~~aquarium permit~~] geographical endorsement issued [~~under section 13-60.4-7(a).~~] pursuant to chapter 13-77.1. [Eff 12/26/13; am and comp 3/11/23; am and comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

[~~**§13-60.4-7 Aquarium collecting permit and vessel registration requirements.** (a) West Hawai‘i aquarium permit. The department may issue West Hawai‘i aquarium permits authorizing persons to engage in aquarium collecting activities for species listed in subsection (b) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai‘i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai‘i regional fishery management area without first having been issued and possessing a West Hawai‘i aquarium permit in addition to a valid State of Hawai‘i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai‘i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai‘i aquarium permit until the expiration of one year from the date of revocation.~~

~~(b) Aquarium species whitelist. In addition to~~

~~other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles* (Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatissimus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:~~

~~(1) No *Zebrasoma flavescens* (yellow tang) may be~~

~~taken or possessed in violation of section 13-60.4-4(2);~~

~~(2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time; and~~

~~(3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.~~

~~(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:~~

~~(1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;~~

~~(2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three inches wide in either black or a color that contrasts with the background;~~

~~(3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard;~~

~~(4) Display a dive flag at all times when divers~~

~~are in the water; and~~

~~(5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.~~

~~(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.~~

~~(e) Nothing in this chapter shall prevent the department from establishing another control date.~~] [Eff 12/26/13; comp 3/11/23; r] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

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

(2) Criminal penalties as provided by sections 187A-13 and 188-70, HRS; and

(3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 12/26/13; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-8.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 3/11/23; comp] (Auth: HRS §188-53) (Imp: HRS §199-7, ch. 712A)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff 12/26/13; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

3. Chapter 13-75, Hawaii Administrative Rules, entitled "Rules Regulating the Possession and Use of Certain Fishing Gear", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCES MANAGEMENT

CHAPTER 75

RULES REGULATING THE POSSESSION AND USE OF CERTAIN FISHING GEAR

§13-75-1 Definitions
§13-75-2 Penalty
§13-75-2.5 Asset forfeiture
§13-75-3 Severability
§13-75-4 Disposal of fishing gear
§13-75-5 Explosives
§13-75-6 Electrofishing devices
§13-75-7 Poisonous substances
§13-75-8 Firearms
§13-75-9 Spears
§13-75-10 Throw nets
§13-75-11 Drift gill nets
§13-75-12 Gill nets
§13-75-12.2 Akule nets
§13-75-12.4 Lay nets
§13-75-12.5 State waters around Moloka‘i, special rules
§13-75-13 Bullpen traps
§13-75-14 Nets, generally
§13-75-15 Traps

§13-75-1 Definitions. As used in this chapter, unless otherwise provided:

"Akule" means any fish identified as *Selar crumenophthalmus* or any recognized synonym. Akule are also known as pā‘ā‘ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that

keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net very visible and made of small mesh to prevent the fish from passing through the mesh.

"Bag net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a fence net in the water in such a manner as to completely encircle the aquatic life. The fence net primarily acts like a barrier to hold or concentrate the aquatic life within the net. The mesh is smaller than the target species so as to prevent the smaller aquatic life from swimming through or entangling in the mesh. The aquatic life is then moved into the bag net for removal from the water. The main characteristics of the bag net fishing method are the closed net configuration, the moving net, person or persons do not chase the aquatic life into the net, and most, if not all, of the aquatic life within the net are captured.

"Bullpen trap" means a type of fishing gear that has a pen and guide or guides of a length or lengths of net or material designed to guide aquatic life into the pen situated to prevent the escape of some or all of the aquatic life entering the pen, whether or not the guide or guides are connected to the pen.

"Closed net configuration" means a net that is deployed in a manner in which the net acts as a physical barrier that prevents or impedes the escape of aquatic life that are too large to pass through the mesh. A net so deployed in a series of baffles or in a complete circle will not allow large fish to escape capture, even if the fish are not entangled in the mesh.

"Commercial aquarium fish collector" means any person who takes marine life for commercial aquarium purposes.

"Commercial marine licensee" means any person that has been issued a commercial marine license pursuant to section 189-2, HRS, and section 13-74-20.

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

"Freshwater stream" means any river, creek, canal, ditch, or other natural or artificial watercourse with a defined bed or channel in which freshwater flows, either continuously or periodically. This includes portions of freshwater streams that may contain brackish water or saltwater periodically, such as at high tide or during times of low or no freshwater flow.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings large enough to permit the heads of fish to pass through, ensnaring them around the gills when they attempt to escape.

"Gold-spot herring" means any fish identified as *Herklotsichthys quadrimaculatus* or other recognized synonyms.

"Hand net" means a net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person.

"'Iao" means any fish known as *Atherinomorus insularum* or any recognized synonym. 'Iao are also known as Hawaiian silverside or Hawaiian Islands silverside.

"Landing net" means a hand net that is used to further secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from becoming unhooked or lost.

"Lay net" means a gill net that is used in lay net fishing.

"Lay netting" or "lay net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of

deploying a gill net in the water in a specific location, then retrieving the gill net from the same location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the stationary lay net. The lay net is most commonly deployed in a straight line or semi-circular configuration. The main characteristics of lay net fishing are the open net configuration, the stationary net, person or persons may chase the aquatic life into the net, and only aquatic life that becomes entangled in the net mesh are captured. This fishing method is also known as set netting, cross netting, paʻipaʻi netting, and moemoe netting.

"Makiawa" [~~or "mikiawa"~~] means any fish [~~identified~~] known as *Etrumeus teres* or *Etrumeus micropus* or other recognized synonyms. Makiawa is also known as mikiawa or ʻōmaka.

"Marquesan sardine" means any fish identified as *Sardinella marquensis* or other recognized synonyms.

"Multi-panel lay net" means a lay net consisting of two or more layers of netting, usually of different mesh size. This gear is also known as a trammel net.

"Nehu" means any fish identified as *Encrasicholina purpurea* or other recognized synonyms.

[~~"ʻOpae"~~] "ʻŌpae" or [~~"shrimp" or other recognized synonyms~~] means an invertebrate crustacean of the Order Decapoda, but other than lobsters, crabs, or crayfish. ʻŌpae are also known as shrimp.

"ʻŌpelu" means any fish of the genus *Decapterus*. ʻŌpelu are also known as mackerel scad.

"Pua" means any juvenile fish of the species *Mugil cephalus* or any recognized synonym. Pua are also known as pua ʻama, pua ʻamaʻama, pua poʻolā, or pua ʻoʻolā. Individuals of this species at other life stages are known as kahaha, ʻamaʻama, or ʻanae. All life stages of this species are generally known as striped mullet.

"Resident" means an individual that has established the individual's primary residence and worked in the State continuously for a period of

twelve months or longer immediately prior to applying for or obtaining a license or permit, or has filed or paid the individual's State income taxes for the previous tax period, or has established domicile in the State. Domicile may be established by providing documentation including a valid Hawai‘i driver's license or identification card, a valid school identification card, or any other official document issued to the individual within the previous thirty days from a government agency, financial institution, insurance company, or utility company.

"State of Hawai‘i aquarium fish permit" means a permit issued by the department to take marine life for aquarium purposes.

"State of Hawai‘i aquarium fish permittee" means any person with a valid State of Hawai‘i aquarium fish permit issued by the department to take marine life for aquarium purposes.

"Stony coral" means any of the invertebrate species belonging to the Order Scleractinia, characterized by having a hard calcareous skeleton, that are native to the Hawaiian islands.

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the net mesh as measured when the eye is stretched to its maximum size.

"Surround gill netting or surround gill net fishing method" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the surround gill net. The main characteristics of surround gill net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear,

equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life. This gear is also known as a cast net.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within.

"Using" means placing in the water or attempting to place in the water. [Eff 12/3/98; am 1/11/02; am and comp 3/2/07; am and comp 3/11/23; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-2 Penalty. (a) Any person violating any provision of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, shall be subject to:

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

(2) Criminal penalties as provided by sections 187A-13, 188-70, and 189-4, HRS; and

(3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §§187A-5) (Imp: HRS §§187A-12.5, 187A-13, 188-70, 189-4)

§13-75-2.5 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter or the terms and conditions of any license or permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §199-7, ch. 712A)

§13-75-3 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/3/98; comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

§13-75-4 Disposal of fishing gear. It is unlawful to discard or otherwise dispose of any fishing net, trap, or gear with netting, or parts thereof, in the waters of the State. Any person violating this section shall be subject to penalty under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-5 Explosives. (a) It is unlawful to possess or use on or near state waters, any explosives or blasting fuse caps, for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of explosives consistent with other legal requirements.

(c) Any person found to have violated subsection (a) shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-6 Electrofishing devices. (a) It is unlawful to possess or use on or near state waters, any electrofishing devices or any source of electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits for the use of electrofishing devices consistent with other legal requirements.

(c) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-7 Poisonous substances. (a) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life, any of the following:

(1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;

(2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;

(3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus, Hura crepitans, Piscidia erythrina, Tephrosia purpurea, Wikstroemia spp.*; or

(4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

(b) The department may issue permits to allow the possession or use of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

(c) The possession of these substances without a permit issued by the department by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

(d) Any person found to have violated subsection (a) of this provision shall be guilty of a class C felony as provided under 188-70(b), HRS. [Eff 12/3/98; am and comp 3/2/07; comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-23) (Imp: HRS §§187A-5, 188-23)

§13-75-8 Firearms. (a) No person shall pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish, except tuna and billfish that have been caught and gaffed, in the State with firearms as defined in section 134-1, HRS.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed in violation of this section, or offered for sale after being taken or killed in violation of this section, shall be confiscated and offered as evidence.

(c) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Evidence of each specimen may constitute a separate offence. Enforcement of any

offense under this section shall not preclude any prosecution under chapter 134, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-9 Spears. (a) No person shall pursue, take, or kill any crustacean (except introduced freshwater prawns), turtle, or aquatic mammal in the State with a spear.

(b) Any crustacean, mollusk, aquatic mammal, or fish taken or killed or offered for sale in violation of this section shall be confiscated and offered as evidence.

(c) No person shall take any fish by the use of spears, or possess any speared fish which is smaller than the minimum size for the fish as specified in chapter 13-95, HAR, or any rule adopted under section 187A-5, HRS. Any person violating this provision for the first time shall receive a citation. Evidence of each specimen may constitute a separate offense. Any subsequent violation shall be punished as provided for in sections 187A-12.5 and 188-70, HRS; provided that the first subsequent violation shall be considered a first violation for the purposes of section 187A-13, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-10 Throw nets. (a) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a mesh of less than two inches stretched mesh.

(b) It shall be unlawful for any person to sell or to offer for sale any throw net with a mesh of less than two inches stretched mesh.

(c) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp

3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-11 Drift gill nets. (a) It is unlawful for any person to possess or use any drift gill net in the waters of the State.

(b) Any person violating this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12 Gill nets. (a) It is unlawful for any person engaged in gill net fishing to:

(1) Leave the person's net unattended for any amount of time; or

(2) Leave the net in the water for a period of more than four hours in any twenty-four hour period.

(b) A person engaged in gill net fishing shall complete a visual inspection of the entire net within two hours after the net is first deployed and shall release any threatened, endangered, prohibited, or unwanted species.

(c) Any person violating this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.2 Akule nets. (a) It is unlawful for any person without a valid commercial marine license to take akule with any net that has less than two and three-fourths inches stretched mesh, except as provided in subsection (e) or as may be otherwise provided by law.

(b) It is unlawful for any person without a valid commercial marine license to take akule while using the bag net fishing method.

(c) Except as provided in subsection (e) or as may be otherwise allowed by law, it is unlawful for any commercial marine licensee to take akule while using the:

(1) Lay net fishing method with a net that has less than two and three-fourths inches stretched mesh;

(2) Surround net fishing method with a net that has less than two and one-half inches stretched mesh; or

(3) Bag net fishing method with a net that has less than one and one-half inches stretched mesh.

(d) It is unlawful for any commercial marine licensee to keep akule within a bag net in the ocean for more than three days without notifying the department. The person must explain the reasons for keeping the akule and when the bag net will be removed. The chairperson or an authorized representative of the department may require the immediate removal of the akule from the bag net if the action is necessary to prevent the unacceptable waste of the akule or to alleviate an unacceptably high public safety risk.

(e) Notwithstanding the provisions of subsections (a) through (d), and section 13-75-14(7), a person may use:

(1) A landing net of any mesh size; provided that the opening of the landing net is less than four feet in any dimension, excluding the handle; or

(2) A throw net with a mesh of two inches or greater.

(f) Anyone violating any provision of this section shall be subject to penalty under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 1/11/02; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-12.4 Lay nets. (a) No person shall use or possess any lay net in State waters without first obtaining a lay net permit. Lay net permits shall be non-transferrable and shall expire on June 30 of each year.

(b) The fee for issuance or renewal of a lay net permit shall be $25, provided that the fee shall be waived for Hawai‘i residents and members of the armed forces of the United States on active duty in the State and their spouses and minor children. The fee for a duplicate permit shall be $10.

(c) The department may revoke, suspend, or withhold issuance or renewal of a lay net permit for any violation of this section, provided that any revocation, suspension, or withholding of a lay net permit shall not exceed three months unless a longer period not to exceed two years is approved by the board.

(d) It is unlawful for any person within the jurisdiction of state waters to:

(1) Possess or use a lay net that, except as provided in section 13-60.4-6, is:
    (A) Longer than one hundred twenty-five feet in length when set end to end, or more than seven feet in stretched height; or
    (B) Of less than two and three-fourths inches stretched mesh, except as provided in section 13-52-2(2)(A);
(2) Possess or use a multi-panel lay net;
(3) Possess or use a lay net that does not have at least four identification tags as specified by the department. Each identification tag must legibly display the lay net permit number of the person possessing or using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net; or
(4) Fish with more than one lay net at a time.

(e) It is unlawful for any person using the lay net fishing method to:

(1) Use a lay net that is not marked by surface buoys as specified by the department. The buoys shall legibly display the lay net permit number of the person using the lay net, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;

(2) Use a lay net within two hundred fifty feet of another lay net, except as provided in section 13-60.4-6;

(3) Use a lay net in water greater than twenty-five feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to eighty feet, except as provided in section 13-60.4-6;

(4) Use a lay net for more than four hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;

(5) Leave a lay net unattended for any amount of time, provided that a lay net shall be considered unattended if the lay net or surface buoys are not within eyesight of the person using the lay net;

(6) Retrieve a lay net in such a manner as to cause any stony coral to break from its attachment to the bottom or to break into smaller pieces. Any stony coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;

(7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species;

(8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours;

(9) Use a lay net in freshwater streams or stream mouths; or

(10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.

(f) It is unlawful for any person to falsely identify any lay net.

(g) Any lay net, within the jurisdiction of state waters, that does not have proper identification tags or surface buoys as required in subsections (d) and (e), shall be considered contraband and subject to immediate seizure by the department.

(h) It is unlawful for any person to use a lay net in the following areas as provided in the table describing the boundary coordinates or locations for the prohibited fishing areas, located at the end of this chapter, entitled, "Table of Descriptions of Lay Net Fishing Prohibited Areas", dated April 19, 2006; and in the maps located at the end of this chapter, entitled, "Map of Lay Net Fishing Prohibited Area: Maui", dated April 19, 2006; "Map of Lay Net Fishing Prohibited Areas: Oʻahu", dated April 19, 2006; and "Map of Lay Net Fishing Prohibited Area: Kaneʻohe Bay, Oʻahu", dated April 19, 2006:

(1) Island of Maui;

(2) Kawaihoa Point to Keahi Point, Oʻahu;

(3) Mokapu Point to Wailea Point, Oʻahu; or

(4) Kaneʻohe Bay, Oʻahu.

(i) Any person violating any subsection of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff and comp 3/2/07; am 12/26/13; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-75-12.5 State waters around Molokaʻi, special rules. (a) Notwithstanding the provisions of

section 13-75-12.4, it is unlawful for any person in State waters of the island of Molokaʻi to use a lay net:

(1) That is longer than 750 feet in length when set end to end, or more than seven feet in stretched height; or

(2) That has a stretched mesh of less than two and three-fourths inches.

(b) Notwithstanding the provisions of section 13-75-12.4, any person using a lay net in State waters of the island of Molokaʻi shall:

(1) First obtain a lay net permit from the department;

(2) Attach at least four identification tags to each lay net as specified by the department. Each identification tag must legibly display the lay net permit number or numbers of the person or persons using the net. At least one identification tag must be attached at each end of both the net float line and the net lead line for a total of at least four attachment points on each lay net;

(3) Mark each lay net with at least two surface buoys, one at each end of its total length. The surface buoys shall display the lay net permit number or numbers of the person or persons using the lay net, be marked with reflective tape, and be large enough to be visible to the naked eye from a distance of 1,320 feet;

(4) Not set a lay net for more than twelve hours during any one set; provided that the same person shall not set any other lay net within twenty-four hours after the ending of the set;

(5) Leave a distance of at least 1,320 feet from any other lay nets that are already set; and

(6) Complete at least two inspections of the entire length of lay net set, and shall release any unwanted, prohibited, threatened or endangered species.

(c) Any person violating any subsection of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 7/12/07; am and comp 3/11/23; comp] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-75-13 Bullpen traps. (a) It is unlawful for any person to use bullpen traps with a stretched mesh of less than two inches.

(b) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap which exceeds two thousand feet in total length. The total length of a bullpen trap shall include the length of the guide or guides and pen.

(c) It is unlawful for any person engaged in bullpen trap fishing to leave the trap in the same place for a period of more than sixteen hours.

(d) It is unlawful for any person to capture or attempt to capture aquatic life with a bullpen trap within one thousand yards from the shoreline, except as provided in subsection (e).

(e) Notwithstanding subsection (d), it is lawful to capture or to attempt to capture aquatic life with a bullpen trap in the area seaward from five hundred yards from the shoreline of the island of Moloka‘i west of Kaunakakai wharf and in the area seaward from two hundred yards from the shoreline of the island of Moloka‘i east of Kaunakakai wharf; provided that the department may designate other areas of similar characteristics in which the use of bullpen traps within one thousand yards from the shoreline may be allowed under this subsection.

(f) Any person violating any portion of this section shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-14 Nets, generally. (a) It is unlawful for any person to use nets made of or using netting with a stretched mesh of less than two inches, except that:

(1) Pond owners or operators who hold a valid license issued under section 13-74-40, may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;

(2) Commercial marine licensees who hold a valid bait license issued under section 13-74-22, may use nets of smaller mesh to take nehu, ʻiao, marquesan sardine, gold-spot herring, or any other species for which an open season may be declared by the department for use as bait;

(3) All persons may use nets of smaller mesh to take shrimp or ʻopae, ʻōpelu, makiawa, or mikiawa;

(4) [~~Aquarium~~] State of Hawai‘i aquarium fish [~~collectors~~] permittees with a valid state of Hawai‘i aquarium fish permit issued pursuant to [~~section 188-31, HRS,~~] chapter 13-77.1 may use [~~traps and~~] nets [~~for aquarium fish and other aquatic life~~] of smaller mesh to take marine life for commercial aquarium purposes in conformance with the terms and conditions of the permit[~~, provided that non-commercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day~~];

(5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;

(6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat; and

(7) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including any handle and other attachment thereto, shall not exceed three feet in any dimension.

(b) Any person violating this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS. Each violation may constitute a separate offense. [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-75-15 Traps. (a) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width.

(b) Except for [~~traps of smaller mesh to take shrimp or ʻopae, and for~~] the entrance cone and as provided in subsections (c) and (d), it shall also be unlawful to use traps made with the following material:

(1) [~~With netting having~~] Netting with a stretched mesh of less than two inches; or

(2) [~~Made with plastic~~] Plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide.

(c) Traps made with netting with a stretched mesh of less than two inches or traps made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches may be used to take shrimp or ʻōpae.

(d) Commercial aquarium fish collectors with a valid state of Hawai‘i aquarium fish permit issued pursuant to chapter 13-77.1 may use traps of smaller

mesh to take marine life for commercial aquarium purposes in conformance with the terms and conditions of the permit.

[~~(c)~~] (e) Any person violating any portion of this provision shall be subject to penalty as provided under sections 187A-12.5 and 188-70, HRS." [Eff 12/3/98; am and comp 3/2/07; am and comp 3/11/23; am and comp] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

4. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

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

6. The adoption of chapter 13-77.1 and amendments to and compilation of chapters 13-60.4 and 13-75, 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 [INSERT DATE OF BLNR FINAL APPROVAL] and filed with the Office of the Lieutenant Governor.

_____
DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARINGS:

_____
JOHN E. DUBIEL
Deputy Attorney General

IV. New Business

A. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 22, Office of Language Access Rules of Practice and Procedures, promulgated by Department of Health - *Exhibit 2*

RECEIVED
By SBRRB at 11:20 am, Jan 22, 2026

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 1/21/2026

Department or Agency: Office of Language Access (OLA)

Administrative Rule Title and Chapter: HAR Title 11 Department of Health Chapter 22

Chapter Name: OFFICE OF LANGUAGE ACCESS RULES OF PRACTICE AND PROCEDURES

Contact Person/Title: May Mizuno (Executive Director)

E-mail: may.mizuno@doh.hawaii.gov Phone: 808-586-8730

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

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

☐ Yes ☑ No

If "**Yes**," provide details: _____

I. Rule Description:

☑ New ☐ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☐ Yes ☑ No

(If "**No**," no need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

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

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

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

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

   a. Amount of the current fee or fine and the last time it was increased.
      N/A
   b. Amount of the proposed fee or fine and the percentage increase.
      N/A
   c. Reason for the new or increased fee or fine.
      N/A
   d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
      N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

RECEIVED
By SBRRB at 11:22 am, Jan 22, 2026

JOSH GREEN, M.D.
GOVERNOR OF HAWAI'I
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAI'I

MAY MIZUNO
EXECUTIVE DIRECTOR
KE PO'O HO'OKELE

STATE OF HAWAI'I
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doh.ola@doh.hawaii.gov

January 21, 2026

Small Business Regulatory Review Board (SBRRB)
c/o DBEDT
P.O. Box 2359
Honolulu, HI 96804

Re: SBRRB "No Impact" Determination - OLA Administrative Rules

Aloha Members of SBRRB:

The Office of Language Access (OLA), an attached agency of the Department of Health, respectfully requests a formal "No Impact" review and statement at your next regularly scheduled meeting on February 19, 2026, regarding the proposed administrative rules: HAR Chapter 11-220 – Office of Language Access Rules of Practice and Procedures.

Pursuant to HRS §201M-5, OLA has conducted an initial assessment to determine if these proposed rules will have a significant economic impact on a substantial number of small businesses. While we recognize that language service providers often operate as sole proprietors or small businesses, our analysis indicates no significant impact based on the following justifications:

- **Voluntary Roster Participation**

  Per HAR §11-220-32 and §11-220-33, the OLA online roster is entirely optional. It serves as a tool for users to search for providers based on criteria such as language and location, but language service providers may continue to operate in the market without joining the roster.

- **No Mandatory Fees**

  Under HAR §11-220-36(b), OLA will not issue fee schedules nor monitor pricing. Furthermore, no licensing or registration fees are imposed by these rules for inclusion on the roster.

- **No Restrictions on Market Entry**

  The proposed rules (HAR §11-220-34 and (HAR §11-220-375) establish eligibility requirements for those who *choose* to be on the roster—such as being at least 18 years of age and possessing specific training or certifications —but they do not prevent providers outside the roster from contracting with state agencies or private clients.

- **Conditional Requirements**

  Continuing education requirements of 3.0 units per two-year cycle (HAR §11-220-37) apply only to those individuals who voluntarily choose to remain listed on the OLA roster.

- **Agency-Focused Compliance**

  The primary compliance obligations, including the establishment of language access plans and the filing of semi-annual encounter reports, apply specifically to state agencies and covered entities under HAR §11-220-17, not to individual interpreters or translators.

Conclusion

Because the proposed rules do not impose mandatory compliance costs or restrictive barriers on the small business community of interpreters and translators, OLA believes they do not have a significant economic impact. We request that the Board issue a formal statement to this effect following the February 19, 2026, meeting.

We have attached a copy of the proposed administrative rules (HAR Chapter 11-220 – Office of Language Access Rules of Practice and Procedures) and the SBRRB Pre-Public Hearing Statement Document

Let us know if there are any other questions. Thank you very much in advance.

Sincerely,

May Mizuno
Executive Director

RECEIVED
By SBRRB at 11:23 am, Jan 22, 2026

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 220

OFFICE OF LANGUAGE ACCESS RULES OF PRACTICE AND PROCEDURES

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SUBCHAPTER 1

GENERAL PROVISIONS

§11-220-1 Purpose and scope. The purpose and scope of these rules is to establish the practice and procedures for the administration of chapter 321C, HRS, and to address affirmatively, on account of national origin, the language access needs of limited English proficient persons. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-1 to 321C-7)

§11-220-2 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Attached agency" means an administrative office, agency, board, or commission placed or established within or administratively attached to the legislative, judicial, or principal departments of the executive branch of state government.

"Complainant" means an individual, group of individuals, or organization that files a complaint alleging a violation of section 321C-3 or 321C-4, HRS.

"Complaint" means a written statement filed with the office of language access alleging a violation of section 321C-3 or 321C-4, HRS.

"Conciliation" means a dispute resolution process where the executive director or designee plays a direct role in the resolution of a language access barrier and may advise the parties by developing and recommending proposals for a resolution.

"Conference" means a dispute resolution process where the executive director or designee plays a direct role in the resolution of the language access barrier by discussing with the complainant and respondent the relevant strengths, weaknesses, and merit of allegations in a complaint and possible resolutions.

"Covered entity" means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

"Interpretation" means the act of listening to a communication or reading a document written in a source language, as in a sight translation, and orally converting it to the target language while retaining the same meaning; this can happen consecutively or simultaneously.

"Interpreter" means a person who converts a spoken message or written text from one language to another in oral form.

"Language access coordinator" means an individual designated by each state agency to establish and implement the state agency's language access plan in consultation with the executive director and the language access advisory council as provided by section 321C-4(c), HRS.

"Language access plan" means a written plan for ensuring meaningful access by limited English proficient persons to services, programs, and

activities administered by a state agency or covered entity in accordance with chapter 321C, HRS.

"Language assistance" means oral or written language services that assist limited English proficient persons in communicating effectively with state agencies and covered entities in order for limited English proficient persons to obtain meaningful access to and an opportunity to participate fully in services, activities, or other programs.

"Language service provider" means an individual or business entity that offers language assistance to state agencies, individuals, and other entities.

"Limited English proficient person" or "LEP person" means a person who, on account of national origin, does not speak English as the person's primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.

"Meaningful access" means language assistance that results in accurate, timely, and effective communication at no additional cost to a limited English proficient person. Meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient persons.

"Mediation" means a dispute resolution process where the executive director or designee facilitates a structured dialogue and assists the parties in identifying and articulating their interests, priorities, and needs to each other with a goal of reaching a mutually satisfactory agreement.

"Multilingual staff" means a staff person who is competent in English and in reading, writing, speaking, or understanding one or more other languages.

"Office" means the office of language access, State of Hawaii.

"Primary language" means the language in which a person most effectively communicates.

"Principal departments" means executive departments as established by section 26-4, HRS.

"Public contact positions" means those positions within state agencies directly involved in the furnishing of information or the execution of programs, services, and activities to the public whereby contact is made with a substantial number of limited English proficient persons.

"Qualified interpreter or translator" means an in-house or contracted oral interpreter or translator of written documents who has demonstrated competency to interpret or translate, as specified in sections 11-220-32, 11-220-33, 11-220-34, 11-220-35 and who abides by a code of professional practice and ethical principles or is authorized to do so by contract or by approval of an agency director, section chief, or other relevant administrator.

"Respondent" means the state agency or covered entity against whom a complaint is filed.

"Roster" means an online roster of language interpreters and translators.

"Services, programs, or activities" means all of the operations of the state agency or covered entity.

"Source language" means the language from which an interpreter interprets, or a translator translates.

"Staff" includes employees, interns, externs, and volunteers who provide services to or on behalf of a state agency.

"State" or "state agency" means the executive, legislative, or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the

executive, legislative, or judicial branches.

"Subrecipient" means a non-state agency that receives an award from a state agency to carry out part of a state program, service, or activity but does not include an individual who is a beneficiary of such program, service, or activity.

"Target language" means the language into which an interpreter interprets, or a translator translates.

"Technical assistance" includes but is not limited to: working with state agencies, covered entities, and the limited English proficient community to address resource needs; developing effective methods to address language needs by ensuring the provision of accurate and timely language assistance; and communicating information through outreach and training to limited English proficient persons about their right to receive language assistance from the State and state-funded agencies and to state agencies about their obligation to provide language assistance.

"Translation" means the written conversion of texts from a source language into the equivalent written text of the target language, retaining the meaning and intent of the original source text and producing a culturally competent product.

"Translator" means a person who converts a written text from one language to another in written form. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-2, 321C-3, 321C-4, 321C-6)

§§11-220-3 to 11-220-10 (Reserved).

SUBCHAPTER 2

OFFICE OF LANGUAGE ACCESS FUNCTIONS

§11-220-11 The office; hours; filings; communications. (a) The principal office of the office of language access is in Honolulu, Hawaii. For purposes of this chapter, the regular office hours of the office shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, except on state holidays, unless otherwise provided by statute or executive order.

(b) All communications applicable to this chapter shall be addressed to the executive director unless otherwise specifically directed.

(c) All documents required to be submitted or filed herein shall be filed with the office at Honolulu, Hawaii, unless specifically directed otherwise and within such time limits as prescribed by these rules or by direction of the executive director. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-1 to 321C-7)

§11-220-12 Purpose and scope. The purpose of the office is to address the language access needs of limited English proficient persons and to ensure meaningful access to services. The office shall provide oversight, central coordination, and technical assistance to state agencies and covered entities in the development and implementation of their language access plans. Additionally, the office shall establish statewide goals and objectives relating to improving access by LEP persons to programs,

services, and activities of state, attached state agencies and covered entities. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-1 to 321C-7)

§11-220-13 Office functions. The functions of the office shall be carried out by the executive director or designee and the office's staff. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-1 to 321C-7)

§§11-220-14 to 11-220-16 (Reserved).

SUBCHAPTER 3

AGENCY REQUIREMENTS

§11-220-17 Establishment of language access plan. (a) Each state agency shall:

(1) Establish a language access plan in consultation with the office and the language access advisory council no later than July 1, 2026, if none exists.

(2) File a valid language access plan with the executive director. To be considered valid, the language access plan must be signed by the agency head and include an effective date. Unless specified otherwise, the effective date is considered to be the date on which the state agency head signs the language access plan.

(3) Review, update, and file the revised language access plan at least every two years from the effective date of the current language access plan. If the agency determines that the agency's language access plan is still current and applicable, the agency shall file the current plan and provide a verification attesting to the validity of the language access plan and include an effective date and be signed by the agency head. The effective date is considered to be the date on which the agency head signs the revised language access plan or attestation. Once filed the language access plan shall be posted on the office's website and reviewed according to the established review procedure of the office.

(b) An attached agency, in consultation with the language access coordinator from their respective branch, office, or principal department, shall:

(1) Establish its own language access plan, subject to the same requirements outlined in subsection (a). A copy of the language access plan shall be filed with the office and the language access coordinator from their respective branch, office, or principal department, no later than July 1, 2026, and at least every two years thereafter; or

(2) Adopt the language access plan established by their respective branch, office, or principal department. The adoption statement shall be signed by

the head of the attached agency and filed with the office and the language access coordinator from their respective branch or principal department, no later than July 1, 2026, and every two years thereafter. [Eff] (Auth: HRS §§321C-3, 321C-4, 321C-6) (Imp: HRS §§321C-4, 321C-7)

§11-220-18 Requirements of language access plan. (a) Each language access plan shall include, at a minimum, the following thirty-two requirements in each of the following seven requirement areas:

(1) Reporting requirements:
  (A) Language access coordinator has been designated;
  (B) Language access coordinator meetings have been attended by language access coordinator or language access coordinator designee; and
  (C) Language access plan has been updated within past two years.

(2) Four factor analysis:
  (A) Number or proportion of LEP persons served or encountered has been identified and measured;
  (B) Descriptions of services, programs, or activities that serve eligible populations, which includes their nature and importance, have been provided;
  (C) Frequency which LEP persons encounter services, programs, or activities has been measured;
  (D) The resources available and potential costs of making services

accessible has been weighed against the costs of not providing services;

(E) Limitations are well-substantiated if limited due to resource concerns or if no limitations are anticipated, a statement attesting to the fact; and

(F) Method of provision of language services (oral or written) has been determined for providing services.

(3) Notice of service availability:

(A) Plan for notifying LEP persons that free language assistance is provided;

(B) Sample of materials used for notification; and

(C) Link to website notices in languages spoken by at least five per cent of the state population or one thousand people, including right to free interpreter services and a telephone number or email within agency to request interpreter services.

(4) Oral language services:

(A) Description of how state agency will select and provide interpretation services;

(B) Description of how state agency will ensure competency of interpretation services;

(C) Description of how state agency will provide timely interpretation services;

(D) Outline of the type of oral language services, e.g. in-person, remote interpretation, etc.;

(E) State agency has a vendor for remote interpretation;
(F) Statement that the use of family members, friends, or, minors as interpreters is highly discouraged and communicated throughout the state agency; and
(G) List of dual and multilingual staff who may be called upon to provide oral language assistance service.

(5) Written language services:
(A) Description of how the state agency will select and provide translation services;
(B) Description of how the state agency will ensure competency of translation services;
(C) Description of how the state agency will provide timely translation services;
(D) List of vital documents and list of vital documents translated, along with translated languages;
(E) Justification is included when safe harbor provision under section 321C-3(c), HRS is used; and
(F) List of dual and multilingual staff who may be called upon to provide written language assistance service.

(6) Training:
(A) A plan detailing how staff (current, future) are trained to provide appropriate services; and
(B) Training plan includes the training topic(s), who is responsible for implementing

training, audience for training, and frequency of training.

(7) State agency internal monitoring:

(A) Description of how language access plan will be monitored to ensure compliance;

(B) Written documentation of language access policies and procedures;

(C) Process for managing and recording complaints;

(D) Description of data collection process and data sources used to compile language access services usage, refusal, and demographics; and

(E) Process of informing and monitoring subrecipient of legal obligation to provide language assistance to LEP persons.

(b) Each language access plan shall include supporting documentation of implementation of the thirty-two requirements in subsection (a). [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-19 Designation of language access coordinators. (a) Each state agency shall designate a language access coordinator who shall:

(1) Establish the state agency's language access plan;

(2) Monitor the state agency's compliance to the language access plan;

(3) Make any revisions and modifications to the language access plan;

(4) Respond to any inquiries, comments, or complaints regarding the language access plan and its implementation;

(5) Train staff by providing the necessary background effectively to implement the language access plan's requirements;
(6) Collect information necessary to enable the state agency to provide meaningful access to its LEP persons;
(7) Compile a list of multilingual staff willing to provide language assistance services to LEP persons;
(8) Coordinate efforts to implement the language access plan;
(9) Coordinate with attached agencies within their respective branch, office, or principal department to monitor attached agencies' compliance to department's language access plan when adopted;
(10) Report directly to the agency head or designee on issues related to compliance with chapter 321C, HRS; and
(11) Attend or designate a proxy to attend regularly scheduled language access coordinator meetings facilitated by the office.

(b) An attached agency shall designate a language access point-of-contact or language access coordinator if the attached agency chooses to establish its own language access plan, no later than July 1, 2026, to coordinate and communicate directly with the language access coordinator from their respective branch, office, or principal department to ensure compliance with language access requirements. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-4)

§11-220-20 Language access encounter report. (a) Each state agency shall submit a language access encounter report to the executive director on a semi-annual basis. The reporting period

shall be from July 1 to December 31 of each calendar year, with a due date of January 31 of the following calendar year, and from January 1 to June 30 of each calendar year, with a due date of July 31 of that calendar year.

(b) The language access encounter report shall contain the following information during the reporting period:

(1) The total number of LEP persons encountered by the state agency and their primary languages;

(2) The total number of LEP persons served by the state agency and their primary languages;

(3) The total number of LEP persons who declined or refused language assistance from the state agency and their primary languages;

(4) The total number of unfulfilled language assistance requests and the languages;

(5) Types of language assistance provided;

(6) Language service providers utilized;

(7) A list of translated documents produced within the 6-month reporting period with their titles and languages;

(8) Expenditures for each type of language assistance; and

(9) The total number and brief description of language access complaints and resolutions. [Eff] (Auth: HRS §321C-6) (Imp: §§321C-3, 321C-4, 321C-6)

§§11-220-21 to 11-220-23 (Reserved).

SUBCHAPTER 4

COMPLIANCE REVIEW AND MONITORING

§11-220-24 Language access plan review. The review of state agency language access plans shall be conducted on a biennial basis to determine effectiveness of agency implementation of language access requirements. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-25 Onsite compliance monitoring.

(a) The office shall conduct onsite visitation at selected sites for state agencies on a regular basis, to determine effectiveness of state agency's implementation of its language access plan.

(b) The sites shall be selected based on one or more of the following criteria:

(1) Public-facing sites that serve the greatest number of LEP persons based on language access encounter reports submitted within the past two years;

(2) Importance of programs as defined as those that directly support the physiological, safety, and mental health needs of the people of Hawaii;

(3) State agency that did not submit language access plan or language access encounter report within the past two years; and

(4) State agency sites that have received formal complaints in the past two years regarding language assistance.

[Eff](Auth: HRS §321C-6) (Imp: HRS §321C-3, 321C-4, 321C-6)

§11-220-26 Telephonic monitoring. (a) The office shall telephonically contact selected telephone numbers for state agencies on a regular basis, to determine effectiveness of state agency's implementation of its language access plan.

(b) Telephone number selections shall be based on the following criteria:

(1) Telephone numbers included with the required notice of language service availability, translated into languages most frequently spoken by LEP persons in Hawaii or by the state agency's public facing programs, as it appears on the state agency's website;

(2) Telephone numbers found on the websites of programs that have received formal complaints in the past two years regarding language assistance;

(3) Public-facing telephone numbers of programs and offices corresponding to selected site visit locations;

(4) Telephone numbers for programs described in state agency language access plans as serving the LEP population; and any other telephone number listed on the directory for an agency on the Legislative Reference Bureau's state government directory site. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-27 Scoring threshold and progress monitoring. The executive director, in consultation with the language access advisory council, shall establish and use a scoring threshold for language access plan reviews and compliance monitoring. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-28 Compliance score, findings, and recommendations. At the completion of the compliance review and monitoring period, the executive director or designee shall prepare a compliance score, findings, and recommendations regarding language assistance services or the remediation of deficiencies, if any, for head of the agency through the language access coordinator. If a state agency receives a score below the scoring threshold, the executive director or designee shall conduct biannual progress monitoring and provide technical assistance to address the deficiencies. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§§11-220-29 to 11-220-31 (Reserved).

SUBCHAPTER 5

ROSTER OF INTERPRETERS AND TRANSLATORS

§11-220-32 Purpose and scope. The purpose of this subchapter is to establish guidelines for the establishment and operation of an online roster of language interpreters and translators that will provide a process by which language service providers can apply for inclusion on the roster. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-33 Establishment of a roster. (a) The office shall establish a public roster of interpreters and translators in consultation with the language access advisory council.

(b) The roster shall have the following functions:

(1) Accepting new applications from interested language service providers;

(2) Notifying applicants about the application status and required actions;

(3) Allowing users to search for interpreters or translators using different criteria such as language, location, subject matter, or availability;

(4) Displaying search results showing qualifications, credentials, or other relevant information related to the experiences and skills of language service providers; and

(5) Allowing listed language service providers to submit requests to update their listing.

(c) The office shall maintain the functionality of the roster and shall post a notice informing the public in the event roster is not functioning. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-34 General eligibility requirements for individual interpreters. An applicant shall be eligible for consideration for inclusion as an interpreter on the roster upon establishing to the satisfaction of the executive director that the applicant:

(1) Is at least 18 years of age;

(2) Is eligible to work in the United States;

(3) Has high school or higher education diploma or general education development certificate;

(4) Has completed at least sixteen hours of basic interpreter training provided by the office or attended and successfully completed interpreter training programs approved by the office;

(5) Demonstrates English proficiency through:

(A) Completing at least 48 semester college credit hours or equivalent with classes conducted in English;

(B) Holding bachelor's, master's, PhD, or any other degree from an institution of higher education with classes conducted in English;

(C) Possessing a credential from an established interpreter certification program that includes a language-specific performance test as determined by the office; or

(D) Possessing a valid English language proficiency scale as determined by the executive director; and

(6) Demonstrates non-English language proficiency through:

(A) Completing at least 48 semester college credit hours or equivalent with classes conducted in the non-English language;
(B) Holding bachelor's, master's, PhD, or any other degree from an institution of higher education with classes conducted in the non-English language;
(C) Possessing a score of advanced high on American Council of the Teaching of Foreign Languages (ACTFL) assessment;
(D) Possessing a score of 2+ on Interagency Language Roundtable (ILR) equivalent;
(E) Possessing a credential from an established interpreter certification program that includes a language-specific performance test as determined by the office; or
(F) Possessing a valid language proficiency scale as determined by the executive director. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-35 General eligibility requirements for individual translators. An applicant shall be eligible for consideration to be listed as a translator on the roster upon establishing to the satisfaction of the executive director that the applicant:

(1) Is at least 18 years of age;

(2) Is eligible to work in the United States;
(3) Has a high school or higher education diploma or general education development certificate; and
(4) Possesses a current translation certification from the American Translators Association (ATA), or Washington State Department of Social and Health Services (DHSH), or other programs approved by the office. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-36 Terms and conditions of posting. (a) Applicant shall be screened and processed by the office. This process includes a review of each applicant's eligibility under sections 11-220-32, 11-220-33, 11-220-34, and 11-220-35 of these rules, academic background, language proficiency, and prior interpreting or translation experience, or both. Any applicant whose application is rejected shall be promptly notified by the office.

(b) The office shall not issue a recommended fee schedule nor monitor pricing arrangements.

(c) All terms and conditions of employment shall be negotiated directly between the language service provider and the roster user.

(d) The office shall not be liable for any errors or omissions in the interpretation or translation provided.

(e) These and other necessary terms shall be posted on the roster as a condition of the roster usage. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-37 Continuing education program. (a) The office shall operate a continuing education program to allow listed interpreters and translators to maintain the eligibility to be listed on the roster.

(b) The requirements for the continuing education program shall be 3.0 continuing education units per two-calendar year cycle.

(c) A continuing education unit is the equivalent of 1 hour of participation in an office-organized workshop, seminar, lecture, conference, class, or other educational activity to increase knowledge, skills, and competency relevant to the practice of interpreting and translating. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§§11-220-38 to 11-220-40 (Reserved).

SUBCHAPTER 6

COMPLAINT PROCEDURE

§11-220-41 Purpose. This subchapter sets forth the procedures for the administration and enforcement of chapter 321C, HRS. These rules shall be liberally construed to accomplish the purposes of this chapter. [Eff] (Auth: HRS §321C-6) (Imp: HRS §321C-6)

§11-220-42 Computation of time. The time in which any act provided by this chapter is to be done is computed by excluding the first day

and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, HRS. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-1 to 321C-6)

§11-220-43 Filing of complaint. (a) Any person claiming to have been denied or not having received adequate language assistance services may file a complaint with the office.

(b) The complaint may also be filed by a person or entity with an interest in the welfare of a limited English proficient complainant.

(c) The complaint shall be in writing and, where feasible, on forms furnished by the office. The complaint shall contain a statement sufficiently precise to identify the parties and describe with reasonable accuracy the violation of chapter 321C, HRS. The complaint shall be signed.

(d) Assistance in filing complaints is available to complainants at the office.

(e) When the complainant is unable to personally deliver or mail a complaint, the office may receive a facsimile copy or an electronic copy, if legible. Complaints are deemed filed on the date of receipt of a legible facsimile copy or a legible electronic copy.

(f) A complaint may be withdrawn upon written request, signed by the complainant. The executive director shall notify all parties of the withdrawal. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-44 Dismissal of complaint. (a) Within thirty days from the date the complaint

was filed, the executive director shall dismiss the complaint if:

(1) The complaint does not allege a violation of sections 321C-3 or 321C-4, HRS;

(2) It is determined that meaningful access to language services was provided, which may be determined at any time following receipt of the written complaint;

(3) The complainant fails or refuses to cooperate or participate in the efforts made by the office to eliminate the language access barrier;

(4) The complainant fails to provide the office with information requested by the executive director or designee, within thirty days of the executive director's written request to the complainant's last known address; or

(5) The complaint has been investigated by an appropriate federal enforcement agency, such as the Office of Federal Contract Compliance Programs, Office for Civil Rights, or the U.S. Department of Justice, and a final determination regarding the complaint has been made by the federal agency.

(b) The executive director shall notify all parties in writing of the dismissal of the complaint and the reasons for the dismissal. The executive director shall also provide the complainant with a list of state and federal authorities that enforce discrimination complaints or investigate other similar wrongs. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§321C-3, 321C-4, 321C-6)

§11-220-45 Notice of conference, conciliation, mediation, or persuasion. (a) Within thirty days from the date the complaint was filed, if the executive director finds reasonable cause to believe that a violation of section 321C-3 or 321C-4, HRS, has occurred or is occurring, the executive director shall endeavor to eliminate the violation through conference, conciliation, mediation, and persuasion.

(b) The executive director may require any or all parties to attend a conciliation conference for the purpose of attempting to informally resolve the matter. The parties shall be notified of the time and place of the conciliation conference.

(c) Where conference, conciliation, mediation, or persuasion efforts are successful, the terms of the conference, conciliation, mediation, or persuasion shall be reduced to a written agreement, which shall be signed by the parties and the executive director. A copy of the signed agreement shall be sent to the parties.

(d) If conference, conciliation, mediation, or persuasion efforts are unsuccessful, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation. The executive director shall also provide the complainant with a list of state and federal authorities that enforce discrimination complaints or investigate other similar wrongs. [Eff] (Auth: HRS §321C-6) (Imp: HRS §§ 321C-3, 321C-4, 321C-6)

§§11-220-46 to 11-220-50 (Reserved).

IV. New Business

B. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 55, Water Pollution Control, and Chapter 55 Appendices B, E, F, G and K, promulgated by Department of Health - *Exhibit 3*

RECEIVED
By SBRRB at 9:03 am, Feb 06, 2026

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 1/13/2026

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

Administrative Rule Title and Chapter: HAR 11-55, Appendices B, E, F, G, and K

Chapter Name: Water Pollution Control

Contact Person/Title: Reef Migita, Clean Water Branch, Engineering Supervisor

E-mail: Reef.Migita@doh.hawaii.gov Phone: (808) 586-4309

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

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

☐ Yes ☑ No

If "**Yes**," provide details: _____

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☑ Compilation

II. Will the proposed rule(s) affect small business?

☑ Yes ☐ No

(If "**No**," no need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

RECEIVED
By SBRRB at 8:37 am, Feb 06, 2026

Small Business Regulatory Review Board
Small Business Impact Statement

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

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

The primary purpose of the proposed revisions to HAR Chapter 11-55 is to reissue several National Pollutant Discharge Elimination System (NPDES) general permits (which expire soon) to maintain uninterrupted NPDES permit coverage, ensure these general permits remain available for permittees (including small businesses), and to ensure continued compliance with current state and federal water quality requirements. There are also several minor changes to the body of HAR 11-55 outside of the general permits as well.

Water pollution permits in Hawaii are part of the federal Clean Water Act (CWA) NPDES permitting program. The NPDES program is a permit system required by Section 402 of the CWA that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The DOH has been authorized by the U.S. Environmental Protection Agency (EPA) to issue NPDES permits in Hawaii. NPDES permits in Hawaii are governed by Hawaii's Water Pollution Control statute, contained in Hawaii Revised Statutes (HRS), Chapter 342D, and HAR Chapter 11-55 titled Water Pollution Control.

HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The chapter also incorporates twelve NPDES General Permits, which are codified as Appendices B through M. These General Permits are issued as administrative rules and are not specific to any individual owner or operator. Each General Permit authorizes a category of discharges for a group of similar types of activities or facilities (e.g., storm water discharges from industrial activities or discharges of hydrotesting water) and contain requirements to minimize pollutants from being discharged to State waters.

Five (5) General Permits (i.e., Appendices B, E, F, G, and K) will expire on January 14, 2027. The others (i.e., Appendix C, D, H, I, J, K, and M) will expire on later dates. An eligible owner or operator may request to be covered under an applicable General Permit by submitting a Notice of Intent (NOI) to the DOH. By submitting an NOI, an owner or operator agrees to comply with all requirements of the applicable General Permit.

If the rules are adopted, which makes the General Permit available for use, coverage can be processed much more quickly than an Individual NPDES Permit. NPDES Individual Permit coverage must be developed on a case-by-case basis, requiring the CWB to draft permit conditions and solicit public comment, which significantly extends processing time. Because General Permits are established through the rule adoption process, their conditions are already in place, allowing eligible applicants to obtain coverage simply by submitting a Notice of Intent. As a result, more than 75% of the authorizations issued by DOH are for coverage under a General Permit.

The general permits to be readopted in this rulemaking are as follows:

Appendix B of HAR Chapter 11-55 authorizes the discharge of storm water associated with industrial activities. While many of the regulated entities are larger businesses, small businesses may be required to apply for coverage under Appendix B, however the rules are mandated by the Federal Clean Water Act, and a majority of current and proposed rules are consistent with the EPA's own industrial storm water permit (i.e., EPA's 2021 Multi Sector General Permit).

Appendix E of HAR Chapter 11-55 authorizes discharges of once through cooling water if the discharge is less than one million gallons per day to a state receiving water. The cooling water is commonly used for larger air conditioning systems and various cooling systems. It is not anticipated that small businesses will apply for coverage under this general permit.

