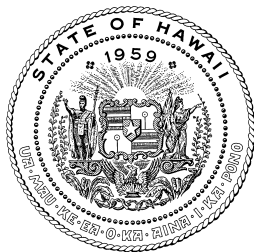


**Small Business Regulatory Review Board Meeting**

**January 19, 2023**

**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](mailto:dbedt.sbrrb.info@hawaii.gov)  
Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)

Tel: 808 798-0737

### AGENDA

**Thursday, January 19, 2023 ★ 10:00 a.m.**

**No. 1 Capitol District Building  
250 S. Hotel Street, Conference Room 436  
Honolulu, HI 96813**

**Josh Green, M.D.**  
*Governor*

**Chris J. Sadayasu**  
*DBEDT Director*

#### Members

Robert Cundiff  
*Chairperson  
O'ahu*

Mary Albitz  
*Vice Chairperson  
Maui*

Jonathan Shick  
*2nd Vice Chairperson  
O'ahu*

Dr. Nancy Atmospera-  
Walch  
*O'ahu*

William Lydgate  
*Kaua'i*

James (Kimo) Lee  
*Hawai'i*

Garth Yamanaka  
*Hawai'i*

Taryn Rodighiero  
*Kaua'i*

Sanford Morioka  
*O'ahu*

Tessa Gomes  
*O'ahu*

Mark Ritchie for  
Director, DBEDT  
*Voting Ex Officio*

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

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

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

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQi09>

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

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

Members of the public may also submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Wednesday, January 18, 2022.

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

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

**I. Call to Order**

**II. Approval of November 17, 2022 Meeting Minutes**

### **III. Old Business – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by Department of Health – **Discussion Leader – Sanford Morioka**
  - a. Appendix A – Standard General Permit Conditions
  - b. Appendix D – NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
  - c. Appendix H – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
  - d. Appendix I – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
  - e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

### **IV. 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
  - B. Discussion on this Board's Fiscal 2023 - 2024 Goals
- V. **Next Meeting:** Thursday, February 16, 2023 at 10:00 a.m., held via Zoom and at 250 S. Hotel Street, Conference Room 436, Honolulu, HI 96813

### **VI. Adjournment**

INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR AUXILIARY AIDS OR SERVICES (e.g., sign language interpreter, captioner, computer-assisted note taker, wheel chair accessibility, parking designated for the disabled or other accommodation).

Any individual needing an auxiliary aid/service or other accommodation due to a disability may contact the Small Business Regulatory Review Board office at 808-798-0737 and/or [jetaime.k.ariola@hawaii.gov](mailto:jetaime.k.ariola@hawaii.gov) as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made less than three working days prior to the meeting cannot be assured. Upon request, this notice is available in alternate formats such as large print or electronic copy.

## **II. Approval of November 17, 2022 Meeting Minutes**

## Small Business Regulatory Review Board

### MEETING MINUTES - DRAFT

November 17, 2022

- I. **CALL TO ORDER:** Vice Chair Albitz called the meeting to order at 10:00 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Mary Albitz, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- Taryn Rodighiero
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

**ABSENT MEMBERS:**

- Robert Cundiff, Chair
- Dr. Nancy Atmospera-Walsh
- William Lydgate

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

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

Mr. Yamanaka motioned to accept the October 20, 2022 meeting minutes, as presented. Mr. Lee seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on Proposed New HAR Title 13 Chapters 230 and 256, General Provisions; Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Ms. Rodighiero, stated that the proposed rules are for manta ray permitting, regulations, and fees in the West Hawaii area. She introduced Administrator Mr. Edward Underwood from DLNR's Division of Boating and Ocean Recreation (DOBOR) who explained that the amendments began in 2014 with a concurrent resolution created by the Legislature. Subsequently, DOBOR conducted eight years of outreach and have tried to address the various issues that were brought to DOBOR's attention.

On October 27, 2022, the Board of Land and Natural Resources (BLNR) approved the proposed rules to move forward. While the rules will have a definite negative impact on small businesses, DOBOR has attempted to be fair in terms of limiting and regulating commercial permits. As such, DOBOR is working closely with House Representative David Tarnas, Chair of the Water & Land Committee, to allow for issuing commercial permits to those businesses

that have been in business the longest. Once these permits are issued, if a permit comes back to the state, it would subsequently be issued by public auction.