Appendix F of HAR Chapter 11-55 authorizes discharges of hydrotesting waters to State receiving waters. Hydrotesting waters are used for hydrostatic testing (testing for strength and leaks) of items, not limited to pressure vessels, pipes, plumbing, gas cylinders, boilers, and fuel tanks. If the pressure vessel or pipes are to be used for drinking water, chlorine may be added to the hydrotesting waters for disinfection. Small businesses involved with construction may apply for coverage under this general permit.

Appendix G of HAR Chapter 11-55 authorizes discharges of dewatering effluent from construction activities to a state receiving water. Construction dewatering is the removal of water, usually groundwater, but may also include surface water (such as from a stream) or storm water. Small businesses involved with construction may apply for coverage under this general permit.

Appendix K of HAR Chapter 11-55 authorizes the discharge of storm water and certain non-storm waters from Small Municipal (e.g., City and County of Honolulu MS4, State Department's MS4s, and United States Department's MS4s) Separate Storm Sewer Systems (MS4s) and hence does not affect small businesses.

Early Stakeholder Outreach on the proposed revisions to HAR Chapter 11-55 and the general permits was initiated on January 12, 2026, and will end on February 11, 2026.

The CWB successfully transmitted nearly 390 emails to notify current permittees and organizations, and to solicit comments.

Acronyms used in this reference:

CWA	Clean Water Act
HRS	Hawaii Revised Statutes
HAR	Hawaii Administrative Rules
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
DOH	State of Hawaii, Department of Health
CWB	Clean Water Branch
NPDES	National Pollutant Discharge Elimination System
NGPC	Notice of General Permit Coverage

HRS §201M-2 Determination of Small Business Impact

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

All small businesses who are regulated under the NPDES permit program will be affected by rule changes to the HAR Chapter 11-55 and Appendices B, E, F, G, and K. Entities regulated under the NPDES program have been determined to have an elevated potential to discharge pollutants to surface waters like Hawaii's streams, wetlands, and coastlines. NPDES permittees in Hawaii tend to include government agencies and large businesses and developers, but sometimes do include small businesses. In general, most time and money expenditures required of NPDES permittees will be carried by these larger entities, and small businesses often provide services to NPDES permittees (scientific monitoring, cleaning operations, consulting, sales of products to prevent pollution, etc.). In some cases when the small business is the permittee, they will bear costs related to pollution prevention and compliance. However, the costs of protecting Hawaii's state waters also return substantial tangible and intangible benefits related to environmental health – ecotourism, food security, and ecological function that protects Hawaii's coastlines.

The only portions of the main body of HAR Chapter 11-55 that are proposed to be revised (i.e., are not grammatical or stylistic revisions) are:

1. HAR §11-55-01 to include the definition of the new term "lands of exclusive federal jurisdiction." This proposed revision is not expected to affect small businesses.
2. HAR §11-55-07(d) to clarify the requirements for updating contact information of permittees. The proposed revision will not impact small businesses because they are already required to provide contact information through an online

system when submitting an NOI for permit coverage. Updating contact information requires little effort and no cost as the information can be provided electronically. Having accurate contact information on file ensures permittees receive important notices from the department.

3. HAR §11-55-34.02 to reflect the new expiration dates for the proposed General Permits in Appendices B, E, F, G, and K. The proposed revisions will not impact small businesses.

4. HAR §11-55-40(b) and HAR §11-55-40(c) to allow for the electronic delivery of field citations and to promote their timely resolution. Quick delivery of field citations through email, which many businesses utilize and rely on, promotes their timely resolution and allows businesses to easily share the citation with anyone assisting them with compliance. This proposed revision will only impact small businesses that are not complying. The proposed revision allows the department to adapt to current technologies.

5. HAR §11-55-40(b)(1)(I) and HAR §11-55-40(b)(2)(B) to allow the issuance of a field citation for the failure to keep contact information up to date with the department, and to establish the penalty for such a violation at $200 for the first violation and $400 for a subsequent violation. Field citations allow for lower, set penalties; the proposed penalty amount for not updating contact information is $200 for the first violation and $400 for subsequent violations. A formal enforcement action, which is intended for violations of a more serious nature, utilizes the department's penalty policy, which recommends penalties of $800-$1,500 for the failure to update contact information. Field citations are intended to correct non-compliant businesses before more serious situations occur, as well as level the playing field for businesses who put in the time and effort to comply without intervention by the department.

   The proposed revision has the potential to affect small businesses who are non-compliant and fail to update their contact information with the DOH. The addition allows for timely resolution for the violation while still maintaining a deterrent effect. Small businesses found to be in noncompliance with this requirement benefit from the smaller penalty already set.

6. HAR §11-55-40(C) and (D) to clarify the due date for responding to field citations. This proposed revision has no impact on small businesses as the addition simply clarifies the due date.

Ultimately, DOH does not expect the proposed revisions to the HAR Chapter 11-55 rules to have an adverse impact on small business.

Appendix B affects small businesses that are conducting industrial activities as defined in 40 CFR 122.26(b)(14); however, they are not expected to be adversely affected. The EPA has identified various businesses that conduct industrial activities that inherently have an elevated risk of polluting waterways when it rains; these businesses are listed in federal and state rule and are regulated under the NPDES permit program to lower that risk of pollution. While many of the regulated entities are larger businesses, small businesses that do fall into the NPDES permit program must obtain permit coverage or file a Certification of No Exposure and take required actions to lower their risk of polluted storm water discharges. Some examples of these businesses include those that produce concrete or asphalt, landfills, automobile salvage yards, scrap and recycling yards, transportation maintenance operations, and ship and boat building or repair facilities.

Many of the revisions to Appendix B were made to bring DOH's industrial storm water permit to be in line with EPA's 2021 Multi-Sector General Permit ("MSGP"). In 2022, DOH revised HAR Chapter 11-55, Appendix B to be consistent with the requirements and permitting approach of EPA's 2015 MSGP, which DOH believed to be appropriate for Hawaii. This current rulemaking updates Hawaii's Appendix B to be in line with EPA's 2021 MSGP. While the proposed revisions largely follow EPA's 2021 MSGP, certain deviations from EPA's MSGP are retained from the previous 2022 Appendix B, in addition to other revisions that were determined by DOH to be necessary in consideration of the State's Administrative Rules, for situations specific to Hawaii's implementation of the NPDES program, and where DOH believes a revision is necessary for clarity.

The substantive revisions can largely be broken into the following groups:

- Revisions to conform with EPA's 2021 MSGP;
- DOH-specific provisions retained from the previous Appendix B; and
- New or other DOH-specific revisions.

As part of EPA's 2020 rulemaking effort to revise their 2015 to the 2021 MSGP, the EPA conducted a Cost Impact Analysis. This analysis evaluated the incremental cost implications of the proposed permit changes as compared to EPA's 2015 MSGP. EPA examined each proposed change considering the 2015 permit's requirements. The objective of the examination was to show where or to what extent the revisions to the 2015 MSGP impose an incremental increase in costs on operators in relation to costs that are already accounted for in the 2015 MSGP. Ultimately, EPA calculated that there would be an incremental cost of $2,363 per facility over the 5-year permit term (i.e., approximately $472.60 per year). EPA determined that the incremental cost impact to entities to be covered under the 2021 MSGP, including small businesses to be minimal. While it should be noted that the analysis was completed using June 2019 dollars, **DOH believes that EPA's conclusion that the cost impact to small businesses is minimal is**

still valid, and as such, DOH believes that any revisions made in this rulemaking to conform with EPA's 2021 MSGP will not significantly impact small businesses.

EPA's cost impact analysis can be accessed from: https://www.epa.gov/sites/default/files/2020-02/documents/final_proposed_2020_msgp_-_cost_analysis.pdf

DOH-specific provisions that are retained from the previous Appendix B are not expected to significantly impact small businesses. As these provisions have not substantively changed from the previous Appendix B, there should be no additional costs to comply.

For the new or other DOH-specific revisions, DOH does not expect these changes to significantly impact small businesses. While many of the proposed revisions add additional requirements, they are not expected to cause any small businesses to require hiring of new employees, making upgrades to their facilities, or purchasing new equipment. These new substantive requirements (and where they are located in the permit) are summarized below:

- Lands of Exclusive Federal Jurisdiction (Cover Page)
    - This revision is to exclude the applicability of Appendix B to areas of exclusive federal jurisdiction.
    - **This change is not expected to significantly impact small businesses and is required to comply with federal law.**
- Changes to Comply with the Supreme Court's End-Result Ruling (Parts 1.1.3.1, 1.1.3.2(c), 1.1.3.2(c)(i), 2.1, 2.2.1, 4.2.1, and 5.1.1.3)
    - On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.
    - **This change is not expected to significantly impact small businesses and is required to comply with a US Supreme Court ruling.** This change also creates regulatory certainty as it clarifies that dischargers are not responsible for the quality of receiving waters, only that any runoff that leaves their facility must comply with the general permit.

- Additional Photographic Requirements (Parts 3.1.5, 3.2.3, 3.2.3.6, 4, and 4.2.4)

    - The proposed revisions include additional photo requirements during routine facility inspections, visual assessments, and of the discharge. This requirement is necessary to ensure that there is visual documentation to corroborate any determinations on the presence of storm water pollution within the sample collected for the visual assessment.

    - Photographic equipment, like cellular phones, computers and electronic file storage are already widely used and businesses are not expected to need additional equipment, labor, services, or other costs related to taking photographs. Photographs are expected to be beneficial, as they can protect businesses who are taking measures to prevent pollution.

    - **This requirement is solely to include photographs, which is not expected to adversely affect small businesses, as taking photographs during inspections and monitoring will require minimal time and effort and does not require special equipment.** It should also be noted that the current Appendix B already requires photographic documentation in certain circumstances, so existing Permittees are not expected to have to purchase new equipment to comply with the revisions.

- Requirement to Check Facility for Unauthorized Discharges (Part 3.1.5.4(f))

    - This revision requires businesses to document any unauthorized discharges, including non-storm water discharges, from the business' facility during a routine facility inspection. The requirement to perform the facility inspection has not changed, but this adds an additional item to look for and document if seen or not seen. This is just one item being added to the inspection process which most permittees already look for that should not add time or effort to the inspection and documentation process.

    - **This change is not expected to cause any adverse effects on small businesses, as the additional recordkeeping is for an inspection that is already required to be conducted by the existing general permit and does not require any additional equipment or personnel.** This change also has the potential to provide benefits that the federal standard does not by documenting the business' efforts to comply and the true quality of any of their discharges.

- Minimal Characteristics for Visual Sampling (Part 3.2.2.5)

    - This revision offers clarification of an existing requirement, which is intended to simplify compliance for businesses who are regulated under Appendix B. This revision does not add a requirement but offers guidance on when the

existing requirement is applicable (when the visual assessment indicates evidence of storm water pollution).

- **This change only offers clarification of an existing requirement and is not expected to have an adverse effect on businesses.** Rather, clarification is intended to reduce burden on businesses who are trying to comply with the requirements.

- Changes to Commingled Discharge Sampling (Part 4.1.2)

  - This revision removes the phrase “to the extent practicable” to eliminate any confusion about what is practicable and how it is determined, and to ensure that businesses only sample their authorized discharges. It is in the best interest of all regulated businesses to only sample what their facility discharges to ensure that they do not inherit pollutants from other facilities or waste streams that may make their storm water discharges appear worse. Accurate sampling also benefits regulated businesses by informing them if they are implementing appropriate storm water pollution prevention controls, not too much or too little.

  - **This change is not expected to adversely impact regulated businesses, as the business is already performing the sampling and the revision is solely intended to prevent inaccurate sampling that can misrepresent the business’ discharges.** No businesses are expected to bear cost from this requirement, but businesses who perform accurate sampling will gather data that may help them develop cost-effective and well-balanced storm water pollution control measures.

- Removal of Individual Permit Requirement (Part 5.2.5.4(b))

  - DOH is not including EPA’s language that may require applying for an individual permit for repeated benchmark exceedances. Currently, all industrial storm water discharges are to be covered under the general permit, and historically, any individual permit would follow the same general permit conditions. It is DOH’s intent that facilities with ongoing exceedances continue corrective actions under the AIM framework until compliance with benchmark thresholds is achieved.

  - **This change is not expected to significantly impact small businesses and may achieve cost savings in this scenario.** Individual permit applications have a higher filing fee cost, require a public notice in the newspaper paid by the Permittee, and take significantly longer to process than a general permit application. As such, removing the potential to require an individual permit does not increase potential costs for applicable small businesses.

- Removal of One AIM Exception (Part 5.2.6.5)

    - The proposed revision removes one of the potential exceptions that would allow the regulated business to forego the additional measures if they can demonstrate that their storm water discharges will not exceed any water quality standard. This option entails a potentially complicated process that requires monetary expenditures for a very unlikely situation, with no guarantee that they can prove their discharge does not exceed water quality standards. Most businesses experience elevated storm water pollutant levels due to run-on from neighboring properties, natural background levels or unusual events, which are all included in the remaining four exceptions still available.

    - It should also be noted that most benchmarks in the proposed permit are at or above established water quality criteria if they exist for the receiving waters. As such, there should be no cases where a benchmark exceedance is not resulting in a water quality standards exceedance.

    - **The proposed removal is not expected to cause any adverse effects on small businesses.** The revision does not add any requirements but only removes one of five options for receiving an AIM exemption. It is not projected that businesses will utilize the option proposed for removal, as it is not commonly encountered and is also likely to be complicated and expensive for a business to execute.

- Unauthorized Discharge Evaluation Prior to NOI Submittal (Part 6.2.3.4)

    - This revision will require a business to perform an evaluation of their facility to identify unauthorized non-storm water discharges before they apply for permit coverage. This will help the business get ahead of problems by identifying and preventing potential violations before the permit coverage is issued. A clearer and more proactive timeline for identifying unauthorized discharges will ultimately protect the business from potential violations and liability, as well as the environmental and public health from pollutant discharges.

    - **This change is not expected to significantly impact small businesses.** Since the evaluation is already required and the revision only affects when the evaluation may occur, the business is not expected to experience adverse effects. In fact, the revision is intended to help businesses get ahead of problems and prevent violations for which they can be held liable.

- Removal of Summarized Sampling Data (Part 6.2.3.6)

    - DOH is not including this requirement in the proposed permit, as there are still some facilities (specifically individual NPDES permits) that do not follow

the current Appendix B requirements and may not have compatible historical sampling data. The DOH is in the process of removing industrial storm water requirements from individual permits and instead requires that facilities apply for and maintain a separate coverage under the general permit.

- **This change is not expected to significantly impact small businesses as it does not add any additional requirements for small businesses.** Rather, it removes a requirement to be completed during the renewal process.

- SWPPP Update Deadline (Part 6.4.1.1, 6.4.1.2, and 6.4.1.3)

  - This revision is to change the deadline to submit updates to a facility's SWPPP from no later than 45 days after conducting the final routine facility inspection for the year to January 30th of each year. This change simplifies the deadline for submittal and creates a regular occurring deadline that should make compliance easier for covered facilities, as a facility does not have a moving deadline based on when they conduct their inspections for the year.

  - **This change is not expected to significantly impact small businesses as there is no additional material needs to comply with the new requirement such as changes to the facility, new equipment, or additional personnel.**

As such, DOH does not expect any of the proposed revisions to Appendix B (as noted above) to the rules to significantly impact small business.

Appendix E affects businesses that use water for cooling and discharge that water to a state receiving water such as the ocean or a stream. Since these types of cooling systems are larger systems, the businesses affected may be medium or larger sized businesses. **There are currently only three permittees, BEI Hawaii, IES Downstream, and National Oceanic and Atmospheric Administration, so no small businesses will be affected by this revision.**

Appendix F primarily impacts government agencies and municipalities. Although there may be contractors or sub-contractors that are small businesses that are hired for these projects, there should be no direct adverse impact to them. The proposed revisions include changes to exclude coverage for discharges occurring within lands of exclusive federal jurisdiction, to not impose compliance based on conditions of the receiving waters (as mandated by the Supreme Court), to comply with federal electronic reporting requirements, and to ensure consistency with requirements already implemented in other existing general permits. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

Appendix G primarily impacts government agencies and municipalities. Although there may be contractors or sub-contractors that are small businesses that are hired for these projects, there should be no direct adverse impact to them. The proposed revisions include changes to exclude coverage for discharges occurring within lands of exclusive federal jurisdiction, to not impose compliance based on conditions of the receiving waters (as mandated by the Supreme Court), to comply with federal electronic reporting requirements, and to ensure consistency with requirements already implemented in other existing general permits. None of the proposed revisions will significantly impact small businesses. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

Appendix K of HAR Chapter 11-55 authorizes the discharge of storm water and certain non-storm waters from Small Municipal Separate Storm Sewer Systems (or Small MS4s). **This general permit only applies to municipal governments and does not impact any small businesses.**

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

With the exception of HAR §11-55-40(b)(1) discussed below, revisions to HAR Chapter 11-55 do not increase any direct or indirect costs.

As noted in Section (1), revisions to HAR Chapter 11-55, Appendices B, E, F, G, and K are not expected to significantly impact small businesses, with any increased indirect costs associated with compliance to be minimal. There are also no direct cost increases for small businesses due to revisions to Appendices B, E, F, G, and K (no increase in fees or fines). Any noncompliance with the general permit conditions could result in penalties in accordance with Hawaii Revised Statutes (HRS) 342D-30.

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

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

   HAR §11-55-40(b)(2)(B): This is a new penalty for failing to update contact information.

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

   HAR §11-55-40(b)(2)(B): $200 for the first violation and $400 for subsequent violations of HAR §11-55-40(b)(1)(I). This is the penalty for failing to update contact information.

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

Field citations offer expedited settlement to specific violations that do not pose a significant threat to public or environmental health and are utilized at DOH's discretion. Field citations and their set monetary penalties are used as deterrents to incentivize compliance with the issued permit, while also allowing for quick and efficient enforcement resolution for certain types of violations. The penalties also promote a level playing field so small businesses putting in the time and effort to protect the environment are not at a monetary disadvantage to businesses who do not. The penalties for not updating contact information promote compliance and timely resolution while maintaining the deterrent effect intended.

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

The penalties for not updating contact information are the lowest of the current penalties: $200 for the first violation and $400 for subsequent violations. They are the same as penalties for not retaining current permitting documents on-site, or at a nearby office or field office.

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

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

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

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

As noted in Section (1), revisions to Appendices B, E, F, G, and K are not expected to significantly impact small businesses; therefore, methods to reduce the impact on small businesses were not explored.

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

DOH does not believe there are less restrictive alternatives to the proposed amendments.

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

DOH does not believe that these revisions to HAR Chapter 11-55 will have an adverse impact on small business. Therefore, alternative methods of compliance for small businesses were not explored.

As noted in Section (1), revisions to Appendices B, E, F, G, and K are not expected to significantly impact small businesses; therefore, alternative methods for small business were not explored. It should also be noted that the general permits are generally not prescriptive on technologies or methods to be used for compliance (i.e., require using a specific technology or product), allowing small businesses to tailor their compliance methods and technologies for their specific circumstances.

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

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

Early Stakeholder Outreach on the proposed revisions was initiated on January 12, 2026, and will end on February 11, 2026. The CWB emailed permittees, government agencies, and public notice distribution list (list of anyone in the public that wants to be notified of all CWB public notices). Combined, the CWB sent out approximately 390 emails.

As of February 5, 2026, the CWB received the following comment from the City and County of Honolulu, Department of Design and Construction, regarding updating contact information.

"HAR 11-55 1) Section 11-55-07(d) requires updating the contact information for the Certifying Person and the Authorized Representative. Can this change be made globally to the Department's open NGPCs as opposed to submission for each NGPC on the DOH Portal?"

We have not received any comments from small businesses. The CWB will provide an update on the comments received from the Early Stakeholder Outreach.

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

The revisions proposed to HAR Chapter 11-55 and Appendices E, F, G, and K are not more stringent than any comparable or related federal, state, or county standards.

Comparisons between the federal 2021 MSGP and the proposed revisions to Appendix B are contained in the corresponding fact sheet and also includes an explanation for why the proposed revisions differ from the federal MSGP. While the proposed revisions that differ from the federal 2021 MSGP include altered or additional requirements, as noted in Section (1), revisions to Appendix B are not expected to significantly impact small businesses, nor are they expected to incur significant costs on small businesses. However, any noncompliance with the general permit conditions could result in penalties in accordance with HRS 342D-30.

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

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

Public Hearing Approval Request

The DOH-CWB requests approval to conduct a public hearing.

- Summary of changes

- Why is this section of Hawaii Administrative Rules being amended?

  The DOH-CWB proposes to amend HAR Chapter 11-55 and amend and reissue HAR Chapter 11-55, Appendices B, E, F, G, and K.

  Rulemaking is required as Appendices B, E, F, G, and K expire on January 14, 2027, and must be readopted and reissued to continue their use.

- What problem is the rule change meant to solve?

  The rule change is primarily to promote the timely resolution of field citations and to issue the Appendices B, E, F, G, and K before they expire.

- List all changes that are being made.

  See the fact sheets for each general permit.

- Impact of changes

  - How does this rule change address the problem?

    As stated previously, the rule change is primarily to promote the timely resolution of field citations and to issue Appendices B, E, F, G, and K before they expire.

    Failure to make this rule change will result in the expiration of Appendices B, E, F, G, and K on January 14, 2027.

    See the fact sheets for specific explanations for each specific change.

  - Who are the stakeholders? Positive and negative.

    HAR Chapter 11-55 revisions of the penalties for not updating contact information do not affect small businesses who are in compliance with their permit. Appendices B, E, F, and G may impact small businesses, however, there should be no adverse impact from revisions. Appendix K does not impact small businesses.

  - What are the potential problems with the rule change?

    The CWB does not expect there to be potential problems with the rule change. The general permits have not become more stringent or costly than they were before.

  - What is the fiscal impact?

The CWB does not expect there to be any major fiscal impacts as a result of this rule change. There may even possibly be reduced fiscal impact to permittees due to changes in effluent limitations and monitoring requirements. Further, the penalties for not updating contact information do not affect permittees that comply with the permit.

- What is the economic impact to the State?

  There should be no significant economic impact to the State. There are no additional fees or costs associated with the changes to these general permits. As stated previously, State agencies issued coverage under these general permits may even save money as a result of changes to effluent limitations and monitoring requirements. Further, the penalty amounts for not updating contact information do not affect State agency permittees that comply with their permit.

- Consequences if changes are not made.

  - What are the consequences if the rule change does not get adopted, amended, or repealed?

    If the General Permits are not renewed, all potential permittees will be required to apply for NPDES Individual permits. The filing fee for an NPDES Individual permit application is $1000 vs. $500 for general permit coverage. The individual permitting process adds significant processing time and burden to CWB staff. Further, the individual permitting process requires a public notice in a local newspaper (with all costs borne by the applicant) and a public comment period of a minimum of 30 days. The individual permitting process may also involve a public hearing. These additional procedures would cause delays in projects that could be covered under the general permit.

Response to January 12, 2026, Early Stakeholder Written Comments Received on the Draft Revisions to HAR Chapter 11-55 and Appendices BEFGK

The Department of Health (DOH), Clean Water Branch (CWB) conducted an early stakeholder outreach period from January 12, 2026, through February 11, 2026, to solicit written input on the proposed draft amendments to Hawaii Administrative Rules (HAR) Chapter 11-55 and HAR 11-55 Appendices B, E, F, G, and K. The purpose of this outreach was to gather feedback specifically on the proposed amendments; comments on existing provisions were not considered during this process

Copies of the proposed amendments and accompanying fact sheets were made available on the CWB website. Stakeholders were invited to review and comment on the following documents:

- HAR Chapter 11-55 and Fact Sheet
- HAR Chapter 11-55 Appendix B - NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activity and Fact Sheet;
- HAR Chapter 11-55 Appendix E - NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons per Day (MGD) and Fact Sheet;
- HAR Chapter 11-55 Appendix F - NPDES General Permit Authorizing Discharges of Hydrotesting Water and Fact Sheet;
- HAR Chapter 11-55 Appendix G - NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering and Fact Sheet; and
- HAR Chapter 11-55 Appendix K - NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and Fact Sheet.

This document serves to acknowledge the early stakeholder outreach period and summarize the process by which the DOH-CWB sought input prior to public notice. All comments received during this outreach were reviewed and considered in the development of the proposed rule amendments and general permits.

Response to January 12, 2026, Early Stakeholder Written Comments Received on the Draft Revisions to HAR Chapter 11-55 and Appendices BEFGK

The DOH-CWB received comments from the following:

	Commenter	Contact(s)
1.	City and County of Honolulu, Department of Design and Construction, Civil Division; 1 page; *949628 Signed.pdf*; Received January 30, 2026.	ddc@honolulu.gov
2.	County of Maui, Department of Public Works (via Paul Barany); 7 pages; *COM Comments_HAR-11-55 Proposed Revisions_260203.pdf*; Received February 9, 2026.	Public.Works@co.maui.hi.us; paul.barany@co.maui.hi.us; michael.kinores@co.maui.hi.us;
3.	State of Hawaii, Department of Transportation, Airports Division (via Stacy Paquette); 11 pages; *2026 AIR-EE Combined Comments to Proposed HAR-55* (sic) *Amendments_260209.docx*; Received February 10, 2026.	stacy.a.paquette@hawaii.gov
4.	Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (via Lisa Parente); 3 pages; *5090_106.3_26-015 HAR 11-55 Early Stakeholder Input.pdf*; Received February 11, 2026	lisa.n.parente.civ@us.navy.mil jade.s.katsuda.civ@us.navy.mil troy.a.otake.civ@us.navy.mil lewis.hsu.civ@us.navy.mil kelly.j.yamashita.civ@us.navy.mil edward.s.drielak.civ@us.navy.mil kristen.m.mock.civ@us.navy.mil
5.	Freer Consulting (via Brian Carmichael); 2 pages; *20260211.Brian Carmichael.Free Consulting.pdf;* Received February 11, 2026	b.carmichael@freerconsulting.com
6.	Airlines for America (via Kenley Farmer); 3 pages; *Hawaii MSGP – Final.pdf*; Received February 11, 2026	kfarmer@airlines.org
7.	State of Hawaii, Department of Transportation, Highways Division – Maui District (via Ty Fukuroku); 2 pages; *HAR 11-55 Proposed Revision Comments*; Received February 11, 2026	ty.h.fukuroku@hawaii.gov

Comments from Non-Government Entities

Freer Consulting

Comment 1

Citation for Comment

Part 7.3.3

Explanation of Views

Per work with a client, we have had issues meeting the deadline for submission of sampling data. The proposed permit maintains the existing deadline of the 28th day of the month following the date of sample. Due to metals analysis requiring shipment of the sample to a mainland laboratory, the results have at times been received close to and up to one day before the deadline.

Assumptions and Data Used in Support

This assumption is based on past experience as noted above. While it is not a regular occurrence, it has happened more than once in the existing permit period. It is most likely to occur when a sample is obtained at the end of the month. Per the lab, "normal turnaround time is approximately 3 weeks, and is not usually considered late until it surpasses 4 weeks."

Explanation of How the Burden Was Estimated

The burden is not meeting the deadline. While the e-Permitting Portal allows for explanation of missing the deadline, an alternative would be to adjust the deadline to be based on when the lab results are received. This deadline structure is used in other parts of the permit.

Specific Examples to Illustrate this Point

The following date ranges for 2024-2026 show monitoring samples where of the number of days from date of sampling to the date the lab reports were received were 27 days or greater:

Date of Sampling	Date Report Received	Number of Days From Sampling to Received Date
3/17/2025	4/23/2025	37
3/21/2024	4/24/2024	34
12/24/2024	1/27/2025	34
12/18/2025	1/16/2026	29
12/18/2025	1/16/2026	29
2/22/2024	3/21/2024	28
9/29/2025	10/27/2025	28
2/27/2024	3/25/2024	27
5/16/2024	6/12/2024	27
9/11/2025	10/8/2025	27
1/15/2026	2/11/2026	27

In many of these examples the turnaround time was not an issue given the time of the month the sample was obtained. In two of the examples we only had one day to complete the submission after receiving the lab results.

Alternatives

As noted above, adjusting the deadline to be based on when the lab results are received would be one solution. Another alternative would be to have the deadline based on the date of sampling, but extend the time frame. One final alternative would be to have quarterly samples due a certain amount of days after the end of the quarter such as 45 days.

Thank you for your consideration,

Response

As noted by the commenter, the submission deadline for monitoring data is retained from the current Appendix B, which the DOH-CWB will not be revising at this time for consistency with the current Appendix B. While the commenter has noted this situation has occurred during this permit term, it is not a regularly occurring issue. The DOH-CWB does not believe this warrants a departure from the current monitoring schedule framework which all permittees have been operating under since the issuance of the last version of the general permit in 2022. Further, as noted by the commenter, there are procedures in place for permittees to provide explanations in those instances where sample results are reported late due to delays with the laboratory.

Airlines for America

Comment 1

Changes Intended to Conform with the U.S. Supreme Court's Decision in City & County of San Francisco v. EPA, 145 S. Ct. 704 (2025) (San Francisco)

A4A appreciates the Agency's intent to incorporate changes to Appendix B to conform with San Francisco, including to Part 1.1.3.1., Part 1.1.3.2(c), Part 1.1.3.2(c)(i), Part 2.1, Part 2.2.1, Part 4.2, and Part 5.1.1.3., as described in the Fact Sheet at 9-11, 14-17, 21-22, and 24-25.

However, we have further suggestions as to how the proposed changes to Appendix B could better meet the U.S. Supreme Court's ruling in San Francisco that a permit may not impose "end result" requirements and look forward to providing more detailed feedback through the formal comment process.

Response

Thank you for your comment.

Comment 2

Aviation-Specific Considerations Pertaining to Implementation of Control Measures and Other Requirements A4A and our member airlines have a long history of supporting and working cooperatively with EPA and state permitting authorities in implementing the CWA and the NPDES permitting program. One important outcome of this longstanding, constructive engagement is that EPA has explicitly acknowledged that the aviation safety and efficiency imperatives imposed by Congress through federal aviation statutes must be taken into consideration in implementing CWA. Accordingly, in every instance in Part 8, Subpart S-Air Transportation of the 2021 MSGP where EPA identified a control measure for potential implementation, it explicitly recognized the control measure need only be implemented "where determined to be feasible and [to] accommodate considerations of safety, space, operational constraints and flight considerations."[1] These same considerations must apply to and be incorporated into other substantive obligations imposed on dischargers by the permit, including the Additional Implementation Measures ("AIM") framework in Part 5 and selection of Storm Water Control Measures in Part 2 of Appendix B.

In addition, the 2021 MSGP and Draft Changes to Appendix B acknowledge the unique circumstances and complexities that attend the aviation context, in which an airport authority and its tenants often must work collaboratively to effectively and efficiently fulfill permit requirements.[2] One aspect of this complexity is that some airport tenants may not have direct control over or access to all outfalls and control measures that are

[1] (DOH-CWB notes that this footnote is listed as footnote 4 in the source document) *See, e.g., 2021 MSGP Part 8.S.4.1.1.*

[2] (DOH-CWB notes that this footnote is listed as footnote 5 in the source document) *See Part 8.S.3.2.*

the subject of the permit. Indeed, at some facilities, stormwater outfalls are not under direct control or adjacent to the facility and discharges may combine with flows from other sources before reaching an outfall. As such, discharge monitoring and control measure documentation (particularly through photographic documentation) requirements, will often require review and approval by the Federal Aviation Administration and, due to operational and safety imperatives, may require extended planning and implementation schedules.

Response

As noted in the Fact Sheet for the revisions to Appendix B, DOH-CWB intends to match EPA's 2021 MSGP where possible. Notably, EPA's 2021 MSGP does not contain the "where determined feasible…" outside of Sector S for those activities specific to air transportation industrial facilities. As such, DOH-CWB will not add this language to the Storm Water Control Measures in Part 2 or the Additional Implementation Measures (AIM) framework in Part 5.

It should be noted that while the exact language regarding feasibility from Sector S in Part 8 is not included in Part 2, Part 2 defines infeasible (in the context of storm water control measures) as "not technologically possible or not economically practicable and achievable in light of best industry practices." The DOH-CWB believes this gives sufficient flexibility for storm water control measure selection for air transportation facilities. By extension, the requirement for feasible storm water control measures would extend to storm water control measure selection pursuant to additional control measures required by the AIM framework. Similarly, Part 5 includes various opportunities for permittees to provide explanations for instances where completing corrective actions within the required time frame is infeasible.

Photographic documentation requirements are retained from the current Appendix B and are necessary to correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required. Existing permittees were required to comply with this since the current permit became effective in 2022. Facilities should already have developed procedures and methods to take photographic documentation of control measures. Further, facilities should be able to access control measures that they are using to comply with this permit, as routine inspection and maintenance of control measures is critical to ensuring that the discharge leaving the facility is in compliance with the terms of the general permit.

As noted in the Fact Sheet, photo requirements of the discharge are intended to corroborate the effectiveness of control measures and reported sampling results. As noted by the commenter, there may be instances where the discharge from the facility is in a distant or difficult to access location, particularly in cases where a discharge leaves the facility and enters a drainage system which may travel long distances collecting storm water from other facilities before entering the state receiving waters.

To address this concern, Part 4.2.4 will be revised to require photographic documentation of the discharge point. Discharge point is defined in Part 3.1.3.8 as the location(s) where storm water leaves the facility either directly or through a separate storm sewer system to a state water. The DOH-CWB believes this revision should address those situations where facilities encounter difficulties accessing the location where storm water from their facility actual enters the receiving water such as through a storm drain system.

Comment 3

Part 8 - Subsector S

Although this addresses an existing provision that is ostensibly beyond the scope of the Agency's solicitation for written input here, and while deicing is typically uncommon in Hawaii, we suggest that for consistency, Part 8.S.2.1 - Limitations on Coverage, be amended to parallel the language in EPA's 2021 MSGP Part 8.S.2.1 to read[3]:

Limitations on Coverage. This permit authorizes stormwater discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), ~~or~~ equipment cleaning operations or deicing operations.

Note: the term "deicing" in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

Similarly, references to deicing in Part 8.S.3.2. of the 2021 MSGP should be carried through in Part 8.S.3.2. of Appendix B.

Response

As noted by the commenter there is an erroneous discrepancy between the proposed Appendix B revisions and EPA's 2021 MSGP.

As such, Parts 8.S.2.1 and 8.S.3.2 have been revised to match EPA's 2021 MSGP.

[3] (DOH-CWB notes that this footnote is listed as footnote 6 in the source document) *This language is also consistent with 40 C.F.R. §122.26(a)(14)(viii). Addition of this language is also consistent with the Agency's affirmation that it is "including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to include any unforeseen situations and to align closely with EPA's 2021 MSGP where possible." Fact Sheet at 7.*

Comments from Government Agencies

City and County of Honolulu, Department of Design and Construction, Civil Division

Comment 1

Thank you for the opportunity to review and comment.

Out Civil Division has the following comments:

HAR 11-55 1) Section 11-55-07(d) requires updating the contact information for the Certifying Person and the Authorized Representative. Can this change be made globally to the Department's open NGPCs as opposed to submission for each NGPC on the DOH Portal?

County of Maui, Department of Public Works

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

"Discharges which may not require an NPDES permit include, but are not limited to, the following:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *Air conditioning condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. *Discharges or flows from firefighting activities."*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, "landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types and "rising ground waters,"

"uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation.

Additionally, the list is inconsistent with HAR 11-55, Appendix K. The following revisions are suggested:

- Remove the distinction "using potable water" from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add "and similar impervious surfaces" to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.
- Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai‘i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

Revise this section to replace "duly authorized representative" with "authorized representative," consistent with the defined term in 11-55-01.

The definition of an "Authorized Representative" in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term "duly authorized representative" is understandable but can lead to confusion as to whether this is a different person than an "authorized representative."

Comment 3

Page: Various Section: Various

Revise Appendix K to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix K uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix K.

Comment 4

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

"The following non-storm water discharges are authorized by this general permit:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *A/C condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. Discharges or flows from firefighting activities."

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

- "Landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types.
- "Rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating

these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

- *Separate potable water sources from foundation drains.*
- *Specify "uncontaminated" in reference to water from crawl space pumps and footing drains.*
- *Revise "Residual street wash water" to "Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives" – note the suggested addition of "and similar impervious surfaces" to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Comment 5

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

"Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge [~~from the discharge~~] and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain [~~with~~] observable deposits of floating solids, scum, sheen or other substances[~~,~~]; [~~an observable~~] film, sheen or discoloration from oil and grease[~~,~~]; or foam or substances that produce an observable change in color, odor, or cloudiness[~~ in the discharges~~]."

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "visible plumes from the discharge" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Comment 6

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Comment 7

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Schedules and protocols for [~~identification of priority areas~~] prioritizing areas of the MS4 for detailed screening [~~of the system~~] based on the likelihood of illicit discharges and illegal connections."

The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Comment 8

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Detailed screening [~~can include~~] may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For

many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing "can include" with "may include, as appropriate" would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Comment 9

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

"Inform public employees, businesses, and the general public of hazards associated with [~~illegal~~] illicit discharges and improper disposal of waste."

The revised language uses the term "illegal discharges," while the remainder of the permit consistently uses the term "illicit discharges," as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term "illicit discharges" will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

State of Hawaii, Department of Transportation, Airports Division

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

"Discharges which may not require an NPDES permit include, but are not limited to, the following:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *Air conditioning condensate;*

8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. *Discharges or flows from firefighting activities."*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, "landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types and "rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation. Additionally, the list is inconsistent with HAR 11 55, Appendix K. The following revisions are suggested:

- *Remove the distinction "using potable water" from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add "and similar impervious surfaces" to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.*
- *Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai'i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

Revise this section to replace "duly authorized representative" with "authorized representative," consistent with the defined term in 11-55-01.

The definition of an "Authorized Representative" in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term "duly authorized representative" is understandable but can lead to confusion as to whether this is a different person than an "authorized representative."

Comment 3

Page: Various Section: Various

Revise Appendix B to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix B uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix B.

Comment 4

Page: 55-B-86 Section: 2.2.1

Proposed Revisions to Amended Text:

"Prohibit discharges [~~with~~] that, at the point of discharge and prior to mixing with receiving waters, contain observable deposits of floating solids, scum, sheen or other substances, [~~an observable~~] film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness at the point of discharges~~ ~~, excluding naturally occurring conditions;"

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "observable deposits of floating solids, scum, sheen or other substances" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Comment 5

Page: 55-B-41 Section: 1.2.2.1(f)

Proposed addition: *"Control measures to generally be implemented consistent with manufacturer specifications, unless the operator documents site specific justification demonstrating equivalent or greater pollutant control, or DOH provides written direction specifying alternative measures."*

The proposed addition is intended to provide procedural clarity and consistency in enforcement across facilities.

Comment 6

Page: 55-B-50 Section: 1.3.4

Proposed Revisions to Amended Text:

"You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to your facility. Where physical signage cannot be posted due to safety, security, or operational restrictions, or [~~Public signage is not required~~] where other laws, regulations, or official policies [~~or local ordinances~~] prohibit or discourage such signage, [~~in which case~~] you must document in your SWPPP a brief explanation for why you cannot post a sign and a reference to the law, regulation, or policy [~~or ordinance~~].

The current language assumes the permitted "facility" has a publicly accessible perimeter frontage. For certain regulated operators, including large, secured transportation facilities (e.g., airports), the industrial activities covered under the permit, such as maintenance baseyards, fueling support areas, and material storage, occur within restricted operational areas that are not accessible to the public for safety and security reasons.

Although a local ordinance may not prohibit signage, state operational and aviation security policies restrict the placement of non-operational signage within secure or operational areas. As written, the permit may create a compliance obligation without a practicable compliance pathway for these types of facilities.

Comment 7

Page: 55-B-96 Section: 3.1.5

Proposed addition: *"Where photographs are used to document inspections, corrective actions, or discharge samples, images shall clearly depict the condition observed and include date and time information and be retained with SWPPP records."*

The proposed addition is intended to provide a standard for objective evidence and enforcement needs.

Comment 8

Page: 55-B-109 Section: 4.1.3

Proposed Revisions to Amended Text:

"You must conduct all required monitoring on a storm event that results in an actual discharge ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). For purposes of this definition, the 72-hour period begins when stormwater discharge from the previous storm event has ceased at the discharge point."

The current definition establishes a minimum 72-hour separation between measurable storm events but does not specify how the end of a storm event is determined. Because stormwater discharges may continue after rainfall has stopped due to drainage system routing, storage, infiltration, or groundwater interaction, it is unclear whether the antecedent period should be measured from the end of precipitation or from cessation of discharge.

Clarifying that the 72-hour period begins after stormwater discharge has ceased provides an objective and observable field condition for operators and inspectors. This aligns the definition with the purpose of stormwater sampling, which is to characterize distinct runoff events, and improves consistency of implementation across permittees.

Comment 9

Page: 55-B-142 Section: 5

***Proposed addition:** "Facilities with concentrations below applicable benchmark thresholds for two consecutive monitoring periods may return to baseline status, consistent with EPA MSGP AIM provisions."*

The proposed addition is intended to address AIM level reset conditions to avoid facilities remaining indefinitely in elevated tiers, consistent with EPA MSGP AIM provisions.

Comment 10

Page: 55-B-144 Section: 5.1.1.3

***Proposed Revisions to Amended Text**: "Your storm water control measures are not stringent enough ~~for your storm water discharge to be controlled as necessary such that the discharge will meet applicable water quality standards or~~ to meet the non-numeric effluent limits ~~in~~ of this permit."*

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

Language removes "end-result" requirements and aligns with CWA compliance.

Comment 11

Page: 55-B-146 Section: 5.1.3.1

Proposed Revisions to Amended Text: *"immediately" means that the day you find a condition requiring corrective action, you must take all reasonable steps to minimize or prevent the discharge of pollutants until you can implement ~~a permanent solution.~~ the required storm water control measure specified in this permit."*

Language aligns with CWA and removes implication of end condition.

Comment 12

Page: 55-B-314 Section: 8.P.2.1

Proposed addition:

"This permit authorizes storm water discharges from only those portions of the transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations."

Certain land transportation and warehousing facilities do not conduct activities typically covered under this industrial permit.

The proposed addition is intended to provide consistency with the language for Sector S and the NPDES Industrial Storm Water General Permit FAQs posted on the DOH webpage.

Comment 13

Page: Various Section: Various

Revise Appendix K [sic] to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix F uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix F.

Comment 14

Page: 55-F-8 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025,

U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Comment 15

Page: 55-F-15 Section: 8(a)(6)

Proposed Revisions to Amended Text: *"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~~] submit Discharge Monitoring Reports online at the department's e-Permitting portal."*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH's NPDES program and applicable national standards for environmental permitting.

Comment 16

Page: Various Section: Various

Revise Appendix K [sic] to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix G uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix G.

Comment 17

Page: 55-G-12 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Comment 18

Page: 55-G-18 Section: 8(a)(6)

Proposed Revisions to Existing Text: *"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~~] submit Discharge Monitoring Reports online at the department's e-Permitting portal."*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH's NPDES program and applicable national standards for environmental permitting.

Comment 19

Page: Various Section: Various

Revise Appendix K to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix K uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix K.

Comment 20

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

"The following non-storm water discharges are authorized by this general permit:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *A/C condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. Discharges or flows from firefighting activities."

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

- "Landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types.
- "Rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating

these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

- *Separate potable water sources from foundation drains.*
- *Specify "uncontaminated" in reference to water from crawl space pumps and footing drains.*
- *Revise "Residual street wash water" to "Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives" – note the suggested addition of "and similar impervious surfaces" to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Comment 21

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

"Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge [from the discharge] and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain [with] observable deposits of floating solids, scum, sheen or other substances[,]; [an observable] film, sheen or discoloration from oil and grease[,]; or foam or substances that produce an observable change in color, odor, or cloudiness[in the discharges]."

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "visible plumes from the discharge" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Comment 22

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Comment 23

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Schedules and protocols for [~~identification of priority areas~~] prioritizing areas of the MS4 for detailed screening [~~of the system~~] based on the likelihood of illicit discharges and illegal connections."

The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Comment 24

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Detailed screening [~~can include~~] may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For

many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing "can include" with "may include, as appropriate" would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Comment 25

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

"Inform public employees, businesses, and the general public of hazards associated with [~~illegal~~] illicit discharges and improper disposal of waste."

The revised language uses the term "illegal discharges," while the remainder of the permit consistently uses the term "illicit discharges," as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term "illicit discharges" will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility

Comment 1

File (Appendix): *HAR 11-55* ***PDF Page Number:*** *N/A* ***Sector/Section:*** *11-55-01* ***HAR 11-55 Page Number:*** *N/A*

Requesting to add the definition of "Storm Water Run-On"

HAR 11-55 defines "Storm Water" and "Storm Water discharge associated with industrial activities" which are types of Storm Water Run Off. HAR 11-55 appendix B makes several references to Storm Water Run-On but does not fully define what is or qualifies as Storm Water Run-On

Comment 2

File (Appendix): *Appendix B* ***PDF Page Number:*** *785* ***Sector/Section:*** *Fact Sheet Part 4) (pg. 7)* ***HAR 11-55 Page Number:*** *N/A*

Please correct the last sentence to state "Storm event"

Typo

Comment 3

File (Appendix): *Appendix B* ***PDF Page Number:*** *796* ***Sector/Section:*** *Fact Sheet Part 3.1.5.4(f) (pg. 18)* ***HAR 11-55 Page Number:*** *55-B-97*

Requesting removal of Part 3.1.5.4(f)

It is unreasonable for permittees to know if certain upstream discharges are authorized under another individuals NPDES permit. Certain facilities or entities may have several overlaps within their property and certain discharges may be authorized under a different permit or SWPPP. Appendix K allows permittees to add in additional authorized non-stormwater discharges which will not be considered illicit discharges so long as they are deemed to not be significant sources of pollutants and might be unknown from the downstream permittee.

Comment 4

File (Appendix): *Appendix B* ***PDF Page Number:*** *798* ***Sector/Section:*** *Fact Sheet Part 4.1.2 (pg. 20)* ***HAR 11-55 Page Number:*** *55-B-108*

Request to keep in the phrase "to the extent practicable" in the monitoring requirement

For certain facilities or entities with large foot prints and shared storm drain systems, it may be impossible to grab samples of authorized storm water discharges prior to commingling with discharges not authorized under this permit. Certain entities may have other coverage for their stormwater (i.e., individual permits) that are not covered under this general permit. The EPA includes the language of "to the extent practicable" in its Multi-Sector General Permit.

Comment 5

File (Appendix): *Appendix B* ***PDF Page Number:*** *798* ***Sector/Section:*** *Fact Sheet Part 4.2 (pg. 20)* ***HAR 11-55 Page Number:*** *55-B-116*

Requesting to change the sentence to "Part 1.3.6, in the event that the permit is administratively continued, monitoring ***and reporting*** *requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration.*

Addition of "and reporting" aligns with the rationale for revising this section. How the revised statement was written did not make clear that reporting also remains the same, it only mentions the monitoring remains the same.

Comment 6

File (Appendix): *Appendix B* ***PDF Page Number:*** *799* ***Sector/Section:*** *Fact Sheet Part 4.2.1 (pg. 21)* ***HAR 11-55 Page Number:*** *55-B-118*

Remove the following "The requirement in Part 2.2.1 that your stormwater storm water discharge be controlled as necessary such that the receiving water of the United States discharge will meet applicable water quality standards still applies."

Conflict exists in the revised section where it states indicator monitoring parameters are "report only" and have "no follow-up action" but then mentions the "storm water discharge be controlled as necessary such that the discharge will meet applicable water quality standards." Water Quality Standards are applicable to the receiving water and not the discharge. This would violate the recent Supreme Court Ruling No. 23-753 City and County of San Francisco v. Environmental Protection Agency, March 4, 2025.

Comment 7

File (Appendix): *Appendix B* ***PDF Page Number:*** *803* ***Sector/Section:*** *Fact Sheet Part 5.2.6.52 (pg. 25)* ***HAR 11-55 Page Number:*** *55-B-170*

Please correct Fact sheet reference from "Part 5.2.6.52" to Part 5.2.6.2.

Typo and no HAR 11-55 Part 5.2.6.52.

Comment 8

File (Appendix): *Appendix B* ***PDF Page Number:*** *803* ***Sector/Section:*** *Fact Sheet Part 5.2.6.52 (pg. 25)* ***HAR 11-55 Page Number:*** *55-B-170*

Requesting the inclusions of the following words to this section: "Due to Run-On: You must demonstrate that run-on from a neighboring source (e.g., a source external to your facility ***or entity****) is the cause of the exceedance, provided that all the following conditions are met and you include you analysis in your SWPPP."*

Addition of "or entity" is consistent with wording in sections a and b following this paragraph. It provides clarity for larger facilities that may have other entities on their facility that there could be run on associated with their activities that may affect the individual's facility seeking coverage under this general permit.

Comment 9

File (Appendix): *Appendix B* ***PDF Page Number:*** *809* ***Sector/Section:*** *Fact Sheet Part 64.1.1 (pg. 31)* ***HAR 11-55 Page Number:*** *55-B-216*

Include verbiage that submission of current SWPPP by January 30th of each year is not required if no modifications were made that year.

Concerns with repeated submissions of a document that has no modifications.

Comment 10

File (Appendix): *Appendix K* ***PDF Page Number:*** *31* ***Sector/Section:*** *Fact Sheet Section 2(c)* ***HAR 11-55 Page Number:*** *55-K-5*

Request the removal of "Prohibit visible plumes from the discharge and"

Requesting the removal of these words to be consistent and align with other individual permit language that state: "Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

State of Hawaii, Department of Transportation, Highways Division – Maui District

Comment 1

Field citation language revision

§11-55-40 Field citations; non-compliance with NPDES requirements

(c) Resolution of field citation.

(1) A person issued a field citation may accept the citation by:

(C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty calendar days after the person receives the field citation; and

(D) Correction within seven calendar days, or unless otherwise specified on the field citation, of

Request to revise the language 11-55-40©(1)© to read as follows: (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within thirty calendar days after the person receives the field citation; and

***Rationale**: DOT would like to request a thirty (30) calendar day time frame instead of twenty calendar day time frame to pay the field citation to account for nonwork days such as weekends and holidays. This request is also consistent with the typical time frames within HAR 11-55.*

Comment 2

Implements narrative water quality standards as discharge prohibitions

2. Limitations on Coverage under this General Permit

(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.

Request to revise this current language to be as follows:

"(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit to implement best management practices (BMPs) that reduce the discharge of pollutants to the Maximum Extent Practicable (MEP), consistent with Section 402(p)(3)(B) of the CWA. The discharges must not contain observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

***Rationale**: The rationale for this request is to make minor revisions to be consistent with the Supreme Court ruling in the case of City and County of San Francisco versus EPA to remove language that can interpreted to impose compliance based on receiving water conditions, Clean Water Act (CWA) Maximum Extent Practicable (MEP) standard, and the nature of stormwater discharges from MS4s. Many state-issued MS4 General Permits (which cover the majority of Phase II communities) do not include "visible plume" prohibitions since it is primarily a receiving water characteristic. The CWA mandates that MS4s reduce pollutant discharges to the MEP and the MS4 permits are designed to handle variable, episodic precipitation events rather than consistent industrial wastewater flows. The EPA notes that typical industrial "end-of-pipe" limits, such as those that might restrict a visible plume, are "poorly suited" for the largely uncontrolled, variable flow of MS4s (MS4 Stormwater Permitting Guide, NACWA). The "visible plume" language is often used for industrial facilities (under the MSGP) to measure immediate compliance, and is not appropriate for the municipal SWMP framework. The EPA's 2017 Compendium of Clean, Specific & Measurable Permitting Examples focuses on numerical, quantifiable metrics for stormwater, such as retention standards and, specifically,, for TMDL compliance, rather than "visual" monitoring. This is also consistent with the Section 6(a) of this General Permit that prohibits non-storm water discharges into the permittee's MS4 consistent with the EPA ruling and Section 7 that removes inspection requirements based on receiving water quality conditions.*

Removing the "visible plume" language brings the permit in line with the MEP standard, aligns with the majority of other state-issued permits and revisions made by DOH to their narrative water quality standards removing plumes from Section 2(c)(2 of the HAR 11-55 Appendices F &G. This also allows for the focus to remain on implementing effective BMPs rather than visual monitoring during storm events.

Comment 3

Permit term revisions/ NOI Submission

3. Term of General Permit

(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Thank DOH you for revising the renewal procedures to reapply i.e., submit an NOI within sixty (60) days of the effective date of the new general permit such that permittees have opportunity to review the permit prior to submitting an NOI.

Request DOH to clarify the timeline for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Section 4(a) of this general permit and the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

***Rationale**: This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 4. Notice of Intent Requirements, (a). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Comment 4

NOI Submission

4. Notice of Intent Requirements

(a) New Permittees (those MS4s not covered under the previous [2013]2022 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous [2013]2022 general permit) shall submit a complete notice of intent no later than [120]180 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

Request DOH to clarify the timeline for existing permittees for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

***Rationale**: This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 3. Term of General Permit, ©(2). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Comment 5

Proposed HAR 11-55 Appendix B

Benchmark Monitoring Schedule

4.2.2.3 Benchmark Monitoring Schedule

Benchmark monitoring of storm water discharges is required quarterly, as identified in Part 4.1.7, in the first and fourth year of permit coverage, as follows:

a. Year one of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your first year of permit coverage, beginning in your first full quarter of permit coverage, no earlier than 90 days after permit issuance.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the next two years (i.e., eight quarters).

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter until monitoring resumes in year four of permit coverage, per Part 4.2.2.3.b below.

b. Year four of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your fourth year of permit coverage (i.e., your thirteenth through sixteenth quarters), unless the first quarter of your fourth year of permit coverage occurs on or after the date this permit expires.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the remainder of your permit coverage.

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter for the remainder of permit coverage.

Request DOH to provide clarification on the reasons for including the benchmark monitoring in the fourth year even if the first four (4) quarterly samples are below the benchmark threshold.

***Rationale**: EPA's Fact Sheet for 2026 Proposed MSGP states that, "The principle underpinning this schedule is that operators that have consistently shown their stormwater controls are controlling discharges so as to not exceed the benchmarks are*

allowed a relief period from benchmark monitoring." and does not provide an analysis or rationale for increasing the frequency of benchmark monitoring. This new requirement essentially doubles the burden on facilities that do not exceed benchmark thresholds thereby punishing the operators that continue to implement measures to ensure their controls are working properly and consistently.

Comment 6

Proposed HAR 11-55 Appendix B

Major Storm Event Resilience

2.1.1.9 Implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures can help to minimize impacts from storm water discharges from major storm events such as hurricanes, storm surge, extreme/heavy precipitation, and flood events. If such storm water control measures are already in place due to existing requirements mandated by other state, local or federal agencies, you should document in your SWPPP a brief description of the controls and a reference to the existing requirement(s). If your facility may be exposed to or has previously experienced such major storm events, additional storm water control measures that may be considered include, but are not limited to:

a. Reinforce materials storage structures to withstand flooding and additional exertion of force;

b. Prevent floating of semi-stationary structures by elevating to the Base flood Elevation (BFE) level or securing with noncorrosive device;

c. When a delivery of exposed materials is expected, and a storm is anticipated within 48 hours, delay delivery until after the storm or store materials as appropriate (refer to emergency procedures);

d. Temporarily store materials and waste above the BFE level;

e. Temporarily reduce or eliminate outdoor storage;

f. Temporarily relocate any mobile vehicles and equipment to higher ground;

g. Develop scenario-based emergency procedures for major storms that are complementary to regular storm water pollution prevention planning and identify emergency contacts for staff and contractors; and

h. Conduct staff training for implementing your emergency procedures at regular intervals.

Request to revise Section 2.1.1.9 to include "When implementing structural improvements, adaptive measures, or a combination of adaptive measures can help to minimize impacts from stormwater discharges from major storm and flood events."

Rationale: *This language is consistent with the proposed 2026 MSGP and the associated Fact Sheet that states, "EPA is not requiring operators to implement additional controls if the operator determines such controls to be unnecessary, but EPA is requiring operators to consider the benefits of selecting and designing control measures that reduce risks to their industrial facility and the potential impact of pollutants in stormwater discharges caused by major storm events."*

RECEIVED
By SBRRB at 9:16 am, Feb 18, 2026

Response to January 12, 2026, Early Stakeholder Written Comments Received on the Draft Revisions to HAR Chapter 11-55 and Appendices BEFGK

The Department of Health (DOH), Clean Water Branch (CWB) conducted an early stakeholder outreach period from January 12, 2026, through February 11, 2026, to solicit written input on the proposed draft amendments to Hawaii Administrative Rules (HAR) Chapter 11-55 and HAR 11-55 Appendices B, E, F, G, and K. The purpose of this outreach was to gather feedback specifically on the proposed amendments; comments on existing provisions were not considered during this process

Copies of the proposed amendments and accompanying fact sheets were made available on the CWB website. Stakeholders were invited to review and comment on the following documents:

- HAR Chapter 11-55 and Fact Sheet
- HAR Chapter 11-55 Appendix B - NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activity and Fact Sheet;
- HAR Chapter 11-55 Appendix E - NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons per Day (MGD) and Fact Sheet;
- HAR Chapter 11-55 Appendix F - NPDES General Permit Authorizing Discharges of Hydrotesting Water and Fact Sheet;
- HAR Chapter 11-55 Appendix G - NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering and Fact Sheet; and
- HAR Chapter 11-55 Appendix K - NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and Fact Sheet.

This document serves to acknowledge the early stakeholder outreach period and summarize the process by which the DOH-CWB sought input prior to public notice. All comments received during this outreach were reviewed and considered in the development of the proposed rule amendments and general permits.

Response to January 12, 2026, Early Stakeholder Written Comments Received on the Draft Revisions to HAR Chapter 11-55 and Appendices BEFGK

The DOH-CWB received comments from the following:

	Commenter	Contact(s)
1.	City and County of Honolulu, Department of Design and Construction, Civil Division; 1 page; *949628 Signed.pdf*; Received January 30, 2026.	ddc@honolulu.gov
2.	County of Maui, Department of Public Works (via Paul Barany); 7 pages; *COM Comments_HAR-11-55 Proposed Revisions_260203.pdf*; Received February 9, 2026.	Public.Works@co.maui.hi.us; paul.barany@co.maui.hi.us; michael.kinores@co.maui.hi.us;
3.	State of Hawaii, Department of Transportation, Airports Division (via Stacy Paquette); 11 pages; *2026 AIR-EE Combined Comments to Proposed HAR-55* (sic) *Amendments_260209.docx*; Received February 10, 2026.	stacy.a.paquette@hawaii.gov
4.	Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (via Lisa Parente); 3 pages; *5090_106.3_26-015 HAR 11-55 Early Stakeholder Input.pdf*; Received February 11, 2026	lisa.n.parente.civ@us.navy.mil jade.s.katsuda.civ@us.navy.mil troy.a.otake.civ@us.navy.mil lewis.hsu.civ@us.navy.mil kelly.j.yamashita.civ@us.navy.mil edward.s.drielak.civ@us.navy.mil kristen.m.mock.civ@us.navy.mil
5.	Freer Consulting (via Brian Carmichael); 2 pages; *20260211.Brian Carmichael.Free Consulting.pdf;* Received February 11, 2026	b.carmichael@freerconsulting.com
6.	Airlines for America (via Kenley Farmer); 3 pages; *Hawaii MSGP – Final.pdf*; Received February 11, 2026	kfarmer@airlines.org
7.	State of Hawaii, Department of Transportation, Highways Division – Maui District (via Ty Fukuroku); 2 pages; *HAR 11-55 Proposed Revision Comments*; Received February 11, 2026	ty.h.fukuroku@hawaii.gov

Comments from Non-Government Entities

Freer Consulting

Comment 1

Citation for Comment

Part 7.3.3

Explanation of Views

Per work with a client, we have had issues meeting the deadline for submission of sampling data. The proposed permit maintains the existing deadline of the 28th day of the month following the date of sample. Due to metals analysis requiring shipment of the sample to a mainland laboratory, the results have at times been received close to and up to one day before the deadline.

Assumptions and Data Used in Support

This assumption is based on past experience as noted above. While it is not a regular occurrence, it has happened more than once in the existing permit period. It is most likely to occur when a sample is obtained at the end of the month. Per the lab, "normal turnaround time is approximately 3 weeks, and is not usually considered late until it surpasses 4 weeks."

Explanation of How the Burden Was Estimated

The burden is not meeting the deadline. While the e-Permitting Portal allows for explanation of missing the deadline, an alternative would be to adjust the deadline to be based on when the lab results are received. This deadline structure is used in other parts of the permit.

Specific Examples to Illustrate this Point

The following date ranges for 2024-2026 show monitoring samples where of the number of days from date of sampling to the date the lab reports were received were 27 days or greater:

Date of Sampling	Date Report Received	Number of Days From Sampling to Received Date
3/17/2025	4/23/2025	37
3/21/2024	4/24/2024	34
12/24/2024	1/27/2025	34
12/18/2025	1/16/2026	29
12/18/2025	1/16/2026	29
2/22/2024	3/21/2024	28
9/29/2025	10/27/2025	28
2/27/2024	3/25/2024	27
5/16/2024	6/12/2024	27
9/11/2025	10/8/2025	27
1/15/2026	2/11/2026	27

In many of these examples the turnaround time was not an issue given the time of the month the sample was obtained. In two of the examples we only had one day to complete the submission after receiving the lab results.

Alternatives

As noted above, adjusting the deadline to be based on when the lab results are received would be one solution. Another alternative would be to have the deadline based on the date of sampling, but extend the time frame. One final alternative would be to have quarterly samples due a certain amount of days after the end of the quarter such as 45 days.

Thank you for your consideration,

Response

As noted by the commenter, the submission deadline for monitoring data is retained from the current Appendix B, which the DOH-CWB will not be revising at this time for consistency with the current Appendix B. While the commenter has noted this situation has occurred during this permit term, it is not a regularly occurring issue. The DOH-CWB does not believe this warrants a departure from the current monitoring schedule framework which all permittees have been operating under since the issuance of the last version of the general permit in 2022. Further, as noted by the commenter, there are procedures in place for permittees to provide explanations in those instances where sample results are reported late due to delays with the laboratory.

As such, no changes were made due to this comment.

Airlines for America

Comment 1

Changes Intended to Conform with the U.S. Supreme Court's Decision in City & County of San Francisco v. EPA, 145 S. Ct. 704 (2025) (San Francisco)

A4A appreciates the Agency's intent to incorporate changes to Appendix B to conform with San Francisco, including to Part 1.1.3.1., Part 1.1.3.2(c), Part 1.1.3.2(c)(i), Part 2.1, Part 2.2.1, Part 4.2, and Part 5.1.1.3., as described in the Fact Sheet at 9-11, 14-17, 21-22, and 24-25.

However, we have further suggestions as to how the proposed changes to Appendix B could better meet the U.S. Supreme Court's ruling in San Francisco that a permit may not impose "end result" requirements and look forward to providing more detailed feedback through the formal comment process.

Response

Thank you for your comment.

Comment 2

Aviation-Specific Considerations Pertaining to Implementation of Control Measures and Other Requirements A4A and our member airlines have a long history of supporting and working cooperatively with EPA and state permitting authorities in implementing the CWA and the NPDES permitting program. One important outcome of this longstanding, constructive engagement is that EPA has explicitly acknowledged that the aviation safety and efficiency imperatives imposed by Congress through federal aviation statutes must be taken into consideration in implementing CWA. Accordingly, in every instance in Part 8, Subpart S-Air Transportation of the 2021 MSGP where EPA identified a control measure for potential implementation, it explicitly recognized the control measure need only be implemented "where determined to be feasible and [to] accommodate considerations of safety, space, operational constraints and flight considerations."[1] These same considerations must apply to and be incorporated into other substantive obligations imposed on dischargers by the permit, including the Additional Implementation Measures ("AIM") framework in Part 5 and selection of Storm Water Control Measures in Part 2 of Appendix B.

In addition, the 2021 MSGP and Draft Changes to Appendix B acknowledge the unique circumstances and complexities that attend the aviation context, in which an airport authority and its tenants often must work collaboratively to effectively and efficiently fulfill permit requirements.[2] One aspect of this complexity is that some airport tenants

[1] (DOH-CWB notes that this footnote is listed as footnote 4 in the source document) *See, e.g., 2021 MSGP Part 8.S.4.1.1.*

[2] (DOH-CWB notes that this footnote is listed as footnote 5 in the source document) *See Part 8.S.3.2.*

may not have direct control over or access to all outfalls and control measures that are the subject of the permit. Indeed, at some facilities, stormwater outfalls are not under direct control or adjacent to the facility and discharges may combine with flows from other sources before reaching an outfall. As such, discharge monitoring and control measure documentation (particularly through photographic documentation) requirements, will often require review and approval by the Federal Aviation Administration and, due to operational and safety imperatives, may require extended planning and implementation schedules.

Response

As noted in the Fact Sheet for the revisions to Appendix B, DOH-CWB intends to match EPA's 2021 MSGP where possible. Notably, EPA's 2021 MSGP does not contain the "where determined feasible…" outside of Sector S for those activities specific to air transportation industrial facilities. As such, DOH-CWB will not add this language to the Storm Water Control Measures in Part 2 or the Additional Implementation Measures (AIM) framework in Part 5.

It should be noted that while the exact language regarding feasibility from Sector S in Part 8 is not included in Part 2, Part 2 defines infeasible (in the context of storm water control measures) as "not technologically possible or not economically practicable and achievable in light of best industry practices." The DOH-CWB believes this gives sufficient flexibility for storm water control measure selection for air transportation facilities. By extension, the requirement for feasible storm water control measures would extend to storm water control measure selection pursuant to additional control measures required by the AIM framework. Similarly, Part 5 includes various opportunities for permittees to provide explanations for instances where completing corrective actions within the required time frame is infeasible.

Photographic documentation requirements are retained from the current Appendix B and are necessary to correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required. Existing permittees were required to comply with this since the current permit became effective in 2022. Facilities should already have developed procedures and methods to take photographic documentation of control measures. Further, facilities should be able to access control measures that they are using to comply with this permit, as routine inspection and maintenance of control measures is critical to ensuring that the discharge leaving the facility is in compliance with the terms of the general permit.

As noted in the Fact Sheet, photo requirements of the discharge are intended to corroborate the effectiveness of control measures and reported sampling results. As noted by the commenter, there may be instances where the discharge from the facility is in a distant or difficult to access location, particularly in cases where a discharge leaves the facility and enters a drainage system which may travel long distances collecting storm water from other facilities before entering the state receiving waters.

To address this concern, Part 4 and 4.2.4 have been revised to require photographic documentation of the discharge point. Discharge point is defined in Part 3.1.3.8 as the location(s) where storm water leaves the facility either directly or through a separate storm sewer system to a state water. The DOH-CWB believes this revision should address those situations where facilities encounter difficulties accessing the location where storm water from their facility actual enters the receiving water such as through a storm drain system.

Comment 3

Part 8 - Subsector S

Although this addresses an existing provision that is ostensibly beyond the scope of the Agency's solicitation for written input here, and while deicing is typically uncommon in Hawaii, we suggest that for consistency, Part 8.S.2.1 - Limitations on Coverage, be amended to parallel the language in EPA's 2021 MSGP Part 8.S.2.1 to read[3]:

Limitations on Coverage. This permit authorizes stormwater discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), ~~or~~ equipment cleaning operations or deicing operations.

Note: the term "deicing" in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

Similarly, references to deicing in Part 8.S.3.2. of the 2021 MSGP should be carried through in Part 8.S.3.2. of Appendix B.

Response

As noted by the commenter there is an erroneous discrepancy between the proposed Appendix B revisions and EPA's 2021 MSGP.

As such, Parts 8.S.2.1 and 8.S.3.2 have been revised to match EPA's 2021 MSGP.

[3] (DOH-CWB notes that this footnote is listed as footnote 6 in the source document) *This language is also consistent with 40 C.F.R. §122.26(a)(14)(viii). Addition of this language is also consistent with the Agency's affirmation that it is "including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to include any unforeseen situations and to align closely with EPA's 2021 MSGP where possible." Fact Sheet at 7.*

Comments from Government Agencies

City and County of Honolulu, Department of Design and Construction, Civil Division

Comment 1

Thank you for the opportunity to review and comment.

Out Civil Division has the following comments:

HAR 11-55 1) Section 11-55-07(d) requires updating the contact information for the Certifying Person and the Authorized Representative. Can this change be made globally to the Department's open NGPCs as opposed to submission for each NGPC on the DOH Portal?

Response

Thank you for your comment. As this question is outside the scope of rulemaking as this is an implementation/procedural question, please contact the Clean Water Branch separately for this issue.

As such, no changes were made due to this comment.

County of Maui, Department of Public Works

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

"Discharges which may not require an NPDES permit include, but are not limited to, the following:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *Air conditioning condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*

13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. *Discharges or flows from firefighting activities."*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, "landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types and "rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation.

Additionally, the list is inconsistent with HAR 11-55, Appendix K. The following revisions are suggested:

- Remove the distinction "using potable water" from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add "and similar impervious surfaces" to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.
- Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai‘i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

Revise this section to replace "duly authorized representative" with "authorized representative," consistent with the defined term in 11-55-01.

The definition of an "Authorized Representative" in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term "duly authorized representative" is understandable but can lead to confusion as to whether this is a different person than an "authorized representative."

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the "duly authorized representative" language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 3

Page: Various Section: Various

Revise Appendix K to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix K uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix K.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the "duly authorized representative" language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 4

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

"The following non-storm water discharges are authorized by this general permit:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *A/C condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. Discharges or flows from firefighting activities."

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

- "Landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types.
- "Rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

- *Separate potable water sources from foundation drains.*
- *Specify "uncontaminated" in reference to water from crawl space pumps and footing drains.*
- *Revise "Residual street wash water" to "Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives" – note the suggested addition of "and similar impervious surfaces" to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 5

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

"Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge [~~from the discharge~~] and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain [~~with~~] observable deposits of floating solids, scum, sheen or other substances[~~,~~]; [~~an observable~~] film, sheen or discoloration from oil and grease[~~,~~]; or foam or substances that produce an observable change in color, odor, or cloudiness[~~ in the discharges~~]."

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "visible plumes from the discharge" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

The language "prohibit visible plumes and," was removed and made consistent with DOH permit language to the following:

"*Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.*"

Comment 6

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 7

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Schedules and protocols for [~~identification of priority areas~~] prioritizing areas of the MS4 for detailed screening [~~of the system~~] based on the likelihood of illicit discharges and illegal connections."

The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Response

The proposed language in Section 6(a)(3)(C)(i) is consistent with 40 CFR 122.34(b)(3), which require MS4s to establish procedures for detecting and addressing illicit discharges. The current proposed text provides permittees with flexibility to develop a reasonable process for identifying priority areas while maintaining alignment with federal MS4 requirements. The permit language has been updated to include "illicit" for consistency with the federal requirements. Section 6(a)(3)(C)(i) is revised to the following:

"Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening can include visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

Comment 8

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Detailed screening [~~can include~~] may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing "can include" with "may include, as appropriate" would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Response

Accepted—revised wording ("may include, as appropriate") improves clarity and preserves permittee discretion while remaining consistent with standard regulatory drafting conventions.

Comment 9

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

"Inform public employees, businesses, and the general public of hazards associated with [~~illegal~~] illicit discharges and improper disposal of waste."

The revised language uses the term "illegal discharges," while the remainder of the permit consistently uses the term "illicit discharges," as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term "illicit discharges" will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

Response

The permit language has been updated to include "illicit" for consistency with the federal requirements.

State of Hawaii, Department of Transportation, Airports Division

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

"Discharges which may not require an NPDES permit include, but are not limited to, the following:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*

6. *Discharges from foundation drains;*
7. *Air conditioning condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. *Discharges or flows from firefighting activities."*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, "landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types and "rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation. Additionally, the list is inconsistent with HAR 11 55, Appendix K. The following revisions are suggested:

- *Remove the distinction "using potable water" from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add "and similar impervious surfaces" to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.*
- *Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai'i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

Revise this section to replace "duly authorized representative" with "authorized representative," consistent with the defined term in 11-55-01.

The definition of an "Authorized Representative" in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term "duly authorized representative" is understandable but can lead to confusion as to whether this is a different person than an "authorized representative."

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the "duly authorized representative" language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 3

Page: Various Section: Various

Revise Appendix B to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix B uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix B.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the

designated certifying person. The DOH-CWB is retaining the "duly authorized representative" language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 4

Page: 55-B-86 Section: 2.2.1

Proposed Revisions to Amended Text:

"Prohibit discharges [~~with~~] that, at the point of discharge and prior to mixing with receiving waters, contain observable deposits of floating solids, scum, sheen or other substances, [~~an observable~~] film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness at the point of discharges~~ ~~, excluding naturally occurring conditions;"

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "observable deposits of floating solids, scum, sheen or other substances" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

As noted by the commenter and in the Fact Sheet, the intent of the proposed revision is to comply with the U.S. Supreme Court's decision in *City and County of San Francisco v. EPA* end-result ruling. To ensure that the general permit is still as protective as the current general permit, while still complying with the Supreme Court decision, the DOH-CWB attempted to revise previous language which encompassed all of the narrative water quality conditions in HAR 11-54-4 to only those that can be observed and controlled within the discharge. The DOH-CWB believes the proposed language is clear that the requirements are to be applied to the discharge from the regulated facility.

As such, no changes have been made due to this comment.

Comment 5

Page: 55-B-41 Section: 1.2.2.1(f)

***Proposed addition:** "Control measures to generally be implemented consistent with manufacturer specifications, unless the operator documents site specific justification demonstrating equivalent or greater pollutant control, or DOH provides written direction specifying alternative measures."*

The proposed addition is intended to provide procedural clarity and consistency in enforcement across facilities.

Response

Please see Part 2.1 Storm Water Control Measures, which specifies that the "selection, design, installation, and implementation of these control measures must be in accordance with good engineering practices and manufacturer's specifications and consistent with direction by the DOH. Note that you may deviate from such manufacturer's specifications where you provide justification for such deviation and include documentation of your rationale…" The DOH-CWB believes this language already in the proposed revisions provides procedural clarity and consistency in line with the commenter's proposed addition.

As such, no changes were made due to this comment.

Comment 6

Page: 55-B-50 Section: 1.3.4

Proposed Revisions to Amended Text:

"You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to your facility. Where physical signage cannot be posted due to safety, security, or operational restrictions, or [~~Public signage is not required~~] where other laws, regulations, or official policies [~~or local ordinances~~] prohibit or discourage such signage, [~~in which case~~] you must document in your SWPPP a brief explanation for why you cannot post a sign and a reference to the law, regulation, or policy [~~or ordinance~~].

The current language assumes the permitted "facility" has a publicly accessible perimeter frontage. For certain regulated operators, including large, secured transportation facilities (e.g., airports), the industrial activities covered under the permit, such as maintenance baseyards, fueling support areas, and material storage, occur within restricted operational areas that are not accessible to the public for safety and security reasons.

Although a local ordinance may not prohibit signage, state operational and aviation security policies restrict the placement of non-operational signage within secure or

operational areas. As written, the permit may create a compliance obligation without a practicable compliance pathway for these types of facilities.

Response

The proposed revision includes language that specifies that the sign or other notice of permit coverage in a safe, publicly accessible location in close proximity to the permitted facility. Depending on a specific facility's layout or other circumstances this may mean that the notice is placed in a safe publicly accessible location that may be a distance away from the actual facility. This is allowable under the proposed language. This language does not require a sign to be placed in a restricted or secure area. The DOH-CWB believes that the proposed language has the flexibility to address the concern identified by the commenter. It should be noted that EPA received a similar comment during their 2021 rulemaking and declined to make any changes (see: https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349, see response to EPA-HQ-OW-2019-0372-0269-A1, Comment Excerpt Number 16, PDF page 358 and EPA-HQ-OW-2019-0372-0196-A1, Comment Excerpt Number 11, PDF page 310).

As such, no changes were made due to this comment.

Comment 7

Page: 55-B-96 Section: 3.1.5

***Proposed addition:** "Where photographs are used to document inspections, corrective actions, or discharge samples, images shall clearly depict the condition observed and include date and time information and be retained with SWPPP records."*

The proposed addition is intended to provide a standard for objective evidence and enforcement needs.

Response

The DOH-CWB agrees that the proposed language clarifies what photographs should depict and the additional date and time information is useful for both the permittee and inspectors.

As such, the following language has been inserted into Parts 3.1.5, 3.2.3, and 4.2.4, which contain photographic requirements for routine facility inspections, visual assessments, and analytical monitoring respectively:

"Photographs shall clearly depict the condition observed and include date and time information and be retained with SWPPP records."

Comment 8

Page: 55-B-109 Section: 4.1.3

Proposed Revisions to Amended Text:

"You must conduct all required monitoring on a storm event that results in an actual discharge ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). For purposes of this definition, the 72-hour period begins when stormwater discharge from the previous storm event has ceased at the discharge point."

The current definition establishes a minimum 72-hour separation between measurable storm events but does not specify how the end of a storm event is determined. Because stormwater discharges may continue after rainfall has stopped due to drainage system routing, storage, infiltration, or groundwater interaction, it is unclear whether the antecedent period should be measured from the end of precipitation or from cessation of discharge.

Clarifying that the 72-hour period begins after stormwater discharge has ceased provides an objective and observable field condition for operators and inspectors. This aligns the definition with the purpose of stormwater sampling, which is to characterize distinct runoff events, and improves consistency of implementation across permittees.

Response

The DOH-CWB believes that the proposed language is unnecessary as a measurable storm event is defined as a storm event that results in an actual discharge. By extension the end of a measurable storm event would be the end of an actual discharge due to the measurable storm event.

As such, no changes were made due to this comment.

Comment 9

Page: 55-B-142 Section: 5

***Proposed addition:** "Facilities with concentrations below applicable benchmark thresholds for two consecutive monitoring periods may return to baseline status, consistent with EPA MSGP AIM provisions."*

The proposed addition is intended to address AIM level reset conditions to avoid facilities remaining indefinitely in elevated tiers, consistent with EPA MSGP AIM provisions.

Response

Please see parts 5.2.3.4, 5.2.4.4, and 5.2.5.4 for criteria to return to baseline status for AIM level 1, 2, and 3 respectively. While the criteria are not exactly what the commenter has proposed, there is already specific language to prevent a Facility from being stuck at an elevated AIM level when discharge concentrations have fallen below benchmark thresholds.

As such, no changes have been made due to this comment.

Comment 10

Page: 55-B-144 Section: 5.1.1.3

***Proposed Revisions to Amended Text**: "Your storm water control measures are not stringent enough ~~for your storm water discharge to be controlled as necessary such that the discharge will meet applicable water quality standards or~~ to meet the non-numeric effluent limits ~~in~~ of this permit."*

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

Language removes "end-result" requirements and aligns with CWA compliance.

Response

The proposed language is a result of DOH-CWB revising the current Appendix B language to comply with the Supreme Court's "end-result" ruling. In order to retain as much of the original language as possible to prevent any reduction in protections to receiving waters, the DOH-CWB simply replaced instances where the permittee must control their discharge such that the receiving water meets applicable water quality standards, to instead require that the discharge meet applicable water quality standards. This ensures that the original protections offered by the current Appendix B language while still in compliance with the Supreme Court ruling. It should also be noted that Part 2.2.1 specifies that DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. This further ensures that Appendix B is in compliance with the Supreme Court decision, as permittees are given explicit requirements (i.e., those contained in the permit) to follow to be considered in compliance with applicable water quality standards.

As such, no changes were made due to this comment.

Comment 11

Page: 55-B-146 Section: 5.1.3.1

***Proposed Revisions to Amended Text:** "immediately" means that the day you find a condition requiring corrective action, you must take all reasonable steps to minimize or prevent the discharge of pollutants until you can implement ~~a permanent solution.~~ the required storm water control measure specified in this permit."*

Language aligns with CWA and removes implication of end condition.

Response

The DOH-CWB does not believe the language specified by the commenter is related to the "end result" Supreme Court decision. As such, there is no reason to deviate from the proposed language.

As such, no changes were made due to this comment.

Comment 12

Page: 55-B-314 Section: 8.P.2.1

Proposed addition:

"This permit authorizes storm water discharges from only those portions of the transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations."

Certain land transportation and warehousing facilities do not conduct activities typically covered under this industrial permit.

The proposed addition is intended to provide consistency with the language for Sector S and the NPDES Industrial Storm Water General Permit FAQs posted on the DOH webpage.

Response

As noted by the commenter, the DOH-CWB's FAQs for Appendix B includes excerpts from 40 CFR 122.26(b)(14)(viii) which specifies the applicability for transportation facilities that have vehicle maintenance shops, equipment cleaning operations, or airport de-icing operations. The DOH-CWB believes it is unnecessary to include this language in Appendix B, as when the DOH-CWB responds to questions regarding eligibility for coverage under Appendix B, the DOH- CWB refers potential applicants to the FAQs. These FAQs clearly specify that not all transportation facilities require industrial storm water coverage, and it is up to potential applicants to determine whether the operations at their facility meet the requirements to apply for industrial storm water coverage.

As such, no changes were made due to this comment.

Comment 13

Page: Various Section: Various

Revise Appendix K [sic] to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix F uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix F.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the "duly authorized representative" language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes were made due to this comment.

Comment 14

Page: 55-F-8 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 15

Page: 55-F-15 Section: 8(a)(6)

Proposed Revisions to Amended Text: *"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~~] submit Discharge Monitoring Reports online at the department's e-Permitting portal."*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH's NPDES program and applicable national standards for environmental permitting.

Response

The DOH-CWB agrees that the requirements specified in Section 8(a)(6) of HAR Chapter 11-55 Appendix F for submitting discharge monitoring reports are unclear.

To comply with federal electronic reporting regulations specified in NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40CFR Part 3), the DOH-CWB is revising Section 8(a)(6) of HAR Chapter 11-55 Appendix F as follows:

~~*[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.]*~~ *The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: https://eha-cloud.doh.hawaii.gov/epermit.*

Comment 16

Page: Various Section: Various

Revise Appendix K [sic] to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix G uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix G.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person.

As such, no changes were made due to this comment.

Comment 17

Page: 55-G-12 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 18

Page: 55-G-18 Section: 8(a)(6)

Proposed Revisions to Existing Text: *"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~~] submit Discharge Monitoring Reports online at the department's e-Permitting portal."*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH's NPDES program and applicable national standards for environmental permitting.

Response

The DOH-CWB agrees that the requirements specified in Section 8(a)(6) of HAR Chapter 11-55 Appendix G for submitting discharge monitoring reports are unclear.

To comply with federal electronic reporting regulations specified in NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40CFR Part 3), the DOH-CWB is revising Section 8(a)(6) of HAR Chapter 11-55 Appendix G as follows:

[~~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.~~] The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: *https://eha-cloud.doh.hawaii.gov/epermit*.

Comment 19

Page: Various Section: Various

Revise Appendix K to replace "duly authorized representative" with "authorized representative," consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term "authorized representative," while Appendix K uses the undefined term "duly authorized representative." Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term "authorized representative" to be used consistently throughout Appendix K.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person.

As such, no changes were made due to this comment.

Comment 20

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

“The following non-storm water discharges are authorized by this general permit:

1. *Water line flushing;*
2. *Landscape irrigation and incidental irrigation runoff;*
3. *Diverted stream flows;*
4. *Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
5. *Discharges from potable water sources;*
6. *Discharges from foundation drains;*
7. *A/C condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. Discharges or flows from firefighting activities."

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

- "Landscape irrigation," "irrigation water," and "lawn watering runoff" describe substantially similar activities and do not appear to represent distinct discharge types.
- "Rising ground waters," "uncontaminated ground water infiltration," and "uncontaminated pumped ground water" are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

- *Separate potable water sources from foundation drains.*
- *Specify "uncontaminated" in reference to water from crawl space pumps and footing drains.*
- *Revise "Residual street wash water" to "Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives" – note the suggested addition of "and similar impervious surfaces" to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 21

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

"Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge [~~from the discharge~~] and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain [~~with~~] observable deposits of floating solids, scum, sheen or other substances[~~,~~]; [~~an observable~~] film, sheen or discoloration from oil and grease[~~,~~]; or foam or substances that produce an observable change in color, odor, or cloudiness[~~ in the discharges~~]."

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as "visible plumes from the discharge" and "observable change in color, odor, or cloudiness in the discharges," could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

The language "prohibit visible plumes and," was removed and made consistent with DOH permit language to the following:

"*Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.*"

Comment 22

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 23

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Schedules and protocols for [~~identification of priority areas~~] prioritizing areas of the MS4 for detailed screening [~~of the system~~] based on the likelihood of illicit discharges and illegal connections."

The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Response

The proposed language in Section 6(a)(3)(C)(i) is consistent with 40 CFR 122.34(b)(3), which require MS4s to establish procedures for detecting and addressing illicit discharges. The current proposed text provides permittees with flexibility to develop a reasonable process for identifying priority areas while maintaining alignment with federal MS4 requirements. The permit language has been updated to include "illicit" for consistency with the federal requirements. Section 6(a)(3)(C)(i) is revised to the following:

"Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening can include visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

Comment 24

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

"Detailed screening [~~can include~~] may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information

submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints."

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing "can include" with "may include, as appropriate" would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Response

Accepted—revised wording ("may include, as appropriate") improves clarity and preserves permittee discretion while remaining consistent with standard regulatory drafting conventions.

Comment 25

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

"Inform public employees, businesses, and the general public of hazards associated with [~~illegal~~] illicit discharges and improper disposal of waste."

The revised language uses the term "illegal discharges," while the remainder of the permit consistently uses the term "illicit discharges," as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term "illicit discharges" will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

Response

The permit language has been updated to include "illicit" for consistency with the federal requirements.

Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility

Comment 1

File (Appendix): *HAR 11-55* ***PDF Page Number:*** *N/A* ***Sector/Section:*** *11-55-01* ***HAR 11-55 Page Number:*** *N/A*

Requesting to add the definition of "Storm Water Run-On"

HAR 11-55 defines "Storm Water" and "Storm Water discharge associated with industrial activities" which are types of Storm Water Run Off. HAR 11-55 appendix B makes several references to Storm Water Run-On but does not fully define what is or qualifies as Storm Water Run-On

Response

The DOH-CWB will add the following definition for run-on to Part 5.2.6.2 (Due to Run-On) of Appendix B:

"**Run-On** – sources of storm water that drain from land located upslope or upstream from the regulated facility in question."

This definition is from EPA's 2021 MSGP and should clarify what run-on refers to when used throughout Appendix B.

Comment 2

File (Appendix): *Appendix B* ***PDF Page Number:*** *785* ***Sector/Section:*** *Fact Sheet Part 4) (pg. 7)* ***HAR 11-55 Page Number:*** *N/A*

Please correct the last sentence to state "Storm event"

Typo

Response

The typo has been revised.

Comment 3

File (Appendix): *Appendix B* ***PDF Page Number:*** *796* ***Sector/Section:*** *Fact Sheet Part 3.1.5.4(f) (pg. 18)* ***HAR 11-55 Page Number:*** *55-B-97*

Requesting removal of Part 3.1.5.4(f)

It is unreasonable for permittees to know if certain upstream discharges are authorized under another individuals NPDES permit. Certain facilities or entities may have several overlaps within their property and certain discharges may be authorized under a different permit or SWPPP. Appendix K allows permittees to add in additional authorized non-stormwater discharges which will not be considered illicit discharges so long as

they are deemed to not be significant sources of pollutants and might be unknown from the downstream permittee.

Response

As noted in the Fact Sheet, facilities should be aware of and checking for any unauthorized discharges from their facility. Note that the language specifies that these are unauthorized discharges from the facility which should be under the control and management of the Permittee or the Permittee's operators. It is not unreasonable for DOH-CWB to require Permittees to document observations of unauthorized discharges from the Permittee's own facility. Additionally, it is to the Permittee's benefit to find any unauthorized discharges from their facility as soon as possible, as delays to good-faith corrective actions (such as applying for a permit for the unauthorized discharge or ceasing the discharge) may impact any potential enforcement actions taken by the DOH-CWB.

As such, no changes were made due to this comment.

Comment 4

File (Appendix): *Appendix B* ***PDF Page Number:*** *798* ***Sector/Section:*** *Fact Sheet Part 4.1.2 (pg. 20)* ***HAR 11-55 Page Number:*** *55-B-108*

Request to keep in the phrase "to the extent practicable" in the monitoring requirement

For certain facilities or entities with large foot prints and shared storm drain systems, it may be impossible to grab samples of authorized storm water discharges prior to commingling with discharges not authorized under this permit. Certain entities may have other coverage for their stormwater (i.e., individual permits) that are not covered under this general permit. The EPA includes the language of "to the extent practicable" in its Multi-Sector General Permit.

Response

The DOH-CWB intends to keep the revision that removes "to the extent practicable" from Part 4.1.2 to eliminate confusion about what is practicable and how practicability is determined, and to ensure that facilities only sample their authorized discharges. It is in the best interest of the facility to only sample their discharges to ensure that they do not inherit pollutants from other facilities or waste streams that may make their storm water discharges appear worse. Accurate sampling also benefits regulated facilities by informing them if they are implementing appropriate storm water pollution prevention controls, not too much or too little. Additionally, the phrase "to the extent practicable" potentially creates a situation where a facility may refuse liability of their storm water discharges because they have commingled with other discharges.

In the case that a facility has received run-on from another facility or location outside their control, and it has commingled and cannot be distinguished from their storm water,

the facility has adopted that run-on and is now responsible for it. In that case, the facility must sample the run-on as part of their authorized discharge. If a facility is receiving some other unauthorized waste stream aside from storm water run-on, they are accepting an illicit discharge and discharging it, which is not authorized. If PHNSY is aware of a specific situation where the facility cannot sample their authorized discharge prior to commingling, please contact the DOH-CWB so the situation may be considered and understood better.

As such, no changes were made due to this comment.

Comment 5

File (Appendix): *Appendix B* ***PDF Page Number:*** *798* ***Sector/Section:*** *Fact Sheet Part 4.2 (pg. 20)* ***HAR 11-55 Page Number:*** *55-B-116*

Requesting to change the sentence to "Part 1.3.6, in the event that the permit is administratively continued, monitoring ***and reporting*** *requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration.*

Addition of "and reporting" aligns with the rationale for revising this section. How the revised statement was written did not make clear that reporting also remains the same, it only mentions the monitoring remains the same.

Response

An administrative extension of an NPDES permit simply means that the term of an NPDES permit has been continued and will not terminate on the expiration date specified on the permit. As such, it is known that when an administrative extension is granted, all terms of the NPDES permit remains in effect. While the 2021 EPA MSGP includes the subject language, the DOH-CWB believes it is unnecessary to further clarify EPA's language as an administrative extension means that all terms of the NPDES permit are continued.

As such, no changes were made due to this comment.

Comment 6

File (Appendix): *Appendix B* ***PDF Page Number:*** *799* ***Sector/Section:*** *Fact Sheet Part 4.2.1 (pg. 21)* ***HAR 11-55 Page Number:*** *55-B-118*

Remove the following "The requirement in Part 2.2.1 that your stormwater storm water discharge be controlled as necessary such that the receiving water of the United States discharge will meet applicable water quality standards still applies."

Conflict exists in the revised section where it states indicator monitoring parameters are "report only" and have "no follow-up action" but then mentions the "storm water discharge be controlled as necessary such that the discharge will meet applicable water

quality standards." Water Quality Standards are applicable to the receiving water and not the discharge. This would violate the recent Supreme Court Ruling No. 23-753 City and County of San Francisco v. Environmental Protection Agency, March 4, 2025.

Response

Nowhere in the Supreme Court's ruling in *County of San Francisco v. Environmental Protection Agency* does the Supreme Court rule that water quality standards are not applicable to a discharge. From page 10 of the Supreme Court opinion written by Justice Alito for the Court:

"We begin with the text of §1311(b)(1)(C), which, as noted, requires a permit to contain, in addition to 'effluent limitations,' 'any more stringent *limitation*' that is 'necessary to *meet*' certain 'water quality standards' that are imposed under state law 'or any other federal law or regulation'; and 'any more stringent *limitation*' that is 'required to *implement* any applicable water quality standard established pursuant to this chapter.' (Emphasis added.) All the italicized terms in the preceding sentence suggest that the most natural reading of §1311(b)(1)(C) is that it authorizes the EPA to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality."

The cited text from the Clean Water Act itself (§1311(b)(1)(C)) specifies that limitations (including any more stringent limitation) are required to implement applicable water quality standards. At question in the Supreme Court case were instances where a permitting agency conditions a Permittee's compliance with conditions of the receiving water without providing specific permit conditions on how to meet this requirement. Notably, Part 2.2.1 of the proposed Appendix B specifies that DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. This further ensures that Appendix B is in compliance with the Supreme Court decision, as permittees are given explicit requirements (i.e., those contained in the permit) to follow to be considered in compliance with applicable water quality standards.

As such, no changes were made due to this comment.

Comment 7

File (Appendix): *Appendix B* ***PDF Page Number:*** *803* ***Sector/Section:*** *Fact Sheet Part 5.2.6.52 (pg. 25)* ***HAR 11-55 Page Number:*** *55-B-170*

Please correct Fact sheet reference from "Part 5.2.6.52" to Part 5.2.6.2.

Typo and no HAR 11-55 Part 5.2.6.52.

Response

The typo has been revised.

Comment 8

File (Appendix): *Appendix B* ***PDF Page Number:*** *803* ***Sector/Section:*** *Fact Sheet Part 5.2.6.52 (pg. 25)* ***HAR 11-55 Page Number:*** *55-B-170*

Requesting the inclusions of the following words to this section: "Due to Run-On: You must demonstrate that run-on from a neighboring source (e.g., a source external to your facility ***or entity****) is the cause of the exceedance, provided that all the following conditions are met and you include you analysis in your SWPPP."*

Addition of "or entity" is consistent with wording in sections a and b following this paragraph. It provides clarity for larger facilities that may have other entities on their facility that there could be run on associated with their activities that may affect the individual's facility seeking coverage under this general permit.

Response

As part of the SWPPP, Permittees must include a site map. This map determines the bounds of the permitted facility. Any area that is to be permitted under a specific Notice of General Permit Coverage is the responsibility of the Permittee. Regardless of whether there may be other entities on site, if the area is included in a permit coverage, the Permittee that the permit coverage is issued to is responsible. Similar to construction sites which may have various other entities such as contractors and subcontractors all operating on the same site, the responsibility for the permitted area falls onto the Permittee.

As such, no changes were made due to this comment.

Comment 9

File (Appendix): *Appendix B* ***PDF Page Number:*** *809* ***Sector/Section:*** *Fact Sheet Part 64.1.1 (pg. 31)* ***HAR 11-55 Page Number:*** *55-B-216*

Include verbiage that submission of current SWPPP by January 30th of each year is not required if no modifications were made that year.

Concerns with repeated submissions of a document that has no modifications.

Response

The proposed language (excluding the revision to the due date) for SWPPP revisions is consistent with EPA's 2021 MSGP. The DOH-CWB, consistent with EPA believes that the SWPPP is intended to be a "living document" and it is unlikely that there would be no changes to a facility's SWPPP throughout the year. It should be noted that EPA received a similar comment during their 2021 rulemaking and declined to make any changes (see: https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349, see response to EPA-HQ-OW-2019-0372-0248-A1, Comment Excerpt Number 20, PDF page 1235).

As such, no changes were made due to this comment.

Comment 10

File (Appendix): *Appendix K* ***PDF Page Number:*** *31* ***Sector/Section:*** *Fact Sheet Section 2(c)* ***HAR 11-55 Page Number:*** *55-K-5*

Request the removal of "Prohibit visible plumes from the discharge and"

Requesting the removal of these words to be consistent and align with other individual permit language that state: "Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

Response

The language "prohibit visible plumes and," was removed and made consistent with DOH permit language to the following:

"*Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.*"

State of Hawaii, Department of Transportation, Highways Division – Maui District

Comment 1

Field citation language revision

§11-55-40 Field citations; non-compliance with NPDES requirements

(c) Resolution of field citation.

(1) A person issued a field citation may accept the citation by:

(C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty calendar days after the person receives the field citation; and

(D) Correction within seven calendar days, or unless otherwise specified on the field citation, of

Request to revise the language 11-55-40©(1)© to read as follows: (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department

must receive the signed field citation and full payment within thirty calendar days after the person receives the field citation; and

***Rationale**: DOT would like to request a thirty (30) calendar day time frame instead of twenty calendar day time frame to pay the field citation to account for nonwork days such as weekends and holidays. This request is also consistent with the typical time frames within HAR 11-55.*

Response

We are unable to implement your proposed revision to have field citations and payments due 30 calendar days after receipt rather than the currently prescribed twenty days. The Hawaii Revised Statues §342D-9 states that "…any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein requires in writing a hearing before the director…". Therefore, we are unable to revise the rule to 30 days to ensure that the rule is consistent with the statute.

Comment 2

Implements narrative water quality standards as discharge prohibitions

2. Limitations on Coverage under this General Permit

(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.

Request to revise this current language to be as follows:

"(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit to implement best management practices (BMPs) that reduce the discharge of pollutants to the Maximum Extent Practicable (MEP), consistent with Section 402(p)(3)(B) of the CWA. The discharges must not contain observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

***Rationale**: The rationale for this request is to make minor revisions to be consistent with the Supreme Court ruling in the case of City and County of San Francisco versus EPA to remove language that can interpreted to impose compliance based on receiving water conditions, Clean Water Act (CWA) Maximum Extent Practicable (MEP) standard, and the nature of stormwater discharges from MS4s. Many state-issued MS4 General Permits (which cover the majority of Phase II communities) do not include "visible plume" prohibitions since it is primarily a receiving water characteristic. The CWA*

mandates that MS4s reduce pollutant discharges to the MEP and the MS4 permits are designed to handle variable, episodic precipitation events rather than consistent industrial wastewater flows. The EPA notes that typical industrial "end-of-pipe" limits, such as those that might restrict a visible plume, are "poorly suited" for the largely uncontrolled, variable flow of MS4s (MS4 Stormwater Permitting Guide, NACWA). The "visible plume" language is often used for industrial facilities (under the MSGP) to measure immediate compliance, and is not appropriate for the municipal SWMP framework. The EPA's 2017 Compendium of Clean, Specific & Measurable Permitting Examples focuses on numerical, quantifiable metrics for stormwater, such as retention standards and, specifically,, for TMDL compliance, rather than "visual" monitoring. This is also consistent with the Section 6(a) of this General Permit that prohibits non-storm water discharges into the permittee's MS4 consistent with the EPA ruling and Section 7 that removes inspection requirements based on receiving water quality conditions.

Removing the "visible plume" language brings the permit in line with the MEP standard, aligns with the majority of other state-issued permits and revisions made by DOH to their narrative water quality standards removing plumes from Section 2(c)(2 of the HAR 11-55 Appendices F &G. This also allows for the focus to remain on implementing effective BMPs rather than visual monitoring during storm events.

Response

The language “prohibit visible plumes and,” was removed and made consistent with DOH permit language to the following:

“*Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.*”

Comment 3

Permit term revisions/ NOI Submission

3. Term of General Permit

(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

Thank DOH you for revising the renewal procedures to reapply i.e., submit an NOI within sixty (60) days of the effective date of the new general permit such that permittees have opportunity to review the permit prior to submitting an NOI.

Request DOH to clarify the timeline for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Section 4(a) of this general permit and the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

***Rationale**: This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 4. Notice of Intent Requirements, (a). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Response

HAR 11-55 Appendix K has been updated to 180-days to align with the Hawaii NPDES Industrial Storm Water MSGP. The Fact Sheet was updated to 180-days also.