In response to an inquiry as to whether an environmental study was performed, Mr. Underwood responded that an assessment was done with regards to moorings. Thirteen moorings will be installed, one will be designated for recreational use and the other 12 exclusively for commercial use of various sizes. If one of the 12 commercial moorings is not being used, it can then be used for recreational. The maximum number of vessels going out will be reduced to 60.

Two shifts will be conducted throughout the night for two hours per shift with the businesses choosing where they want to go during the shifts. This was created to keep as many businesses operating as possible within a twelve-hour window. There will be no more rafting or “live” boating, and only one boat per mooring. In regard to what impact, if any, live boating may have on the manta rays, it was noted that DLNR’s Aquatic Resource Division does not have a concern with the light impacting the manta rays. Mr. Underwood noted that outrigger canoes are not separate from a vessel, even if non-motorized, as a vessel is defined as anything that can be used in the water as a means of transportation.

In regard to outreach efforts to the community, Mr. Underwood stated that throughout the eight years of promulgating the rules, 120 emails were sent to the impacted businesses with an open solicitation for comments from the community; all received comments were taken into consideration.

Mr. Yamanaka mentioned that during official public hearings, back-and-forth discussions and conversations are restricted as comments only from the public and the community are allowed. Mr. Underwood stated that after the public hearing, DLNR would then have the authority to take, or not take, any recommendations made and then finalize the rules for adoption. However, Mr. Yamanaka voiced his concern that there is still much conversation needed with the stakeholders and that going to public hearing right now would be premature; Ms. Rodighiero concurred.

In regard to Vice Chair Albitz’s concerns about safety within the manta ray area and how DOBOR addressed these concerns, Mr. Underwood replied that the safety concerns relate to the sheer number of people in the water because there are so many. However, there have been no reports received by DOBOR regarding accidents although DOBOR would generally not receive these because accident reports go directly to the Coast Guard if one occurred to a certified vessel. He added that “carrying capacities” are very difficult to calculate for various reasons. If the bill changing the way permits are distributed passes, it will most likely not take effect until after July 1, 2023.

In addition to receiving written testimonies, the following summarizes testimony received during the meeting:

Ms. Manu Powers, co-owner with her husband of Sea Quest Hawaii, Ltd., are in opposition to what they consider to be irrelevant, unnecessary, and at times dangerous draft rules that would decimate the Island of Hawaii’s economy and beyond. The major concerns are safety, the perception of overcrowding, regulation and enforcement, and economic impact. Ms.

Powers believes that if these rules were to take effect, they would have to lay off seventy-five percent of Sea Quest's workforce.

Ms. Holly Crane and Iko Balanga, co-founders of Anelakai Adventures, a tour company based in Keauhou Bay that has the only non-powered vessels (i.e., canoes), provided this Board testimony back in 2018 in support of DLNR creating administrative rules for the safety of the manta rays. However, while they are in support of the intent of the proposed draft rules, they are opposed to the negative impacts regarding the safety and accessibility of ocean guests of all physical abilities, the invasiveness upon the manta rays, and the strong potential inability of their small, local business providing safe, respectful Hawaiian ocean cultural experiences to people of all levels of ocean knowledge and capabilities.

Ms. Joanie May and Mr. Bryan Balanga, husband and wife co-owners of JBB Enterprises, Inc. dba Hawaiian Coastline Adventures in Kahaluu-Keauhou, explained that their boating tour company, which started in 2013 and consists of one vessel only with one permit, is their sole livelihood. Their biggest concern is safety; putting down moorings will not make it safer. Mr. Balanga has been a captain for the past 25 years and although the rules include moorings, there is no consideration or discussion about the ocean "current" discussed in the rules, which regularly changes. They questioned whether only manta rays are included in the seven miles of water described in the rules or does it also include snorkelers and fishers.

Mr. Tait Heitz and Mr. Paul D'Angelo, Vice President & General Manager and Director of Operations, respectively, of Big Island Divers asked this Board to reject the proposed rules. Big Island Divers was established in 1984, has a 4,400 square foot retail store, operates four US Coast Guard inspected vessels, and is the largest dive operations on the Big Island. Manta ray scuba diving and manta ray snorkeling represent the majority of their business; depending on the season, they employ 40 to 48 employees.