Comment 4

NOI Submission

4. Notice of Intent Requirements

(a) New Permittees (those MS4s not covered under the previous [~~2013~~]2022 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous [~~2013~~]2022 general permit) shall submit a complete notice of intent no later than [~~120~~]180 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

Request DOH to clarify the timeline for existing permittees for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

***Rationale**: This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 3. Term of General Permit, ©(2). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Response

HAR 11-55 Appendix K has been updated to 180-days to align with the Hawaii NPDES Industrial Storm Water MSGP. The Fact Sheet was updated to 180-days also.

Comment 5

Proposed HAR 11-55 Appendix B

Benchmark Monitoring Schedule

4.2.2.3 Benchmark Monitoring Schedule

Benchmark monitoring of storm water discharges is required quarterly, as identified in Part 4.1.7, in the first and fourth year of permit coverage, as follows:

a. Year one of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your first year of permit coverage, beginning in your first full quarter of permit coverage, no earlier than 90 days after permit issuance.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the next two years (i.e., eight quarters).

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter until monitoring resumes in year four of permit coverage, per Part 4.2.2.3.b below.

b. Year four of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your fourth year of permit coverage (i.e., your thirteenth through sixteenth quarters), unless the first quarter of your fourth year of permit coverage occurs on or after the date this permit expires.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the remainder of your permit coverage.

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter for the remainder of permit coverage.

Request DOH to provide clarification on the reasons for including the benchmark monitoring in the fourth year even if the first four (4) quarterly samples are below the benchmark threshold.

***Rationale**: EPA's Fact Sheet for 2026 Proposed MSGP states that, "The principle underpinning this schedule is that operators that have consistently shown their stormwater controls are controlling discharges so as to not exceed the benchmarks are allowed a relief period from benchmark monitoring." and does not provide an analysis or rationale for increasing the frequency of benchmark monitoring. This new requirement essentially doubles the burden on facilities that do not exceed benchmark thresholds thereby punishing the operators that continue to implement measures to ensure their controls are working properly and consistently.*

Response

As noted in the Fact Sheet, the purpose of the majority of the proposed changes to Appendix B is to conform with EPA's 2021 MSGP. As noted by the commenter, EPA has a **proposed** 2026 MSGP which has not completed EPA's NPDES permit issuance process and is not currently finalized. The DOH-CWB is choosing not revise Appendix B to the EPA's proposed 2026 MSGP at this time due to it not being finalized, since the conditions of EPA's 2026 MSGP may change once it is finalized.

As such, no changes were made due to this comment.

Comment 6

Proposed HAR 11-55 Appendix B

Major Storm Event Resilience

2.1.1.9 Implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures can help to minimize impacts from storm water discharges from major storm events such as hurricanes, storm surge, extreme/heavy precipitation, and flood events. If such storm water control measures are already in place due to existing requirements mandated by other state, local or federal agencies, you should document in your SWPPP a brief description of the controls and a reference to the existing requirement(s). If your facility may be exposed to or has previously experienced such major storm events, additional storm water control measures that may be considered include, but are not limited to:

a. Reinforce materials storage structures to withstand flooding and additional exertion of force;

b. Prevent floating of semi-stationary structures by elevating to the Base flood Elevation (BFE) level or securing with noncorrosive device;

c. When a delivery of exposed materials is expected, and a storm is anticipated within 48 hours, delay delivery until after the storm or store materials as appropriate (refer to emergency procedures);

d. Temporarily store materials and waste above the BFE level;

e. Temporarily reduce or eliminate outdoor storage;

f. Temporarily relocate any mobile vehicles and equipment to higher ground;

g. Develop scenario-based emergency procedures for major storms that are complementary to regular storm water pollution prevention planning and identify emergency contacts for staff and contractors; and

h. Conduct staff training for implementing your emergency procedures at regular intervals.

Request to revise Section 2.1.1.9 to include "When implementing structural improvements, adaptive measures, or a combination of adaptive measures can help to minimize impacts from stormwater discharges from major storm and flood events."

***Rationale**: This language is consistent with the proposed 2026 MSGP and the associated Fact Sheet that states, "EPA is not requiring operators to implement additional controls if the operator determines such controls to be unnecessary, but EPA is requiring operators to consider the benefits of selecting and designing control measures that reduce risks to their industrial facility and the potential impact of pollutants in stormwater discharges caused by major storm events."*

Response

As noted in the Fact Sheet, the purpose of the majority of the proposed changes to Appendix B is to conform with EPA's 2021 MSGP. As noted by the commenter, EPA has a **proposed** 2026 MSGP which has not completed EPA's NPDES permit issuance process and is not currently finalized. The DOH-CWB is choosing not revise Appendix B to the EPA's proposed 2026 MSGP at this time due to it not being finalized, since the conditions of EPA's 2026 MSGP may change once it is finalized.

As such, no changes were made due to this comment.

IV. New Business

C. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 58.1, Solid Waste Management Control, promulgated by Department of Health - *Exhibit 4*

RECEIVED
By SBRRB at 12:29 pm, Feb 06, 2026

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 2/6/2026

Department or Agency: Department of Health

Administrative Rule Title and Chapter: Title 11 Chapter 58.1

Chapter Name: Solid Waste Management Control

Contact Person/Title: Lauren Cruz, Environmental Health Specialist

E-mail: lauren.cruz@doh.hawaii.gov Phone: (808) 586-4244

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

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

☐ Yes ☑ No

If "**Yes**," provide details: Not yet, will be at time of public hearing.

I. Rule Description:

☐ New ☐ Repeal ☑ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☑ Yes ☐ No

(If "**No**," no need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☑ No

(If "**Yes**" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☑ No

(If "**Yes**" no need to submit this form.)

* * *

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

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

   Please see attached for all responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

February 2026 Chapter 11-58.1, Solid Waste Management Control, Pre-hearing Small Business Impact Statement

IV.

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

Facilities that manage solid waste, including composting facilities, solid waste salvage facilities, recycling processing facilities, materials recovery facilities, and landfills must comply with chapter 11-58.1, HAR. There are approximately 73 small businesses operating approximately 116 permitted facilities in the state that manage solid waste. The department believes that only one small business currently in operation will face a significant cost to comply with regulatory changes. Please see #2.

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

The majority of the proposed rule changes in this rulemaking package will not affect small businesses. The following is identified by the department as a proposed change that will have a small business impact.

1. The department is proposing to require that salvaging activities be conducted on an impervious working surface (for example, concrete). There are currently 9 small businesses in the State operating 10 solid waste salvaging facilities. Of these 10 salvaging facilities, only one facility will be impacted by this proposed rule change, as the other facilities are already conducting salvaging activities on an impervious working surface (for example, concrete). It is estimated that the additional cost of complying with this proposed requirement for the remaining facility ranges from approximately $65,000 to $250,000. The cost ranges widely because cheaper surfaces (i.e., asphalt) may be used to meet the requirement, but will need to be replaced more often.

The following changes will not affect small businesses, but may appear to. Some of the changes below increase costs by amounts that the department does not consider to be a significant economic burden for small businesses.

2. The majority of changes to requirements for existing construction and demolition (C&D) landfills clarify existing regulatory requirements or codify requirements currently implemented through the permitting process. The change from deed restrictions to a new requirement to prepare an environmental covenant for the property under chapter 508C, HRS, will affect one small business operating an existing C&D landfill. We estimate a one-time cost of $3,000 to $5,000 to prepare and file this environmental covenant. New requirements for special waste landfills and new C&D landfills may impact small businesses seeking to operate a new landfill in the future.

3. Permit application fees charged once every five years will be increased for all types of facilities that manage solid waste. These increased fees range from $250 for a composting facility to $5,000 for a landfill or incinerator receiving greater than twenty tons of waste per day. Other than large capacity landfills and incinerators, all types of facilities have an increased permit application fee of $1,250 or less. Only one small business is operating a large capacity landfill ($5,000 fee/five years). Approximately 57 small businesses operating approximately 81 permitted facilities in the state would be subject to fees ranging from $250 to $1,250 once every five years.
4. Closure requirements are being added for solid waste incinerators and energy recovery facilities and infectious waste treatment and disposal facilities. However, these regulations primarily codify requirements currently implemented through the permitting process. There are two small businesses in the State operating infectious waste treatment and disposal facilities whose cost of operation will not be affected by these new requirements because they already have closure plans, and estimated closure costs are not affected by the rule change. Closure requirements are also being clarified for other facility types where regulatory requirements already exist and details are implemented through the permitting process. The revised regulations will not add cost.
5. The department is proposing to require permits for inert waste landfills receiving under 150 tons per year of solid waste and incinerators with a capacity of less than 1 ton per hour under the new rules. Since these facilities are currently not subject to any permitting or notification requirement, it is difficult to estimate the number of small businesses that may be affected by the requirement to obtain a permit. The permit application cost per facility would be $1,250 every five years.
6. Land clearing and grubbing landfills and certain agricultural landfills will require a permit under the new rules. These facilities were previously covered under “permit by rule.” There are no existing facilities in this category. This may impact a small business seeking to operate a land clearing and grubbing landfill or certain agricultural landfills in the future, with a permit application fee of $1,250 to $5,000 every five years depending on volume.
7. The department proposes a change to the permitting fee structure that will “sum…the separate fees for each distinct activity type.” Two small businesses with three facilities will pay increased permit application fees (an additional $50 for a 5-year permit for each facility) for facilities with both materials recovery and salvage operations.

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

a. Amount of the current fee or fine and the last time it was increased.
The permit application fees were last increased in 1994.
Current 5-year permit application fee:

Facility or activity type	Current Fee
Landfill less than twenty tons/day	$250
Landfill greater than twenty tons/day	$1,000
Incinerator less than twenty tons/day	$250
Incinerator greater than twenty tons/day	$1,000
Transfer station less than one hundred tons/day	$100
Transfer station greater than one hundred tons/day	$250
Recycling and materials recovery facility (includes vehicle storage)	$50
Salvage facility	$50
Composting facility	$50
Remediation facility	$250
Other non-specified technology	$300
Special waste handling, except infectious waste or foreign waste	$500
Infectious waste only	$100
Foreign waste	$100
Permit by rule	$25

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

The proposed increase is 400% for all fees, except facilities exempt from permitting requirements. Facilities exempt from permitting requirements will not be required to pay a permit application fee, which is effectively a few reduction for some facilities that were previously "permit by rule." Facilities with more than one type of regulated solid waste management activity will pay fees summed across different activity types.

Proposed 5-year permit application fee:

Facility or activity type	Proposed Fee
Landfill less than twenty tons/day	$1,250
Landfill greater than twenty tons/day	$5,000
Incinerator less than twenty tons/day	$1,250
Incinerator greater than twenty tons/day	$5,000
Transfer station less than one hundred tons/day	$500
Transfer station greater than one hundred tons/day	$1,250
Recycling and materials recovery facility (includes vehicle storage)	$250

Salvage facility	$250
Composting facility	$250
Remediation facility	$1,250
Other non-specified technology	$1,500
Special waste handling, except infectious waste or foreign waste	$2,500
Infectious waste only	$500
Foreign waste	$500

c. **Reason for the new or increased fee or fine.**
The fees are being increased in to align with other state programs and increase due to inflation (inflation since 1994 is 213%). Current fees are incredibly low and the proposed new fees will still put the state in the lowest one third of states for comparable fees.

d. **Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).**
Revised fees were determined by comparison to other states' fees for facilities that management solid waste. Inflation rates for every year since 1994 were taken from the Federal Reserve's website. However, the primary driver was an analysis of other states' fee structures.

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

The agency will not directly benefit. Approximately $50,000 in increased fees are expected to be collected over a 5-year period, which will go to the state's general fund.

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

The solid waste regulations that apply to a site are based on the waste management activities it conducts and the potential environmental impact of the operation, not the size of the business in terms of number of employees.

In addition to the change discussed above that is expected to impact a small business, the Department is adopting some regulations designed to ease regulatory burden for small landfills. MSWLFs that receive less than twenty tons per day of solid waste are afforded regulatory flexibilities related to frequency of methane monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. The department can also determine alternative

ground water monitoring requirements located in dry or remote areas. These flexibilities provide cost savings for small landfills while still protecting human health and the environment. Currently, no small businesses operate MSWLFs in the State.

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

There are no practicable alternatives that will provide the protection to human health and the environment gained by imposing these new rules.

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

The department consulted with the affected small business and is proposing to implement in the rules the flexible method of compliance suggested by that business, which is to allow the business a period of time to come into compliance for the entire facility. The cost of adding impermeable surfaces on which to conduct their current salvaging operations can be spread out over the course of several years.

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

The department reached out to some of the small businesses regulated by chapter 11-58.1, HAR, to better understand any concerns or potential challenges that may arise due to the proposed changes. In addition, small businesses will have an opportunity to comment at the upcoming public hearing and comment period for the proposed rule.

7a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Yes, a recommendation was made by a small business to allow the business a period of time to come into compliance for the entire facility, and this suggestion was incorporated into the proposed rule. The recommendation would allow flexibility as to how and when existing solid waste salvage facilities must conduct salvage activities on an impermeable surface, which will benefit this business by allowing it to spread the cost over time and still make changes to better protect human health and the environment.

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

The requirements for new construction and demolition landfills are more stringent than comparable federal rules because they require all new C&D landfills within the state to meet the standard required for C&D landfills to be able to accept very small quantity generator (VSQG) hazardous waste. This higher standard for C&D landfills comes straight from the federal rules, but is optional under those rules. The department proposes to require this standard for new

C&D landfills so that they can all accept VSQG hazardous waste, which could help divert this waste from some of the unlined smaller municipal solid waste landfills, protecting the special, fragile ecosystems in our state.

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

The proposed rule provides additional protection of human health and the environment by requiring environmental controls on C&D landfills similar to the controls required for municipal solid waste landfills.

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

40 CFR part 257 subpart B. These rules are designed to minimize the risk that non-municipal non-hazardous landfills that receive VSQG waste pose to human health and the environment. In the federal regulations, compliance with subpart B is optional for C&D landfills, but if C&D landfills comply with subpart B then they can accept VSQG hazardous waste.

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

The standards in 40 CFR part 257 subpart B are optional in the federal rules—required only for C&D landfills that want to be able to accept VSQG hazardous waste—but required in the proposed state rules.

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

These rules apply to new landfills only and are considered during the initial design and permitting process. There may be an increased cost to designing a new landfill to meet these standards, but it is difficult to estimate. This will also enable the landfill to accept another category of waste, which could offset the cost. The main benefit is greater health and environmental protection and more places that can accept VSQG hazardous waste within the state.

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

Due to the operating costs of running a C&D landfill, it is unlikely that a small business will seek to open a new C&D landfill and be affected by these regulations. See also #8d.

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Detailed list of proposed amendments to chapter 11-58.1

1) Reorganize chapter for ease of use
   a) Renumber §§01 to 04 and 06 to §§101 to 105
   b) Consolidate requirements for all types of facilities that manage solid waste, except landfills, rather than having separate sections for each facility type [delete §§20 to 55, new subchapter 2]
   c) Place requirements into one subchapter for:
      i) All types of facilities that manage solid waste, except landfills [subchapter 2]
      ii) Special waste landfills [subchapter 3]
      iii) Municipal solid waste landfills [subchapter 4, renumber §§11 to 18 as §§151 to 158]
      iv) Construction and demolition landfills [subchapter 5; renumber §19 as §183]
   d) Move sections
      i) "General responsibilities" [from §61 to §106, rename as "solid waste management responsibilities"]
      ii) "Foreign waste treatment and disposal facilities" and "Infectious wastes," [from §§53(a) and 63 to §123(j)(1) and (2) "Operating requirements" – "Treatment facilities"]
      iii) "Severability clause" [from §72 to §109]
      iv) "Inspections" [from §05 to §191]
      v) "Hazardous wastes" and "Special waste controls" to permit application and operating requirement sections applicable to landfills and incinerators [from §§62(a), 65 to §§122, 123, 132, 135, 152, 155, 172, 175, 183]

2) Adopt certain EPA rules promulgated between 1994 and present
   a) Financial assurance technical corrections (Financial Assurance Criteria for Owners and Operators of Municipal Solid Waste Landfill Facilities [60 FR 40104; August 7, 1995])
   b) Allow local government guarantee as a financial assurance mechanism for municipal solid waste landfills (Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities [61 FR 60328; November 27, 1996])
   c) Allow additional flexibilities for small landfills (Revisions to Criteria for Municipal Solid Waste Landfills [62 FR 40708; July 29, 1997])
   d) Disposal of lead-based paint waste (Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste [68 FR 36487; June 18, 2003])
   e) Airport siting restrictions (Municipal Solid Waste Landfill Location Restrictions for Airport Safety [68 FR 59333; October 15, 2003])
   f) Updated testing criteria (Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB [70 FR 34538; June 14, 2005])
   g) Conformity with hazardous waste rule changes, handling of Very Small Quantity Generator hazardous waste (Hazardous Waste Generator Improvements Rule [81 FR 85732; November 28, 2016])

3) Permit system changes [§104]
   a) Remove permit exemptions for: [§104(b)]
      (1) Onsite landfilling of less than 150 tons per year of inert waste
      (2) Incinerators with a capacity of less than 1 ton per hour
      (3) Facilities previously under "permit by rule"
         (a) Convenience centers
         (b) Land clearing, grubbing, and certain agricultural landfills and inert waste landfills
         (c) Recycling drop-off and processing facilities, except as listed below under "add permit exemptions for"
   b) Add permit exemptions for: [§104(b)]
      (1) A facility composting only green waste generated on its premises and using the compost only on its premises, other than a single family or duplex residential property, which was already exempt
      (2) Recycling drop-off facilities accepting only the following source-separated materials: cardboard, newspaper, office paper and other paper recyclables, glass containers, aluminum containers, food and beverage containers (glass, plastic, bi-metals, steel, and aluminum), scrap aluminum, stainless steel, brass, and bronze
      (3) Recycling processing facilities accepting and processing only a single source-separated material of one of the following types: polystyrene, bi-metal beverage containers, aluminum cans, or plastic containers
   c) Add procedural detail for modification, suspension, or revocation of permits [§104(e)]
   d) Changes to permit application fees [§104(i)]
      i) Rename "filing fee" to "application fee"
      ii) Increase permit application fees
      iii) Make fees additive across different activity types with separate fees
      iv) Add new fee level for facilities proposing the use of new or innovative technologies to handle solid waste

4) New incident notification requirement for all facilities that manage solid waste, including landfills [§108; codifying what are currently permit requirements]

5) Changes to accepted waste
   a) Allow incinerators and energy recovery facilities to accept household pesticide containers [§123(k)(1)(C)]
   b) Allow incinerators, energy recovery facilities, and landfills to accept PCB bulk product waste by permit and in accordance with 40 C.F.R. section 761.62(b), consistent with EPA rule Disposal of Polychlorinated Biphenyls (PCBs) [§§123(k)(4), 135(c), 155(a), 175(a), 183(f)(3)]

6) New requirements for facilities that manage solid waste, except landfills
   a) All facilities:
      i) Leachate control, if applicable [§123(e)]

ii) Closure, closure assessment, and remediation [§125]
(1) Added details for content of closure plan
(2) Clarify timing to report termination of operations (no less than 90 days before terminating operations; within 90 days of the department's identification of an open dump)

b) Solid waste salvage facilities [§123(h)]
i) New facilities not holding a permit on the effective date of the rules must conduct all processing and salvaging activities on an impervious working surface (for example, concrete)
ii) Existing facilities must:
(1) Conduct all processing and salvaging activities on an impervious working surface (for example, concrete) within five years of the effective date of the rules
(2) Submit a plan to the department within one year of the effective date of the rules for conversion of processing and salvaging work surfaces to an impervious working surface (for example, concrete); plan must include
(a) A sampling plan to evaluate whether processing and salvaging activities have contaminated the ground surface and subsurface
(b) A schedule for converting all work surfaces to an impervious working surface (for example, concrete)
(3) Perform sampling, remediation of existing contamination, and conversion of work surfaces to an impervious working surface (for example, concrete) in accordance with plans and schedules approved by the department

c) Facilities exempt from permit requirement: notification requirement [§124(b)]

d) Codifying what are currently permit requirements
i) All facilities
(1) Add or clarify requirement to submit closure plan as part of the permit application [§122(b)(6)]
(2) Remove requirement to certify compliance with local ordinances from permit application; requirement has been implemented as pertaining to local zoning requirements only [§122(b)(8)]
(3) Add specifications for annual reports [§124(a)]
ii) Facilities proposing new or innovative technologies to handle solid waste: justification for the use of the proposed technology [§122(b)(5)]
iii) Facilities producing an end product: a market evaluation for the product, to ensure proposed activities do not constitute sham recycling [§122(b)(7)]
iv) Compost facilities:
(1) Require compost to be nonpathogenic, free of offensive odors, biologically and chemically stable, free of injurious components or particles, and able to sustain plant growth [§123(i)(1)]
(2) For composting facilities accepting pathogenic waste, submit as part of the permit application and implement a sampling and analysis plan to ensure finished compost is protective of human health and the environment, if required by the department [§122(d)(4)]
(3) For a system using only sewage sludge with an additive such as wood chips, change maximum contaminant concentrations the sewage sludge

must meet from 40 C.F.R. part 503 to 40 C.F.R. part 503 or chapter 11-62, whichever is more stringent [§123(i)(2)]

7) New requirements for special waste landfills
   a) Closure plan and requirements, including environmental covenant [§§132(a)(b), 137(a)]
   b) Post-closure plan and requirements [§132(a)(7), 137(b)]
   c) Environmental monitoring and corrective action plan and requirements, as appropriate based on the type of waste to be accepted [§§132(a)(8), 136]
   d) Financial assurance [§§138 to 142]

8) Updates to municipal solid waste landfill requirements
   a) Update groundwater protection standards to either the federal maximum contaminant level (MCL) or the state MCL for a contaminant, whichever is lower [§156(e)(8)(A)]
   b) Update tsunami zone to reference current tsunami inundation maps [§153(g)]
   c) Allow construction of new landfill units in a tsunami inundation zone if the operator can demonstrate that the engineering design protects from damage or infiltration by tsunami waters [§153(g)]
   d) Require recording in operating record any major deviation from the operations plan (fires and explosions), daily log of weight or volume, source, and type of solid waste being disposed (codifying what are currently permit requirements)
   e) Change the closure requirement from notation on deed to environmental covenant recorded with the bureau of conveyances and submitted to the Department [§157(a)(10) and (11)]

9) New requirements for new construction and demolition landfills, based on requirements for municipal solid waste landfills, including groundwater monitoring requirements and siting restrictions [§§171 to 182]

10) New requirements for existing construction and demolition landfills
   a) Program and procedures for excluding HW and unpermitted PCB waste [§183(f)(3)]
   b) Closure plan and requirements, including environmental covenant [§§177(a), 183(c)(5) and (i)]
   c) Post-closure plan (codifying what are currently permit requirements) and requirements [§§177(b), 183(c)(6) and (j)]
   d) Allow for C&D landfills meeting requirements of §§173 to 176 to accept VSQG hazardous waste [§183(f)(2)(A) and (8)]
   e) Tighten restrictions on accepting pesticide containers [§183(f)(2)(C)]
   f) Clarify existing bans on accepting industrial solid waste, scrap automobiles, white goods, and whole tires [§183(f)(2)(E) to (H)]
   g) Access requirements (codifying what are currently permit requirements) [§183(g)]
   h) Financial assurance (clarifying requirement) [§183(k)]

11) Changes to clarify meaning, make grammar or formatting consistent, update references, or correct punctuation
    a) Definitions [§103]
        i) Delete unused definitions: bioconversion, buffer zone, bulky waste, common water pollutants, compliance schedule, disposal site, existing facility, free liquids, garbage, inert wastes, landspreading facility, lift, limited purpose landfill, medical waste, monofill, performance standard, permit by rule, plan of operation, premises, putrescible waste, refuse, reserved, sole source aquifer, solid waste disposal facility, solid waste handling, stream, Table 1, used oil transporter, waste recycling, waste reduction
        ii) Move definitions used only once to the relevant location: agricultural waste, areas susceptible to mass movement, bird hazard, karst terranes, open burning, poor foundation conditions
        iii) Clarifying changes to definitions: ash, construction and demolition waste, energy recovery, existing MSWLF unit, facility, foreign waste, hazardous waste, landfill, municipal solid waste landfill unit, permit, petroleum, post-closure, recoverable material, recycling drop-off facility, recycling processing facility, regulated hazardous waste, salvage, scavenging, solid waste, solid waste management, special waste, structural components, transfer station, unstable area, wetlands
        iv) Add new definitions: construction and demolition landfill unit, existing construction and demolition landfill unit, inert fill material, new construction and demolition landfill unit, open dump, PCB, PCB bulk product waste, qualified environmental professional, residential lead-based paint waste, special waste landfill
    b) Change terms:
        i) “residential” to “household”
        ii) “medical waste” to “infectious waste”
        iii) “must” and “should” to “shall”
        iv) “and/or” to “and” or “or,” as appropriate
        v) “refuse-derived fuel processing facility” to “energy recovery facility”
        vi) “recycling processing or materials recovery facility” to “recycling processing facility”
        vii) “handling” to “management” or “storage,” as appropriate
        viii) Conform spelling of “groundwater” throughout chapter
    c) Conform cancellation language for different financial assurance mechanisms
    d) Remove obsolete references to dates
    e) Clarify facilities and materials to which the chapter does not apply [§102(b)]
        i) Remediation facilities developed for a one-time operation and managed under chapter 11-264.1, 11-280.1, or 11-451
        ii) Facilities that only handle hazardous waste or used oil and are regulated under chapters 11-260.1 to 11-279.1
        iii) Manufacturers that use clean, source-separated paper products, glass, and plastic as feedstock for their manufacturing process, and which as a result of this process, produce an end-product for resale

iv) Facilities treating infectious waste generated on-site in treatment units located on-site
v) A solid waste disposal or composting facility on which only agricultural solid waste from an agricultural operation or an agricultural products processing facility is composted or disposed
vi) Salvage facilities that store at any one time either twenty-five or fewer waste vehicles or twenty-five or fewer waste white goods
vii) Inert fill material

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DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-58.1
Hawaii Administrative Rules

ADOPTION DATE

1. Chapter 11-58.1, Hawaii Administrative Rules, entitled "Solid Waste Management Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 58.1

SOLID WASTE MANAGEMENT CONTROL

Subchapter 1 General Provisions

§11-58.1-101 Purpose
§11-58.1-102 Applicability
§11-58.1-103 Definitions
§11-58.1-104 Permit system
§11-58.1-105 Variances
§11-58.1-106 Solid waste management
§11-58.1-107 Incident notification
§11-58.1-108 Severability clause
§§11-58.1-109 to 11-58.1-120 (Reserved)

Subchapter 2 Solid Waste Storage, Processing, Treatment, and Reclamation Facilities

§11-58.1-121 Applicability

§11-58.1-122 Permit application
§11-58.1-123 Operating requirements
§11-58.1-124 Reporting and Notification
§11-58.1-125 Closure, closure assessment, and site remediation
§§11-58.1-126 to 11-58.1-130 (Reserved)

Subchapter 3 Special Waste Landfills

§11-58.1-131 Special waste landfills - applicability
§11-58.1-132 Special waste landfills - permit application
§11-58.1-133 Special waste landfills - siting restrictions
§11-58.1-134 Special waste landfills - annual report
§11-58.1-135 Special waste landfills - operating criteria
§11-58.1-136 Special waste landfills - environmental monitoring and corrective action
§11-58.1-137 Special waste landfills - closure and post-closure care
§11-58.1-138 Special waste landfills — financial assurance
§11-58.1-139 (Reserved)
§11-58.1-140 Special waste landfills — local government financial test specifications
§11-58.1-141 (Reserved)
§11-58.1-142 Special waste landfills — local government guarantee specifications
§§11-58.1-143 to 11-58.1-150 (Reserved)

Subchapter 4 Municipal Solid Waste Landfills

§11-58.1-151 Municipal solid waste landfills — purpose, scope, and applicability
§11-58.1-152 Municipal solid waste landfills — permit requirements
§11-58.1-153 Municipal solid waste landfills — site analysis and siting restrictions
§11-58.1-154 Municipal solid waste landfills —

design criteria
§11-58.1-155 Municipal solid waste landfills — operating criteria
§11-58.1-156 Municipal solid waste landfills — groundwater protection
§11-58.1-157 Municipal solid waste landfills — closure and post-closure care
§11-58.1-158 Municipal solid waste landfills — financial assurance
§11-58.1-159 (Reserved)
§11-58.1-160 Municipal solid waste landfills — local government financial test specifications
§11-58.1-161 (Reserved)
§11-58.1-162 Municipal solid waste landfills — local government guarantee specifications
§§11-58.1-163 to 11-58.1-170 (Reserved)

Subchapter 5 Construction and Demolition Landfills

§11-58.1-171 Construction and demolition landfills — applicability
§11-58.1-172 Construction and demolition landfills — permit requirements
§11-58.1-173 Construction and demolition landfills — site analysis and siting restrictions
§11-58.1-174 Construction and demolition landfills — design criteria
§11-58.1-175 Construction and demolition landfills — operating criteria
§11-58.1-176 Construction and demolition landfills — groundwater protection
§11-58.1-177 Construction and demolition landfills — closure and post-closure care
§11-58.1-178 Construction and demolition landfills — financial assurance
§11-58.1-179 (Reserved)
§11-58.1-180 Construction and demolition landfills — local government financial test

specifications
§11-58.1-181 (Reserved)
§11-58.1-182 Construction and demolition landfills — local government guarantee specifications
§11-58.1-183 Existing construction and demolition landfills
§§11-58.1-184 to 11-58.1-190 (Reserved)
§11-58.1-20 Repealed
§§11-58.1-31 to 11-58.1-33 Repealed
§§11-58.1-41 to 11-58.1-42 Repealed
§§11-58.1-51 to 11-58.1-55 Repealed
§§11-58.1-61 to 11-58.1-65 Repealed

Subchapter 6 Enforcement

§11-58.1-191 Inspections
§11-58.1-192 Penalties and remedies

Historical Note: Chapter 11-58.1, Hawaii Administrative Rules, is based substantially on Chapter 11-58, Hawaii Administrative Rules. [Eff 11/27/81; R 1/13/94]

Historical Note: The chapter was reorganized and all sections not repealed were renumbered in the amendment and compilation. [Am and comp]

SUBCHAPTER 1

GENERAL PROVISIONS

[~~§11-58.1-01~~] §11-58.1-101 Purpose. (a) The purpose of this chapter is to establish minimum standards governing the design, construction, installation, operation, [~~and~~] maintenance, closure, and post-closure care of facilities that manage solid

waste, including the storage, treatment, disposal, recycling, reclamation, and transfer [~~systems.~~] of solid waste. Such standards are intended to:

(1) Prevent pollution of the drinking water supply or waters of the State;
(2) Prevent air pollution;
(3) Prevent the spread of disease and the creation of nuisances;
(4) Protect the public health and safety;
(5) Conserve natural resources; and
(6) Preserve and enhance the beauty and quality of the environment.

(b) Reserved. [Eff 1/13/94; §11-58.1-01; am, ren §11-58.1-101, and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-2, 342H-3, 342H-4, 342H-6, 342H-7, 342H-13, 342H-31, 342H-32, 342H-53, 342H-54, 342H-55, 342H-56, 342J-4, 342J-6, 342J-31, 342J-52, 342J-55) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342H-53, 342J-30)

[~~§11-58.1-02~~] §11-58.1-102 Applicability. (a) These rules are applicable to all persons [~~as defined in this chapter~~] who [~~propose,~~] own, operate, propose to operate, close, or maintain a facility that manages solid waste, including the storage, recycling, reclamation, salvage, transfer, treatment, or disposal [~~facility; and are applicable to medical waste treatment, foreign waste treatment, used oil transport and recycling, hazardous waste, infectious waste, and radioactive waste.~~] of solid waste, except as excluded in subsections (b) and (c).

(b) This chapter does not apply to:

(1) Remediation facilities developed for a one-time operation and managed under chapter 11-264.1, 11-280.1, or 11-451;
(2) Facilities that only handle hazardous waste or used oil and are regulated under chapters 11-260.1 to 11-279.1;
(3) Manufacturers that use clean, source-

separated paper products, glass, and plastic as feedstock for their manufacturing process and, which as a result of this process, produce an end-product for resale;

(4) Facilities only treating infectious waste generated on-site in treatment units located on-site;

(5) A solid waste disposal or composting facility upon or in which only agricultural solid waste from an agricultural operation or an agricultural products processing facility is composted or disposed. Agricultural solid waste means wastes resulting from the production of agricultural products including but not limited to manure and animal carcasses;

(6) Salvage facilities that store at any one time:

(A) Twenty-five or fewer waste vehicles; or

(B) Twenty-five or fewer waste white goods; and

(7) Inert fill material.

(c) The permit requirements in sections 11-58.1-104 and 11-58.1-122 do not apply to:

(1) A facility composting only green waste or vegetative food waste generated on its premises and using the compost only on its premises;

(2) A composting facility that handles no more than 3,000 tons per year of green waste only;

(3) Recycling drop-off facilities accepting only the following source-separated materials: cardboard, newspaper, office paper and other paper recyclables, glass containers, aluminum containers, food and beverage containers (glass, plastic, bi-metals, steel, and aluminum), scrap aluminum, stainless steel, brass, and bronze;

(4) Recycling processing facilities accepting and processing only a single source-separated material of one of the following

types: polystyrene, bi-metal beverage containers, aluminum cans, or plastic containers; and

(5) Minor sources as determined by the director.

[Eff 1/13/94; §11-58.1-02; am, ren §11-58.1-102, and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-2, 342H-3, 342H-4, 342H-6, 342H-7, 342H-13, 342H-31, 342H-32, 342H-53, 342H-54, 342H-55, 342H-56, 342J-4, 342J-6, 342J-31, 342J-52, 342J-55) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342H-53, 342J-30)

[~~§11-58.1-03~~] §11-58.1-103 Definitions. When used in this chapter, the following terms have the meanings given below:

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with section [~~11-58.1-17(a).~~] 11-58.1-137(a), 11-58.1-157(a), or 11-58.1-177(a).

"Active portion" means that part of a facility or unit that has received or is receiving [~~wastes~~] waste and that has not been closed in accordance with section [~~11-58.1-17(a).~~] 11-58.1-137(a), 11-58.1-157(a), or 11-58.1-177(a).

[~~"Agricultural waste" means wastes resulting from the production of agricultural products including but not limited to manures, and carcasses of dead animals.~~]

"Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Appendix I" means Appendix I [~~as it appears~~] in 40 [~~CFR 258.~~] C.F.R. part 258, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Appendix II" means Appendix II [~~as it appears~~]

in 40 [~~CFR 258.~~] C.F.R. part 258, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Aquifer" means a geological formation, group of formations, or part of a formation capable of yielding a significant quantity of [~~ground water~~] groundwater to wells or springs.

[~~"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or artificial events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.~~

~~"Ashes"~~] "Ash" means the residue including any air pollution flue dusts or bottom ash from combustion or incineration of material including solid wastes.

"Best practicable technology" means current state of the art methods [~~and/or~~] or procedures which consider the economic capabilities of the owner [~~and/or~~] or operator.

[~~"Bird hazard" means an increase in the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.~~

~~"Bioconversion" means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or generate products including, but not limited to, fertilizers, feeds, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a municipal waste landfill.~~

~~"Buffer zone" means that part of a facility that lies between the active area and the property boundary.~~

~~"Bulky waste" means large items of refuse, such as appliances, furniture, and other oversize wastes which would typically not fit into reusable or disposable containers.~~

~~"CFR"~~] "C.F.R." means Code of Federal Regulations.

"Clean Air Act" means the federal Clean Air Act, 42 [~~U.S.C. sections~~] United States Code section 7401 [~~to 7671q.~~] et seq.

"Clean Water Act" means the federal Clean Water Act, 33 [~~U.S.C. sections~~] United States Code section 1251 [~~to 1387.~~] et seq.

"Clear and grub material" means material consisting of any rock, coral, sand, gravel, and soil in conjunction with a maximum of twenty per cent vegetation which includes trees, timber shrubbery, and plants dislodged or uprooted from the ground.

"Closure" means those actions taken by the owner or operator of a solid waste site or facility to cease disposal operations and to ensure that all such facilities are closed in conformance with applicable rules at the time of such closures and to prepare the site for the post-closure period.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding [~~residential~~] household and industrial wastes.

[~~"Common water pollutants" means those industrial discharges that are point sources subject to permits under 33 U.S.C. section 1342.~~

~~"Compliance schedule" means a written schedule of required measures in a permit including an enforceable sequence leading to compliance with these rules.~~]

"Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), green or yard waste materials, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like mulch or soil amendment. This term includes the processing of organic and non-treated wood waste materials for the generation of wood chips

or other materials that can be used as soil amendment, planting mixes, mulches for horticultural and agricultural applications, landfill cover, and land reclamation. The process of composting under methods approved by the department is a recycling activity. Land application of uncomposted organic solid waste shall not be considered an approved solid waste management activity, except as a portion of [~~the~~] a United States Department of [~~Agriculture-Soil Conservation Service~~] Agriculture Natural Resources Conservation Service approved [~~Land Improvement, Soil Stabilization or Reclamation~~] Comprehensive Nutrient Management Plan.

"Construction and demolition landfill unit" means a discrete area of land or an excavation that receives construction and demolition waste and does not receive regulated hazardous waste or industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 C.F.R. section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024. A construction and demolition landfill unit that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

"Construction and demolition waste" means solid waste[~~, largely inert waste,~~] resulting from the construction, repair, demolition, or razing of buildings, [~~of~~] roads, or other structures[~~, such as~~]. Construction and demolition waste typically consists of concrete, [~~rock,~~] brick, bituminous concrete, hollow tile, asphaltic pavement, wood, [~~and~~] glass, masonry, composition roofing and roofing paper, steel, plaster, and minor amounts of other metals, such as copper. Construction and demolition waste includes clear and grub material and does not include cleanup materials contaminated with hazardous substances, friable asbestos, waste paints, solvents, sealers, adhesives, or similar materials.

"Container" means a device used for the collection, storage, or transportation of solid waste, including but not limited to, reusable containers,

disposable containers, detachable containers, and tanks, whether fixed or detachable.

"Contaminate" means to allow to discharge a substance into [~~ground water~~] groundwater that would cause the concentration of that substance in the [~~ground water~~] groundwater to exceed the maximum contaminant level.

"Convenience center" means [~~waste handling facilities~~] a facility performing limited transfer station [~~operation~~] operations located at convenient areas receiving less than forty tons per day of only household [~~or residential~~] solid waste.

"Cover material" means soil or other suitable material that has been approved by the department as cover for wastes.

"Department" means the state department of health.

"Director" means the director of health or the director's authorized representative.

"Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste onto any land or water so that such solid waste, or any constituent thereof, may enter the environment, be emitted into the air, or be discharged into any water, including [~~ground waters.~~] groundwaters.

"Disposal facility" means a [~~solid waste management~~] facility [~~or part of one~~] at which solid waste is intentionally placed into or on any land or water, and at which solid waste will remain after closure.

[~~"Disposal site" means the location where any final treatment, utilization, processing, or deposition of solid waste occurs.~~]

"Energy recovery" means the recovery of energy in a useable form from [~~mass~~] burning [~~or refuse derived fuel~~], incineration, pyrolysis, gasification, or any

other means of [~~using the heat of combustion or solid waste that involves high temperature (over twelve hundred degrees Fahrenheit)~~] processing[~~.~~] solid waste.

[~~"Existing facility" means a facility which is owned or leased, and in operation, or for which construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state, and local statutes, regulations, rules, and ordinances. This term does not include existing MSWLF units.~~]

"Existing construction and demolition landfill unit" means any construction and demolition landfill unit that received construction and demolition waste before the effective date of these rules.

"Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of October 9, 1993. [~~Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.~~]

"Facility" means all contiguous land [~~including buffer zones~~] and structures, other appurtenances, and improvements on the land [~~used for the handling of solid waste~~].

"Facility structures" means, but is not limited to, buildings, sheds, utility lines, and drainage pipes on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the one hundred-year flood.

"Foreign waste" means garbage generated by carriers which left foreign ports, including any territory or possession of the U.S., and their first port of entry to the U.S. is Hawaii. This includes unconsumed food, food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation

areas, passengers' or crews' quarters, dining rooms, and any other areas on the means of conveyance.

[~~"Free liquids" means liquids from any solid waste which produces measurable liquids as defined by the Paint Filter Liquids Test, Method 9095 of EPA Publication Number SW-846.~~

~~"Garbage" means, but is not limited to, putrescible solid waste including animal and vegetable wastes resulting from the handling, storage, sale, preparation, cooking, or serving of food. Garbage originates primarily in home kitchens, stores, markets, restaurants, and other places where food is stored, prepared, or served.~~]

"Gas condensate" means the liquid generated as a result of gas recovery processes at [~~the~~] a MSWLF unit.

"Green waste" means solid waste that includes leaves, grass clippings, garden and yard wastes, tree trunks, holiday trees, tree trimmings, [~~and/or~~] or prunings.

[~~"Ground water" or "ground-water"~~] "Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means [~~regulated~~] a solid waste that is a hazardous waste as defined in [~~40 CFR 261 or the State of Hawaii's rules or statutes, whichever is more stringent.~~] 40 C.F.R. section 261.3, as incorporated and amended in chapter 11-261.1.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household waste" means any solid waste, including [~~garbage and~~] food waste, trash, infectious waste, and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

"Incineration" means the destruction of solid waste by burning in a furnace designed for that purpose where solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste [~~regulated under subtitle C of RCRA~~]. The waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Inert fill material" means earth, soil, rocks, rock-like material such as cured asphalt, brick, and clean concrete less than eight inches in diameter except as specified by a licensed soils engineer, not containing exposed steel reinforcing rod, vegetation, organic material, or other solid waste.

[~~"Inert wastes" means wastes which are limited to earth and earth-like products, concrete, cured asphalt, rock, bricks, and material which will not cause a leachate of environmental concern.~~]

"Infectious waste" means any waste which may contain pathogens capable of causing an infectious disease and shall include, but not be limited to, wastes categorized in section [~~11-104-4 of the Hawaii Administrative Rules.~~] 11-104.1-4.

[~~"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, are developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.~~]

"Landfill" means a disposal facility or part of a facility [~~at which solid waste is permanently placed in or on land and which is not a landspreading~~

~~facility.~~] that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 C.F.R. section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024.

[~~"Landspreading facility" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface at greater than vegetative utilization and soil conditioner [and/or] or immobilization rates.~~]

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

"Leachate" means water or other liquid that has percolated or passed through or emerged from solid waste and contains dissolved, soluble, suspended, or miscible materials removed from the waste or due to contact with solid waste or gases therefrom.

[~~"Lift" means a compacted layer of solid waste and its overlying earth cover in a landfill.~~

~~"Limited purpose landfill" means a landfill that receives solid waste of limited types, known and consistent composition, other than woodwastes, garbage, inert waste, and demolition waste.~~]

"Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method [~~9095~~] 9095B (Paint Filter Liquids Test), [~~as described~~] included in "Test Methods for Evaluating Solid [~~Wastes,~~] Waste, Physical/Chemical Methods" (EPA [~~Pub. No.~~] Publication SW-846).

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include artificial materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Lower explosive limit" means the lowest per cent by volume of a mixture of explosive gases in air that

will propagate a flame at twenty-five degrees centigrade and atmospheric pressure.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety per cent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

[~~"Medical waste" means all the infectious and injurious waste originating from a medical, veterinary, or intermediate care facility.~~

~~"Monofill" means a landfill which accepts only one type of solid waste.~~]

"Municipal solid waste landfill unit" or "MSWLF unit" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined [~~under~~] in 40 [~~CFR~~] C.F.R. section 257.2[~~.~~], published by the Office of the Federal Register, as amended as of July 1, 2024. A MSWLF unit also may receive other types of [~~RCRA subtitle D wastes,~~] waste regulated under subtitle D of RCRA, such as commercial solid waste, nonhazardous sludge, [~~conditionally exempt~~] hazardous waste generated by a very small quantity generator [~~waste~~], as defined in 40 C.F.R. section 260.10, as incorporated and amended in chapter 11-260.1, and industrial solid waste. The landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill unit that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

"New construction and demolition landfill unit" means any construction and demolition landfill unit that has not received waste before the effective date of these rules.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste before October 9, 1993.

"Nuisance" consists of an act or an omission of an act which annoys, injures, or endangers the comfort, health, or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any public park, square, street, or highway; or in any way renders other persons insecure in life, or in the use of property.

"One hundred-year flood" means a flood that has a one per cent or greater chance of recurring in any given year or a flood [~~occurring~~] of a magnitude [~~equalled~~] equaled or exceeded once in one hundred years on the average over a significantly long period.

[~~"Open burning" means the combustion of solid waste without:~~

~~(1) Control of combustion air to maintain adequate temperature for efficient combustion;~~

~~(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~(3) Control of the emission of the combustion products.~~]

"Open dump" means a location where solid waste is disposed in nonconformance with applicable standards, relevant permit conditions, this chapter, or chapter 342H, Hawaii Revised Statutes.

"Operator" means the [~~person(s)~~] person responsible for the overall operation of a facility or part of a facility.

"Owner" means the [~~person(s)~~] person who has legal title to a facility or part of a facility.

"PCB" or "PCBs" shall have the same meaning as defined in 40 C.F.R. section 761.3, published by the Office of the Federal Register, as amended as of July 1, 2024.

"PCB bulk product waste" shall have the same meaning as defined in 40 C.F.R. section 761.3, published by the Office of the Federal Register, as amended as of July 1, 2024.

[~~"Performance standard" means the criteria for the performance of solid waste handling facilities.~~]

"Permeability" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1 x 10^{-7} cm/sec or less may be considered impermeable.

"Permit" means written authorization from the director to construct, modify, and operate any solid waste [~~disposal~~] management system or any component of any solid waste [~~disposal~~] management system. A permit authorizes the grantee to construct, modify, and operate any solid waste [~~disposal~~] management system in a manner or amount, not forbidden by chapter 342H, Hawaii Revised Statutes, or this chapter[~~, or by rules adopted pursuant to HRS 342~~] but requiring review by the department.

[~~"Permit by rule" means an abbreviated procedure by which "limited impact" solid waste facilities may begin operations in accordance with section 11-58.1-04(i).~~]

"Person" means an individual, firm, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

"Petroleum" means [~~a regulated substance which includes~~] any petroleum, including crude oil or any fraction thereof [~~which~~], that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute[~~.)~~]).

"Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

[~~"Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life and during closure and post-closure.~~

~~"Poor foundation conditions" means those areas where features exist which indicate that a natural or artificial event may result in inadequate foundation support for the structural components of an MSWLF unit.~~]

"Post-closure" means the requirements placed upon

[~~landfill disposal sites~~] landfills after closure to ensure their environmental safety [~~for a thirty-year period~~].

[~~"Premises" means a tract or parcel of land with or without habitable buildings.~~]

"Processing" means an operation to convert solid waste into a useful product or to prepare it for disposal[~~.~~] or recycling.

[~~"Putrescible waste" means solid waste which contains material capable of being decomposed by micro-organisms.~~]

"Pyrolysis" means the process in which solid waste is heated in an enclosed device in the absence of oxygen to vaporize, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

"Qualified environmental professional" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and who has sufficient training and experience in environmental science and related fields, as may be demonstrated by state registration, professional certifications, or completion of accredited university programs, to enable them to make sound professional judgments regarding environmental site assessments, evaluating risks, and forming conclusions regarding conditions indicative of releases or threatened releases at a property.

"Qualified [~~ground-water~~] groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and who has sufficient training and experience in [~~ground-water~~] groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding [~~ground-water~~] groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the federal Resource Conservation and Recovery Act, 42 [~~U.S.C.~~] United States Code sections 6901 [~~to 6992k.~~] et seq.

"Reclamation facility" means a location used for the [~~handling,~~] processing[~~,~~] or storage of recoverable material, including but not limited to composting and remediation facilities.

"Recoverable material" means material that can be diverted from disposal for recycling [~~or bioconversion~~]. This term does not include those materials that are generated and normally used on-site for manufacturing purposes.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Recycling drop-off facility" means a structure or site designated for collection [~~and small scale (low technology) segregation~~] of recyclable materials. The [~~manned or unmanned~~] staffed or unstaffed site will receive and temporarily store [~~recyclables "dropped-off" and no payment is made to the participants depositing recyclables.~~] dropped off recyclable materials.

"Recycling processing [~~or materials recovery~~] facility" means a facility which [~~collects and~~] bales, shreds, cuts, crushes, melts, sorts, [~~or~~] otherwise treats, or temporarily stores[~~,~~] and brokers[~~, or transports~~] recyclable materials for reuse or re-manufacture.

[~~"Refuse" means anything putrescible or non-putrescible that is discarded or rejected.~~]

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 [~~CFR~~] C.F.R. section 261.3, as incorporated and amended in chapter 11-261.1, that [~~is not excluded from regulation as a hazardous waste under 40 CFR section 261.4(b) or~~] was not generated by a [~~conditionally exempt~~] very small quantity generator, as defined in [~~40 CFR section 261.5.~~] 40 C.F.R. section 260.10, as incorporated and amended in chapter 11-260.1.

"Remediation" means a process utilizing physical, chemical, or biological conversion to mitigate or

eliminate undesirable or unsafe constituents within the waste material.

[~~"Reserved" means a section having no requirements and which is set aside for future possible rulemaking as a note to the regulated community.~~]

"Residential lead-based paint waste" means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Salvage" means the incidental removal of solid waste for reuse or recycling under the control of the facility owner or operator.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the removal of materials at a [~~disposal site, or interim~~] facility that manages solid waste [~~handling site~~] without the approval of the owner or operator and the department [~~of health~~].

"Secondary [~~Resources"~~] resources" means postconsumer material collected and processed for feedstock in a manufacturing process.

"Seismic impact zone" means an area with a ten per cent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a [~~per cent~~] percentage of the earth's gravitational [~~pull(g),~~] pull (g), will exceed 0.10g in two hundred fifty years.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, industrial process, or air pollution control facility exclusive of the treated effluent

from a wastewater treatment plant.

[~~"Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to section 1424e of the Safe Drinking Water Act (P.L. 93-523).~~]

"Solid waste" [~~or "waste"~~] means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial [~~waste water~~] wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants, or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended [~~(68 Stat. 923).~~] (42 United States Code section 2011 et seq.).

[~~"Solid waste disposal facility" means any facility which receives solid waste for ultimate disposal through landfilling or incineration. This term does not include facilities utilized for transfer, storage, processing, or remanufacturing for recycling or reuse, or bioconversion.~~

~~"Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes, or the conversion of the energy in such wastes to more useful forms or combinations thereof.~~]

"Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, [~~transportation,~~] transfer, processing, treatment, [~~and~~] or disposal of solid waste.

"Source separation" means dividing solid waste

into some or all of its component parts at the point of generation.

"Special [~~wastes"~~] waste" means any solid waste which, because of its source or physical, chemical, or biological characteristics, [~~require~~] requires special consideration for its proper processing or disposal, or both. This term includes, but is not limited to, foreign waste, asbestos, [~~used oil, lead acid batteries,~~] municipal waste combustion ash, sewage sludge that is non-hazardous, [~~medical~~] infectious wastes, tires, white goods, and derelict vehicles.

"Special waste landfill" means a disposal facility that receives special waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 C.F.R. section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Storage" means the holding of solid waste materials for a temporary period.

[~~"Stream" means the point at which any confined freshwater body of surface water reaches a mean annual flow rate of twenty cubic feet per second.~~]

"Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of [~~the MSWLF~~] a landfill that is necessary for protection of human health and the environment.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen material (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Surface water" means all lakes, rivers, ponds, streams, inland waters, salt waters, and all other water and water courses within the jurisdiction of the State of Hawaii.

[~~"Table 1" means Table 1 as it appears in 40 CFR 258.~~]

"Transfer station" means a [~~permanent, fixed, supplemental collection and transportation~~] facility[~~,~~] used [~~by persons and route collection vehicles~~] to [~~deposit collected~~] consolidate, sort, transfer, or temporarily store solid waste collected from off-site [~~into a larger transfer vehicle~~] for transport to [~~a solid waste handling~~] another facility[~~.~~] that manages solid waste. Transfer stations may also include recycling activities.

"Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for energy or material resource recovery, or reduced in volume.

"Twenty-five year storm" means a storm of a particular duration and of such intensity that it has a four per cent probability of being [~~equalled~~] equaled or exceeded in any year.

"Twenty-four hour, twenty-five year storm" means a twenty-five year storm of twenty-four hours duration.

"Unstable area" means a location that is susceptible to natural or artificial events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes. As used in this definition:

(1) "Poor foundation conditions" means areas where features exist which indicate that a natural or artificial event may result in inadequate foundation support for the structural components of a landfill unit.

(2) "Areas susceptible to mass movement" means areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or artificial events, results in the downslope transport of soil

and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(3) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, are developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

[~~"Used oil transporter" means a person who transports more than five hundred gallons of used oil annually, except a person who transports used oil obtained solely from sources owned and operated by the person to a storage facility owned and operated by the same person.~~]

"Washout" means the carrying away of solid waste by waters of the base flood.

"Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

[~~"Waste recycling" means reusing waste materials and extracting materials from a waste stream.~~

~~"Waste reduction" means reducing the amount or type of waste generated.~~]

"Water quality standard" means a standard set for maximum allowable contamination in surface waters.

"Wetlands" means those areas [~~that are defined in 40 CFR section 232.2(r). It includes those areas~~] that are inundated or saturated by surface or [~~ground water~~] groundwater at a frequency and duration sufficient to support a prevalence of vegetative or

aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, estuaries, and similar areas.

"White goods" means electrical and mechanical appliances made primarily of metal parts such as refrigerators, clothes washers, and dryers. Appliances of less than three cubic feet in volume before crushing shall not be included in this definition. [Eff 1/13/94; §11-58.1-03; am, ren §11-58.1-103, and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-2, 342H-3, 342H-31, 342H-55, 342H-56, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-30, 342H-36, 342J-30)

[~~§11-58.1-04~~] §11-58.1-104 Permit [~~systems.~~] system. (a) Requirement. It shall be unlawful for any person to establish, modify, or operate any facility that manages solid waste [~~management facility~~] or a part thereof or any extension or addition thereto without a permit issued in accordance with this chapter, [~~Hawaii Revised Statutes,~~] chapter 342H, Hawaii Revised Statutes, and the integrated solid waste management plan for the State of Hawaii[~~.~~], except as provided in subsection (b).

(b) [~~Exemptions. The following are exempted from the requirements of subsection (a). But these exemptions do not apply to facilities regulated by 40 CFR 258.~~

~~(1) A single family or duplex residential property reusing by composting only green or vegetative solid wastes generated on its premises.~~

~~(2) A solid waste disposal facility on which the agricultural solid waste from the operation or from its products processing facility is disposed. This exemption does not include equipment and materials such as pesticides and fertilizers used in the operation of the farm. It also excludes land not used for~~

~~agricultural purposes.~~

(3) ~~A landfill site which is used only by the owner or person in control of the premises to landfill less than one hundred fifty tons per year of soil, rock, concrete, or other nondecomposable and/or uncontaminated inert materials generated on the site.~~

~~(4) Incinerator facilities having a total rated capacity of less than one ton per hour.~~

~~(5) Minor sources as determined by the director.~~]

This section does not apply to facilities exempted from the permitting requirement under section 11-58.1-102(c).

(c) [~~Application for permit.~~] Permit application and application review.

(1) Application for a permit shall be completed on forms furnished by the [~~director and shall be accompanied by the following for approval:~~

~~(A) Detailed plans and specifications for the facility.~~

~~(B) Certification of compliance with local ordinances and zoning requirements including the recording of its disposal facility with the bureau of conveyances.~~

~~(C) An operations report detailing the proposed method of operation, population, and area to be served, the characteristics, quantity, and source of material to be processed, the use and distribution of processed materials, method of processed residue disposal, emergency operating procedures, and the type and amount of equipment to be provided and the proposed ultimate use of the land.~~

~~(D) Other specific requirements as stated for each facility.~~

~~(2)~~] department and shall include an application fee in accordance with subsection (i). Each

application shall contain the original signature of the owner and [~~applicant~~] operator and shall constitute an acknowledgement that the [~~applicant~~] operator will assume responsibility for the construction or modification and operation of the facility in accordance with these rules and regulations. If the [~~applicant~~] owner or operator is a partnership or group other than a corporation or a county, the application shall be made by one individual who is a member of the group. If the [~~applicant~~] owner or operator is a corporation or a county, the application shall be made by an officer of the corporation, general manager of the facility, or an authorized representative of the county.

[~~(3) The failure of the director to act on a complete application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs and federally approved programs, shall be deemed a grant of such application; provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof and shall notify the department a minimum of fifteen days before the start up of operation.~~]

(2) The director shall determine whether the permit application is complete. If the application is not complete, the director shall request more information. The director may require the applicant to provide site access and sampling data necessary to determine the degree of pollution from the facility. An application determined to be incomplete will not be evaluated.

[~~(4)~~](3) The director shall evaluate the [~~applicant's~~] complete application, including the response to the department's request for more information, if applicable, and shall notify the applicant in writing of the director's final approval or intent to deny the application. No complete application for a permit shall be denied unless the applicant has had an opportunity for a hearing by the director in accordance with chapter 91, Hawaii Revised Statutes.

[~~(5)~~](d) Permit issuance and conditions.

(1) The director shall approve [~~an~~] a complete application for a permit if the [~~application and the supporting information clearly show~~] director determines that the issuance thereof is in the public interest and that the [~~solid waste~~] facility is designed, built, and equipped in accordance with the best practicable technology so as to operate without causing a violation of applicable rules and regulations.

[~~(6)~~](2) Permit conditions.

(A) The director [~~issues a~~] may specify permit [~~conditioned upon compliance with established requirements.~~] conditions for a specific facility in addition to the applicable requirements of this chapter.

[~~(A)~~](B) Commencement of work [~~under such an authority by the applicant~~] under a permit shall be deemed as acceptance of all conditions so specified.

[~~(B) The director may require the applicant to provide such facilities as are necessary for sampling and testing to determine the degree of pollution from the solid waste facility.~~

~~(d)~~](e) Modification, suspension, or revocation. The director may[~~, on the director's own motion or the application of any person,~~] modify, suspend, or revoke a permit if, after affording the permittee a hearing

in accordance with chapter 91, Hawaii Revised Statutes, the director determines that any condition of the [~~permit has been violated or~~] permit, any rule of the [~~department has been violated~~] department, or any provision of chapter 342H, Hawaii Revised Statutes, has been violated or that such is in the public interest. Modification, suspension, or revocation of a permit shall [~~become final ten days after service of notice of the final decision to modify, suspend, or revoke, on the holder of the permit.~~] be accomplished in the following manner:

(1) The director may serve upon the permittee a written notice of permit modification, suspension, or revocation stating the reasons for the action taken and declaring the director's intent to either modify, suspend, or revoke the permit.

(2) Any person may petition the director to modify, suspend, or revoke any permit.

(3) The modification, suspension, or revocation shall become effective twenty (20) days after the permittee's receipt of the notice and order, unless before the expiration of the twenty (20) day period of time to request a hearing, the director receives a written request for a contested case hearing.

(4) In the event that a timely written request for a contested case hearing is received, the permit shall be modified, suspended, or revoked only upon the request being withdrawn or a final decision being rendered at hearing. The modification, suspension, or revocation shall become effective immediately upon the withdrawal or the issuance of a final decision.

[~~(e)~~] (f) Duration, transfer, and termination.

(1) Duration of permit. The director may grant a permit for any term, not exceeding five years, and upon application may renew a permit from time to time for a term not exceeding five years if such is in the

public interest.

(2) Transfer of permit. A permit shall not be transferrable without the written approval of the director.

(3) Reporting termination. [~~Within~~] No less than ninety days [~~of~~] before the permanent termination of the operation of a [~~solid waste~~] facility, the [~~facility's~~] permittee shall notify the director in writing of the facility's planned termination of operation.

[~~(f)~~](g) Posting. A permittee shall at all times post its permit in a conspicuous place at or near the [~~solid waste disposal~~] facility for which the permit was issued.

[~~(g)~~](h) Falsifying or altering permit. A person shall not [~~willfully~~] wilfully deface, alter, forge, counterfeit, or falsify a permit.

[~~(h)~~](i) [~~Filing~~] Application fees[~~:~~].

(1) Every applicant for a permit shall pay [~~a filing~~] an application fee in accordance with the following fee schedule[~~:~~]. A facility with more than one solid waste management activity shall pay an application fee that is the sum of the separate fees for each distinct activity type that will be covered by the permit.

~~[(1) (A) Solid waste disposal facilities~~

~~(i) Landfills~~

~~Greater than twenty tons/day. ..... $1,000~~

~~Less than twenty tons/day..... 250~~

~~(ii) Incinerators~~

~~Greater than twenty tons/day. ..... 1,000~~

~~Less than twenty tons/day..... 250~~

~~(B) Solid waste storage, handling and processing facilities~~

~~(i) Transfer stations~~

~~Less than one hundred tons/day..100~~

~~Over one hundred tons/day.....250~~

~~(ii) Recycling and materials recovery facilities.....~~

~~50~~

~~(iii) Salvage facilities.....~~

~~50~~

~~(C) Solid waste reclamation facilities~~

~~(i) Composting.....~~

~~50~~

~~(ii) Remediation.....~~

~~250~~

~~(D) Special wastes~~

~~(i) Special wastes.....~~

~~500~~

~~(ii) Medical wastes.....~~

~~100~~

~~(iii) Foreign wastes.....~~

~~100~~

~~(iv) Other non-specific technology..~~

~~300~~

~~(E) Others~~

~~(i) Permit by rule.....~~

~~25~~

~~(To be submitted with the letter of notification)~~]

Facility or activity type	Fee
Landfill, less than twenty tons/day	$1,250
Landfill, greater than twenty	$5,000

tons/day	
Incinerator or energy recovery facility, less than twenty tons/day	$1,250
Incinerator or energy recovery facility, greater than twenty tons/day	$5,000
Transfer station, less than one hundred tons/day	$500
Transfer station, greater than one hundred tons/day	$1,250
Recycling processing facility	$250
Salvage facility (includes vehicle storage)	$250
Storage facility	$250
Composting facility	$250
Remediation facility	$1,250
Infectious waste management facility	$500
Foreign waste management facility	$500
Facilities proposing the use of new or innovative technologies to handle solid waste	$1,500

(2) [~~This filing~~] The application fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application following final action of [~~cancellation~~] cancelation or denial of an application.

[~~(2)~~] (3) Fees shall be made payable to the State of Hawaii.

[~~(3)~~] (4) A request for a duplicate permit shall be made in writing to the director within ten days after the destruction, loss, or defacement of a permit. A fee of $50 shall be charged and submitted with the request.

[~~(i) Permit by rule for certain solid waste~~

~~handling and disposal facilities of limited impact.~~
~~(1) Permit by rule: Notwithstanding any other provision of these rules, the convenience centers, composting facilities handling not more than three thousand tons per year of green wastes, clearing and grubbing landfills, certain agricultural landfills, and recycling drop-off facilities shall be deemed to have a solid waste handling and disposal permit if the following conditions are met:~~

~~(A) Notification. At least thirty days prior to commencing solid waste handling activities which are covered under a permit by rule, written notification of such activity must be made to the director. Written notification shall be made on such forms as are provided by the director. Persons failing to notify the director of such activities shall be deemed to be operating without a permit.~~

~~(B) General conditions of every facility.~~

~~(i) No regulated hazardous waste in accordance with 40 CFR Part 261 may be collected, transported, or disposed at any of the facilities.~~

~~(ii) Nuisance control. Suitable means shall be employed to prevent solid wastes from scattering; control of litter, odors, and vectors such as rodents and insects.~~

~~(iii) Suitable means shall be provided to prevent and control fires, including an emergency response plan when appropriate.~~

~~(iv) It is the responsibility of the owner and/or operator to comply with all the local rules, regulations, and ordinances, and the director may add additional conditions deemed appropriate.~~

~~(v) Each facility shall be supervised, secured, and have a permanent sign~~

identifying the facility, hours and days of operation, materials accepted or not accepted, the owner and/or operator, a person to contact, and other pertinent information.

(iv) An annual report shall be prepared and submitted to the director.

(C) Convenience centers.

(i) Only household and/or residential solid waste will be accepted.

(ii) Car batteries and waste oil may be collected at the convenience centers but must be collected and stored in a safe and orderly manner.

(D) Green wastes (landscape waste) composting facilities.

(i) Composting facilities accepting only green waste, less than three thousand tons per year, are permitted by rule unless exempted.

(ii) The finished compost must be sufficiently stable that it can be stored or applied on land without producing a nuisance.

(iii) An annual report shall be prepared and submitted to the department, reporting the tonnage of green waste accepted, the composted tonnage produced, and residual disposed.

(iv) The department reserves the right to add additional requirements.

(E) Land clearing, grubbing, and certain agricultural landfills and inert waste landfills.

(i) All persons exempted under section 11-58.1-4(b)(3) and landfilling more than one hundred and fifty tons per year shall be permitted by rule.

~~(ii) Only waste that will not or is not likely to produce leachate of environmental concerns shall be disposed of in the landfill. Acceptable materials for disposal in the land clearing, grubbing, and certain agricultural landfill are earth and earth-like products, and land clearing debris such as stumps, limbs and leaves. Acceptable materials for disposal in the inert waste landfill are earth and earth-like products, concrete, cured asphalt, rocks, and bricks.~~

~~(iii) Materials placed in the landfill shall be generated on site and spread in layers and compacted to the smallest practicable volume.~~

~~(iv) Public access to the landfills shall be limited to authorized entrances which shall be closed when the site is not in operation.~~

~~(v) The final cover shall consist of eighteen inches of earthen material to minimize infiltration and six inches of earthen material to minimize erosion or as approved by the director. A vegetative cover shall be placed over the final lift, not later than one month following final placement of waste within that lift. The vegetative cover must be maintained a minimum of a year after the closure of the landfill.~~

~~(vi) A written notice of final closure must be provided to the director within one hundred eighty days of receiving the final load of material. Any site not receiving waste for in excess of one hundred~~

~~eighty days shall be deemed abandoned and in violation of these rules unless properly closed. Notice of closure must include the date of final material receipt and an accurate legal description of the boundaries of the landfill.~~

~~(vii) A permanent notation of the landfill location shall be added at the bureau of conveyances to the facility property and on any other instrument that would normally be examined during the title search and note any land use restrictions from the closure plans. The notation shall notify any potential purchaser of the property that the area has been used for land clearing and grubbing and agricultural solid waste landfills.~~

~~(viii) All other applicable federal, state, and local laws, rules, and ordinances, including erosion and sediment control, and any applicable federal wetlands permits, must be fully complied with prior to commencement of landfilling operations.~~

~~(F) Recycling drop-off and processing facilities.~~

~~(i) An annual report shall be prepared and submitted to the department, reporting the amounts and types of recyclable materials or scrap metals received and distributed by weight. The report is due on July 31 of each year for the preceding fiscal year.~~

~~(ii) Scavenging at the facility by the general public is prohibited.~~

~~(iii) Recycling processing facilities utilizing single source separated material for reuse. The single source separated items are, but not limited to: cardboard, newspaper print, office paper, glass, aluminum containers, plastics, tires, and non-ferrous scrap metals.~~] [Eff 1/13/94; §11-58.1-04; am, ren §11-58.1-104, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-7, 342H-13, 342H-31, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342J-30)

[~~§11-58.1-06~~] §11-58.1-105 Variances. [~~Variance~~] Variances and variance applications shall comply with [~~Hawaii Revised Statutes,~~] section 342H-5[~~.~~], Hawaii Revised Statutes. [Eff 1/13/94; §11-58.1-06; am, ren §11-58.1-105, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-5, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-5, 342H-30, 342H-36)

§11-58.1-106 Solid waste management. (a) Storage of solid waste. The aesthetic, non-hazardous, and sanitary storage of solid waste is the responsibility of the owner, operator, and occupant of the property where the solid waste is accumulated.

(b) Removal of solid waste.

(1) The owner, operator, and occupant of a property have the responsibility of removing accumulated solid waste to a permitted facility; contractual or other arrangements for the removal shall not relieve a person

of this primary responsibility.

(2) Solid waste shall be removed to a permitted facility prior to creating a nuisance condition or health or safety hazard.

(c) Disposal of animal carcasses.

(1) The disposal of animal carcasses is the responsibility of the owner, operator, and occupant upon whose property the animal carcass is found.

(2) On-site disposal of the carcass shall be by immediate burial, covered by at least two feet of compacted earth, or by other methods approved by the director. [Eff and comp] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342H-3, 342H-30)

§11-58.1-107 Incident notification. (a) The operator of a facility that manages solid waste shall notify the department whenever there is an incident that could threaten human health or the environment (i.e., air, soil, or surface waters), such as fire, explosion, or release of regulated waste.

(b) The operator shall provide initial notification within 24 hours of the incident and, whenever possible, within eight hours of the incident. Initial notification shall be made to:

(1) The Solid and Hazardous Waste Branch during regular business hours (7:45am to 4:30pm), by phone at (808) 586-4226; or

(2) The on-scene coordinator from the Hazard Evaluation and Emergency Response Office at (808) 236-8200 after business hours (weekends, state holidays, and outside business hours).

(c) The operator shall submit a written notification within seven (7) calendar days that shall include:

(1) Name, address, and telephone number of the owner and operator;

(2) Name, address, and telephone number of the

facility where the incident occurred;

(3) Date, time, and type of incident (i.e. fire, explosion, release, etc.);

(4) Name and quantity of materials involved;

(5) Extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment, where applicable;

(7) Estimated quantity and disposition of recovered and unrecovered material that resulted from the incident;

(8) Evaluation of the circumstances that led to the incident;

(9) Steps being taken to reduce, eliminate, and prevent recurrence, including an implementation schedule; and

(10) Other information or monitoring as required by the department. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-14, 342H-3)

[~~§11-58.1-72~~] §11-58.1-108 Severability clause. If any provision of this chapter or the application of any provision of this chapter 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 1/13/94; §11-58.1-72; ren §11-58.1-108 and comp] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342J-30)

§§11-58.1-109 to 11-58.1-120 (Reserved).

SUBCHAPTER 2

SOLID WASTE STORAGE, PROCESSING, TREATMENT, AND RECLAMATION FACILITIES

§11-58.1-121 Applicability. (a) This subchapter applies to all solid waste storage, processing, reclamation, and treatment facilities, including transfer stations, recycling processing facilities, solid waste salvage facilities, solid waste storage facilities, compost facilities, remediation facilities, solid waste incinerators and energy recovery facilities, and infectious waste and foreign waste treatment facilities. Solid waste salvage facilities include, but are not limited to, automobile dismantlers, scrap metal and white goods processors, and junkyards.

(b) The following subsections apply only to the specific types of facilities enumerated below:

(1) Transfer stations: section 11-58.1-122(c) permit application requirements;

(2) Composting facilities:

(A) Section 11-58.1-122(d) permit application requirements;

(B) Section 11-58-1-123(i) operating requirements; and

(C) For composting facilities exempted from permitting under section 11-58.1-102(c)(1) and (2): section 11-58.1-124(b) notification requirements;

(3) Incinerators and energy recovery facilities:

(A) Section 11-58.1-122(e) permit application requirements; and

(B) Section 11-58-1-123(k) operating requirements;

(4) Salvage facilities: section 11-58.1-123(h) operating requirements;

(5) Remediation facilities: section 11-58.1-123(j) operating requirements;

(6) Recycling drop-off facilities:
(A) Section 11-58.1-123(l) operating requirements; and
(B) For recycling drop-off facilities exempted from permitting under section 11-58.1-102(c)(3):
(i) Section 11-58.1-123(m) operating requirements; and
(ii) Section 11-58.1-124(b) notification requirements;
(7) Recycling processing facilities exempted from permitting under section 11-58.1-102(c)(4):
(A) Section 11-58.1-123(m) operating requirements; and
(B) Section 11-58.1-124(b) notification requirements; and
(8) Minor sources exempted from permitting under section 11-58.1-102(c)(5): section 11-58.1-124(b) notification requirements.

(c) Section 11-58.1-125(b) applies to open dumps. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342J-30, 342J-31)

11-58.1-122 Permit application. (a) This section does not apply to facilities exempted from the permitting requirement under section 11-58.1-102(c).

(b) The permit application shall include the following:
(1) Site analysis. The site analysis shall include:
(A) A site plan;
(B) A description of siting of equipment and machinery, public access, and turnaround areas;
(C) An analysis of the potential impacts of the operations on the environment;

(D) Surrounding land uses; and
(E) Mitigative measures that will be taken to reduce the impact of the facility upon the environment and neighboring properties;

(2) Design requirements. A description of how the facility design meets the requirements of this paragraph. The site shall be designed:
(A) With adequate drainage to prevent standing water and to control run-on and run-off of rainwater;
(B) To control spills and releases, including methods to control, collect, and manage leachate, if applicable;
(C) To control litter, insects, odors, and vectors;
(D) To prevent and minimize fire hazards;
(E) To minimize impact of waste storage and operations on the environment;
(F) With adequate space for traffic flow, turnaround, and emergency vehicle access;
(G) To maintain a neat and orderly appearance; and
(H) With screening or buffering to minimize nuisances to neighboring properties;

(3) Operation plan. A description of the overall operation plan of the site, detailing the following:
(A) A functional description of all equipment to be used to handle solid waste and a description of any technical training required by personnel to operate it;
(B) The type, characteristics, source, and quantity of solid waste to be collected, stored, treated, or processed at the facility;
(C) By-products and end products produced, if applicable;
(D) A means of weighing or measuring all

solid waste accepted at the facility and all material leaving the facility, including residue, byproducts, and recovered material;

(E) Ultimate destination and disposition for solid waste accepted at the facility;

(F) Ultimate destination and disposition for residue and by-products created during processing, if applicable;

(G) How the facility design and operations will allow the operator to meet the applicable operational requirements in section 11-58.1-123; and

(H) Emergency operating procedures;

(4) Fire plan to prevent and minimize fire hazards;

(5) For facilities proposing the use of new or innovative technologies to handle solid waste, an extensive justification for the use of the proposed technology, including:

(A) A general description of the technology, including relevant design concepts, construction drawings, and engineering specifications. Explain how the technology and associated equipment will process the waste. Discuss the need for other types of materials in the process, the residue or by-products produced, and the quality of any finished product created;

(B) Maintenance requirements. Describe the maintenance requirements for the system. Discuss the frequency of maintenance, ease of maintaining the equipment, and the availability of replacement parts;

(C) Experiences where the technology was used. Describe when and where this technology has been used before, the types of waste treated, and successes and failures in the use of this

technology. Provide supporting analytical data. Include contact names of the facilities where this technology is being used or has been used and the types of environmental permits these facilities obtained. If this technology has not been previously used or has been used for different waste streams, explain why this technology is currently proposed;

(D) Identification and qualifications of the person who developed the technology; and

(E) The type of technical support that will be provided to the facility and who will be providing it;

(6) Closure plan. A plan for closure and site assessment that meets the requirements of section 11-58.1-125(a)(1);

(7) Market evaluation. A description of the ultimate use for the proposed end product, demonstration that the finished product is protective of human health and the environment, and an evaluation of available markets, if applicable. Include a plan for disposal of end products that cannot be sold;

(8) Certification of compliance with local zoning requirements; and

(9) Any other information required by the director.

(c) Transfer stations. For transfer stations, the application shall also include a plan for the transfer of the solid waste including route, frequency, haulers, and alternative transfer routes.

(d) Composting facilities. For composting facilities, the application shall also include:

(1) A description of the type and size of the facility, detention times for storing and processing the material, a process flow diagram of the entire process, and all the major equipment required;

(2) A detailed description of the source, quality and quantity of the solid waste to be composted, including the source, quality, and expected quantity of any bulking agent to be used;

(3) Engineering plans and specifications for the entire composting facility, including manufacturer's performance data for the selected equipment;

(4) If sewage sludge, clear and grub material, or other potentially contaminated material is to be composted, analytical data on potential contaminants in the material; and

(5) If required by the director:

(A) An evaluation showing that incoming feedstock and resulting finished compost will not pose a risk to human health and the environment; and

(B) A sampling and analysis plan to ensure finished compost is protective of human health and the environment.

(e) Incinerators and energy recovery facilities. For incinerators and energy recovery facilities, the application shall also include:

(1) An engineering report that includes a general description of the overall process, design criteria, anticipated performance, and a process flow diagram;

(2) A plan for sampling and testing the ash;

(3) A description of the ash management system, ash removal procedures, and the landfill or landfills that will receive the ash;

(4) A description of how the facility is designed to comply with state air pollution control authority emission and operating requirements in chapter 11-60.1; and

(5) In the operation plan, alternative storage or disposal plans in the event of a breakdown that would result in overfilling of the facility's storage capacity. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4,

342H-31, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-36)

§11-58.1-123 Operating requirements. (a) Facilities shall be operated in accordance with the design requirements and operation plan submitted and approved as part of the permit application.

(b) Facility sign. A sign shall be posted at the front entrance of the facility that displays:

(1) The name of the owner or operator of the facility;

(2) The facility's hours of operation;

(3) A contact phone number in case of emergency; and

(4) A list of which wastes are or are not accepted by the facility.

(c) Acceptance of waste. No industrial waste, infectious waste, construction and demolition waste, regulated hazardous waste, or PCB waste shall be accepted unless specifically approved by the director.

(d) Ultimate disposition of waste. All solid waste received by the facility or generated by the facility shall be collected, treated, recycled, or disposed of at a department-permitted facility or an out-of-state facility that is authorized by the appropriate regulatory authority.

(e) All leachate shall be collected and treated by a method approved by the department.

(f) The operator shall make a hazardous waste determination for all waste generated by the facility, in accordance with chapter 11-262.1. Hazardous waste, as defined in chapter 11-261.1, shall be disposed in accordance with chapters 11-260.1 to 11-273.1.

(g) Operational records. Operational records shall be maintained and shall include:

(1) A daily log of the volume or weight of:

(A) Each type of solid waste accepted at the facility; and

(B) Each material leaving the facility, including residue, byproducts, and recovered material;

(2) Source of solid waste accepted at the facility;

(3) Ultimate destination and disposition of each material leaving the facility, including residue, byproducts, and recovered material; and

(4) Major deviations from the operations plan, including incidents such as fires and explosions.

(h) Salvage facilities.

(1) For new salvage facilities not holding a permit on the effective date of these rules, processing and salvaging activities, including baling, crushing, shredding, shearing, cutting, flattening, fluid removal, and removal and dismantling of fluid-containing parts, shall be conducted on an impervious working surface (for example, concrete); and

(2) For existing salvage facilities holding a permit on the effective date of these rules:

(A) The operator shall submit to the department within one year of the effective date of these rules, unless otherwise approved by the director, a plan for converting the area for processing and salvaging activities to an impervious working surface (for example, concrete). The plan shall:

(i) Include a sampling plan to evaluate whether processing and salvaging activities have contaminated the ground surface and subsurface in areas where work is not currently conducted on an impervious working surface (for example, concrete); and

(ii) Specify timelines and surface areas to be converted to achieve

compliance with subparagraph (D);

(B) If contamination is found, the operator shall submit a plan and schedule to the department for remediating the contamination;

(C) Sampling, remediation of existing contamination, and conversion of areas to an impervious working surface (for example, concrete) shall be completed in accordance with plans and schedules approved by the director; and

(D) Processing and salvaging activities, including baling, crushing, shredding, shearing, cutting, flattening, fluid removal, and removal and dismantling of fluid-containing parts, shall be conducted on an impervious working surface (for example, concrete) within five years of the effective date of these rules, unless otherwise approved by the director.

(i) Composting facilities.

(1) Compost shall be nonpathogenic, free of offensive odors, biologically and chemically stable, free of injurious components or particles, and able to sustain plant growth. Compost failing to meet these requirements shall be disposed of;

(2) For a composting system using only sewage sludge with an additive such as wood chips, the maximum contaminant concentrations of the sewage sludge shall meet the applicable standards in 40 C.F.R. part 503 or chapter 11-62, whichever is more stringent. Since other contaminants may be present in the sewage sludge as indicated by discharge monitoring and other industrial pre-treatment requirements, the department, on a case specific basis, may determine the maximum allowable concentrations of these contaminants in the sewage sludge;

(3) Solid waste that poses a pathogen concern

shall be composted using a method for reducing pathogens that is approved by the director. In addition to approved composting methods listed below, proposed methods may be submitted to the director for review. Approved methods are:

(A) Windrow composting method. The solid waste is maintained under aerobic conditions during the composting process. A minimum of five turnings is required during a period of fifteen consecutive days with the temperature of the mixture being fifty-five degrees Celsius or greater within six to eight inches below the surface of the pile. The temperature shall be monitored, at minimum on a daily basis, six to eight inches below the pile surface;

(B) Aerated static pile composting method. The compost pile shall be insulated and a temperature of not less than fifty-five degrees Celsius or greater shall be maintained throughout the compost pile for at least three consecutive days. The temperature shall be monitored, at minimum on a daily basis, six to eight inches below the pile surface and six to eight inches from the outlet of the aeration pipe; and

(C) Enclosed vessel composting method. The mixture shall be maintained at a temperature of not less than fifty-five degrees Celsius or greater throughout the mixture for at least three consecutive days. The temperature shall be monitored, at minimum on a daily basis, six to eight inches inside the vessel wall and six to eight inches from the aeration piping (when operating in the positive aeration mode); and

(4) If required by the director, the facility

shall follow its approved sampling and analysis plan to ensure finished compost is protective of human health and the environment.

(j) Treatment facilities, including remediation facilities.

(1) Treatment facilities managing infectious waste shall comply with applicable provisions of chapter 11-104.1 to render the waste non-infectious prior to disposal, except for household infectious waste, which may be disposed of as household solid waste without treatment;

(2) Treatment facilities managing foreign waste shall incinerate the waste in accordance with the applicable requirements of this chapter or sterilize it in accordance with chapter 11-104.1; and

(3) For remediation facilities:

(A) Unless specified by the director, the area on which the material to be remediated is placed shall:

(i) Be impermeable to prevent potential contamination of soil and groundwater; and

(ii) Have a system to collect leachate and runoff; and

(B) If a liner is used to comply with subparagraph (A)(i), it shall be of sufficient thickness and strength to withstand stresses imposed by vehicles and the material itself.

(k) Incinerators and energy recovery facilities.

(1) Incinerators and energy recovery facilities shall not accept:

(A) Hazardous waste;

(B) Electrical transformers with oil or polychlorinated biphenyls (PCB) or when generated from other than demolition projects;

(C) Pesticide containers, except that incinerators may accept pesticide

containers that meet the definition of empty in 40 C.F.R. section 261.7, as incorporated and amended in chapter 11-261.1, or are household waste;

(D) Liquid waste;

(E) Scrap automobiles; and

(F) White goods;

(2) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all incinerators and energy recovery facilities shall implement a program for detecting and preventing the disposal of hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with 40 C.F.R. section 761.62(b). This program shall include, at a minimum:

(A) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain hazardous wastes or unpermitted PCB wastes;

(B) Records of inspections;

(C) Training of facility personnel to recognize hazardous waste and unpermitted PCB wastes; and

(D) Notification to the director if a hazardous waste or unpermitted PCB waste is discovered at the facility; and

(3) Ash management. Ash shall be handled as solid waste, special waste, or hazardous waste based on test results, according to the facility's permit.

(l) Recycling drop-off facilities. For recycling drop-off facilities, no processing (e.g., sorting, baling, crushing) of accepted material shall occur at the site.

(m) Recycling drop-off facilities and recycling processing facilities exempted from permitting under section 11-58.1-102(c).

(1) Recyclable material shall be free of fluids and contaminants that may cause harm to human health or the environment (i.e., paints, oils, solvents, etc.). Leaded glass such as crystals shall not be accepted.

(2) Recyclable material shall be stored:

(A) In a closed container or under cover to limit the exposure of the material to precipitation; and

(B) In a safe and orderly manner that prevents creation of a nuisance, health and safety hazard, or environmental hazard. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-30, 342H-36, 342J-30, 342J-31)

§11-58.1-124 Reporting and notification. (a) Annual report. The operator shall submit an annual report to the director not later than July 31 of each year reporting on operations during the previous fiscal year (July 1 to June 30). The report shall include:

(1) A summation, based on the operational record, of the total volume or weight of:

(A) Each type of solid waste accepted at the facility; and

(B) Each material leaving the facility, including residue, byproducts, and recovered material;

(2) The ultimate destination and disposition of each material leaving the facility, including residue, byproducts, and recovered material;

(3) A summary of incidents outside of normal operations;

(4) Monitoring data required by the facility's permit; and

(5) Additional information, as requested by the department.

(b) Notification for facilities exempted from permitting under section 11-58.1-102(c).

(1) Initial notification. At least thirty days prior to commencing solid waste management activities covered under section 11-58.1-102(c), the operator shall provide written notification to the director on forms provided by the department. The notification shall include:

(A) A site plan of appropriate scale;

(B) An operations narrative describing the proposed activity;

(C) Documentation of owner approval for the waste management activity; and

(D) Documentation demonstrating compliance with local zoning ordinances.

(2) Closure notification. No less than ninety days before ceasing operations, the operator shall provide written notification of the planned closure date to the director on forms provided by the department. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-36)

§11-58.1-125 Closure, closure assessment, and site remediation. (a) All facilities that manage solid waste, except landfills complying with the closure and post-closure requirements of section 11-58.1-137, 11-58.1-157, or 11-58.1-177, shall complete closure and cleanup as follows:

(1) Closure plan. No less than ninety days before terminating operations, the owner or operator of a facility that manages solid waste shall submit to the department a plan for closure. The closure plan shall:

(A) Be prepared by a qualified

environmental professional, unless otherwise approved by the director;

(B) Consider all past solid waste activities at the site, including any incidents; and

(C) Include:

(i) A plan for the removal from the site and proper disposal of all solid waste, unsold product, and other items remaining from solid waste management operations;

(ii) A plan for assessing, at the time of closure, the site's potential to cause harm to human health and the environment due to facility operations; and

(iii) An implementation schedule;

(2) Upon department approval of the closure plan, the owner or operator shall complete closure in accordance with the closure plan;

(3) Within ninety days of completion of the closure assessment the owner or operator shall submit a report of the results to the department, unless otherwise approved by the director;

(4) If the closure assessment report identifies potential threats to human health and the environment:

(A) Within ninety days of completion of the closure assessment, the owner or operator shall submit to the department a remediation plan to minimize or mitigate the identified threats. The remediation plan shall:

(i) Be prepared by a qualified environmental professional; and

(ii) Include an implementation schedule;

(B) Within ninety days of department approval of the remediation plan, the owner or operator shall begin implementation of the remediation plan;

and

(C) Within ninety days of completing remediation actions in accordance with the approved remediation plan, the owner or operator shall submit a report documenting completion to the department, unless otherwise approved by the director; and

(5) The department may require additional site assessment, remediation actions, or long-term controls based on its review of the closure plan, closure assessment report, remediation plan, or remediation completion report.

(b) The operator of an open dump, or the owner of the real property where the open dump is located, shall complete closure and cleanup in accordance with subsection (a). The closure assessment plan shall be submitted to the department within ninety days of the department's identification of an open dump, unless otherwise approved by the director. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3)

§§11-58.1-126 to 11-58.1-130 (Reserved).

SUBCHAPTER 3

SPECIAL WASTE LANDFILLS

§11-58.1-131 Special waste landfills - applicability. (a) This subchapter applies to all special waste landfills.

(b) Reserved. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4,

342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)

§11-58.1-132 Special waste landfills – permit application. (a) The permit application shall include:

(1) All applicable components listed in section 11-58.1-122(b);

(2) For a special waste landfill accepting municipal solid waste ash, in addition to the descriptions required by section 11-58.1-122(b)(2), a description of how the facility design meets the requirements of section 11-58.1-154;

(3) In the site analysis, an illustration of the location of all structures including storage areas, offices, maintenance areas, limits of waste, planned areas for expansion, and property boundaries;

(4) In the site analysis, a demonstration that the landfill meets all applicable requirements of section 11-58.1-133;

(5) An engineering report and engineering design plan, that:

(A) Describes how the design of the landfill is protective of human health and the environment; and

(B) Includes a construction quality assurance plan;

(6) In the operation plan, a plan for preventing acceptance of scrap automobiles, white goods, and whole motor vehicle tires;

(7) In the operation plan, an explanation of how the facility design and operations will allow the operator to meet the applicable operational requirements in section 11-58.1-135 and how operations will ensure that any design assumptions will be met;

(8) Documentation of the recording of the

landfill facility with the bureau of conveyances;

(9) Closure. A plan for complying with the closure requirements in section 11-58.1-137(a);

(10) Post-closure care. A plan for complying with the post-closure care requirements in section 11-58.1-137(b);

(11) Environmental monitoring. An environmental monitoring plan meeting the requirements in section 11-58.1-136(a);

(12) Financial assurance. A plan for complying with the financial assurance requirements in section 11-58.1-138; and

(13) For a landfill accepting green waste, in the operation plan, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste.

(b) Reserved. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)

§11-58.1-133 Special waste landfills – siting restrictions. (a) Airport safety. This subsection applies to special waste landfills that receive putrescible waste.

(1) Owners or operators of special waste landfills that are located within ten thousand feet (3,048 meters) of any airport runway end used by turbojet aircraft or within five thousand feet (1,524 meters) of any airport runway end used by only piston-type aircraft shall demonstrate that the landfill is designed and operated so that

the landfill does not increase the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.

(2) Owners or operators proposing to site a new special waste landfill located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration.

(3) The owner or operator shall place the demonstration in paragraph (1) in the operating record and notify the director that it has been placed in the operating record.

(b) Floodplains. Owners or operators of special waste landfills located in one hundred-year floodplains shall demonstrate that the unit will not restrict the flow of the one-hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(c) Wetlands. Special waste landfills shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the landfill will not:

(A) Cause or contribute to violations of any applicable state water quality standard;

(B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;

(3) The landfill will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the landfill;

(C) The volume and chemical nature of the waste managed in the landfill;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the

maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(d) Fault areas. Special waste landfills shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the landfill and will be protective of human health and the environment.

(e) Seismic impact zone. Special waste landfills shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(f) Unstable areas. Owners or operators of special waste landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the landfill will not be disrupted. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;
(2) On-site or local geologic or geomorphologic features; and
(3) On-site or local artificial features or events (both surface and subsurface).

(g) Consistency with local zoning ordinance. The owner or operator of a special waste landfill shall comply with all applicable local zoning ordinances and other applicable local ordinances. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-134 Special waste landfills – Annual report. (a) Annual report. The operator shall submit an annual report to the director not later than July 31 of each year reporting on operations during the previous fiscal year (July 1 to June 30). The report shall include:

(1) A summation, based on the operational record, of the total volume or weight of each type of solid waste accepted at the facility;
(2) A summary of incidents outside of normal operations;
(3) Monitoring data required by the facility's permit; and
(4) Additional information, as requested by the department.

(b) Reserved. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-135 Special waste landfills – operating criteria. (a) The operator shall comply with the requirements in section 11-58.1-123(a), (b), and (e).

(b) Acceptable waste. A special waste landfill

shall accept only the type or types of special waste specified in its permit.

(c) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all special waste landfills shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with 40 C.F.R. section 761.62(b). This program shall include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;

(2) Records of inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and

(4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(d) Operational records. Operational records shall be maintained and shall include:

(1) A daily log of the volume or weight of each type of solid waste accepted at the facility;

(2) Source of solid waste accepted at the facility; and

(3) Major deviations from the operations plan, including incidents such as fires and explosions. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-136 Special waste landfills - environmental monitoring and corrective action. (a) Unless the director determines that it is not

necessary, the owner or operator shall establish and implement an environmental monitoring program based on the type of waste to be accepted. The environmental monitoring program shall:

(1) Assess the site for the presence of contamination that indicates a need for corrective action; and

(2) Establish standards that indicate the effectiveness of a corrective action remedy.

(b) If environmental monitoring results indicate a need for corrective action, the owner or operator shall:

(1) Submit a corrective action plan to the director for review and approval, including a remedy selection designed to meet the standards established under subsection (a)(2) and a schedule for initiating and completing remedial activities;

(2) Implement the approved corrective action remedy;

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to paragraph (2). The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(A) Time required to develop and implement a final remedy;

(B) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(D) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(E) Weather conditions that may cause hazardous constituents to migrate or be released;

(F) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) Other situations that may pose threats to human health and the environment; and

(4) Determine, based on information developed after implementation of the remedy has begun or other information, whether the standards established under subsection (a)(2) are being achieved through the remedy selected. If the standards established under subsection (a)(2) are not being achieved, the owner or operator shall submit a revised corrective action plan to the department for review and approval and, once approved, implement the revised corrective action plan.

(c) Remedies selected pursuant to subsection (b) shall be considered complete when:

(1) The environmental monitoring program results indicate that the cleanup standards established under subsection (a)(2) have been achieved; and

(2) All actions required to complete the remedy have been satisfied.

(d) Upon completion of the remedy, the owner or operator shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of subsection (c) has been placed in the operating record. The certification shall be signed by the owner or operator.

(e) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements in subsection (c), the owner or

operator shall be released from the requirements for financial assurance for corrective action under section 11-58.1-138. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-137 Special waste landfills – closure and post-closure care. (a) Closure criteria.

(1) The owner or operator shall prepare a written closure plan that describes the steps necessary to close the special waste landfill at any point during its active life. The closure plan, at a minimum, shall include the following information:

(A) A description of the final cover and the methods and procedures to be used to install the cover;

(B) An estimate of the largest area of the special waste landfill ever requiring a final cover at any time during the active life;

(C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.

(2) No less than ninety days before beginning closure of a special waste landfill as specified in paragraph (3), an owner or operator shall notify the director that a notice of intent to close the landfill has been placed in the operating record.

(3) The owner or operator shall begin closure activities of the special waste landfill within thirty days after the date on which the landfill receives the known final receipt of wastes or, if the special waste landfill has remaining capacity and there is

a reasonable likelihood that the landfill will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the special waste landfill has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed special waste landfill.

(4) The owner or operator of all special waste landfills shall complete closure activities of the special waste landfill in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in paragraph (3). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed special waste landfill.

(5) Following closure of the special waste landfill, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(6) (A) Following closure of all special waste landfills, the owner shall:

(i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director

for approval;

(ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and

(iii) Following recording, notify the director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.

(B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a landfill facility; and

(ii) The land's use is restricted during the post-closure period as described in the post-closure plan. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with other requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(7) Following the removal of all wastes from the facility and completion of a risk assessment that illustrates that the waste did not impact the environmental integrity of the site and there is no residual contamination that needs to be managed, the owner may

request permission from the director to terminate the environmental covenant.

(b) Post-closure care requirements.

(1) Following closure of the special waste landfill, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(B) Maintaining and operating the leachate collection system, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(C) Monitoring the groundwater and maintaining the groundwater monitoring system, if applicable; and

(D) Maintaining and operating the gas monitoring system, if applicable.

(2) The length of the post-closure care period may be:

(A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

(B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.

(3) The owner or operator of the special waste

landfill shall prepare a written post-closure plan that includes, at a minimum, the following information:

(A) A description of the monitoring and maintenance activities required in paragraph (1) for each special waste landfill, and the frequency at which these activities will be performed;

(B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to repair post-closure monitoring systems. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(4) Following completion of the post-closure care period for each special waste landfill, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-138 Special waste landfills — financial assurance. (a) Applicability. The requirements of this section apply to owners and operators of all special waste landfills, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Financial assurance for closure.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the special waste landfill ever requiring a final cover as required under section 11-58.1-137(a) at any time during the active life in accordance with the closure plan. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate shall equal the cost of closing the largest area of the special waste landfill ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 11-58.1-137(a)).

(B) During the active life of the special waste landfill, the owner or operator shall annually adjust the closure cost estimate for inflation.

(C) The owner or operator shall increase the closure cost estimate and the amount of financial assurance required under paragraph (2) if changes to the closure plan or special waste landfill conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the

closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the special waste landfill. The owner or operator shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each special waste landfill shall establish financial assurance for closure of the special waste landfill in compliance with subsection (e). The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section 11-58.1-137(a)(6) and (7).

(c) Financial assurance for post-closure care.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the special waste landfill in compliance with the post-closure plan developed under section 11-58.1-137(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the special

waste landfill and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or special waste landfill conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each special waste landfill shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section 11-58.1-137(b). The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with section 11-58.1-137(b)(4).

(d) Financial assurance for corrective action.

(1) An owner or operator of a construction and demolition landfill unit required to undertake a corrective action program under section 11-58.1-136 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the

corrective action in accordance with the program required under section 11-58.1-136. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The owner or operator shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section 11-58.1-136(d).

(B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if changes in the corrective action program or special waste landfill conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each special waste landfill required to undertake a corrective action program under section 11-58.1-136 shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator shall provide

continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with section 11-58.1-136(d) and (e).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators shall choose from the options specified in paragraphs (1) to (10).

(1) Trust fund.

(A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this paragraph. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be placed in the facility's operating record.

(B) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the special waste landfill, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(C) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as

provided in paragraph (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(E) The initial payment into the trust fund shall be made before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the

requirements of section 11-58.1-136.

(F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.

(G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(2) Surety bond guaranteeing payment or performance.

(A) An owner or operator may demonstrate

financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The owner or operator shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(B) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).

(C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(D) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1)(B) to (E).

(E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

(F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this subsection.

(G) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(3) Letter of credit.

(A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The owner or operator shall notify the director that a copy of the letter of credit has been placed in the operating record. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are

regulated and examined by a federal or state agency.

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.

(C) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, except as provided in paragraph (11). The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

(D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(4) Insurance.

(A) An owner or operator may demonstrate financial assurance for closure and

post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance shall be effective before the initial receipt of waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator shall notify the director that a copy of the insurance policy has been placed in the operating record.

(B) The closure or post-closure care insurance policy shall guarantee that funds will be available to close the special waste landfill whenever final closure occurs or to provide post-closure care for the special waste landfill whenever the post-closure care period begins, whichever applies. The policy shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(C) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) An owner or operator, or any other

person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(E) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.

(F) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this subsection.

(G) For insurance policies providing coverage for post-closure care,

commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.

(H) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(5) Corporate financial test. (Reserved.)

(6) Local government financial test. An owner or operator that satisfies the requirements of section 11-58.1-140(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-140(d).

(7) Corporate guarantee. (Reserved.)

(8) Local government guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-142. The guarantor shall meet the requirements of the local government financial test in section 11-58.1-140 and shall comply with the terms of the written guarantee specified in section 11-58.1-142. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-140(d).

(9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.

(10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and corrective action requirements of sections 11-58.1-136 and 11-58.1-137, or assures that the funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this subsection. Any state assumption of responsibility shall meet the criteria specified in paragraph (12).

(11) Use of multiple financial mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms shall be as specified in paragraphs (1) to (10), except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, may be provided by a combination of mechanisms rather than a single mechanism.

(12) The language of the mechanisms listed in paragraphs (1) to (10) shall ensure that the instruments satisfy the following criteria:

(A) The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care,

and corrective action for known releases when needed;

(B) The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed;

(C) The financial assurance mechanisms shall be obtained by the owner or operator prior to the initial receipt of solid waste in the case of closure and post-closure care and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136, until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).

(D) The financial assurance mechanisms shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-139 (Reserved).

§11-58.1-140 Special waste landfills — local government financial test specifications. (a) Financial component.

(1) The owner or operator shall satisfy subparagraph (A) or (B) as applicable:

(A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other

collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(3) A local government is not eligible to assure its obligations under this section if it:

(A) Is currently in default on any outstanding general obligation bonds;

(B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (2).