The reason for asking this Board to reject this proposal is because the rules do not solve any of the alleged problems. Instead, they will have a detrimental impact on small business, the Kona community, and revenue for the state. As the rules entail an unclear understanding of safety and potential overcrowding, suggestions by Messrs. Heitz and D'Angelo included creating new manta ray zones and adding more campfires and moorings.

In regard to whether DOBOR previously heard the testimonies brought forth today, it was noted that although meetings were attended by the testifiers and testimonies were submitted, participating in an actual "rule-making process" was not extended to the stakeholders nor did back-and-forth discussions about the rules occur. Some of the businesses received notice of the meetings a day before the scheduled meetings, which is essentially too late for many of these ongoing businesses to attend or contribute.

Mr. Dane Knezek, General Manager of Aquatic Life Divers, a dive and snorkel business in Kona, is opposed to the rules as he believes a balance is needed allowing for recreational access, cultural practices, business maneuverability, and effective resource management to co-exist within a supportively governed community.

He stated that the major problems of the manta ray sites are safety, user conflict, and environmental impact. All of these problems are exacerbated by overcrowding, which is a

direct result of DLNR's own action around 2010 to open up unlimited commercial permitting. Further, approving rules that attack the ability of businesses to operate is not an ethical way to fix the problems.

Ms. Heidi Guth principal of Kai Ho'oulu, LLC, and board treasurer of Ohana Wa'a, a non-profit organization representing all of the voyaging community of Hawaii, was before this Board to stand on her written testimony. She requested that DOBOR consult Ohana Wa'a with regards to definitions of "canoe" especially as it is referenced in Hawaii and possibly Polynesia. She further requested that DOBOR table any definition changes of canoe until a more educated and culturally-informed definition can be formulated with proper consultation; Ohana Wa'a is willing to participate in continued future discussions.

Ms. Roberta Anderson, representative of Hang Loose Boat Tours in Kailua-Kona, referred to the safety issues in the rules and stated that if ongoing safety issues are a legitimate concern, it is important to keep the dialogue open between DOBOR and the business owners. With regards to changing specific times for boats to leave the dock, all the boat owners have worked very closely to stagger their time in and out so that there is no overcrowding, and it will be a safer experience for the manta rays as well as the guests. Further, reducing the number of boats would be absolutely devastating to the Big Island, and attaching to moorings would be a very unsafe course to take especially for the snorkelers.

In terms of what number might be needed to "cap" the number of tours going out, it was suggested by Ms. Anderson that because there are no safety concerns to date, perhaps any new tours can be stopped "now" in order to assess the situation until it is necessary to begin reducing the number of tours; other testifiers at the meeting concurred.

Mr. Jonathan Droggie, a licensed Coast Guard Captain, representing Hawaiian Island and Ocean Tours in Kailua-Kona, explained that safety training occurs with all the businesses testifying today. He agreed that the door should be closed "now" regarding the cap on tours. He believes that the rules are extremely over-reaching and unfair and asked that the Board reject the proposed rules as written so the stakeholders and DLNR can work together to create rules that are more in line with the business' sentiments.

Mr. Tom Young, representing both Hawaii Oceanic and Coral Reef Snorkel Adventures, stated that that this is a "high-stakes" rule proposal. There is currently an estimated \$100 million in annual revenue across the manta ray industry and these rules as written will cut that number by about fifty percent with a corresponding reduction in jobs.

From a safety perspective, manta ray tours have been running for more than twenty years, and there have been very few safety incidences in spite of a perception that manta ray tours are unsafe. There is clearly no data to support the idea that manta ray viewing zones are unsafe. Overall, the proposed rules as written will result in catastrophic consequences.

Second Vice Chair Shick pointed out that the businesses testifying today have a vested interest in making sure that the industry and the businesses remain successful. If safety, overcrowding, and destruction of manta ray habitat and the environment become a problem, it sorely affects all the businesses. Therefore, it is important that the rules govern in a positive way and that it is essential for DOBOR and the stakeholders to take time to sit down



and go through each of the points discussed today to ensure that the final draft rules are the best for everyone.