(4) The following terms used in this subsection are defined as follows:

(A) Deficit equals total annual revenues minus total annual expenditures;

(B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) Total expenditures include all expenditures excluding capital outlays and debt repayment;

(D) Cash plus marketable securities is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. For the first year the financial test is used to assure costs at a particular facility, the

reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(c) Recordkeeping and reporting requirements.

(1) The local government owner or operator shall place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);

(ii) Provides evidence and certifies that the local government meets the conditions of subsection (a)(1), (a)(2), and (a)(3); and

(iii) Certifies that the local government meets the conditions of subsections (b) and (d).

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or

the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(2) The items required in paragraph (1) shall be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or

(B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-136.

(3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-138(e); or

(B) The owner or operator is no longer required to demonstrate financial

responsibility in accordance with the requirements section 11-58.1-138(b)(2), (c)(2), or (d)(2).

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-138, place the required submissions for that assurance in the operating record, and notify the director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with section 11-58.1-138(e).

(d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total

annual revenue.

(2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under 40 C.F.R. part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The total that may be assured shall not exceed forty-three per cent of the local government's total annual revenue.

(3) The owner or operator shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (1) and (2). [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-141 (Reserved).

§11-58.1-142 Special waste landfills — local government guarantee specifications. (a) Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The guarantee shall provide that:

(1) If the owner or operator fails to perform closure, post-closure care, or corrective

action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or

(B) Establish a fully funded trust fund as specified in section 11-58.1-138(e)(1) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancelation by certified mail to the owner or operator and to the director. Cancelation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide that alternate assurance within one hundred twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.

(b) Recordkeeping and reporting.

(1) The owner or operator shall place a certified copy of the guarantee along with the items required under section 11-58.1-140(c) into the facility's operating record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been

selected in accordance with the requirements of section 11-58.1-136.

(2) The owner or operator is no longer required to maintain the items specified in this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-138(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-138(b)(2), (c)(2), or (d)(2).

(3) If a local government guarantor no longer meets the requirements of section 11-58.1-140, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-143 to 11-58.1-150 (Reserved).

SUBCHAPTER [~~2~~] 4

MUNICIPAL SOLID WASTE [~~DISPOSAL FACILITIES~~] LANDFILLS

[~~§11-58.1-11~~] §11-58.1-151 Municipal solid waste landfills — purpose, scope, and applicability. (a)

The purpose of [~~sections 11-58.1-11 through 11-58.1-18~~] this subchapter is to establish minimum state criteria for all municipal solid waste landfill (MSWLF) units including municipal solid waste landfills that are used to dispose of sewage sludge. These minimum state criteria ensure the protection of human health and the environment.

(b) [~~These criteria apply~~] This subchapter applies to owners and operators of new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in [~~sections 11-58.1-11 through 11-58.1-18.~~] this subchapter.

(c) [~~These criteria do~~] This subchapter does not apply to MSWLF units that did not receive waste after October 9, 1991.

(d) MSWLF units that [~~receive~~] received waste after October 9, 1991, but [~~stop~~] stopped receiving waste before October 9, 1993, are exempt from all [~~the~~] requirements of [~~sections 11-58.1-11 through 11-58.1-18,~~] this subchapter except [~~for~~] the final cover requirement [~~specified~~] in section [~~11-58.1-17(a)(1).~~] 11-58.1-157(a)(1). The final cover [~~must~~] shall be installed within six months of the last receipt of [~~wastes.~~] waste. Owners or operators of MSWLF units [~~described in this subsection~~] that fail to complete cover installation within this six-month period [~~will be~~] are subject to all [~~the~~] requirements of [~~sections 11-58.1-11 through 11-58.1-18,~~] this subchapter, unless otherwise specified.

[~~(e) All MSWLF units that receive waste on or after October 9, 1993, must comply with all requirements of sections 11-58.1-11 through 11-58.1-18, unless otherwise specified.~~

~~(f)~~](e) Exemption for small MSWLF units.

(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty tons of municipal solid waste daily, based on an annual average, are exempt from sections [~~11-58.1-14 and 11-58.1-16,~~] 11-58.1-154 and 11-58.1-156, so long as[~~: (1) There~~] there is no evidence of existing [~~ground-water~~]

groundwater contamination from the MSWLF unit[~~; (2) The~~] and the MSWLF unit serves either:

(A) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility; or

(B) A community that has no practicable waste management alternative and the MSWLF unit is located in an area that annually receives less than or equal to twenty-five inches of precipitation[~~; and~~].

[~~(3)~~](2) [~~The owners~~] Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that meet the criteria in paragraph (1) shall place in the operating record information demonstrating [~~that the requirements of this subsection are met.~~] this.

[~~(g)~~](3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of [~~ground-water~~] groundwater contamination resulting from the unit that has asserted the exemption in [~~subsection (f),~~] paragraph (1), the owner or operator [~~must~~] shall notify the director of the contamination and shall thereafter comply with sections [~~11-58.1-14 and 11-58.1-16.~~] 11-58.1-154 and 11-58.1-156.

[~~(h)~~](f) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA.

[~~(i)~~](g) MSWLF units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA[~~.~~] and section 342H-30, HRS.

[~~(j)~~](h) MSWLF units containing sewage sludge and failing to satisfy these criteria violate sections 309 and 405(e) of the Clean Water Act.

[~~(k) The effective date of sections 11-58.1-11 through 11-58.1-17 is October 9, 1993. Section 11-58.1-18 is effective April 9, 1994.~~

~~(l)~~](i) The owner or operator of a MSWLF unit [~~must~~] shall comply with any other applicable state [~~or~~] and federal rules, laws, regulations, [~~or~~] and other requirements.

[~~(m) Extensions of the effective dates in 40 CFR 258 and this chapter may be approved on a case-by-case basis only following rule changes to 40 CFR 258 promulgated by the EPA authorizing such extensions or under statutory authority granted by the U.S. Congress.~~] [Eff 1/13/94; §11-58.1-11; am, ren §11-58.1-151, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-55, 342H-56, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

[~~§11-58.1-12~~] §11-58.1-152 Municipal solid waste landfills — permit requirements. (a) All municipal solid waste landfills (MSWLF) [~~require a permit and~~] shall comply with [~~the requirements of~~] section [~~11-58.1-04.~~] 11-58.1-104.

(b) Permit notification. The director shall ensure that the public receives notice of each application for a new municipal solid waste landfill permit or any application for modification or renewal of an existing permit through the public notification process. Procedures for the circulation of public notices shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include 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.

(3) The director shall add the name of any person or group upon request to a mailing

list to receive copies of notices for all [~~variance~~] permit applications within the State or within a certain geographical area.

(4) 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 [~~reviews~~] comments with respect to the application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.

(5) The contents of public notice shall include at least the following:

(A) Name, address, and phone number of agency issuing the public notice;

(B) Name and address of each applicant;

(C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the application;

(D) A short description of the location of each disposal or activity indicating whether such disposal or activity is new or existing;

(E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (4) and any other means by which interested persons may influence or comment upon those determinations; and

(F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the [~~variance~~] permit applications and supporting and related documents.

(6) Public hearings. The director may hold a public hearing if, after reviewing the comments submitted under paragraph (4), the

director determines that a public hearing is warranted. Any hearing [~~brought~~] pursuant to this subsection shall be held in the geographical area of the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

(c) Permit application requirements. In order to obtain a permit to construct and operate, the owner or operator of a municipal solid waste landfill unit shall submit the following:

(1) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;

(2) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste;

(3) A plan for closure in accordance with section 11-58.1-157(a);

(4) A plan for post-closure care in accordance with section 11-58.1-157(b); and

(5) Any additional information requested by the director. [Eff 1/13/94; §11-58.1-12; am, ren §11-58.1-152, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-54, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-52)

[~~§11-58.1-13~~] §11-58.1-153 Municipal solid waste landfills - site analysis[~~.~~] and siting restrictions.

(a) Airport safety.

(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within ten thousand feet

(3,048 meters) of any airport runway end used by turbojet aircraft or within five thousand feet (1,524 meters) of any airport runway end used by only piston-type aircraft [~~must~~] shall demonstrate that the units are designed and operated so that the MSWLF unit does not [~~pose a bird hazard to aircraft.~~] increase the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.

(2) Owners or operators proposing to site new MSWLF units and lateral expansions located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft [~~must~~] shall notify the affected airport and the Federal Aviation Administration [~~(FAA)~~].

(3) The owner or operator [~~must~~] shall place the demonstration in paragraph (1) in the operating record and notify the director that it has been placed in the operating record.

(4) A prohibition on locating a new MSWLF near certain airports was enacted in section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 United States Code section 44718 note). Section 503 prohibits the construction or establishment of new MSWLFs after April 5, 2000 within six miles of certain smaller public airports. The Federal Aviation Administration administers the Ford Act and has issued guidance in Federal Aviation Administration Advisory Circular 150/5200-34, dated August 26, 2000. For further information, please contact the Federal Aviation Administration.

(b) Floodplains. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in one hundred-year floodplains [~~must~~] shall demonstrate that the unit will not restrict the flow of the [~~one hundred-year~~] one-

hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator [~~must~~] shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(c) Wetlands. New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

(A) Cause or contribute to violations of any applicable state water quality standard;

(B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator [~~must~~] shall demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration

potential of native wetland soils, muds, and deposits used to support the MSWLF unit;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(C) The volume and chemical nature of the waste managed in the MSWLF unit;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(d) Fault areas. New MSWLF units and lateral expansions shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an

alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(e) Seismic impact zone. New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator [~~must~~] shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(f) Unstable areas. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area [~~must~~] shall demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator [~~must~~] shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator [~~must~~] shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local artificial features or events (both surface and subsurface).

(g) Tidal wave (tsunami) zone. New [~~MSWLFs~~] MSWLF units and lateral expansions shall not be located in possible tsunami inundation areas[~~.~~ ~~(1)~~], except where owners or operators demonstrate that engineering measures have been incorporated into the MSWLF unit design to ensure that the structural components of the MSWLF unit will not be damaged or disrupted and seawater from the tsunami run-up does

not infiltrate the MSWLF unit. Tsunami inundation areas [~~on the islands of Oahu, Hawaii, Maui, and Kauai~~] are those areas delineated in a report entitled [~~"Hawaii Tsunami Inundation Evacuation Map Project" by George D. Curtis, University of Hawaii Joint Institute for Marine and Atmospheric Research, dated April 19, 1991.~~] "Hawaii Tsunami Mapping Project: Data Sources, Procedures, and Products for Extreme Aleutian Events, Final Report, Prepared for Hawaii Emergency Management Agency" by Kwok Fai Cheung, PhD, PE, Department of Ocean and Resources Engineering, University of Hawaii at Manoa dated June 30, 2015.

[~~(2) Tsunami inundation areas on other islands shall be determined by the director.~~]

(h) Closure of existing MSWLF units.

(1) Existing MSWLF units that cannot make the demonstration specified in subsection (a)(1) pertaining to airports, subsection (b) pertaining to floodplains, or subsection (f) pertaining to unstable areas, [~~must~~] shall close by October 9, 1996, in accordance with section [~~11-58.1-17(a)~~] 11-58.1-157(a) and conduct post-closure activities in accordance with section [~~11-58.1-17(b).~~] 11-58.1-157(b).

(2) The deadline for closure required by paragraph (1) may be extended up to two years if the owner or operator demonstrates to the director that:

(A) There is no available alternative disposal capacity; and

(B) There is no immediate threat to human health and the environment.

(i) Consistency with local zoning ordinance. The owner or operator of a MSWLF [~~must~~] shall comply with [~~any~~] all applicable local zoning ordinances [~~or~~] and other applicable local ordinances. [Eff 1/13/94; §11-58.1-13; am, ren §11-58.1-153, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

[~~§11-58.1-14~~] §11-58.1-154 Municipal solid waste landfills - design criteria. (a) The design of new MSWLF units and lateral expansions shall be approved by the director before commencement of construction.

(b) The design shall either:

(1) Ensure that the concentration values listed in Table 1[~~, which is incorporated by reference, or Hawaii Administrative Rules, title 11, chapter 20,~~] in 40 C.F.R. section 258.40, published by the Office of the Federal Register, as amended as of July 1, 2024, or in sections 11-20-3 to 11-20-7, whichever is more stringent, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the director under subsection (e); or

(2) Include a composite liner as described in subsection (c) and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner.

(c) A composite liner shall consist of two components:

(1) An upper component that [~~must~~] shall consist of a minimum 30-mil flexible membrane liner (FML) with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec[~~. (FML components consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick. The FML component must~~] and shall be installed in direct and uniform contact with the compacted soil component[~~.~~]; provided that an FML component consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick; and

(2) A lower component that [~~must~~] shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

(d) When approving a design that complies with

subsection (b)(1), the director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(e) The relevant point of compliance specified by the director shall be no more than one hundred fifty meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance, the director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction of flow of [~~ground water;~~] groundwater;

(4) The proximity and withdrawal rate of the [~~ground-water~~] groundwater users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the [~~ground water,~~] groundwater, including other sources of contamination and their cumulative impacts on the [~~ground water~~] groundwater and whether [~~ground water~~] groundwater is currently used or reasonably expected to be used for drinking water;

(7) Public health, safety, and welfare effects; and

(8) Practicable capability of the owner or operator. [Eff 1/13/94; §11-58.1-14; am, ren §11-58.1-154, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52)

[~~§11-58.1-15~~] §11-58.1-155 Municipal solid waste landfills – operating criteria. (a) Procedures for excluding the receipt of hazardous waste[~~.~~] and unpermitted PCBs. Owners or operators of all MSWLF units [~~must~~] shall implement a program [~~at the facility~~] for detecting and preventing the disposal of regulated hazardous wastes [~~as defined in 40 CFR Part 261~~] and polychlorinated [~~biphenyls~~] biphenyl (PCB) wastes [~~as defined in 40 CFR Part 761.~~], except PCB bulk product waste as allowed by permit and in accordance with 40 C.F.R. section 761.62(b). This program [~~must~~] shall include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;

(2) Records of inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and

(4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(b) Cover material requirements.

(1) Except as provided in paragraph (2), the owners or operators of all MSWLF units [~~must~~] shall cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(2) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the director if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health

and the environment.

(3) The director may grant a temporary waiver from the requirement of paragraphs (1) and (2) if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting the requirements impractical.

(4) The director may establish alternative frequencies for cover requirements in paragraphs (1) and (2), after public review and comment, for any MSWLF that disposes of twenty tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

(A) Consider the unique characteristics of small communities;

(B) Take into account climatic and hydrogeologic conditions; and

(C) Be protective of human health and the environment.

(c) Disease vector control. Owners or operators of all MSWLF units [~~must~~] shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(d) Explosive gases control.

(1) Owners or operators of all MSWLF units [~~must~~] shall ensure that:

(A) The concentration of methane gas generated by the facility does not exceed twenty-five per cent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(B) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(2) Owners or operators of all MSWLF units [~~must~~] shall implement a routine methane

monitoring program to ensure that the standards of paragraph (1) are met.

(A) The type and frequency of monitoring [~~must~~] shall be determined based on the following factors:

(i) Soil conditions;

(ii) The hydrogeologic conditions surrounding the facility;

(iii) The hydraulic conditions surrounding the facility; and

(iv) The location of facility structures and property boundaries.

(B) The minimum frequency of monitoring shall be quarterly.

(3) If methane gas levels exceeding the limits specified in paragraph (1) are detected, the owner or operator [~~must:~~] shall:

(A) Immediately take all necessary steps to ensure protection of human health and notify the director;

(B) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(C) Within sixty days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(D) The director may establish alternative schedules for demonstrating compliance with subparagraphs (B) and (C).

(4) The director may establish alternative frequencies for the monitoring requirement of paragraph (2)(B), after public review and comment, for MSWLFs that dispose of twenty tons of municipal solid waste per day or

less, based on an annual average. Any alternative monitoring frequencies established under this paragraph must:

(A) Consider the unique characteristics of small communities;

(B) Take into account climatic and hydrogeologic conditions; and

(C) Be protective of human health and the environment.

(e) Air criteria.

(1) Owners or operators of all [~~MSWLFs must~~] MSWLF units shall ensure that the units do not violate any applicable requirements developed under the Hawaii State Implementation Plan (SIP) approved by the U.S. EPA Administrator pursuant to section 110 of the Clean Air Act, as amended.

(2) Open burning of solid waste, except for debris from emergency cleanup operations, is prohibited at all MSWLF units. Open burning means the combustion of solid waste without:

(A) Control of combustion air to maintain adequate temperature for efficient combustion;

(B) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) Control of the emission of the combustion products.

(f) Access requirements. Owners or operators of all MSWLF units [~~must~~] shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

(g) Run-on [~~or~~] and run-off control systems.

(1) Owners or operators of all MSWLF units [~~must~~] shall design, construct, and maintain:

(A) A run-on control system to prevent flow onto the active portion of the landfill

during the peak discharge from a [~~twenty-five-year~~] twenty-five year storm; and

(B) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a [~~twenty-four-hour, twenty-five-year~~] twenty-four hour, twenty-five year storm.

(2) Run-off from the active portion of the landfill unit [~~must~~] shall be handled in accordance with subsection (h)(1).

(h) Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States,including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under sections 208 or 319 of the Clean Water Act, as amended.

(i) Landfill units shall not accept the following items:

(1) Scrap automobiles;

(2) White goods; and

(3) Whole motor vehicle tires.

[~~(i)~~] (j) Liquids restrictions.

(1) Bulk or noncontainerized liquid waste [~~may~~] shall not be placed in MSWLF units unless:

(A) The waste is household waste other than septic waste; or

(B) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF or lateral expansion, is

designed with a composite liner and leachate collection system as described in section [~~11-58.1-14(b)(2).~~] 11-58.1-154(b)(2). The owner or operator [~~must~~] shall place [~~the~~] a demonstration that the conditions of section 11-58.1-154(b)(2) have been met in the operating record and notify the director that it has been placed in the operating record.

(2) Containers holding liquid waste [~~may~~] shall not be placed in a MSWLF unit [~~unless:~~] except:

(A) [~~The container is a small container~~] Small containers similar in size to that normally found in household waste;

(B) [~~The container is~~] Containers designed to hold liquids for use other than storage;

(C) [~~The waste is household~~] Household waste; or

(D) [~~The oil filters are drained for at least twenty-four hours or crushed and are not a regulated hazardous waste.~~] Oil filters from which the used oil has been properly drained to the extent possible such that no visible signs of free-flowing oil remain in or on the material.

[~~(j)~~] (k) Recordkeeping requirements.

(1) The owner or operator of a MSWLF unit [~~must~~] shall record and retain near the facility in an operating record or in an alternative location approved by the director the following information as it becomes available:

(A) Any location restriction demonstration required under section [~~11-58.1-13;~~] 11-58.1-153;

(B) Inspection records, training procedures, and notification procedures required in subsection (a);

(C) Gas monitoring results from monitoring and any remediation plans required by subsection (d);

(D) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under subsection [~~(i)(1)(B);~~] (j)(1)(B);

(E) Any demonstration, certification, finding, monitoring, testing, or analytical data required by section [~~11-58.1-16;~~] 11-58.1-156;

(F) Closure and post-closure [~~care~~] plans and any monitoring, testing, or analytical data as required by section [~~11-58.1-17(a) and (b);~~] 11-58.1-157(a) and (b);

(G) Any cost estimates and financial assurance documentation required by [~~section 11-58.1-18 ; and~~] sections 11-58.1-158 to 11-58.1-162;

(H) Any information demonstrating compliance with the small community exemption as required by section [~~11-58.1-11(f)(3).~~] 11-58.1-151(e)(2);

(I) Any major deviation from the operations plan (fires and explosions); and

(J) Daily operating records. Daily records shall include:

(i) The weight or volume, source, and type of solid waste being disposed.

(ii) Additional information, as requested by the department.

(2) The owner or operator [~~must~~] shall notify the director when the documents from paragraph (1) have been placed or added to the operating record, except daily operating records required by paragraph (1)(J), and all information contained in the operating record [~~must~~] shall be furnished upon request to the director or be made available at all reasonable times for inspection by

the director.

(3) The director can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) and (2), except for the notification requirements in sections [~~11-58.1-13(a)(2) and 11-58.1-16(e)(7)(A)(iii).~~] 11-58.1-153(a)(2) and 11-58.1-156(e)(7)(A)(iii).

[~~(k)~~] (l) Public health, safety, and welfare. The director [~~shall~~] may require an owner or operator to fulfill any other requirements that the director believes necessary to protect the public health, safety, and welfare. [Eff 1/13/94; §11-58.1-15; am, ren §11-58.1-155, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-55, 342H-56, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342G-30, 342H-3, 342H-30, 342H-52, 342J-30)

[~~§11-58.1-16~~] §11-58.1-156 Municipal solid waste landfills - [~~ground water~~] groundwater protection.

(a) Applicability.

(1) The requirements in [~~sections 11-58.1-11 through 11-58.1-18~~] this section apply to all MSWLF units, except as provided in paragraph (2).

(2) [~~Ground water~~] Groundwater monitoring requirements under subsections (b) [~~through~~] to (e) may be suspended by the director for a MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer [~~(as defined in section 11-58.1-03)~~] during the active life of the unit and the post-closure care period. This demonstration [~~must~~] shall be certified by a qualified [~~ground water~~] groundwater scientist and approved by the director, and [~~must~~] shall

be based upon:

(A) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(B) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(3) Owners and operators of MSWLF units [~~must~~] shall comply with the [~~ground-water~~] groundwater monitoring requirements of [~~sections 11-58.1-11 through 11-58.1-18~~] this section according to the following schedule unless an alternative schedule is specified under paragraph (4):

(A) Existing MSWLF units and lateral expansions less than one mile from a drinking water intake (surface or subsurface) [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) by October 9, 1994;

(B) Existing MSWLF units and lateral expansions greater than one mile but less than two miles from a drinking water intake (surface or subsurface) [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) by October 9, 1995;

(C) Existing MSWLF units and lateral expansions greater than two miles from a drinking water intake (surface or subsurface) [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) by October 9, 1996;

(D) New MSWLF units [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) before waste can be placed in the unit.

(4) The director may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e). This schedule [~~must~~] shall ensure that fifty per cent of all existing MSWLF units are in compliance by October 9, 1994 and that all existing MSWLF units are in compliance by October 9, 1996. In setting the compliance schedule, the director [~~must~~] shall consider potential risks posed by the unit to human health and the environment. The following factors [~~should~~] shall be considered in determining potential risk:

(A) Proximity of human and environmental receptors;

(B) Design of the MSWLF unit;

(C) Age of the MSWLF unit;

(D) [~~The size~~] Size of the MSWLF unit;

(E) Types and quantities of wastes disposed including sewage sludge; and

(F) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) [~~Ground-water~~] Groundwater quality and quantity.

(5) Once established at a MSWLF unit, [~~ground-water~~] groundwater monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in section [~~11-58.1-17(b).~~] 11-58.1-157(b).

(6) The director may establish alternative schedules for demonstrating compliance with [~~subsection~~]:

(A) Subsection (b)(4)(B), pertaining to notification of placement of certification in operating record; [~~subsection~~]

(B) Subsection (d)(3)(A), pertaining to notification that statistically significant increase (SSI) notice is in operating record; [~~subsection~~]

(C) Subsection (d)(3)(B) and (C), pertaining to an assessment monitoring program; [~~subsection~~]

(D) Subsection (e)(2), pertaining to sampling and analyzing Appendix II constituents; [~~subsection~~]

(E) Subsection (e)(4)(A), pertaining to placement of notice (Appendix II constituents detected) in record and notification of notice in record; [~~subsection~~]

(F) Subsection (e)(4)(B), pertaining to sampling for Appendix I and II; [~~subsection~~]

(G) Subsection (e)(7), pertaining to notification (and placement of notice in record) of SSI above [~~ground-water~~] groundwater protection standard; [~~subsections~~]

(H) Subsections (e)(7)(A)(iv) and (f)(1), pertaining to assessment of corrective measures; [~~subsection~~]

(I) Subsection (g)(1), pertaining to selection of remedy and notification of placement in record; [~~subsection~~]

(J) Subsection (h)(3)(D), pertaining to notification of placement in record (alternative corrective action measures); and [~~subsection~~]

(K) Subsection (h)(6), pertaining to notification of placement in record

(certification of remedy completed).

(b) [~~Ground-water~~] Groundwater monitoring systems.

(1) A [~~ground-water~~] groundwater monitoring system [~~must~~] shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield [~~ground-water~~] groundwater samples from the uppermost aquifer [~~(as defined in section 11-58.1-03)~~] that:

(A) Represent the quality of background [~~ground water~~] groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background [~~ground-water~~] groundwater quality that is as representative as or more representative than that provided by the upgradient wells; and

(B) Represent the quality of [~~ground water~~] groundwater passing the relevant point of compliance specified by the director under section [~~11-58.1-14(e).~~] 11-58.1-154(e). The downgradient monitoring system [~~must~~] shall be installed at the relevant point of compliance specified by the director under section [~~11-58.1-14(e)~~] 11-58.1-154(e) that ensures detection of [~~ground-water~~] groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of [~~ground-water~~]

groundwater monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system [~~may~~] shall be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the director under section [~~11-58.1-14~~] 11-58.1-154 that ensures detection of [~~ground-water~~] groundwater contamination in the uppermost aquifer.

(2) The director may approve a multi-unit [~~ground-water~~] groundwater monitoring system instead of separate [~~ground-water~~] groundwater monitoring systems for each MSWLF unit when the facility has several units, if the multi-unit [~~ground-water~~] groundwater monitoring system meets the requirement of paragraph (1) and will be as protective of human health and the environment as individual monitoring systems for each MSWLF unit, based on the following factors:

(A) Number, spacing, and orientation of the MSWLF units;

(B) Hydrogeologic setting;

(C) Site history;

(D) Engineering design of the MSWLF units[~~,~~]; and

(E) Type of waste accepted at the MSWLF units.

(3) Monitoring wells [~~must~~] shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing [~~must~~] shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of representative [~~ground-water~~] groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth [~~must~~] shall be sealed to prevent contamination of samples and the

[~~ground water.~~] groundwater.

(A) The owner or operator [~~must~~] shall notify the director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(B) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices [~~must~~] shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The number, spacing, and depths of monitoring systems shall be:

(A) Determined based upon site-specific technical information that [~~must~~] shall include thorough characterization of:

(i) Aquifer thickness, [~~ground-water~~] groundwater flow rate, [~~ground-water~~] groundwater flow direction including seasonal and temporal fluctuations in [~~ground-water~~] groundwater flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

(B) Certified by a qualified [~~ground-water~~] groundwater scientist or approved by the director. Within fourteen days of

this certification, the owner or operator [~~must~~] shall notify the director that the certification has been placed in the operating record.

(c) [~~Ground-water~~] Groundwater sampling and analysis requirements.

(1) The [~~ground-water~~] groundwater monitoring program [~~must~~] shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of [~~ground-water~~] groundwater quality at the background and downgradient wells installed in compliance with subsection (b)(1). The owner or operator [~~must~~] shall notify the director that the sampling and analysis program documentation has been placed in the operating record and the program [~~must~~] shall include procedures and techniques for:

(A) Sample collection;

(B) Sample preservation and shipment;

(C) Analytical procedures;

(D) Chain of custody control; and

(E) Quality assurance and quality control.

(2) The [~~ground-water~~] groundwater monitoring program [~~must~~] shall include sampling and analytical methods that are appropriate for [~~ground-water~~] groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in [~~ground-water~~] groundwater samples. [~~Ground-water~~] Groundwater samples shall not be field-filtered before laboratory analysis.

(3) The sampling procedures and frequency [~~must~~] shall be protective of human health and the environment.

(4) [~~Ground-water~~] Groundwater elevations [~~must~~] shall be measured in each well immediately before purging, each time [~~ground water~~] groundwater is sampled. The owner or operator [~~must~~] shall determine the rate and direction of [~~ground-water~~] groundwater flow

each time [~~ground-water~~] groundwater is sampled. [~~Ground-water~~] Groundwater elevations in wells which monitor the same waste management area [~~must~~] shall be measured within a period of time short enough to avoid temporal variations in [~~ground-water~~] groundwater flow which could preclude accurate determination of [~~ground-water~~] groundwater flow rate and direction.

(5) The owner or operator [~~must~~] shall establish background [~~ground-water~~] groundwater quality in a hydraulically upgradient or background [~~well(s)~~] well for each of the monitoring parameters or constituents required in the particular [~~ground-water~~] groundwater monitoring program that applies to the MSWLF unit, as determined under subsections (d)(1) or (e)(1). Background [~~ground-water~~] groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of subsection (b)(1)(A).

(6) The number of samples collected to establish [~~ground-water~~] groundwater quality data [~~must~~] shall be consistent with the appropriate statistical procedures determined pursuant to paragraph (7). The sampling procedures shall be those specified under subsection (d)(2) for detection monitoring, subsections (e)(2) and (e)(4) for assessment monitoring, and subsection (f)(2) for corrective action.

(7) The owner or operator [~~must~~] shall specify in the operating record one of the following statistical methods to be used in evaluating [~~ground-water~~] groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(A) A parametric analysis of variance

(ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method [~~must~~] shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(B) An ANOVA based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method [~~must~~] shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(D) A control chart approach that gives control limits for each constituent.

(E) Another statistical test method that meets the performance standards of paragraph (8). The owner or operator [~~must~~] shall place a justification for this alternative in the operating record and notify the director of the use of this alternative test. The justification [~~must~~] shall demonstrate that the alternative method meets the performance standards of paragraph (8).

(8) Any statistical method chosen under paragraph (7) shall comply with the following performance standards, as appropriate:

(A) The statistical method used to evaluate [~~ground-water~~] groundwater monitoring

data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data [~~should~~] shall be transformed or a distribution-free theory test [~~should~~] shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a [~~ground-water~~] groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I [~~experiment wise~~] experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons [~~must~~] shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate [~~ground-water~~] groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the

concentration values for each constituent of concern.

(D) If a tolerance interval or a predictional interval is used to evaluate [~~ground-water~~] groundwater monitoring data, the levels of confidence and, for tolerance intervals, the per cent of the population that the interval [~~must~~] shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(9) The owner or operator [~~must~~] shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular [~~ground-water~~] groundwater monitoring program that applies to the MSWLF unit, as determined under subsections (d)(1) or (e)(1).

(A) In determining whether a statistically significant increase has occurred, the owner or operator [~~must~~] shall compare the [~~ground-water~~] groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subsection (b)(1)(B) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (7) and (8).

(B) Within a reasonable period of time after completing sampling and analysis, the owner or operator [~~must~~] shall determine whether there has been a statistically significant increase over background at each monitoring well.

(d) Detection monitoring program.

(1) Detection monitoring is required at MSWLF units at all [~~ground-water~~] groundwater monitoring wells defined under subsections (b)(1)(A) and (B). At a minimum, a detection monitoring program [~~must~~] shall include monitoring for the constituents listed in Appendix I.

(A) The director may delete any of the Appendix I monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(B) The director may establish an alternative list of inorganic indicator parameters for a MSWLF unit, in lieu of some or all of the heavy metals (constituents 1 [~~through~~] to 15 of Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the [~~ground water.~~] groundwater. In determining alternative parameters, the director shall consider

the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the [~~ground-water;~~] groundwater; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the [~~ground-water~~] groundwater background.

(2) The monitoring frequency for all constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) [~~must~~] shall be collected and analyzed for Appendix I [~~which is incorporated by reference~~], or the alternative list approved in accordance with paragraph (1)(B), during the first semiannual sampling event. At least one sample from each well (background and downgradient) [~~must~~] shall be collected and analyzed during subsequent semi-annual sampling events. The director may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents, or the alternative list approved in accordance with paragraph (1)(B), during the active life (including closure) and the post-closure care period.

The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(A) Lithology of the aquifer and unsaturated zone;

(B) Hydraulic conductivity of the aquifer and unsaturated zone;

(C) [~~Ground-water~~] Groundwater flow rates;

(D) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and

(E) Resource value of the aquifer.

(3) If the owner or operator determines, pursuant to subsection (c)(7), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), at any monitoring well at the boundary specified under subsection (b)(1)(B), the owner or operator:

(A) [~~Must~~] Shall, within twenty-four hours of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the director that this notice was placed in the operating record; and

(B) [~~Must~~] Shall establish an assessment monitoring program meeting the requirements of subsection (e) within ninety days except as provided for in subparagraph (C).

(C) The owner or operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling,

analysis, statistical evaluation, or natural variation in [~~ground water~~] groundwater quality. A report documenting this demonstration [~~must~~] shall be certified by a qualified [~~ground water~~] groundwater scientist or approved by the director and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this [~~section.~~] subsection. If, after ninety days, a successful demonstration is not made, the owner or operator [~~must~~] shall initiate an assessment monitoring program as required in subsection (e).

(e) Assessment monitoring[~~.~~] program.

(1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subsection (d)(1)(B).

(2) Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator [~~must~~] shall sample and analyze the [~~ground water~~] groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well [~~must~~] shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) [~~must~~] shall be collected and analyzed to establish background for the constituents. The director may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment

monitoring. The director may delete any of the Appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph (2), during the active life (including closure) and post-closure care of the unit considering the following factors:
   (A) Lithology of the aquifer and unsaturated zone;
   (B) Hydraulic conductivity of the aquifer and unsaturated zone;
   (C) [~~Ground water~~] Groundwater flow rates;
   (D) Minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screen (minimum distance of travel);
   (E) Resource value of the aquifer; and
   (F) Nature (fate and transport) of any constituents detected in response to this section.

(4) After obtaining the results from the initial or subsequent sampling events required in paragraph (2), the owner or operator [~~must:~~] shall:
   (A) Within twenty-four hours, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the director that this notice has been placed in the operating record;
   (B) Within ninety days, and on at least a semiannual basis thereafter, resample all wells specified by subsection (b)(1), conduct analyses for all constituents in Appendix I, or in the

alternative list approved in accordance with subsection (d)(1)(B), and for those constituents in Appendix II that are detected in response to paragraph (2), and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) [~~must~~] shall be collected and analyzed during these sampling events. The director may specify an alternative monitoring frequency during the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for Appendix I constituents, or the alternative list approved in accordance with subsection (d)(1)(B), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (3);

(C) Establish background concentrations for any constituents detected pursuant to paragraph (2) or (4)(B); and

(D) Establish [~~ground water~~] groundwater protection standards for all constituents detected pursuant to paragraph (2) or (4). The [~~ground water~~] groundwater protection standards shall be established in accordance with paragraph (8) or (9).

(5) If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in subsection (c)(7), for two consecutive sampling events, the owner or operator [~~must~~] shall notify the director of this finding and may return to detection monitoring.

(6) If the concentrations of any Appendix II

constituents are above background values, but all concentrations are below the [~~ground water~~] groundwater protection standard established under paragraph (8) or (9), using the statistical procedures in subsection (c)(7), the owner or operator [~~must~~] shall continue assessment monitoring in accordance with this section.

(7) If one or more Appendix II constituents are detected at statistically significant levels above the [~~ground water~~] groundwater protection standard established under paragraph (8) or (9) in any sampling event, the owner or operator [~~must,~~] shall, within fourteen days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the [~~ground water~~] groundwater protection standard and notify the director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(A) (i) [~~Must~~] Shall characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) [~~Must~~] Shall install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (4)(B);

(iii) [~~Must~~] Shall notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with paragraph (7)(A); and

(iv) [~~Must~~] Shall initiate an

assessment of corrective measures as required by subsection (f) within ninety days; or

(B) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in [~~ground water~~] groundwater quality. A report documenting this demonstration [~~must~~] shall be certified by a qualified [~~ground-water~~] groundwater scientist or approved by the director and placed in the operating record. If a successful demonstration is made, the owner or operator [~~must~~] shall continue monitoring in accordance with the assessment monitoring program pursuant to this subsection, and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph (5). Until a successful demonstration is made, the owner or operator [~~must~~] shall comply with paragraph (7) including initiating an assessment of corrective measures.

(8) The owner or operator [~~must~~] shall establish a [~~ground water~~] groundwater protection standard for each Appendix II constituent detected in the [~~ground water.~~] groundwater. The [~~ground water~~] groundwater protection standard shall be:

(A) For constituents for which a maximum contaminant level (MCL) has been [~~promulgated under section 1412 of the Safe Drinking Water Act (codified) under~~] set in 40 CFR part 141[~~,~~] or chapter 11-20, the lower MCL for that constituent;

(B) For constituents for which MCLs have not been promulgated, the background

concentration for the constituent established from wells in accordance with subsection (b)(1)(A); or

(C) For constituents for which the background level is higher than the MCL identified under subparagraph (A) or health-based levels identified under paragraph [~~(9)(A),~~] (9), the background concentration.

(9) The director may establish an alternative [~~ground water~~] groundwater protection standard for constituents for which MCLs have not been established. These [~~ground water~~] groundwater protection standards shall be appropriate health-based levels that satisfy the following criteria:

(A) The level is derived in a manner consistent with U.S. Environmental Protection Agency (EPA) guidelines for assessing the health risks of environmental pollutants (51 Fed. Reg. 33992, 34006, 34014, 34028, September 24, 1986);

(B) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 [~~CFR~~] C.F.R. part 792) or equivalent;

(C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) [~~with~~] within the 1×10^{-4} to 1×10^{-6} range; and

(D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed [~~to~~] on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this section, systemic toxicants

include toxic chemicals that cause effects other than cancer or mutation.

(10) In establishing [~~ground water~~] groundwater protection standards under paragraph (9), the director may consider the following:

(A) Multiple contaminants in the [~~ground water;~~] groundwater;

(B) Exposure threats to sensitive environmental receptors; and

(C) Other site-specific exposure or potential exposure to [~~ground water.~~] groundwater.

(f) Assessment of corrective measures.

(1) Within ninety days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the [~~ground water~~] groundwater protection standards defined under subsection (e)(8) or (e)(9), the owner or operator [~~must~~] shall initiate an assessment of corrective measures. The assessment [~~must~~] shall be completed within a reasonable period of time.

(2) The owner or operator [~~must~~] shall continue to monitor in accordance with the assessment monitoring program as specified in subsection (e).

(3) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection (g), addressing at least the following:

(A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(B) The time required to begin and complete the remedy;

(C) The costs of remedy implementation; and

(D) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the [~~remedy(s).~~] remedy.

(4) The owner or operator [~~must~~] shall discuss the results of the corrective measures assessment, before the selection of remedy, in a public meeting with interested and affected parties.

(g) Selection of remedy.

(1) Based on the results of the corrective measures assessment conducted under subsection (f), the owner or operator [~~must~~] shall select a remedy that, at a minimum, meets the standards listed in paragraph (2). The owner or operator [~~must~~] shall notify the director, within fourteen days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (2).

(2) Remedies [~~must:~~] shall:

(A) Be protective of human health and the environment;

(B) Attain the [~~ground water~~] groundwater protection standard as specified pursuant to subsection (e)(8) or (9);

(C) Control the [~~source(s)~~] source of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and

(D) Comply with standards for management of wastes as specified in subsection (h)(4).

(3) In selecting a remedy that meets the standards of paragraph (2), the owner or operator shall consider the following

evaluation factors:

(A) The long- and short-term effectiveness and protectiveness of the potential [~~remedy(s),~~] remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(B) The effectiveness of the remedy in

controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(C) The ease or difficulty of implementing a potential [~~remedy(s)~~] remedy based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technology;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(D) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(E) The degree to which community concerns are addressed by a potential [~~remedy(s).~~] remedy.

(4) The owner or operator shall specify as part of the selected remedy a [~~schedule(s)~~] schedule for initiating and completing remedial activities. Such a schedule [~~must~~] shall require the initiation of remedial activities within a reasonable period of time taking into consideration the [~~factors set forth in subparagraphs (A) through (H). The owner or operator must consider the~~] following factors [~~in determining the schedule of remedial activities~~]:

(A) Extent and nature of contamination;

(B) Practical capabilities of remedial technologies in achieving compliance with [~~ground water~~] groundwater protection standards established under subsection (e)(7) or (8) and other objectives of the remedy;

(C) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(D) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(E) Potential risks to human health and the environment from exposure to contamination before completion of the remedy;

(F) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) [~~Ground water~~] Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) [~~Ground water~~] Groundwater removal and treatment costs; and

(vii) The cost and availability of alternative water supplies;

(G) Practicable capability of the owner or operator; and

(H) Other relevant factors.

(5) The director may determine that remediation

of a release of an Appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the director that:

(A) The [~~ground water~~] groundwater is additionally contaminated by substances that have originated from a source other than a MSWLF unit and that those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or

(B) The [~~constituent(s)~~] constituent is present in [~~ground water~~] groundwater that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a [~~concentration(s)~~] concentration that would exceed the [~~ground-water~~] groundwater protection standards established under subsection (e)(8) or (9); or

(C) Remediation of the [~~release(s)~~] release is technically impracticable; or

(D) Remediation results in unacceptable cross-media impacts.

(6) A determination by the director pursuant to [~~subsection (g)(5)~~] paragraph (5) shall not affect the authority of the [~~State~~] director to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the [~~ground-water,~~] groundwater, to prevent exposure to the [~~ground-water,~~] groundwater, or to

remediate the [~~ground water~~] groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

(h) Implementation of the corrective action program.

(1) Based on the schedule established under subsection (g)(4) for initiation and completion of remedial activities the owner or operator [~~must:~~] shall:

(A) Establish and implement a corrective action [~~ground water~~] groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under subsection (e);

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with [~~ground water~~] groundwater protection standard pursuant to paragraph (5);

(B) Implement the corrective action remedy selected under subsection (g); and

(C) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures [~~should,~~] shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subsection (g). The following factors [~~must~~] shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to

hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the [~~ground water~~] groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(2) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of subsection (g)(2) are not being achieved through the remedy selected. In these cases, the owner or operator [~~must~~] shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph (3).

(3) If the owner or operator determines that compliance with requirements under subsection (g)(2) cannot be practically achieved with any currently available methods, the owner or operator [~~must:~~] shall:

(A) Obtain certification of a qualified [~~ground water~~] groundwater scientist or approval by the director that compliance with the requirements under subsection (g)(2) cannot be practically

achieved with any currently available methods;

(B) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(C) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(D) Notify the director [~~within~~] at least fourteen days before implementing alternative measures that a report justifying the alternative measures [~~before implementing the alternative measures~~] has been placed in the operating record.

(4) All solid wastes that are managed pursuant to a remedy required under subsection (g), or an interim measure required under paragraph (1)(C), shall be managed in a manner:

(A) That is protective of human health and the environment; and

(B) That complies with applicable RCRA requirements.

(5) Remedies selected pursuant to subsection (g) shall be considered complete when:

(A) The owner or operator complies with the [~~ground-water~~] groundwater protection standards established under subsection (e)(8) or (9) at all points within the plume of contamination that lie beyond the [~~ground water~~] groundwater monitoring well system established under subsection (b)(1)[~~.~~];

(B) Compliance with the [~~ground water~~]

groundwater protection standards established under subsection (e)(8) or (9) has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the [~~ground water~~] groundwater protection [~~standard(s)~~] standard for a period of three consecutive years using the statistical procedures and performance standards in subsection (c)(7) and [~~(c)(8).~~] (8). The director may specify an alternative length of time during which the owner or operator [~~must~~] shall demonstrate that concentrations of Appendix II constituents have not exceeded the [~~ground water~~] groundwater protection [~~standard(s)~~] standard taking into consideration:

(i) Extent and concentration of the [~~release(s);~~] release;

(ii) Behavior characteristics of the hazardous constituents in the [~~ground water;~~] groundwater;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the [~~ground water.~~] groundwater; and

(C) All actions required to complete the remedy have been satisfied.

(6) Upon completion of the remedy, the owner or operator [~~must~~] shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of paragraph (5) has been placed in the operating record. The certification [~~must~~] shall be signed by the owner or operator and by a qualified [~~ground water~~] groundwater scientist or approved by the director.

(7) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (5), the owner or operator shall be released from the requirements for financial assurance for corrective action under section [~~11-58.1-18(d).~~] 11-58.1-158(d). [Eff 1/13/94; §11-58.1-16; am, ren §11-58.1-156, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-53, 342H-54, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52)

[~~§11-58.1-17~~] §11-58.1-157 Municipal solid waste landfills — closure and post-closure care. (a) Closure criteria.

(1) Owners or operators of all MSWLF units [~~must~~] shall install a final cover system that is designed to minimize infiltration and erosion. The final cover system [~~must be~~] shall:

(A) Be comprised of an erosion layer underlain by an infiltration layer [~~as follows:~~];

[~~(A)~~](B) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1 x 10^{-5} cm/sec, whichever is less[~~, and~~];

[~~(B)~~](C) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum eighteen inches of earthen material[~~,~~]; and

[~~(C)~~](D) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum six inches of

earthen material that is capable of sustaining native plant growth.

(2) The director may approve an alternative final cover design that includes:

(A) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraph [~~(1)(A) and (1)(B);~~] (1)(B) and (C); and

(B) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph [~~(1)(C).~~] (1)(D).

(3) The director may establish alternative requirements for the infiltration barrier in paragraph (2)(A), after public review and comment, for any MSWLF that disposes of twenty tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:

(A) Consider the unique characteristics of small communities;

(B) Take into account climatic and hydrogeologic conditions; and

(C) Be protective of human health and the environment.

[~~(3)~~](4) The owner or operator [~~must~~] shall prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during [~~its~~] their active life in accordance with the cover design requirements in paragraph (1) or (2), as applicable. The closure plan, at a minimum, [~~must~~] shall include the following information:

(A) A description of the final cover, designed in accordance with paragraph (1) and the methods and procedures to be used to install the cover;

(B) An estimate of the largest area of the

MSWLF unit ever requiring a final cover as required under paragraph (1) at any time during the active life;

(C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.

[~~(4)~~] (5) The owner or operator [~~must~~] shall notify the director that a closure plan has been prepared and placed in the operating record by October 9, 1993, or by the initial receipt of waste, whichever is later.

[~~(5)~~] (6) [~~Before~~] No less than ninety days before beginning closure of each MSWLF unit as specified in paragraph [~~(6),~~] (7), an owner or operator [~~must~~] shall notify the director that a notice of intent to close the unit has been placed in the operating record.

[~~(6)~~] (7) The owner or operator [~~must~~] shall begin closure activities of each MSWLF unit within thirty days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

[~~(7)~~] (8) The owner or operator of all MSWLF units [~~must~~] shall complete closure activities of each MSWLF unit in accordance with the closure plan within one hundred eighty days

following the beginning of closure as specified in paragraph [~~(6).~~] (7). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

[~~(8)~~](9) Following closure of each MSWLF unit, the owner or operator [~~must~~] shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

[~~(9)~~](10) (A) Following closure of all MSWLF units, the owner [~~or operator must record a notation on the deed to~~] shall:

(i) Prepare an environmental covenant for the landfill facility property[~~, or some other instrument that is normally examined during title search, and~~] in accordance with chapter 508C, HRS, and submit it to the director for approval;

(ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and

(iii) Following recording, notify the director that the [~~notation~~] environmental covenant has been recorded with the bureau of conveyances and submit a copy [~~has been placed in the operating record.~~] to the director.

(B) The [~~notation on the deed must~~]

environmental covenant shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a landfill facility; and

(ii) [~~Its~~] The land's use is restricted under subsection (b)(3)(C).

[~~(10)~~](11) The owner [~~or operator~~] may request permission from the director to [~~remove~~] terminate the [~~notation from the deed~~] environmental covenant if all wastes are removed from the facility.

(b) Post-closure care requirements.

(1) Following closure of each MSWLF unit, the owner or operator [~~must~~] shall conduct post-closure care. Post-closure care [~~must~~] shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(B) Maintaining and operating the leachate collection system in accordance with the requirements in section [~~11-58.1-14,~~] 11-58.1-154, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(C) Monitoring the [~~ground water~~] groundwater in accordance with the requirements of section [~~11-58.1-16~~] 11-58.1-156 and maintaining the [~~ground-water~~] groundwater monitoring

system, if applicable; and

(D) Maintaining and operating the gas monitoring system in accordance with the requirements of section [~~11-58.1-15(d).~~] 11-58.1-155(d).

(2) The length of the post-closure care period may be:

(A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

(B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.

(3) The owner or operator of all MSWLF units [~~must~~] shall prepare a written post-closure plan that includes, at a minimum, the following information:

(A) A description of the monitoring and maintenance activities required in paragraph (1) for each MSWLF unit, and the frequency at which these activities will be performed;

(B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, [~~liner(s),~~] liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in [~~sections 11-58.1-11 through 11-58.1-18.~~] this subchapter. The director may approve

any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(4) The owner or operator [~~must~~] shall notify the director that a post-closure plan has been prepared and placed in the operating record no later than [~~the effective date of this Subchapter, October 9, 1993,~~] January 13, 1994 or [~~by~~] the date of initial receipt of waste, whichever is later.

(5) Following completion of the post-closure care period for each MSWLF unit, the owner or operator [~~must~~] shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record. [Eff 1/13/94; §11-58.1-17; am, ren §11-58.1-157, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

[~~§11-58.1-18~~] §11-58.1-158 Municipal solid waste landfills — financial assurance. (a) Applicability and effective date.

(1) The requirements of this section apply to owners and operators of all MSWLF units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(2) The requirements of this section are

effective April 9, 1994.

(b) Financial assurance for closure.

(1) The owner or operator [~~must~~] shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under section [~~11-58.1-17(a)~~] 11-58.1-157(a) at any time during the active life in accordance with the closure plan. The owner or operator [~~must~~] shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate [~~must~~] shall equal the cost of closing the largest area of all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section [~~11-58.1-17(a)(3)(B)).~~] 11-58.1-157(a)(4)(B)).

(B) During the active life of the MSWLF unit, the owner or operator [~~must~~] shall annually adjust the closure cost estimate for inflation.

(C) The owner or operator [~~must~~] shall increase the closure cost estimate and the amount of financial assurance required under paragraph (2) if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator

[~~must~~] shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each MSWLF unit [~~must~~] shall establish financial assurance for closure of the MSWLF unit in compliance with subsection (e). The owner or operator [~~must~~] shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section [~~11-58.1-17(a)(8) and (a)(9).~~] 11-58.1-157(a)(9) and (10).

(c) Financial assurance for post-closure care.

(1) The owner or operator [~~must~~] shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under section [~~11-58.1-17(b).~~] 11-58.1-157(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) [~~must~~] shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator [~~must~~] shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate for post-closure care [~~must~~] shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator [~~must~~] shall annually adjust the post-closure cost estimate for inflation.

(C) The owner or operator [~~must~~] shall

increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator [~~must~~] shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each MSWLF unit [~~must~~] shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section [~~11-58.1-17(b).~~] 11-58.1-157(b). The owner or operator [~~must~~] shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with section [~~11-58.1-17(b)(5).~~] 11-58.1-157(b)(5).

(d) Financial assurance for corrective action.

(1) An owner or operator of a MSWLF unit required to undertake a corrective action program under section [~~11-58.1-16(h) must~~] 11-58.1-156(h) shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under section [~~11-58.1-16(h).~~] 11-58.1-156(h). The corrective action cost estimate [~~must~~] shall account for the total costs of corrective

action activities as described in the corrective action plan for the entire corrective action period. The owner or operator [~~must~~] shall notify the director that the estimate has been placed in the operating record.

(A) The owner or operator [~~must~~] shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section [~~11-58.1-16(h)(6).~~] 11-58.1-156(h)(6).

(B) The owner or operator [~~must~~] shall increase the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator [~~must~~] shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each MSWLF unit required to undertake a corrective action program under section [~~11-58.1-16(h) must~~] 11-58.1-156(h) shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator [~~must~~] shall provide continuous coverage for corrective action until released from financial assurance requirements for

corrective action by demonstrating compliance with section [~~11-58.1-16(h)(6) and (h)(7).~~] 11-58.1-156(h)(6) and (7).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection [~~must~~] shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators [~~must~~] shall choose from the options specified in paragraphs (1) [~~through~~] to (10).

(1) Trust fund.

(A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this paragraph. The trustee [~~must~~] shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement [~~must~~] shall be placed in the facility's operating record.

(B) Payments into the trust fund [~~must~~] shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(C) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund [~~must~~] shall be at least equal to the current cost estimate for

closure or post-closure care, except as provided in paragraph [~~(10),~~] (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments [~~must~~] shall be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund [~~must~~] shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph [~~(10),~~] (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments [~~must~~] shall be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining [~~on~~] in the pay-in period.

(E) The initial payment into the trust fund [~~must~~] shall be made before the initial receipt of waste or before [~~the effective date of this section (~~] April

9, [~~1994),~~] 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section [~~11-58.1-16(h).~~] 11-58.1-156(h).

(F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund [~~must~~] shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.

(G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator [~~must~~] shall notify the director that documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to

demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(2) Surety bond guaranteeing payment or performance.

(A) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond [~~must~~] shall be effective before the initial receipt of waste or before [~~the effective date of this section (~~] April 9, [~~1994),~~] 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section [~~11-58.1-16(h).~~] 11-58.1-156(h). The owner or operator [~~must~~] shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond [~~must~~] shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(B) The penal sum of the bond [~~must~~] shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).

(C) Under the terms of the bond, the surety will become liable on the bond

obligation when the owner or operator fails to perform as guaranteed by the bond.

(D) The owner or operator [~~must~~] shall establish a standby trust fund. The standby trust fund [~~must~~] shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1)(B) [~~through~~] to (E).

(E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund [~~must~~] shall be approved by the trustee.

(F) Under the terms of the bond, the surety may cancel the bond by sending notice of [~~cancellation~~] cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of [~~cancellation.~~] cancelation. If the surety cancels the bond, the owner or operator [~~must~~] shall obtain alternate financial assurance as specified in this [~~section.~~] subsection.

(G) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(3) Letter of credit.

(A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit [~~must~~] shall be

effective before the initial receipt of waste or before [~~the effective date of this section (~~] April 9, [~~1994),~~] 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section [~~11-58.1-16(h).~~] 11-58.1-156(h). The owner or operator [~~must~~] shall notify the director that a copy of the letter of credit has been placed in the operating record. The issuing institution [~~must~~] shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name[~~,~~] and address of the facility, and the amount of funds assured, [~~must~~] shall be included with the letter of credit in the operating record.

(C) The letter of credit [~~must~~] shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, except as provided in paragraph [~~(1).~~] (11). The letter of credit [~~must~~] shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has [~~cancelled~~] canceled the letter of credit by sending notice of [~~cancellation~~] cancelation by

certified mail to the owner and operator and to the director one hundred twenty days in advance of [~~cancellation.~~] cancelation. If the letter of credit is canceled by the issuing institution, the owner or operator [~~must~~] shall obtain alternate financial assurance.

(D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is [~~released from the requirements of this subsection~~] no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(4) Insurance.

(A) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance [~~must~~] shall be effective before the initial receipt of waste or before [~~the effective date of this section (~~] April 9, [~~1994),~~] 1994, whichever is later. At a minimum, the insurer [~~must~~] shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator [~~must~~] shall notify the director that a copy of the insurance policy has been placed in the operating record.

(B) The closure or post-closure care insurance policy [~~must~~] shall guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care

for the MSWLF unit whenever the post-closure care period begins, whichever applies. The policy [~~must~~] shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(C) The insurance policy [~~must~~] shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph [~~(1).~~] (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator [~~must~~] shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(E) Each policy [~~must~~] shall contain a

provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.

(F) The insurance policy [~~must~~] shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy [~~must,~~] shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of [~~cancellation~~] cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of [~~cancellation.~~] cancelation. If the insurer cancels the policy, the owner or operator [~~must~~] shall obtain alternate financial assurance as specified in this subsection.

(G) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase [~~must~~] shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.

(H) The owner or operator may cancel the insurance policy only if alternate

financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(5) Corporate financial test. [Reserved]

(6) Local government financial test. [~~[Reserved]~~] An owner or operator that satisfies the requirements of section 11-58.1-160(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-160(d).

(7) Corporate guarantee. [Reserved]

(8) Local government guarantee. [~~[Reserved]~~] An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-162. The guarantor shall meet the requirements of the local government financial test in section 11-58.1-160 and shall comply with the terms of the written guarantee specified in section 11-58.1-162. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-160(d).

(9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.

(10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care [~~and/or~~], and corrective action requirements of sections [~~11-58.1-11 through 11-58.1-18,~~] 11-58.1-156 and 11-58.1-157, or assures that the funds

will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this subsection. Any state assumption of responsibility [~~must~~] shall meet the criteria specified in paragraph (12).

(11) Use of multiple financial mechanisms. An owner or operator may [~~satisfy the requirements of this subsection~~] demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility[~~.~~], except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms [~~must~~] shall be as specified in paragraphs (1) [~~through~~] to (10), except that [~~it is the combination of mechanisms, rather than the single mechanism, which must provide~~] financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies[~~. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.~~], may be provided by a combination of mechanisms rather than a single mechanism.

(12) The language of the mechanisms listed in paragraphs (1) [~~through~~] to (10) [~~must~~] shall ensure that the instruments satisfy the following criteria:

(A) The financial assurance mechanisms [~~must~~] shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(B) The financial assurance mechanisms [~~must~~] shall ensure that funds will be available in a timely fashion when needed;

(C) The financial assurance mechanisms [~~must~~] shall be obtained by the owner or operator by [~~the effective date of this section~~] April 9, 1994, or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section [~~11-58.1-16(h),~~] 11-58.1-156(h), until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).

(D) The financial assurance mechanisms [~~must~~] shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff 1/13/94; §11-58.1-18; am, ren §11-58.1-158, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§11-58.1-159 (Reserved).

§11-58.1-160 Municipal solid waste landfills – local government financial test specifications. (a) Financial component.

(1) The owner or operator shall satisfy subparagraph (A) or (B) as applicable:

(A) If the owner or operator has

outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(3) A local government is not eligible to assure its obligations under this section if it:

(A) Is currently in default on any outstanding general obligation bonds;

(B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State

agency) auditing its financial statement as required under paragraph (2).

(4) The following terms used in this subsection are defined as follows:

(A) Deficit equals total annual revenues minus total annual expenditures;

(B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) Total expenditures include all expenditures excluding capital outlays and debt repayment;

(D) Cash plus marketable securities is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than one hundred twenty days after the corrective action remedy has been selected in

accordance with the requirements of section 11-58.1-156(h). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(c) Recordkeeping and reporting requirements.

(1) The local government owner or operator shall place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);

(ii) Provides evidence and certifies that the local government meets the conditions of subsection (a)(1), (a)(2), and (a)(3); and

(iii) Certifies that the local government meets the conditions of subsections (b) and (d).

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(2) The items required in paragraph (1) shall be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or

(B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-156(h).

(3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

(A) The owner or operator substitutes alternate financial assurance as

specified in section 11-58.1-158(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements section 11-58.1-158(b)(2), (c)(2), or (d)(2).

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-158, place the required submissions for that assurance in the operating record, and notify the director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with section 11-58.1-158(e).

(d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may

assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total annual revenue.

(2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under 40 C.F.R. part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The total that may be assured shall not exceed forty-three per cent of the local government's total annual revenue.

(3) The owner or operator shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (1) and (2). [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§11-58.1-161 (Reserved).

§11-58.1-162 Municipal solid waste landfills — local government guarantee specifications. (a) Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the

requirements of section 11-58.1-156(h). The guarantee shall provide that:

(1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or

(B) Establish a fully funded trust fund as specified in section 11-58.1-158(e)(1) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancelation by certified mail to the owner or operator and to the director. Cancelation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide that alternate assurance within one hundred twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.

(b) Recordkeeping and reporting.

(1) The owner or operator shall place a certified copy of the guarantee along with the items required under section 11-58.1-160(c) into the facility's operating

record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-156(h).

(2) The owner or operator is no longer required to maintain the items specified in this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-158(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-158(b)(2), (c)(2), or (d)(2).

(3) If a local government guarantor no longer meets the requirements of section 11-58.1-160, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§§11-58.1-163 to 11-58.1-170 (Reserved).

SUBCHAPTER 5

CONSTRUCTION AND DEMOLITION LANDFILLS

§11-58.1-171 Construction and demolition landfills — applicability. (a) Sections 11-58.1-172 to 11-58.1-182 apply to new construction and demolition landfill units, except as otherwise specifically provided in this subchapter. Sections 11-58.1-177 to 11-58.1-183 apply to existing construction and demolition landfill units.

(b) Construction and demolition landfill units failing to satisfy any applicable requirement in this subchapter are considered open dumps, which are prohibited under section 4005 of RCRA and section 342H-30, HRS.

(c) The owner or operator of a construction and demolition landfill unit shall comply with any other applicable state and federal rules, laws, regulations, and other requirements. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-172 Construction and demolition landfills — permit requirements. (a) All construction and demolition landfills shall comply with section 11-58.1-104.

(b) Permit application requirements. In order to obtain a permit to construct and operate, the owner or operator of a construction and demolition landfill unit shall submit the following:

(1) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;

(2) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially

generated green waste and fifty per cent of all uncontaminated household green waste;

(3) A plan for closure in accordance with section 11-58.1-177(a);

(4) A plan for post-closure care in accordance with section 11-58.1-177(b); and

(5) Any additional information requested by the director. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-54) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30)

§11-58.1-173 Construction and demolition landfills – site analysis and siting restrictions. (a) Floodplains. Owners or operators of construction and demolition landfill units located in one hundred-year floodplains shall demonstrate that the landfill unit will not restrict the flow of the one-hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(b) Wetlands. Construction and demolition landfill units shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the landfill unit will not:

(A) Cause or contribute to violations of any applicable state water quality standard;

(B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;

(3) The landfill unit will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the landfill unit and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill unit;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the landfill unit;

(C) The volume and chemical nature of the waste managed in the landfill unit;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under section 404 of the Clean Water Act or applicable state

wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(c) Fault areas. Construction and demolition landfill units shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the landfill unit and will be protective of human health and the environment.

(d) Seismic impact zone. Construction and demolition landfill units shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(e) Unstable areas. Owners or operators of new construction and demolition landfill units located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill unit's design to ensure that the integrity of the structural components of the landfill unit will not be

disrupted. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local artificial features or events (both surface and subsurface).

(f) Tidal wave (tsunami) zone. Construction and demolition landfill units shall not be located in possible tsunami inundation areas, except where owners or operators demonstrate that engineering measures have been incorporated into the landfill unit design to ensure that the structural components of the landfill unit will not be damaged or disrupted and seawater from the tsunami run-up does not infiltrate the landfill unit. Tsunami inundation areas are those areas delineated in a report entitled "Hawaii Tsunami Mapping Project: Data Sources, Procedures, and Products for Extreme Aleutian Events, Final Report, Prepared for Hawaii Emergency Management Agency" by Kwok Fai Cheung, PhD, PE, Department of Ocean and Resources Engineering, University of Hawaii at Manoa dated June 30, 2015.

(g) Consistency with local zoning ordinance. The owner or operator of a construction and demolition landfill shall comply with all applicable local zoning ordinances and other applicable local ordinances.

[Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-174 Construction and demolition landfills - design criteria. (a) The design of new construction and demolition landfill units and lateral expansions shall be approved by the director before

commencement of construction.

(b) The design shall either:

(1) Ensure that the concentration values listed in Table 1 in 40 C.F.R. section 258.40, published by the Office of the Federal Register, as amended as of July 1, 2024, or in sections 11-20-3 to 11-20-7, whichever is more stringent, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the director under subsection (e); or

(2) Include a composite liner as described in subsection (c) and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner.

(c) To meet the requirements of subsection (b)(2), a composite liner shall consist of two components:

(1) An upper component that shall consist of a minimum 30-mil flexible membrane liner (FML) with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec and shall be installed in direct and uniform contact with the compacted soil component; provided that an FML component consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick; and

(2) A lower component that shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

(d) When approving a design that complies with subsection (b)(1), the director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(e) The relevant point of compliance specified by the director shall be no more than one hundred

fifty meters from the waste management unit boundary and shall be located on land owned by the owner of the construction and demolition landfill unit. In determining the relevant point of compliance, the director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction of flow of groundwater;

(4) The proximity and withdrawal rate of the groundwater users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;

(7) Public health, safety, and welfare effects; and

(8) Practicable capability of the owner or operator. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-175 Construction and demolition landfills – operating criteria. (a) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all construction and demolition landfill units shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with 40 C.F.R. section 761.62(b). This program shall

include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;

(2) Records of inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and

(4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(b) Cover material requirements. The application of interim cover at construction and demolition solid waste landfill units will be on a case-specific basis, as specified in the permit. It will consist of at least six inches of earthen material unless otherwise approved by the director.

(c) Disease vector control. Owners or operators of all construction and demolition landfill units shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(d) Access requirements. Owners or operators of all construction and demolition landfill units shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

(e) Run-on and run-off control systems.

(1) Owners or operators of all construction and demolition landfill units shall design, construct, and maintain:

(A) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five year storm; and

(B) A run-off control system from the active portion of the landfill to collect and control at least the water

volume resulting from a twenty-four hour, twenty-five year storm.

(2) Run-off from the active portion of the landfill unit shall be handled in accordance with subsection (f)(1).

(f) Surface water requirements. Construction and demolition landfill units shall not:

(1) Cause a discharge of pollutants into waters of the United States,including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under sections 208 or 319 of the Clean Water Act, as amended.

(g) Landfill units shall not accept the following items:

(1) Electrical transformers with oil or polychlorinated biphenyls (PCBs);

(2) Pesticide containers;

(3) Scrap automobiles;

(4) White goods;

(5) Whole motor vehicle tires; and

(6) Industrial solid waste.

(h) Liquids restrictions.

(1) Bulk or noncontainerized liquid waste shall not be placed in construction and demolition landfill units unless the waste is leachate derived from the landfill unit and the landfill unit is designed with a composite liner and leachate collection system as described in section 11-58.1-174(b)(2). The owner or operator shall place a demonstration that the conditions of section 11-58.1-174(b)(2) have been met in the operating record and notify the director

that it has been placed in the operating record.

(2) Containers holding liquid waste shall not be placed in a construction and demolition landfill unit.

(i) Landfill units may accept the following items:

(1) Friable asbestos containing material complying with chapter 11-501;

(2) Petroleum contaminated soils, if the soil complies with the landfill's permit conditions; and

(3) Hazardous waste generated by a very small quantity generator, as defined in 40 C.F.R. section 260.10, as incorporated and amended in chapter 11-260.1.

(j) Recordkeeping requirements.

(1) The owner or operator of a construction and demolition landfill unit shall record and retain near the facility in an operating record or in an alternative location approved by the director the following information as it becomes available:

(A) Any location restriction demonstration required under section 11-58.1-173;

(B) Inspection records, training procedures, and notification procedures required in subsection (a);

(C) Any construction and demolition landfill unit design documentation for placement of leachate in a landfill unit as required under subsection (h)(1);

(D) Any demonstration, certification, finding, monitoring, testing, or analytical data required by section 11-58.1-176;

(E) Closure and post-closure plans and any monitoring, testing, or analytical data as required by section 11-58.1-177(a) and (b); and

(F) Any cost estimates and financial

assurance documentation required by sections 11-58.1-178 to 11-58.1-182.

(2) The owner or operator shall notify the director when the documents from paragraph (1) have been placed or added to the operating record, and all information contained in the operating record shall be furnished upon request to the director or be made available at all reasonable times for inspection by the director.

(3) The director can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) and (2), except for the notification requirements in section 11-58.1-176(e)(7)(A)(iii).

(k) Public health, safety, and welfare. The director may require an owner or operator to fulfill any other requirements that the director believes necessary to protect the public health, safety, and welfare. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342J-30)

§11-58.1-176 Construction and demolition landfills – groundwater protection. (a) Applicability.

(1) The requirements in this section apply to all construction and demolition landfill units, except as provided in paragraph (2).

(2) Groundwater monitoring requirements under subsections (b) to (e) may be suspended by the director for a construction and demolition landfill unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that construction and demolition landfill unit to the uppermost aquifer during the active life of the unit

and the post-closure care period. This demonstration shall be certified by a qualified groundwater scientist and approved by the director, and shall be based upon:

(A) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(B) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(3) A construction and demolition landfill unit shall be in compliance with the groundwater monitoring requirements specified in subsections (b) to (e) before waste can be placed in the unit.

(4) Once established at a construction and demolition landfill unit, groundwater monitoring shall be conducted throughout the active life and post-closure care period of that unit as specified in section 11-58.1-177(b).

(5) The director may establish alternative schedules for demonstrating compliance with:

(A) Subsection (b)(4)(B), pertaining to notification of placement of certification in operating record;

(B) Subsection (d)(3)(A), pertaining to notification that statistically significant increase (SSI) notice is in operating record;

(C) Subsection (d)(3)(B) and (C), pertaining to an assessment monitoring program;

(D) Subsection (e)(2), pertaining to sampling and analyzing Appendix II constituents;

(E) Subsection (e)(4)(A), pertaining to placement of notice (Appendix II constituents detected) in record and

notification of notice in record;

(F) Subsection (e)(4)(B), pertaining to sampling for Appendix I and II;

(G) Subsection (e)(7), pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;

(H) Subsections (e)(7)(A)(iv) and (f)(1), pertaining to assessment of corrective measures;

(I) Subsection (g)(1), pertaining to selection of remedy and notification of placement in record;

(J) Subsection (h)(3)(D), pertaining to notification of placement in record (alternative corrective action measures); and

(K) Subsection (h)(6), pertaining to notification of placement in record (certification of remedy completed).

(b) Groundwater monitoring systems.

(1) A groundwater monitoring system shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(A) Represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that

provided by the upgradient wells; and

(B) Represent the quality of groundwater passing the relevant point of compliance specified by the director under section 11-58.1-174(e). The downgradient monitoring system shall be installed at the relevant point of compliance specified by the director under section 11-58.1-174(e) that ensures detection of groundwater contamination in the uppermost aquifer.

(2) The director may approve a multi-unit groundwater monitoring system instead of separate groundwater monitoring systems for each construction and demolition landfill unit when the facility has several units, if the multi-unit groundwater monitoring system meets the requirement of paragraph (1) and will be as protective of human health and the environment as individual monitoring systems for each construction and demolition landfill unit, based on the following factors:

(A) Number, spacing, and orientation of the construction and demolition landfill units;

(B) Hydrogeologic setting;

(C) Site history;

(D) Engineering design of the construction and demolition landfill units; and

(E) Type of waste accepted at the construction and demolition landfill units.

(3) Monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of representative groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above

the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(A) The owner or operator shall notify the director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(B) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The number, spacing, and depths of monitoring systems shall be:

(A) Determined based upon site-specific technical information that shall include thorough characterization of:

(i) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

(B) Certified by a qualified groundwater scientist or approved by the director. Within fourteen days of this certification, the owner or operator

shall notify the director that the certification has been placed in the operating record.

(c) Groundwater sampling and analysis requirements.

(1) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with subsection (b)(1). The owner or operator shall notify the director that the sampling and analysis program documentation has been placed in the operating record and the program shall include procedures and techniques for:

(A) Sample collection;

(B) Sample preservation and shipment;

(C) Analytical procedures;

(D) Chain of custody control; and

(E) Quality assurance and quality control.

(2) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples.

(3) The sampling procedures and frequency shall be protective of human health and the environment.

(4) Groundwater elevations shall be measured in each well immediately before purging, each time groundwater is sampled. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate

determination of groundwater flow rate and direction.

(5) The owner or operator shall establish background groundwater quality in a hydraulically upgradient or background well for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the construction and demolition landfill unit, as determined under subsections (d)(1) or (e)(1). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the construction and demolition landfill unit if it meets the requirements of subsection (b)(1)(A).

(6) The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to paragraph (7). The sampling procedures shall be those specified under subsection (d)(2) for detection monitoring, subsections (e)(2) and (e)(4) for assessment monitoring, and subsection (f)(2) for corrective action.

(7) The owner or operator shall specify in the operating record one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(B) An ANOVA based on ranks followed by

multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(D) A control chart approach that gives control limits for each constituent.

(E) Another statistical test method that meets the performance standards of paragraph (8). The owner or operator shall place a justification for this alternative in the operating record and notify the director of the use of this alternative test. The justification shall demonstrate that the alternative method meets the performance standards of paragraph (8).

(8) Any statistical method chosen under paragraph (7) shall comply with the following performance standards, as appropriate:

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents

differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(D) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the per cent of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data

distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(9) The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the construction and demolition landfill unit, as determined under subsections (d)(1) or (e)(1).

(A) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subsection (b)(1)(B) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (7) and (8).

(B) Within a reasonable period of time after completing sampling and analysis, the owner or operator shall determine

whether there has been a statistically significant increase over background at each monitoring well.

(d) Detection monitoring program.

(1) Detection monitoring is required at construction and demolition landfill units at all groundwater monitoring wells defined under subsections (b)(1)(A) and (B). At a minimum, a detection monitoring program shall include monitoring for the constituents listed in Appendix I.

(A) The director may delete any of the Appendix I monitoring parameters for a construction and demolition landfill unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(B) The director may establish an alternative list of inorganic indicator parameters for a construction and demolition landfill unit, in lieu of some or all of the heavy metals (constituents 1 to 15 of Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the construction and demolition landfill unit to the groundwater. In determining alternative parameters, the director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the construction and demolition landfill unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the construction and demolition landfill unit;

(iii) The detectability of indicator

parameters, waste constituents, and reaction products in the groundwater; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(2) The monitoring frequency for all constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for Appendix I, or the alternative list approved in accordance with paragraph (1)(B), during the first semiannual sampling event. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semi-annual sampling events. The director may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents, or the alternative list approved in accordance with paragraph (1)(B), during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(A) Lithology of the aquifer and unsaturated zone;

(B) Hydraulic conductivity of the aquifer and unsaturated zone;

(C) Groundwater flow rates;

(D) Minimum distance between upgradient

edge of the construction and demolition landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(E) Resource value of the aquifer.

(3) If the owner or operator determines, pursuant to subsection (c)(7), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), at any monitoring well at the boundary specified under subsection (b)(1)(B), the owner or operator:

(A) Shall, within twenty-four hours of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the director that this notice was placed in the operating record; and

(B) Shall establish an assessment monitoring program meeting the requirements of subsection (e) within ninety days except as provided for in subparagraph (C).

(C) The owner or operator may demonstrate that a source other than a construction and demolition landfill unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be certified by a qualified groundwater scientist or approved by the director and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue

detection monitoring as specified in this subsection. If, after ninety days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required in subsection (e).

(e) Assessment monitoring program.

(1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subsection (d)(1)(B).

(2) Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator shall sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the constituents. The director may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The director may delete any of the Appendix II monitoring parameters for a construction and demolition landfill unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph (2), during the active life (including closure)

and post-closure care of the unit considering the following factors:

(A) Lithology of the aquifer and unsaturated zone;

(B) Hydraulic conductivity of the aquifer and unsaturated zone;

(C) Groundwater flow rates;

(D) Minimum distance between the upgradient edge of the construction and demolition landfill unit and the downgradient monitoring well screen (minimum distance of travel);

(E) Resource value of the aquifer; and

(F) Nature (fate and transport) of any constituents detected in response to this section.

(4) After obtaining the results from the initial or subsequent sampling events required in paragraph (2), the owner or operator shall:

(A) Within twenty-four hours, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the director that this notice has been placed in the operating record;

(B) Within ninety days, and on at least a semiannual basis thereafter, resample all wells specified by subsection (b)(1), conduct analyses for all constituents in Appendix I, or in the alternative list approved in accordance with subsection (d)(1)(B), and for those constituents in Appendix II that are detected in response to paragraph (2), and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) shall be collected and analyzed during these sampling events. The director may specify an alternative monitoring frequency during

the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for Appendix I constituents, or the alternative list approved in accordance with subsection (d)(1)(B), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (3);

(C) Establish background concentrations for any constituents detected pursuant to paragraph (2) or (4)(B); and

(D) Establish groundwater protection standards for all constituents detected pursuant to paragraph (2) or (4). The groundwater protection standards shall be established in accordance with paragraph (8) or (9).

(5) If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in subsection (c)(7), for two consecutive sampling events, the owner or operator shall notify the director of this finding and may return to detection monitoring.

(6) If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph (8) or (9), using the statistical procedures in subsection (c)(7), the owner or operator shall continue assessment monitoring in accordance with this section.

(7) If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph (8) or (9) in

any sampling event, the owner or operator shall, within fourteen days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(A) (i) Shall characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Shall install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (4)(B);

(iii) Shall notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with paragraph (7)(A); and

(iv) Shall initiate an assessment of corrective measures as required by subsection (f) within ninety days; or

(B) May demonstrate that a source other than a construction and demolition landfill unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be certified by a qualified groundwater scientist or approved by the director

and placed in the operating record. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this subsection, and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph (5). Until a successful demonstration is made, the owner or operator shall comply with paragraph (7) including initiating an assessment of corrective measures.

(8) The owner or operator shall establish a groundwater protection standard for each Appendix II constituent detected in the groundwater. The groundwater protection standard shall be:

(A) For constituents for which the department has established a standard under paragraph (9), the standard established by the department; or

(B) For constituents for which the background level established from wells in accordance with subsection (b)(1)(A) is higher than the standard established by the department under paragraph (9) or for which the department has not established a standard under paragraph (9), the background concentration.

(9) The director may establish an alternative groundwater protection standard. These groundwater protection standards shall be appropriate health-based levels that satisfy the following criteria:

(A) The level is derived in a manner consistent with U.S. Environmental Protection Agency (EPA) guidelines for assessing the health risks of environmental pollutants (51 Fed. Reg. 33992, 34006, 34014, 34028, September 24, 1986);

(B) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 C.F.R. part 792) or equivalent;

(C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-6} range; and

(D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this section, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(10) In establishing groundwater protection standards under paragraph (9), the director may consider the following:

(A) Multiple contaminants in the groundwater;

(B) Exposure threats to sensitive environmental receptors; and

(C) Other site-specific exposure or potential exposure to groundwater.

(f) Assessment of corrective measures.

(1) Within ninety days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under subsection (e)(8) or (e)(9), the owner or operator shall initiate an assessment of corrective measures. The assessment shall be completed within a reasonable period of time.

(2) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in

subsection (e).

(3) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection (g), addressing at least the following:

(A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(B) The time required to begin and complete the remedy;

(C) The costs of remedy implementation; and

(D) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy.

(4) The owner or operator shall discuss the results of the corrective measures assessment, before the selection of remedy, in a public meeting with interested and affected parties.

(g) Selection of remedy.

(1) Based on the results of the corrective measures assessment conducted under subsection (f), the owner or operator shall select a remedy that, at a minimum, meets the standards listed in paragraph (2). The owner or operator shall notify the director, within fourteen days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (2).

(2) Remedies shall:

(A) Be protective of human health and the environment;

(B) Attain the groundwater protection standard as specified pursuant to

subsection (e)(8) or (9);

(C) Control the source of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and

(D) Comply with standards for management of wastes as specified in subsection (h)(4).

(3) In selecting a remedy that meets the standards of paragraph (2), the owner or operator shall consider the following evaluation factors:

(A) The long- and short-term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(B) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(C) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technology;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(D) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(E) The degree to which community concerns are addressed by a potential remedy.

(4) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the:

(A) Extent and nature of contamination;

(B) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under subsection (e)(7) or (8) and other objectives of the remedy;

(C) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(D) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(E) Potential risks to human health and the environment from exposure to contamination before completion of the remedy;

(F) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Groundwater removal and treatment costs; and

(vii) The cost and availability of alternative water supplies;

(G) Practicable capability of the owner or operator; and

(H) Other relevant factors.

(5) The director may determine that remediation of a release of an Appendix II constituent from a construction and demolition landfill unit is not necessary if the owner or operator demonstrates to the satisfaction of the director that:

(A) The groundwater is additionally contaminated by substances that have originated from a source other than a construction and demolition landfill unit and that those substances are present in concentrations such that cleanup of the release from the construction and demolition landfill unit would provide no significant reduction in risk to actual or potential receptors; or

(B) The constituent is present in groundwater that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration that would exceed the groundwater protection standards established under subsection (e)(8) or (9); or

(C) Remediation of the release is technically impracticable; or

(D) Remediation results in unacceptable cross-media impacts.

(6) A determination by the director pursuant to paragraph (5) shall not affect the authority of the director to require the owner or

operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

(h) Implementation of the corrective action program.

(1) Based on the schedule established under subsection (g)(4) for initiation and completion of remedial activities the owner or operator shall:

(A) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under subsection (e);

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with groundwater protection standard pursuant to paragraph (5);

(B) Implement the corrective action remedy selected under subsection (g); and

(C) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subsection (g). The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and

implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(2) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of subsection (g)(2) are not being achieved through the remedy selected. In these cases, the owner or operator shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph (3).

(3) If the owner or operator determines that compliance with requirements under subsection (g)(2) cannot be practically achieved with any currently available methods, the owner or operator shall:

(A) Obtain certification of a qualified groundwater scientist or approval by

the director that compliance with the requirements under subsection (g)(2) cannot be practically achieved with any currently available methods;

(B) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(C) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(D) Notify the director at least fourteen days before implementing alternative measures that a report justifying the alternative measures has been placed in the operating record.

(4) All solid wastes that are managed pursuant to a remedy required under subsection (g), or an interim measure required under paragraph (1)(C), shall be managed in a manner:

(A) That is protective of human health and the environment; and

(B) That complies with applicable RCRA requirements.

(5) Remedies selected pursuant to subsection (g) shall be considered complete when:

(A) The owner or operator complies with the groundwater protection standards established under subsection (e)(8) or (9) at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subsection (b)(1);

(B) Compliance with the groundwater protection standards established under

subsection (e)(8) or (9) has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard for a period of three consecutive years using the statistical procedures and performance standards in subsection (c)(7) and (8). The director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard taking into consideration:

(i) Extent and concentration of the release;

(ii) Behavior characteristics of the hazardous constituents in the groundwater;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the groundwater; and

(C) All actions required to complete the remedy have been satisfied.

(6) Upon completion of the remedy, the owner or operator shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of paragraph (5) has been placed in the operating record. The certification shall be signed by the owner or operator and by a qualified groundwater scientist or approved by the director.

(7) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under

paragraph (5), the owner or operator shall be released from the requirements for financial assurance for corrective action under section 11-58.1-178(d). [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-54) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-177 Construction and demolition landfills — closure and post-closure care. (a) Closure criteria.

(1) Owners or operators of all construction and demolition landfill units shall install a final cover system that is designed to minimize infiltration and erosion. The final cover system shall:

(A) Be comprised of an erosion layer underlain by an infiltration layer;

(B) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1 x 10^{-5} cm/sec, whichever is less;

(C) Minimize infiltration through the closed construction and demolition landfill by the use of an infiltration layer that contains a minimum eighteen inches of earthen material; and

(D) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum six inches of earthen material that is capable of sustaining native plant growth.

(2) The director may approve an alternative final cover design that includes:

(A) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraph (1)(B) and (C); and

(B) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (1)(D).

(3) The owner or operator shall prepare a written closure plan that describes the steps necessary to close all construction and demolition landfill units at any point during their active life in accordance with the cover design requirements in paragraph (1) or (2), as applicable. The closure plan, at a minimum, shall include the following information:

(A) A description of the final cover, designed in accordance with paragraph (1) and the methods and procedures to be used to install the cover;

(B) An estimate of the largest area of the construction and demolition landfill unit ever requiring a final cover as required under paragraph (1) at any time during the active life;

(C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.

(4) The owner or operator of an existing construction and demolition landfill unit shall notify the director that a closure plan has been prepared and placed in the operating record no later than six months after the effective date of these rules or ninety days before beginning closure, whichever is earlier.

(5) No less than ninety days before beginning closure of each construction and demolition landfill unit as specified in paragraph (6), an owner or operator shall notify the director that a notice of intent to close the unit has been placed in the operating

record.

(6) The owner or operator shall begin closure activities of each construction and demolition landfill unit within thirty days after the date on which the unit receives the known final receipt of wastes or, if the construction and demolition landfill unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the construction and demolition landfill unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed construction and demolition landfill unit.

(7) The owner or operator of all construction and demolition landfill units shall complete closure activities of each construction and demolition landfill unit in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in paragraph (6). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed construction and demolition landfill unit.

(8) Following closure of each construction and demolition landfill unit, the owner or operator shall notify the director that a certification, signed by an independent

registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(9) (A) Following closure of all construction and demolition landfill units, the owner shall:

(i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director for approval;

(ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and

(iii) Following recording, notify the director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.

(B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a landfill facility; and

(ii) The land's use is restricted under subsection (b)(3)(C).

(10) The owner may request permission from the director to terminate the environmental covenant if all wastes are removed from the facility.

(b) Post-closure care requirements.

(1) Following closure of each construction and demolition landfill unit, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:

(A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(B) Maintaining and operating the leachate collection system in accordance with the requirements in section 11-58.1-174, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment; and

(C) Monitoring the groundwater in accordance with the requirements of section 11-58.1-176 and maintaining the groundwater monitoring system, if applicable.

(2) The length of the post-closure care period may be:

(A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

(B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.

(3) The owner or operator of all construction and demolition landfill units shall prepare a written post-closure plan that includes, at a minimum, the following information:

(A) A description of the monitoring and maintenance activities required in paragraph (1) for each construction and demolition landfill unit, and the

frequency at which these activities will be performed;

(B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this subchapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(4) The owner or operator of an existing construction and demolition landfill unit shall notify the director that a post-closure plan has been prepared and placed in the operating record no later than six months after the effective date of these rules or ninety days before beginning closure, whichever is earlier.

(5) Following completion of the post-closure care period for each construction and demolition landfill unit, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record. [Eff and comp] (Auth: HRS §§321-11,

342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-178 Construction and demolition landfills — financial assurance. (a) Applicability. The requirements of this section apply to owners and operators of all construction and demolition landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Financial assurance for closure.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all construction and demolition landfill units ever requiring a final cover as required under section 11-58.1-177(a) at any time during the active life in accordance with the closure plan. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate shall equal the cost of closing the largest area of all construction and demolition landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 11-58.1-177(a)(3)(B)).

(B) During the active life of the construction and demolition landfill unit, the owner or operator shall annually adjust the closure cost estimate for inflation.

(C) The owner or operator shall increase the closure cost estimate and the amount of financial assurance required

under paragraph (2) if changes to the closure plan or construction and demolition landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the construction and demolition landfill unit. The owner or operator shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each construction and demolition landfill unit shall establish financial assurance for closure of the construction and demolition landfill unit in compliance with subsection (e). The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section 11-58.1-177(a)(8) and (9).

(c) Financial assurance for post-closure care.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the construction and demolition landfill unit in compliance with the post-closure plan developed under section 11-58.1-177(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the

entire post-closure care period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the construction and demolition landfill unit and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or construction and demolition landfill unit conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each construction and demolition landfill unit shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section 11-58.1-177(b). The owner or operator shall provide continuous coverage for post-closure care until released from

financial assurance requirements for post-closure care by demonstrating compliance with section 11-58.1-177(b)(5).

(d) Financial assurance for corrective action.

(1) An owner or operator of a construction and demolition landfill unit required to undertake a corrective action program under section 11-58.1-176(h) shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under section 11-58.1-176(h). The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The owner or operator shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section 11-58.1-176(h)(6).

(B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if changes in the corrective action program or construction and demolition landfill unit conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the

corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each construction and demolition landfill unit required to undertake a corrective action program under section 11-58.1-176(h) shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with section 11-58.1-176(h)(6) and (7).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators shall choose from the options specified in paragraphs (1) to (10).

(1) Trust fund.

(A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this paragraph. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be placed in the facility's operating record.

(B) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the construction and demolition landfill unit, whichever is shorter, in the case of a trust fund for closure or post-

closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(C) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{CE-CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{RB-CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total

costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(E) The initial payment into the trust fund shall be made before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h).

(F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.

(G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(2) Surety bond guaranteeing payment or performance.

(A) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). The owner or operator shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(B) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).

(C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(D) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1)(B) to (E).

(E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

(F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this subsection.

(G) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(3) Letter of credit.

(A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit shall be effective before the initial receipt of waste in

the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). The owner or operator shall notify the director that a copy of the letter of credit has been placed in the operating record. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.

(C) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, except as provided in paragraph (11). The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain

alternate financial assurance.

(D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(4) Insurance.

(A) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance shall be effective before the initial receipt of waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator shall notify the director that a copy of the insurance policy has been placed in the operating record.

(B) The closure or post-closure care insurance policy shall guarantee that funds will be available to close the construction and demolition landfill unit whenever final closure occurs or to provide post-closure care for the construction and demolition landfill unit whenever the post-closure care period begins, whichever applies. The policy shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(C) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(E) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.

(F) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face

amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this subsection.

(G) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.

(H) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(5) Corporate financial test. (Reserved.)

(6) Local government financial test. An owner or operator that satisfies the requirements of section 11-58.1-180(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-180(d).

(7) Corporate guarantee. (Reserved.)

(8) Local government guarantee. An owner or

operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-182. The guarantor shall meet the requirements of the local government financial test in section 11-58.1-180 and shall comply with the terms of the written guarantee specified in section 11-58.1-182. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-180(d).

(9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.

(10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and corrective action requirements of sections 11-58.1-176 and 11-58.1-177, or assures that the funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this subsection. Any state assumption of responsibility shall meet the criteria specified in paragraph (12).

(11) Use of multiple financial mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms shall be as specified in paragraphs (1) to (10), except

that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, may be provided by a combination of mechanisms rather than a single mechanism.

(12) The language of the mechanisms listed in paragraphs (1) to (10) shall ensure that the instruments satisfy the following criteria:

(A) The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(B) The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed;

(C) The financial assurance mechanisms shall be obtained by the owner or operator prior to the initial receipt of solid waste in the case of closure and post-closure care and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h), until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).

(D) The financial assurance mechanisms shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-179 (Reserved).

§11-58.1-180 Construction and demolition landfills – local government financial test specifications. (a) Financial component.

(1) The owner or operator shall satisfy subparagraph (A) or (B) as applicable:

(A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

(i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(3) A local government is not eligible to assure its obligations under this section if it:

(A) Is currently in default on any outstanding general obligation bonds;

(B) Has any outstanding general obligation

bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

(C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (2).

(4) The following terms used in this subsection are defined as follows:

(A) Deficit equals total annual revenues minus total annual expenditures;

(B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(C) Total expenditures include all expenditures excluding capital outlays and debt repayment;

(D) Cash plus marketable securities is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial

receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(c) Recordkeeping and reporting requirements.

(1) The local government owner or operator shall place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);

(ii) Provides evidence and certifies that the local government meets the conditions of subsection (a)(1), (a)(2), and (a)(3); and

(iii) Certifies that the local government meets the conditions of subsections (b) and (d).

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for

local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

(C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and

(D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(2) The items required in paragraph (1) shall be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or

(B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-176(h).

(3) After the initial placement of the items in the facility's operating record, the local

government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-178(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements section 11-58.1-178(b)(2), (c)(2), or (d)(2).

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-178, place the required submissions for that assurance in the operating record, and notify the director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the

local government shall provide alternate financial assurance in accordance with section 11-58.1-178(e).

(d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total annual revenue.

(2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under 40 C.F.R. part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The total that may be assured shall not exceed forty-three per cent of the local government's total annual revenue.

(3) The owner or operator shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (1) and (2). [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-181 (Reserved).

§11-58.1-182 Construction and demolition landfills — local government guarantee specifications. (a) Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). The guarantee shall provide that:

(1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or

(B) Establish a fully funded trust fund as specified in section 11-58.1-178(e)(1) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancelation by certified mail to the owner or operator and to the director. Cancelation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide that alternate assurance within one hundred

twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.

(b) Recordkeeping and reporting.

(1) The owner or operator shall place a certified copy of the guarantee along with the items required under section 11-58.1-180(c) into the facility's operating record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h).

(2) The owner or operator is no longer required to maintain the items specified in this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-178(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-178(b)(2), (c)(2), or (d)(2).

(3) If a local government guarantor no longer meets the requirements of section 11-58.1-180, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

[~~§11-58.1-19 Construction~~] **§11-58.1-183 Existing construction and demolition [~~solid waste landfill.~~] landfills.** (a) Applicability. This section is applicable to [~~the landfilling of all~~] existing construction and demolition [~~solid wastes. The landfill shall be designed, constructed, and operated to properly dispose of construction and demolition wastes. "Construction and demolition waste" is solid waste resulting from the construction, repair, demolition, or razing of buildings, of roads, and other structures. It includes the land clearing debris from the clearing of land for construction. Construction and demolition wastes typically consist of concrete, hollow tile, bituminous concrete, asphaltic pavement, wood, glass, masonry, roofing, siding, plaster, alone or in combinations. Land clearing debris typically consist of dirt, rock, stumps, boulders, brush, and other similar material. Demolition and construction waste does not include cleanup materials contaminated with hazardous wastes, asbestos, waste paints, solvents, sealers, adhesives, or similar materials.~~] landfill units.

(b) Permit [~~requirements. (1)~~] requirement. All construction and demolition [~~solid waste landfills~~] landfill units [~~require a permit and must~~] shall comply with [~~sections 11-58.1-4 and 11-58.1-12(a), unless exempted.~~] section 11-58.1-104.

(c) Permit application. [~~(2)~~] The application shall [~~contain an engineering report and an operation plan.~~] include:

(1) Engineering report. The engineering report shall include a leachate management plan, site description, utilization, solid waste characteristics and volume, user population, and a controlled access to the landfill[~~.~~];

(2) [~~In addition to the requirements in section 11-58.1-12(a), the operation plan shall include methods to control insects, birds, rodents, other disease vectors, nuisance conditions, drainage, and develop an emergency fire plan.~~] Operation plan;

(3) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;

(4) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste;

(5) Closure plan in accordance with section 11-58.1-177(a);

(6) Post-closure plan in accordance with section 11-58.1-177(b); and

(7) Any additional information requested by the director.

[~~(c)~~] (d) [~~Design requirements.~~] Siting restrictions.

(1) Landfills shall not be located in areas susceptible to flooding, in wetlands, close to potable water supplies, near fault areas, or any other unstable locations.

(2) Reserved.

(e) Design requirements.

(1) The landfill unit shall be designed, constructed, and operated to properly dispose of construction and demolition wastes.

(2) The permeability of the underlying soil liner will be dependent on the hydrogeological condition of the area. It [~~will~~] shall consist of a minimum of two feet thick layer of soil, with a maximum permeability of 1×10^{-5} [~~cm per sec.~~] cm/sec or an alternative design, with approval on a case specific basis.

(3) When required, [~~ground water~~] groundwater monitoring systems [~~will~~] shall include a minimum of three monitoring wells, located to provide adequate data of [~~ground water~~] groundwater movement and quality. Additional wells may be required by the director.

[~~(d)~~] (f) Operating requirements.

(1) [~~Implement the operation~~] Landfill units shall be operated in accordance with the procedures in the operation plan.

(2) [~~The landfills~~] Landfill units shall not accept the following items:

(A) Hazardous waste [~~as defined in these rules.~~], including hazardous waste generated by a very small quantity generator, as defined in 40 C.F.R. section 260.10, as incorporated and amended in chapter 11-260.1, except as allowed in paragraph (8);

(B) Electrical transformers with oil or polychlorinated biphenyls [~~(PCB) or when generated from other than demolition projects.~~] (PCBs);

(C) Pesticide containers[~~, unless they meet the requirements of 40 CFR 261.7 and 261.4(b) household waste.~~];

(D) [~~Liquids, as defined in these rules.~~] Liquid waste;

(E) Scrap automobiles;

(F) White goods;

(G) Whole motor vehicle tires; and

(H) Industrial solid waste.

(3) [~~The owner and/or operator shall record at the bureau of conveyances the landfill location on the property and on any other instrument that would normally be examined during the title search and note any land use restrictions from the closure plans. The notation shall notify any potential purchaser of the property that the area has been used for construction and demolition solid waste landfill.~~] Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all construction and demolition landfill units shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated

biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with 40 C.F.R. section 761.62(b). This program shall include, at a minimum:

(A) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;

(B) Records of inspections;

(C) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and

(D) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(4) The application of interim cover of earthen material will be on a case-specific basis and [~~will~~] shall be a minimum of [~~six inches.~~] six inches. Final cover shall be two feet of earthen material or as approved in the closure plan.

(5) The facility shall maintain daily operating records. At a minimum, [~~it should~~] records shall include [~~weights (or volumes),~~] number of vehicles [~~entering, source and~~] entering and weights or volumes, source, and type of solid waste being disposed. Major deviation from the operations plan (fires and explosions) [~~should~~] shall be noted on the daily operating record.

(6) Landfills may accept friable asbestos containing material complying [~~to the latest 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) Regulations.~~] with chapter 11-501.

(7) Petroleum contaminated soils may be accepted at the landfill if the contaminated soil complies with the landfill's [~~special~~] permit conditions.

(8) A construction and demolition landfill unit that meets the requirements of sections 11-58.1-173 to 11-58.1-176 may receive hazardous waste generated by a very small quantity generator, as defined in 40 C.F.R. section 260.10, as incorporated and amended in chapter 11-260.1.

(g) Access requirements. Owners or operators of construction and demolition landfills shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

[~~(c)~~] (h) [~~Ground water~~] Groundwater protection.

(1) [~~Ground water~~] Groundwater protection and monitoring plans are required unless the applicant can justify their omission. The monitoring plan shall include:

(A) Location of the monitoring wells;

(B) Detailed description of the monitoring well construction;

(C) A monitoring well head protection or security plan; and

(D) Boring log of each monitoring well.

(2) Prior to starting operations, the [~~ground water~~] groundwater monitoring wells [~~will~~] shall be sampled and tested by the applicant to establish baseline data for the landfill. The chemicals to be tested shall include, but not be limited to the following:

Heavy Metals:
Arsenic
Barium
Cadmium
Chromium
Lead
Mercury
Selenium
Silver

Volatile Organic Compounds (VOCs):
Chemical Oxygen Demand (COD)
Total Organic Carbon (TOC)
Total Petroleum Hydrocarbon (TPH) for diesel, oil, and grease

Others:
Cyanide

(3) A sampling plan including tests to be performed, methods to be used, and frequency of sampling [~~must~~] shall be submitted for approval. The method used for testing [~~should~~] shall be equivalent to [~~EPA-SW-846~~] EPA publication SW-846, Test Methods for Evaluating Solid Waste, Third Edition.

(4) Corrective actions shall be submitted should the results of testing be deficient. The results of the testing [~~must~~] shall be submitted to the director for evaluation.

[~~(f)~~] (i) Closure [~~and post-closure~~] requirements. [~~The owner and/or operator shall develop a closure plan in accordance with section 11-58.1-17 as part of the application for a permit.~~]

(1) The owner or operator shall complete closure activities in accordance with the approved closure plan, unless otherwise approved by the director.

(2) (A) Following closure of all construction and demolition landfill units, the owner shall:

(i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director for approval;

(ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and

(iii) Following recording, notify the

director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.

(B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a landfill facility; and

(ii) The land's use is restricted during the post-closure period as described in the post-closure plan. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with other requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(3) The owner may request permission from the director to terminate the environmental covenant if all wastes are removed from the facility.

(j) Post-closure requirements. The owner or operator shall complete post-closure activities in accordance with the approved post-closure plan, unless otherwise approved by the director.