Mr. Underwood reiterated that these rules have been worked on for the past eight years and every draft was provided to the stakeholders for input with all updates placed on DOBOR's website. Because the rules have gone through an extensive process up to this point, he does not know how much more change to the draft rules will occur. He added that DOBOR stopped issuing manta ray permits prior to the COVID pandemic, and suggested that all the businesses attending the meeting today submit their changes to DOBOR.

In response to Mr. Ritchie's inquiry if there is another way to engage with the concerned businesses, such as a half day for input to revise the proposed rules so the final result will work for everyone, Mr. Underwood responded that DOBOR already utilized RCUH (Research Corporation of the University of Hawaii), which assisted with outreach meetings on the Island of Hawaii. The rules were amended several times over the years, were posted on the website, and were sent to the Deputy AG's office for revisions and approval.

Further, because BLNR and the Deputy Attorney General approved the rules as written, DOBOR cannot change them; however, he added that there is still a long process ahead. Mr. Ritchie expressed that he is hesitant to recommend sending the rules to public hearing because there are still several issues and concerns with the stakeholders that haven't been resolved. Thus, since this Board looks at impact on small business, it would be best to try to have DOBOR and the stakeholders on the same page before the rules go to public hearing.

Mr. Yamanaka added that this type of arrangement has worked in the past for other agencies. Although it is apparent that right from the start there was a strong disconnect, now that DOBOR and the businesses seem to be more on the same page, it should be communicated exactly what the concerns are and what changes are needed. Suggesting changes at a formal public hearing does not allow for back-and-forth discussions and sharing in dialogue. Second Vice Chair Shick reiterated that another stakeholder meeting needs to be held to discuss the "open" concerns that are on the table and for DOBOR to come back before this Board with any changes.

Mr. Yamanaka motioned to defer a final recommendation of the rule proposal due to the rules' overall financial impact upon the small businesses in order for DLNR/DOBOR and the stakeholders to meet prior to the public hearing to discuss the detrimental impacts and negative concerns addressed by the affected businesses. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

#### **IV. OLD BUSINESS** – After Public Hearing

##### **A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 13 Chapter 256-152 Kahaluu Bay Ocean Waters, promulgated DLNR**

Discussion leader, Ms. Rodighiero, asked Mr. Underwood to describe the after public hearing rules; he stated that these rules relate to DLNR limiting the number of activities at Kahaluu Bay, primarily the surf schools. Subsequently to DLNR coming before this board both before

and after public hearing, a technical error had occurred whereby the administrative rules were adopted without the map. As such, DLNR had to go back out to public hearing so that the map would be part of the rules; the proposal therefore includes the corresponding map.

Mr. Lee motioned to forward the proposal to the Governor for adoption. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

**B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 13 Chapter 251, Subchapters 1, 2, 3, and 7, Commercial Activities on State Ocean Waters, Navigable Streams and Beaches promulgated by DLNR**

Discussion leader, Ms. Rodighiero, stated that some of the rules are being repealed to satisfy the small business community. Mr. Underwood confirmed and explained that for years the rules mandated that, in order to engage in surfing instructions and canoe rides on Waikiki and Kaanapali Beaches, DLNR was required to service the operators.

However, it was the belief of the surfing community that DLNR should not be servicing the operators. Instead, the businesses should service their own employees and determine how long the employees need to be trained before they engage in canoe rides and surfing instructions. Therefore, it was decided that this section of the rules be repealed so that the conditions be developed by the operators/business owners, not DLNR, and placed into the operating permits.

Mr. Lee motioned to forward the proposed amendments to the Governor for adoption. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

**V. ADMINISTRATIVE MATTERS**

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

Vice Chair Albitz stated that Mr. Yamanaka's second term on this Board and Ms. Rodighiero's and Mr. Morioka's first terms are expiring June 30, 2023. Should members be interested in staying on, they must re-register with the Governor's Boards and Commissions Office; Mr. Yamanaka could potentially stay on as a holdover.