[~~(g)~~](k) Financial assurance. The owner [~~and/or~~] or operator shall develop [~~a~~] cost estimates and establish financial assurance [~~plan~~] in accordance with [~~section 11-58.1-18.~~] sections 11-58.1-178 to 11-58.1-182.

[~~(h)~~](l) Reporting requirement. At a minimum, an annual report shall be submitted to the department no later than [~~thirty days after June 30~~] July 31 of each year. The annual report shall [~~detail the~~] include:

(1) The volume or weight of solid waste received at the facility[~~, the~~];

(2) The origin and transporter of the solid waste[~~.~~]; and

(3) Additional information, as requested by the department. [Eff 1/13/94; §11-58.1-19; am, ren §11-58.1-183, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30)

§§11-58.1-184 to 11-58.1-190 (Reserved).

[~~§11-58.1-20 Solid waste incinerator and refuse-derived fuel processing facility.~~ ~~(a) Applicability. This section regulates facilities designed to reduce volume of solid waste by the use of an enclosed device using controlled combustion. Solid waste used for incineration must not include materials contaminated with hazardous waste as defined in these rules. In addition, those facilities handling and disposing infectious waste must comply with the applicable provisions of chapter 104 of this title. Regulations governing construction and operation of solid waste incinerators for purposes of air pollution control are set forth in chapter 60 of this title.~~

~~(b) Exemption. Exemption for a permit is contained in section 11-58.1-4(b).~~

~~(c) Permit requirements.~~

~~(1) All solid waste incinerators or refuse derived fuel processing facilities require a permit and must comply with section 11-58.1-04, unless otherwise exempted. Other permit~~

~~requirements are listed in section 11-58.1-12(a).~~

~~(2) Site analysis. A site plan and analysis shall be submitted with the application. The analysis shall include a brief description of the area, the location of any equipment and machinery, surrounding land uses, public access, and, where determined by the director, a description of mitigative measures taken to reduce the impact of facility upon neighboring properties.~~

~~(d) Design requirements.~~

~~(1) An engineering report which addresses a general description of the overall process, design criteria, anticipated performance and a process flow diagram.~~

~~(2) Equipment. A description of the overall operation and a functional description of all processing equipment to be used in the remediation process and the personnel trained to operate them.~~

~~(3) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(4) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~

~~(5) A description of the ash residue system, the ash removal procedures and the landfill or landfills that will receive the ash residue.~~

~~(6) Operation plan. The operation plan shall include a description of the process and the equipment necessary, by-products produced, and the means for their disposal.~~

~~(7) Design the energy recovery facilities and~~

~~solid waste incinerators in compliance with state air pollution control authority emission and operating requirements.~~

~~(8) Provide equipment and space for the storage and charge areas and elsewhere to allow periodic cleaning and temporary upsets as may be required in order to maintain the plant in a vector free, sanitary, and clean condition.~~

~~(c) Operating requirements.~~

~~(1) Each owner or operator shall operate their facility in accordance with the operation plan submitted and approved during the application for a permit. The operation plan should be used in the operation of the disposal facility. The operation plan shall address alternative storage and/or disposal plans for all breakdowns that would result in overfilling of the storage facility. The plan shall also include effective methods to control liquids, insects, birds, rodents, emergency fire explosions, and other disease vectors and nuisance conditions at the facility.~~

~~(2) All solid waste received at the facility and ash residues must be weighed and recorded and the results must be incorporated in the annual report.~~

~~(3) Ash residue generated by energy recovery facilities or solid waste incinerators shall be handled as special waste unless determined to be otherwise and shall be disposed in an ash monofill or as determined by the director.~~

~~(4) Reporting. The owner or operator must submit to the director an annual report by the end of July for the previous fiscal year (July 1 - June 30). The report shall cover the facility's activities during previous fiscal year.~~

~~(5) The facility shall maintain daily operating~~

~~records. At a minimum, it should include weights (or volumes), number of vehicles entering, source and type of solid waste being disposed. Major deviation from the operations plan (fires and explosions) should be noted on the daily operation record.~~

~~(6) The incinerator shall not accept the following items:~~

~~(A) Hazardous waste as defined in these rule.~~

~~(B) Electrical transformers with oil or polychlorinated biphenyls (PCB) or when generated from other than demolition projects.~~

~~(C) Pesticide containers, unless they meet the requirements of 40 CFR 261.7 and 261.4(b) household waste.~~

~~(D) Liquids, as defined in these rules.~~

~~(f) Sampling and testing. The owner or operator must test the ash residue within one month following the date in which the solid waste incinerator begins operating and must continually test semi-annually thereafter, or as determined by the director. The ash residue must contain less than ten percent organic matter by weight. The frequency of testing for organic matter will be determined by the director. A representative sample of solid waste and ash residue shall be tested for the following: arsenic, barium, cadmium, chromium (total and hexavalent), lead, mercury, selenium, silver, and any other parameters determined by the director to be necessary or should be eliminated. The test methods used shall be EPA documented (SW-846, Test Methods for Evaluating Solid Waste, Third Edition) or its equivalent.~~] [Eff 1/13/94; R]

[~~SUBCHAPTER 3~~

~~SOLID WASTE STORAGE, HANDLING, AND PROCESSING~~

~~FACILITIES~~]

[~~§11-58.1-31 Transfer stations.~~ ~~(a) Applicability. All solid waste transfer stations are subject to the requirements set forth in this subchapter.~~

~~(b) Permit requirements. In order to obtain a permit to construct and operate, each transfer station shall submit the following:~~

~~(1) Site analysis. A site plan and analysis of the facility which illustrates the location of all structures including storage areas on the site; offices, maintenance areas, planned areas for expansion, and property boundaries. Included in the analysis will be a description of neighboring land uses and measures taken to mitigate interference with those existing or anticipated uses.~~

~~(2) Design requirements.~~

~~(A) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(B) Machinery and equipment. A description of machinery and equipment to be used at the facility.~~

~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The transfer station shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~

~~(D) Facility sign. Provide a posted sign which displays owner or operators of the facility, the hours of operation and a contact in case of emergency. The sign shall clearly state which wastes~~

~~are or are not acceptable at the site.~~

~~(3) Operation plan. An operation plan shall be submitted with the permit application which includes the following:~~

~~(A) General operations. A description of its purpose, the facility's general operating plan including origin, composition, and expected volume of solid waste to be handled at the site.~~

~~(B) Acceptable wastes. Only household waste and commercial waste shall be accepted at the facility. No industrial waste, infectious waste, construction and demolition waste, or regulated hazardous waste shall be accepted unless specifically approved by the director.~~

~~(C) Ultimate disposal of waste. All solid waste passing through this facility shall be collected, treated, recycled, or disposed of at a solid waste disposal facility authorized by the department.~~

~~(D) Transfer route. Provide a plan for the transfer of the solid waste including route, frequency, haulers, and alternative transfer routes.~~

~~(4) Closure plan. As part of the application for a permit, the owner or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements.~~

~~(1) Operational records. Operational records shall be maintained and shall include a daily log of the volume of solid waste received, transported, and disposal site of the solid waste.~~

~~(2) Annual report. An annual report shall be submitted to the director no later than thirty days after June 30 of each year. The annual report shall detail the volume or weight of solid waste received at the~~

~~facility, the origin and transporter of the solid waste and the ultimate disposal site. One combined report may be submitted for owners with more than one transfer station.~~]
[Eff 1/13/94; R]

[~~§11-58.1-32 Recycling and materials recovery facilities.~~ ~~(a) Applicability. This Subpart regulates the construction and operation of recyclables handling and recovery facilities including but not limited to the following:~~

- ~~(1) Recycling centers which process only source separated materials such as batteries, motor oil, and metal sludges.~~
- ~~(2) Recycling facilities which separate recyclables from nonrecyclables on-site.~~
- ~~(3) Recycling facilities which only collect, buy, broker, bale, compact or shred recyclable materials.~~
- ~~(4) Exemptions. The following facilities are exempt from regulation under this section.~~
  - ~~(A) Composting operations which separate or treat greenwaste, sludge, or ash. These are regulated in sections 11-58.1-04 and 11-58.1-41.~~
  - ~~(B) Facilities which process hazardous or other regulated wastes as determined by 40 CFR 261 and the Clean Air Act and do not produce a recycled material or solid waste requiring disposal.~~
  - ~~(C) Buy back and refillable container centers.~~
  - ~~(D) Recycling drop-off centers are permitted by rule and are not subject to this subchapter.~~
  - ~~(E) Manufacturers that use clean, source separated paper products, glass, and plastic as feedstock for their manufacturing process, and which as a result of this process, produce an end-~~

product for resale.

(F) Repair and re-sale of clean, source separated clothing, residential and commercial furniture.

(5) Recycling facilities which are in operation at the time this subchapter becomes effective shall complete the requirements for a permit within one year after the effective date of these rules.

(b) Permit requirements. A permit is required to construct and operate a facility used in the recovery, collection, storage, or treatment of recyclable material. The application shall contain the following:

(1) Site analysis. A site analysis shall be submitted and shall include at least a site plan, description of siting of equipment and machinery, public access, and turnaround areas. The site analysis shall include surrounding land uses and, where determined necessary by the director, describe mitigative measures taken to reduce the impact of the facility upon neighboring properties.

(2) Design requirements.

(A) Equipment. A description of the overall operation and a functional description of all processing equipment to be used to load, bale, shred, compact, or process recyclables and the personnel trained to operate them.

(B) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run- off of rainwater shall be provided.

(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.

~~(3) Operation plan. An operation plan shall be submitted to the director detailing the following:~~

~~(A) Recoverable materials collected. A description of the recoverable materials proposed to be collected, stored, treated, and/or disposed of at the facility including the current management of the recoverable materials.~~

~~(B) A means of weighing or measuring all materials accepted at the facility and a means of weighing or measuring residue, bypass waste, and recyclables recovered.~~

~~(C) Residue disposal. Intended disposal measures and capacities for residue created or separated during processing.~~

~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements. An annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume in tons of each recoverable material collected, processed, shipped, and disposed of.~~] [Eff 1/13/94; R]

[~~§11-58.1-33 Solid waste salvage facilities.~~

~~(a) Applicability. This subchapter regulates the construction and operation of materials recovery facilities. This includes, but is not limited to, automobile dismantlers, scrap metal, and white goods processors, and junkyards.~~

~~(1) Exemptions. The following facilities are exempt from regulations under this subchapter.~~

~~(A) Facilities which store twenty-five cars or less at any one time.~~

~~(B) Facilities which store twenty-five units of white goods or less at any one time.~~

~~(b) Permit requirement. A permit is required to construct and operate a materials recovery facility. The application shall contain the following:~~

~~(1) Site analysis. A site plan and analysis including the siting of any equipment and machinery, surrounding land uses, and public access.~~

~~(2) Design requirements.~~

~~(A) Equipment. A description of the overall operation and a functional description of all processing equipment to be used and the personnel to operate them.~~

~~(B) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run- of" of rainwater shall be provided.~~

~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The salvage facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~

~~(3) Operation plan. An operation plan shall be submitted and should include a brief description of the process, recoverable materials proposed to be collected, stored, and disposed at the facility A means of weighing or measuring the incoming materials and a description of the intended method of disposal of the salvageable by-products must be included.~~

~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements. At a minimum, an~~

~~annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and the salvageable material recovered and how disposed.~~] [Eff 1/13/94; R]

[~~SUBCHAPTER 4~~

~~SOLID WASTE RECLAMATION FACILITIES~~]

[~~§11-58.1-41 Composting facilities.~~ ~~(a) Applicability. This section regulates the construction and operation of composting facilities for sewage sludge, green waste (yard waste), and other solid wastes.~~

~~(A) Exemption. Composting facilities processing less than three thousand tons of green wastes (yard wastes) per year are permitted by rule.~~

~~(b) Permit requirements:~~

~~(1) Site analysis. A site analysis shall be submitted and shall include at least a site plan, description of the siting of equipment and machinery, public access, and turnaround areas. The site analysis shall include surrounding land uses and, where determined necessary by the director, describe mitigative measures taken to reduce the impact of the facility upon neighboring properties.~~

~~(2) Design requirements.~~

~~(A) Provide engineering plans and specifications for the entire composting facility, including manufacturer's performance data for the selected equipment.~~

~~(B) The composting facility must have sufficient temperature monitoring to~~

ensure that the pathogen reduction criteria are met. For a windrow and an aerated static pile process, this may include monitoring six to eight inches below the pile surface and for an aerated static pile process, six to eight inches from the outlet of the aeration pipe. For an enclosed vessel system, this may include monitoring six to eight inches inside the vessel wall and six to eight inches from the aeration piping (when operating in the positive aeration mode). Temperature monitoring must occur, at a minimum, on a daily basis.

(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The transfer station shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.

(D) The waste storage area and the active composting, curing, and compost storage areas must be located on surfaces capable of minimizing leachate release into the groundwater under the site and the surrounding land surface.

(E) All leachate must be collected and treated by a method (in the engineering report) approved by the department.

(F) For composting system using only sewage sludge with an additive such as wood chips, the maximum contaminant concentrations of the sewage sludge shall meet the applicable standards in 40 CFR Part 503. Since other contaminants may be present in the sewage sludge as indicated by discharge monitoring and other industrial pre-

~~treatment requirements; the department, on a case specific basis, may determine the maximum allowable concentrations of these contaminants in the sewage sludge.~~

~~(G) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(3) Operation plan.~~

~~(A) Provide a description of the type and size of the facility, detention times for handling and processing the material, a process flow diagram of the entire process, and all the major equipment required. Include in the report monitoring information, such as the locations of all the temperature monitoring points and their frequency of reading.~~

~~(B) Provide a detailed description of the source, quality and quantity of the solid waste to be composted, including the source, quality, and expected quantity of any bulking agent to be used. If sewage sludge is to be composted, data on the material must be submitted.~~

~~(C) The compost from composting operations shall be nonpathogenic, free of offensive odors, biologically and chemically stable, and free of injurious components or particles, and able to sustain plant growth. Rejects generated by the composting process shall be disposed of in accordance with these rules.~~

~~(D) Solid waste that possess a pathogen concern, shall be composted and meet the criteria for reducing pathogens. Three acceptable methods are:~~

~~(i) Using the windrow composting~~

~~method, the solid waste is maintained under aerobic conditions during the composting process. A minimum of five turnings is required during a period of fifteen consecutive days with the temperature of the mixture being fifty-five degrees Celsius or greater within six to eight inches below the surface of the pile.~~

~~(ii) Using the aerated static pile composting method, the compost pile must be insulated and a temperature of not less than fifty-five degrees Celsius or greater must be maintained throughout the compost pile for at least three consecutive days.~~

~~(iii) Using the enclosed vessel composting method, the mixture must be maintained at a temperature of not less than fifty-five degrees Celsius or greater throughout the mixture for at least three consecutive days.~~

~~(iv) Other methods may be submitted to the director and they will be approved on a case-by-case basis.~~

~~(E) Provide a description of the ultimate use for the finished compost and the method of removal from the site. Include a plan for disposal of the finished compost that cannot be used.~~

~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements. At a minimum, an annual report shall be submitted to the department, not later than thirty days after June 30 of each year. The report must include:~~

~~(A) The type and quantity, by weight or volume after primary processing, of solid waste received by the facility.~~
~~(B) The quantity, by weight or volume, of compost produced and removed from the facility.~~
~~(C) A summary of monitoring done during the operation.~~] [Eff 1/13/94; R]

[~~§11-58.1-42 Remediation facilities.~~ ~~(a) Applicability. This subchapter regulates the construction and operation of off-site remedial facilities. It will include, but not be limited to facilities utilizing the physical, chemical, and biological conversion processes in the recovery of waste materials. Each process will use the best practicable technology and must be in the best interest of the public. Facilities developed for a one-time operation are exempt from these regulations.~~

~~(b) Permit requirements.~~

~~(1) Site analysis. A site plan and analysis shall be submitted with the application. The analysis shall include a brief description of the area, the location of any equipment and machinery, surrounding land uses, public access, and where determined by the director, a description of mitigative measures taken to reduce the impact of facility upon neighboring properties.~~

~~(2) Design requirements.~~

~~(A) Unless specified by the director, the area on which the material is to be placed shall be impermeable to prevent subsurface soil and potential ground water contamination with a system to collect leachate and runoff. If a liner is used it should be of sufficient thickness and strength to withstand stresses imposed by vehicles and the~~

material itself.

(B) Equipment. A description of the overall operation and a functional description of all processing equipment to be used in the remediation process and the personnel trained to operate them.

(C) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off of rainwater shall be provided.

(D) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.

(3) Operation plan. The operation plan shall include a description of the process and the equipment necessary, by-products produced, and the means for their disposal.

(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure and post-closure plan to ensure no adverse environmental impacts.

(c) Reporting requirement. At a minimum, an annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and the material recovered from the process.] [Eff 1/13/94; R]

[SUBCHAPTER 5

SPECIAL WASTE MANAGEMENT]

[§11-58.1-51 Special waste landfills. (a)

~~Applicability. Solid wastes which do not fall under the categories contained in subchapter 3 or 4 are termed special wastes and the landfill shall comply to these requirements (when disposal is by landfill). A permit will be required for the landfill.~~

~~(b) Permit requirements. Each special waste landfill permit application will be evaluated on a case by case basis and shall include, but not limited to the following:~~

~~(1) Site analysis. A site plan and analysis of the facility which illustrates the location of all structures including storage areas on the site; offices, maintenance areas, planned areas for expansion, and property boundaries. Including in the analysis will be a description of neighboring land uses and measures taken to mitigate interference with those existing or anticipated uses.~~

~~(2) Design requirements.~~

~~(A) Adequate design of the landfill depending on the type of waste to be disposed.~~

~~(B) Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(C) Design methods to control litter, insects, odors, and vectors or any other possibilities of nuisance or to protect health and safety.~~

~~(D) Ash monofill shall meet the requirements of subchapter 2.~~

~~(3) Operation plan. An operation plan will be submitted with the permit application.~~

~~(c) Reporting requirement. At a minimum, an annual report for the twelve-month period ending June 30 shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and any monitoring data required by the permit.~~] [Eff 1/13/94; R]

[~~§11-58.1-52 Medical waste treatment and disposal facilities.~~ ~~(a) Applicability. The purpose of this section is to regulate the disposal of infectious wastes from the point at which such waste is received from a health care facility which generates such wastes for the purpose of off-site transport for storage, treatment, or disposal.~~

~~(b) Permit requirements.~~

~~(1) All facilities involved with the storage, transfer treatment and disposal of infectious waste are subject to the requirements of this subchapter. Facilities treating, transferring, managing, and disposing of infectious wastes must comply with chapter 11-104. Infectious waste storage and transfer facilities are not authorized to accept low level radioactive waste, solid waste, or treated and destroyed medical waste; unless authorized in writing by the director.~~

~~(2) Exemptions. A health care facility with treatment and disposal units located on-site and treating and disposing infectious waste generated on-site.~~

~~(3) The application for a permit shall include but not be limited to:~~

~~(A) Engineering report including site and security analysis, methods to control litter, insects, odors, and vectors. Development of a fire plan to prevent and minimize fire hazards. Adequate drainage plan to control "run-on" and "run-off".~~

~~(B) Operation plan to include a brief description of its purpose and major equipment to be used.~~

~~(c) Reporting requirements. At a minimum, an annual report for a twelve-month period ending June 30 be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight of incoming material.~~]

[Eff 1/13/94; R]

[~~§11-58.1-53 Foreign waste treatment and disposal.~~ ~~(a) Applicability. Foreign solid waste generated by carriers which left foreign ports and their first port of entry to the united states is Hawaii must comply with the procedures for the treatment and disposal of foreign solid waste as contained in the U. S. Department of Agriculture Title 7, Chapter III, Part 330, Sub-part Garbage regulations. Sterilization and incineration are the methods used for the treatment and disposal of the foreign wastes.~~

~~(b) Permit requirements. Treatment facilities used to treat foreign wastes must comply with the requirements contained in sections 11-58.1-20 and 11-58.1-52 for permits as contained in this chapter.~~]

[Eff 1/13/94; R]

[~~§11-58.1-54 Used oil transport and recycle facilities.~~ ~~(a) Applicability. The purpose of these rules is to establish minimum requirements governing the management of used oil pursuant to and for the purpose of implementing Hawaii Revised Statutes, chapter 342N, used oil transport, recycling, and disposal.~~

~~(b) Permit requirement. A person who operates as a transporter, recycler, or marketer, as defined in chapter 342N, HRS, of used oil shall comply with this section and obtain a permit from the department.~~

~~(1) Each application shall include but not be limited to: A description detailing the management and operation of the facility, the geographical area to be served, the source and disposition of the used oil, construction plans and specifications and certification of compliance with local ordinances and zoning requirements.~~

~~(2) Each application shall be signed by the applicant and shall constitute an acknowledgement that the applicant assumes responsibility for the construction, modification, and operation of the facility in accordance with permit conditions and this section.~~

~~(3) The design of the facility must consider methods to control litter, insects, odors and vectors. A fire plan must be developed to prevent and minimize fire hazards.~~

~~(4) Design of an adequate drainage plan to control "run-on and run-off"~~

~~(5) Operation plan requirements:~~

~~(i) Sampling and testing: The director may require a sampling and testing plan to analyze for constituents of specification fuel. The constituents are:~~

~~Constituent/property~~	~~Allowable Level~~
~~Arsenic~~	~~5 ppm maximum~~
~~Cadmium~~	~~2 ppm maximum~~
~~Chromium (Total)~~	~~10 ppm maximum~~
~~Lead~~	~~100ppm maximum~~
~~Total Halogen~~	~~1,000ppm maximum~~
~~Flash Point~~	~~100° F minimum~~
~~Polychlorinated biphenyl(PCB)~~	~~2 ppm maximum~~

~~(ii) Blending of used oil: When specification fuel is blended with virgin oil, the resulting mixture is considered virgin oil for burning. When used oil is blended with virgin oil or specification fuel, the resulting mixture is considered used oil unless an analysis is performed to indicate otherwise. The method of sampling and analysis shall be included in the operation plan.~~

~~(6) Used oil transporter requirements:~~

~~(i) A used oil transporter shall provide~~

~~a signed voucher to each person surrendering or accepting the used oil.~~

~~(ii) A transporter may temporarily store used oil on the transporter's premises before delivery to a recycler, marketer, transporter, or incinerator.~~

~~(iii) All vehicles used in the actual transporting of used oil shall be identified with the firm's name and the permit number.~~

~~(c) Reporting requirements.~~

~~(1) At a minimum, an annual report for the twelve-month period ending June 30 shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight of the incoming material and the salvageable material recovered and how disposed.~~

(2) ~~Voucher or invoice is required to track the movement of used oil. At a minimum the voucher shall contain the name and address of the parties, the quantity and type of used oil, whether an analysis has been performed, date of transaction and signature.~~] [Eff 1/13/94; R]

[~~§11-58.1-55 Other non-specified technologies.~~

~~(a) Applicability. The purpose of this section is to provide a procedure by which new innovative technologies in the treatment and disposal of solid wastes will be considered for permitting.~~

~~(b) Permit requirements. An engineering report providing an extensive justification will be required before any new technology is approved by the director for use. The justification shall include:~~

~~(1) Experiences where the technology was used and found to be successful.~~

~~(2) A brief description of the operating process to be used, equipment necessary, and any technical training required by the~~

~~personnel.~~

~~(3) Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards.~~

~~(c) Reporting requirements. At a minimum, an annual report for the twelve-month period ending June 30 shall be prepared and submitted to the director, not later than thirty days after June 30 of each year. The report should summarize the data collected either by weight or volume of the incoming material.~~] [Eff 1/13/94; R]

[~~SUBCHAPTER 6~~

~~SOLID WASTE MANAGEMENT RESPONSIBILITIES~~]

[~~§11-58.1-61 General responsibilities.~~ ~~(a) The aesthetic, nonhazardous, and sanitary storage of solid waste is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the solid waste is accumulated.~~

~~(b) Any person not exempted in section 11-58.1-04(b) owning, operating, or managing a property, premise, business establishment, or industry, has the responsibility of removing accumulated solid waste to an approved solid waste disposal facility. Contractual or other arrangements for the removal of accumulated solid waste shall not relieve a person of this primary responsibility as stated above. Solid waste shall be removed to an approved solid waste disposal facility, prior to creating a nuisance condition or health or safety hazard.~~

~~(c) The disposal of animal carcasses is the responsibility of the land owner or land occupant or both upon whose land the animal carcass is found. On-site disposal of the carcass shall be by immediate~~

~~burial, covered by at least two feet of compacted earth, or by other methods approved by the director.~~] [Eff 1/13/94; R]

[~~§11-58.1-62 Hazardous wastes.~~ ~~(a) Owners and operators of solid waste disposal facilities shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous waste as defined in 40 CFR Part 261 or the State of Hawaii's rules or statutes, whichever is more stringent, and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR Part 761 into the solid waste disposal facility.~~

~~(b) Preparation for disposal of pesticide containers shall be in accordance with section 4-66-55, Hawaii Administrative Rules.~~

~~(c) Soils determined to be hazardous shall be treated as hazardous waste as defined in 40 CFR 261 or the State of Hawaii's rules or statutes, whichever is more stringent and shall be disposed as hazardous waste.~~] [Eff 1/13/94; R]

[~~§11-58.1-63 Infectious wastes.~~ ~~The management and disposal of infectious waste shall be in accordance with chapter 11-104, Hawaii Administrative Rules. Treated infectious waste which have been rendered non-infectious may be disposed in a municipal solid waste landfill or incinerated. All infectious wastes generated within the household may be disposed as residential solid waste.~~] [Eff 1/13/94; R]

[~~§11-58.1-64 Radioactive wastes.~~ ~~Disposal of radioactive waste at all solid waste disposal facilities shall be subject to regulation or control pursuant to the U.S. Nuclear Regulatory Commission,~~

~~the Hawaii Administrative Rules, and the Hawaii Revised Statutes, whichever is more stringent~~.] [Eff 1/13/94; R]

[~~§11-58.1-65 Special solid waste controls.~~ ~~(a) Applicability. The special solid wastes regulated under this subchapter are green wastes, scrap automobiles, white goods, and tires.~~

~~(b) Green wastes. Solid waste disposal facilities~~ shall have in place by December 31, 1994, a plan to ban or require source separation of green waste from entering the disposal facility. The plan shall detail requirements for diversion of seventy-five per cent of all commercially generated green waste by December 31, 1995 and fifty percent of all residential green waste by December 31, 1996. If, based on data submitted by the operator as part of the annual report, these diversion rates are not achieved, all commercial green waste shall be banned from the facility by December 31, 1995, and residential green waste by December 31, 1996.

~~(c) Scrap automobiles, white goods, and tires. Scrap automobiles may not be accepted at disposal facilities permitted under these rules. White goods and motor vehicle tires may not be accepted at disposal facilities permitted under these rules after June 30, 1994. A plan must be developed by the operator of solid waste disposal facility and included in the facility operations plan to implement this ban~~]. [Eff 1/13/94; R]

SUBCHAPTER 6

ENFORCEMENT

[~~§11-58.1-05~~] **§11-58.1-191 Inspections.** The

director, in accordance with the law, may enter and inspect [~~the~~] any facility, building, or place for the purpose of investigating an actual or suspected source of solid waste[~~, or other~~] pollution[~~:~~], ascertaining compliance or non-compliance with any [~~rule,~~] rule or standard promulgated by the department[~~:~~] pursuant to chapter 342H, HRS, including this chapter, and making reasonable tests in connection therewith. [Eff 1/13/94; §11-58.1-05; am, ren §11-58.1-191, and comp] (Auth: HRS §§321-11, 342G-13, 342H-2, 342H-3, 342H-6, 342J-4, 342J-6, 342J-31, 342J-52, 342J-55) (Imp: HRS §§342G-13, 342G-14, 342H-3,342H-30, 342H-36, 342H-52, 342J-30)

[~~SUBCHAPTER 7~~

~~MISCELLANEOUS PROVISIONS~~]

[~~§11-58.1-71~~] §11-58.1-192 Penalties and remedies. (a) Any person who violates any provision of this chapter shall be subject to [~~the~~] penalties and remedies as provided in sections 342G-71, 342G-72, 342H-7, 342H-8, 342H-9, 342H-10, and 342H-11, Hawaii Revised Statutes.

(b) The director may provide notice of violations of chapter 342H, Hawaii Revised Statutes, or any provision of these rules and issue an order assessing administrative penalties, requiring either an immediate return to compliance or compliance within a specified time, and may seek to enforce such order and collect penalties pursuant to the procedures set forth in section 342H-7, Hawaii Revised Statutes."

[Eff 1/13/94; §11-58.1-71; am, ren §11-58.1-192, and comp] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342H-3, 342H-9, 342H-10, 342H-11, 342H-37, 342H-39)

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

3. Additions to update source notes and other notes to reflect these amendments and compilation are not bracketed, struck through, or underscored.

4. The amendments to and compilation of chapter 11-58.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

_____
Kenneth S. Fink, MD, MGA, MPH
Director of Health

APPROVED AS TO FORM:

_____
Wade H. Hargrove III
Deputy Attorney General

V. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force's most recent meeting pursuant to Act 133 to identify actions taken challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental permit processes; and appropriates funds
2. Discussion and Update of the Board's Maui Island meeting scheduled for March 19, 2026
3. Becker Communications Inc., regarding the Board's Small Business Outreach
4. Presentations to Industry Associations
5. Staff's Small Business Outreach

February 12, 2026

From: Dr. Jennifer Salisbury
Small Business Regulatory Review Board
SPEED Task Force Member

Subj: REPORT ON SPEED TASK FORCE PIG RECOMMENDATIONS AND LEGISLATIVE UPDATE

Aloha,

As a follow up to my ongoing service on Governor Green's Simplified Permitting for Enhanced Economic Development (SPEED) Task Force, I submit this letter an on-going update. As the SPEED Task Force does not meet again until after the Legislative Session, I had previously reported that I would not provide any updates until then. Boy was I wrong.

My phone and emails have been blowing up. All kinds of folks have reached out asking about legislative impacts from the 3 initial PIGs, what the individual Counties are doing to support the Task Force, and what is the developer perspective on many of the permitting items. I am so thankful for everyone who has come up to me recently to *thank me.* That doesn't normally happen. For that, mahalo right back.

Updates as of this letter (more changes nearly daily):

- SPEED Task Force Recommendations turned into legislation including:
  - Chair Ilagan proposed HB 1710, HD1, to clarify SHPD timelines and give agencies and applicants more predictable expectations.
  - Rep Sue Keohokapu - Lee Loy proposed HB 1967 HD1 that requires the Department of Business, Economic Development and Tourism to develop a permitting workforce pipeline…
  - Rep Sue Keohokapu - Lee Loy proposed HB 1968 HD1 that requires and appropriates funds for the Department of Business, Economic Development, and Tourism to develop an artificial intelligence-assisted pre-compliance intake pilot platform…
- Grassroots Institute of Hawaii has also published a "Hawaii housing policy playbook" outlining 10 policies that research has shown could encourage more homebuilding. Not all of these policies are ideal – namely the elimination of parking restrictions on building permits – if this is eliminated, then Counties/Cities will be forced to enact some other way to enforce no parking on blacktop, which doesn't actually solve the housing problem. There are other issues with these policies, but there are a few solutions worth discussing for sure. Many small business members, Maui County employees and contractors have reached out with either the same or very similar innovative ideas.
- Grassroots Institute of Hawaii has noted other bills in this legislative session to expand housing affordability and potentially speed up building permit approval times including:

>> SB2190 and HB1741, both of which would scale back inclusionary zoning requirements.

>> HB1919, which would eliminate minimum parking mandates for certain developments. *This one would likely speed up building permits BUT not necessarily solve the problem, only shift this. Parking would still be a problem to enforce for emergency services access, but the enforcement would become local.*

>> HB1734, which proposes reforming several county regulations, such as minimum lot-size requirements, parking mandates, setback rules and height limitations.

>> HB1742 and HB1719, which would allow self-contained relocatable housing and manufactured housing.

>> HB1725, which proposes streamlining Hawaii's process of adopting building codes.

>> HB1738, which would increase the land acreage cap on LUC district boundary amendments.

- Maui County's Councilmember Paltin has put forward a Maui County Ordinance here to permit off-site construction build homes, assembled for dwellings in the Lahaina burn area; this ordinance mirrors the recommendation from the Building Permit PIG. I have been active in communication on my perspective on this ordinance but also mirrored a State Bill proposed by Building Permit PIG Chair Sue Keohokapu-Lee Loy.
- County of Maui is in process of revising Title 19, which is the zoning bylaw for Maui. Several members, including one member involved in the re-write, has been interacting with me nearly daily. Others around the re-write have input and are also interested. I am very humbled to give my input, as a housing provider. And as a housing-provider, I maintain two simple guidelines:
    - Aim to keep local families together, locally.
    - All a person needs to build a home, is a permit. *The faster you get that permit into their hands, the faster they can build a home.*
- I encourage all of you to review bills and submit testimony on the Hawaii State Legislature website: Hawai‘i State Legislature

Upcoming SPEED Task Force Items:

- Third SPEED Task Force meeting approximately May 2026, establishing the 2nd set of PIGS:
    - Second set of PIGs ***potentially*** to include:
        - Building Codes
        - Land Use District Boundary Amendments
        - Water Resource Management

- Late in 2026, third set of PIGs ***potentially*** to include:
    - Special Management Area/Coastal Zone Management
    - American Disabilities Act
    - Conservation Use District

Jen's Service on the SPEED Task Force as of today, by the numbers:

- 20 Recommendations to the Task Force
- 3 Service on Permitted Interaction Groups
- 46.25 hours spent to date in SPEED Task Force Meetings
- 46 Conversations with Maui Employers, Contractors and Small Businesses about the Task Force
- 26.75 hours in other Small Business Network Meetings, not directly with the Task Force

I am very grateful the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT) and the Small Business Regulatory Review Board continues supporting me in serving this task force. **We have scheduled the VERY FIRST Small Business Regulatory Review Board meeting on Maui, and only the second neighbor-island meeting ever, set for March 19, 2026 on Maui.** More details as the New Year unfolds!

In case you missed it, I had the honor of supporting the Maui Chamber of Commerce's "Business Matters" radio show on December 30th, speaking about the SPEED Task Force: Show Link Here

my life as a LANDLORD

If you want to listen to my take on the SPEED Task Force, I have created a three-part series on my national-award-nominated-podcast, My Life As A Landlord, which explains further about the SPEED Task Force and the three PIGs which can be found here here.

I am also honored to report that I have been nominated as a 2026 "Woman Who Means Business" from Pacific Business News; Maui United Way championed the nomination. PBN flew me to Oahu to attend a photo shoot and in-person interview for this award. There will be a write up of all nominees in the February issue of PBN and the award will be announced at the event on March 12, 2026.

Mahalo for your input and support,

Dr. Jennifer Salisbury "Jen"

Quick links if you have more questions:

State of Hawaii Small Business Regulatory Review Board: Small Business Regulatory Review Board

State of Hawaii SPEED Task Force: Streamline Permitting for Enhanced Economic Development

VI. Legislative Matters

A. Update on the following:

1. **House Bill 1612 – Relating to Economic Development –** Establishes a business competitiveness goal for the State to achieve a ranking of being in the top thirty states in the United States for business climate by 2045, with interim goals. Requires the Department of Business, Economic Development, and Tourism to submit annual reports on progress in meeting the business competitive goals. Appropriates funds.
2. **Senate Bill 2263 – Relating to Business Competitiveness** – Establishes a goal for the State to achieve a ranking among the top 10 states in the nation for business competitiveness by 2025. Establishes a ranking metric and interim goals. Requires the Department of Business, Economic Development, and Tourism to establish a working group to develop and recommend policies that improve Hawaii's business competitiveness. Requires annual reports to Legislature. Appropriates moneys.
3. **Governor's Message 612** Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Leelen Park**, for a term to expire June 30, 2029
4. **Governor's Message 613** Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, **Cynthia Hobson**, for a term to expire June 30, 2029

Hawai'i State Legislature

Ka 'Aha'ōlelo Moku'āina 'O Hawai'i

HB1612 HD1

Measure Title:	RELATING TO ECONOMIC DEVELOPMENT.
Report Title:	Department of Business, Economic Development, and Tourism; Business Competitiveness Goals; Reports; Appropriation ($)
Description:	Establishes a business competitiveness goal for the State to be nationally ranked in the top thirty states for business climate by 2050, with interim goals. Requires the Department of Business, Economic Development, and Tourism to submit annual progress reports to the Legislature. Appropriates funds. Effective 7/1/3000. (HD1)
Companion:	
Package:	None
Current Referral:	ECD, FIN
Introducer(s):	ILAGAN, AMATO, KILA, MARTEN, MATSUMOTO, SHIMIZU, WOODSON, Alcos

Sort by Date		Status Text
2/17/2026	H	Reported from ECD (Stand. Com. Rep. No. 288-26) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
2/4/2026	H	The committee on ECD recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Ilagan, Hussey, Holt, Tam, Templo, Yamashita, Gedeon; Ayes with reservations: none; Noes: none; and Excused: none.
1/30/2026	H	Bill scheduled to be heard by ECD on Wednesday, 02-04-26 10:00AM in House conference room 423 VIA VIDEOCONFERENCE.
1/26/2026	H	Referred to ECD, FIN, referral sheet 1
1/21/2026	H	Introduced and Pass First Reading.

1/16/2026	H	Prefiled.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

HB1612 HD1

HOUSE OF REPRESENTATIVES
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

H.B. NO. 1612

A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that Hawaii ranks among the least competitive states for business in national assessments, including CNBC's America's Top States for Business, which ranked Hawaii fiftieth in 2024 and forty-ninth in 2025. Businesses in Hawaii face high regulatory burdens, elevated costs, and slow governmental processes, which collectively hinder economic growth and threaten the long-term prosperity of the State and its residents.

The legislature further finds that the business revitalization task force, created by Act 142, Session Laws of Hawaii 2024, was established to identify strategies to improve Hawaii's business climate. In the business revitalization task force's November 2025 report, the task force recommends the creation of a permanent framework to advance business competitiveness through sustained policy development and stakeholder engagement.

Accordingly, the purpose of this Act is to establish a business competitiveness goal for the State to achieve a ranking of being in the top thirty states in the United States for business climate by 2045, with interim goals.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . HAWAII BUSINESS COMPETITIVENESS GOAL**

§201- Definitions. As used in this part:

"Ranking metric" means the CNBC's America's Top States for Business. The CNBC ranking scores each state using one hundred thirty-five metrics in ten broad categories of competitiveness. The categories are:

(1) Economy: Measures economic strength through GDP and job growth, fiscal stability, credit ratings, real estate health, business diversity, trade exposure, and new business survival;

(2) Infrastructure: Assesses transportation networks, utilities, broadband, site readiness, land availability, market access, and climate resiliency;

(3) Workforce: Evaluates skilled labor availability, education levels, migration of talent, productivity, training programs, and labor flexibility;

(4) Cost of doing business: Examines tax competitiveness, wages, utilities, property and insurance costs, and business incentives;

(5) Business friendliness: Focuses on regulatory and legal environments, permitting efficiency, land-use rules, and support for emerging industries;

(6) Quality of life: Measures livability, including safety, environment, health care, child care, worker rights, inclusiveness, and reproductive freedoms;

(7) Technology and innovation: Captures innovation capacity via patents, research funding, research and development support, and participation in semiconductor and artificial intelligence sectors;

(8) Education: Assesses K-12 and higher education systems, funding, access, and workforce alignment through community colleges partnerships;

(9) Access to capital: Measures availability of venture capital, bank lending, state-backed financing, and foreign direct investment; and

(10) Cost of living: Evaluates affordability through housing, consumer goods, and insurance costs, factoring in inflation and overall living expenses.

§201- Business climate improvement; state goals. It shall be the goal of the State to achieve a ranking among the top thirty states in the nation for business climate by 2045, as measured by the ranking metric. The interim goals shall include:

(1) Ranking of forty-fifth or better by 2030;

(2) Ranking of fortieth or better by 2035;

(3) Ranking of thirty-fifth or better by 2040; and

(4) Ranking of thirtieth or better by 2045;

provided that if the ranking metric is discontinued, the department shall identify and recommend an alternative national ranking metric that provides a comprehensive and balanced assessment of state business climates.

§201- Annual report. (a) The department shall submit an annual report to the legislature no later than twenty days

prior to the convening of each regular session, which shall include:

(1) The status and progress toward the State's business competitiveness goals pursuant to this part; and

(2) Legislative options to improve Hawaii's business climate.

(b) The legislature shall deliberate on the department's proposals submitted in the department's report and enact legislation to advance the goals set forth in this part."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $300,000 or so much thereof as may be necessary for fiscal year 2026-2027 for the costs of independent research, staffing, travel, and other administrative expenses necessary for the purposes of this Act.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2026.

INTRODUCED BY: _____

JAN 16 2026

H.B. NO. 1612

Report Title:
Department of Business, Economic Development, and Tourism; Business Competitiveness Goals; Reports; Appropriation

Description:
Establishes a business competitiveness goal for the State to achieve a ranking of being in the top thirty states in the United States for business climate by 2045, with interim goals. Requires the Department of Business, Economic Development, and Tourism to submit annual reports on progress in meeting the business competitive goals. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Hawai'i State Legislature

Ka 'Aha'ōlelo Moku'āina 'O Hawai'i

SB2263 SD1

Measure Title:	RELATING TO BUSINESS COMPETITIVENESS.
Report Title:	DBEDT; Business Competitiveness; Business Climate Improvement Working Group; Reports; Appropriation ($)
Description:	Establishes a goal for the State to achieve a ranking among the top 10 states in the nation for business competitiveness by 2045. Defines and requires the Department of Business, Economic Development, and Tourism to select a "ranking metric" and establishes interim goals. Requires DBEDT to establish a working group to develop and recommend policies that improve Hawai'i's business competitiveness. Requires annual reports to Legislature. Appropriates funds. Effective 7/1/2050. (SD1)
Companion:	
Package:	None
Current Referral:	EDT, WAM
Introducer(s):	DECOITE, CHANG, HASHIMOTO, LAMOSAO, RICHARDS, Fukunaga, Inouye, Kanuha, McKelvey, Moriwaki, Wakai

Sort by Date		Status Text
2/12/2026	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
2/12/2026	S	Reported from EDT (Stand. Com. Rep. No. 2207) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM.
2/5/2026	S	The committee(s) on EDT recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in EDT were as follows: 3 Aye(s): Senator(s) DeCoite, Fukunaga, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Wakai, Kim.

2/2/2026	S	The committee(s) on EDT has scheduled a public hearing on 02-05-26 1:00PM; Conference Room 229 & Videoconference.
1/26/2026	S	Referred to EDT, WAM.
1/21/2026	S	Introduced and passed First Reading.
1/15/2026	S	Pending Introduction.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

SB2263 SD1

THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2263

JAN 21 2026

A BILL FOR AN ACT

RELATING TO BUSINESS COMPETITIVENESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that Hawaii ranks among the least competitive states for business in national assessments. For example, CNBC's "America's Top States for Business" listing, which scores each state using one hundred thirty-five metrics in ten broad categories of competitiveness, ranked Hawaii fiftieth in 2024 and forty-ninth in 2025.

The legislature finds that Hawaii's low ranking in the CNBC "America's Top States for Business" listing and similar rankings elsewhere is due to the challenges that Hawaii businesses face, which include high regulatory burdens and slow governmental processes. These issues collectively hinder economic growth and threaten Hawaii's long-term prosperity.

The legislature further finds that the business revitalization task force, established by Act 142, Session Laws of Hawaii 2024, was formed to identify strategies to improve Hawaii's business climate. The task force recommended the creation of a permanent framework to advance business

competitiveness through sustained policy development and stakeholder engagement.

Accordingly, the purpose of this Act is to:

(1) Establish a statutory goal for the State to achieve a ranking among the top states in the nation for business competitiveness by the year 2045; and

(2) Require the department of business, economic development, and tourism to establish a business climate improvement working group to work with private sector organizations and other relevant parties to develop and recommend policies that improve Hawaii's business competitiveness.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . HAWAII BUSINESS COMPETITIVENESS**

§201-A Ranking metric; definition; selection by department. (a) As used in this part, "ranking metric" means a publication that:

(1) Measures each state's business competitiveness by considering data and other information in the following categories:

(A) Economy: Measures economic strength through gross domestic product and job growth, fiscal stability, credit ratings, real estate health, business diversity, trade exposure, and new business survival;

(B) Infrastructure: Assesses transportation networks, utilities, broadband, site readiness, land availability, market access, and climate resiliency;

(C) Workforce: Evaluates skilled labor availability, education levels, migration of talent, productivity, training programs, and labor flexibility;

(D) Cost of doing business: Examines tax competitiveness, wages, utilities, property and insurance costs, and business incentives;

(E) Business friendliness: Focuses on regulatory and legal environments, permitting efficiency,

land-use rules, and support for emerging industries;

(F) Quality of life: Measures livability, including safety, environment, health care, childcare, worker rights, inclusiveness, and reproductive freedoms;

(G) Technology and Innovation: Captures innovation capacity via patents, research funding, research and development support, and participation in the semiconductor and artificial intelligence sectors;

(H) Education: Assesses kindergarten through twelfth grade and higher education systems, funding, access, and workforce alignment through community colleges partnerships;

(I) Access to capital: Measures availability of venture capital, bank lending, state-backed financing, and foreign direct investment; and

(J) Cost of living: Evaluates affordability through housing, consumer goods, and insurance costs,

factoring inflation and overall living expenses; and

(2) Ranks each state's business competitiveness in relation to each other using the categories of metrics described in paragraph (1).

(b) The department shall select a ranking metric that meets the definition in subsection (a); provided that if the department's selected ranking metric is discontinued, the department shall select an alternative national ranking metric that provides a comprehensive and balanced assessment of state business competitiveness.

§201-B State commitment to business competitiveness improvement. (a) It shall be the goal of the State to achieve a ranking among the top ten states in the nation for business competitiveness by 2045, as measured by the ranking metric.

(b) In addition to the goal established in subsection (a), it shall be the goal of the State to achieve the following interim rankings, as measured by the ranking metric:

(1) Forty-fifth or better by 2030;

(2) Thirtieth or better by 2035; and

(3) Twentieth or better by 2040.

§201-C Business climate improvement working group. (a) The department shall establish a business climate improvement working group, which shall develop targeted policies and legislative proposals to improve Hawaii's business competitiveness.

(b) The director of business, economic development, and tourism shall appoint members to the working group and shall designate a member to serve as chairperson. Working group members may include representatives from private sector organizations and any other parties having experience or expertise relevant to the improvement of the State's business competitiveness.

(c) In developing policies and proposals, the working group shall:

(1) Consult with persons from business groups, labor unions, community groups, and other government entities; and

(2) Review and analyze relevant research, including:

(A) Reports from the department;

(B) The Chamber of Commerce Hawaii's 2030 Blueprint;

(C) The office of planning and sustainable development's comprehensive economic development strategy reports for the State and each county;

(D) Studies and other publications from the university of Hawaii economic research organization; and

(E) Recommendations by the business revitalization task force established by Act 142, Session Laws of Hawaii 2024.

(d) Members of the working group shall serve without compensation, but may be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

§201-D **Annual report.** No later than twenty days prior to the convening of each regular session, the working group shall submit a report to the legislature that includes:

(1) An assessment of the State's progress in meeting the goals established by section 201-B, including the State's progress in improving the State's scores in the ranking metric; and

(2) Proposed policies, including any proposed legislation, to improve Hawaii's business competitiveness."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $300,000 or so much thereof as may be necessary for fiscal year 2026-2027 for independent research, staffing, travel, and other expenses for the purposes of this Act.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect on July 1, 2026.

INTRODUCED BY: Lynn DeCorte

S.B. NO. 2263

Report Title:
DBEDT; Business Competitiveness; Business Climate Improvement Working Group; Reports; Appropriation

Description:
Establishes a goal for the State to achieve a ranking among the top 10 states in the nation for business competitiveness by 2045. Establishes a ranking metric and interim goals. Requires the Department of Business, Economic Development, and Tourism to establish a working group to develop and recommend policies that improve Hawaii's business competitiveness. Requires annual reports to Legislature. Appropriates moneys.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

GM612

Measure Title:	Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, LEELAN PARK, for a term to expire 06-30-2029.
Report Title:	Small Business Regulatory Review Board
Description:	
Companion:	
Package:	
Current Referral:	EDT
Introducer(s):	

Sort by Date		Status Text
1/30/2026	S	Referred to EDT.
1/30/2026	S	Received.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

GM612

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

GOV. MSG. NO. 612

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

January 21, 2026

The Honorable Ronald D. Kouchi, President
and Members of the Senate
Thirty-Third Legislature
Hawai'i State Capitol, Room 409
Honolulu, Hawai'i 96813

Dear President Kouchi and Members of the Senate:

In accordance with the provisions of Article V, Section 6 of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation the following nomination:

Leelen Park
Small Business Regulatory Review Board
Expiration Date: June 30, 2029

Sincerely,

Josh Green M.D.
Josh Green, M.D.

Governor, State of Hawai'i

GM613

Measure Title:	Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, CYNTHIA HOBSON, for a term to expire 06-30-2029.
Report Title:	Small Business Regulatory Review Board
Description:	
Companion:	
Package:	
Current Referral:	EDT
Introducer(s):	

Sort by Date		Status Text
1/30/2026	S	Referred to EDT.
1/30/2026	S	Received.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

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GM613

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

GOV. MSG. NO. 613

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

January 21, 2026

The Honorable Ronald D. Kouchi, President
and Members of the Senate
Thirty-Third Legislature
Hawai'i State Capitol, Room 409
Honolulu, Hawai'i 96813

Dear President Kouchi and Members of the Senate:

In accordance with the provisions of Article V, Section 6 of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation the following nomination:

Cynthia Hobson
Small Business Regulatory Review Board
Expiration Date: June 30, 2029

Sincerely,

Josh Green M.D.

Josh Green, M.D.

Governor, State of Hawai'i