**VI. NEXT MEETING - Thursday, December 8, 2022 at 10:00 a.m.**

**VII. ADJOURNMENT – Mr. Lee made a motion to adjourn the meeting and Mr. Yamanaka seconded the motion; the meeting adjourned at 11:46 a.m.**

### **III. New Business**

A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by Department of Health

- a. Appendix A – Standard General Permit Conditions
- b. Appendix D – NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
- c. Appendix H – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
- d. Appendix I – NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
- e. Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

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

**Department or Agency:** \_\_\_\_\_

**Administrative Rule Title and Chapter:** \_\_\_\_\_

**Chapter Name:** \_\_\_\_\_

**Contact Person/Title:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

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

☐ **Yes**      ☐ **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

**I. Rule Description:**    ☐ **New**    ☐ **Repeal**    ☐ **Amendment**    ☐ **Compilation**

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

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

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

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

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

☐ **Yes**      ☐ **No**

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

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

☐ **Yes**      ☐ **No**

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

\*

\*

\*

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

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

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

1. A description of how opinions or comments from affected small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
  - (i) Attended the public hearing:
  - (ii) Testified at the hearing:
  - (iii) Submitted written comments:
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?  
☐ **Yes**    ☐ **No**
  - (i) If "Yes," was the change adopted?    ☐ **Yes**    ☐ **No**
  - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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

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

Discussion Leader and 2<sup>nd</sup> Vice Chair, Jonathan Shick, motioned to move the proposed amendments to public hearing once more. Mr. Yamanaka seconded the motion, ten members voted in support of the motion and Tessa Gomes abstained.

#### **IV. NEW BUSINESS** – Before Public Hearing **August 18, 2022 Minutes**

##### **A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Appendices A, D, H, I, and M, Water Pollution Control, promulgated by DOH**

Mr. Darryl Lum, Engineering Section Supervisor, Mr. Alec Wong, Program Manager, and Mr. Matthew Kurano, Enforcement Supervisor at DOH's Clean Water Branch, are introduced by Discussion Leader Nancy Atmospera-Walch.

Mr. Lum explains that the water pollution permits in Hawaii are part of the federal Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system required by Section 402 of the CWA that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The Department of Health (DOH) has been authorized by the U.S. Environmental Protection Agency (EPA) to issue NPDES permits in Hawaii. NPDES permits in Hawaii are governed by Hawaii's Water Pollution statute, Hawaii Revised Statutes (HRS), Chapter 342D, and HAR Chapter 11-55 Water Pollution Control.

HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES General Permits are incorporated into the HAR Chapter 11-55 as appendices. General Permits are issued as rules in the HAR and not specifically to any individual owner or operator. Each General Permit authorizes a category of discharges for a group of similar types of activities or facilities (e.g., once-through cooling water for air-conditioning systems or storm water discharges from construction activities) and contain requirements to minimize pollutants from being discharged to State waters. An owner or operator may request to be covered under an applicable General Permit, if eligible, by submitting a Notice of Intent (NOI) to the DOH. By submitting an NOI, an owner or operator thereby agrees to comply with all requirements of the applicable General Permit.

If a General Permit is available (i.e., for the specific category of discharge), the processing of coverage under the General Permit can be obtained more expeditiously than if coverage were to be processed under an Individual NPDES Permit. Coverage under an NPDES Individual Permit is processed on a case-by-case basis and requires the CWB to develop permit conditions and solicit public comment. More than 75% of the authorizations issued by DOH are for coverage under a General Permit. Appendix A of HAR Chapter 11-55 is the list of standard general permit conditions that are applicable to all of the General Permits.

Appendix D of HAR Chapter 11-55 authorizes the discharge of treated effluent from leaking underground storage tank remedial activities to a State receiving water from the cleanup (or remedial action) of underground storage tanks that have leaked petroleum hydrocarbons. Currently there is only one permittee, The United States Navy.

Appendix H of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with petroleum bulk stations and terminals to a State receiving water.

Treated process wastewater effluent includes tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater, and contaminated storm water runoff from the product storage and handling areas.

Appendix I of HAR Chapter 11-55 authorizes discharges of treated process wastewater associated with well drilling activities to a State receiving water. Treated process wastewater associated includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

The last General Permit that DOH is proposing to amend is in Appendix M of HAR Chapter 11-55 which authorizes point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to a State receiving water.

Early Stakeholder Outreach on the proposed revisions to HAR 11-55 and the general permits were conducted from July 11, 2022 through August 1, 2022. The CWB sent 585 emails to notify current permittees and organizations and to solicit comments. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

The rule change is primarily to issue the Appendices D, H, I, and M before they expire. The rule change also updates the main body of HAR 11-55 and Appendix A to conform with current implementation practices and to address any needed clarifications and revisions that were deemed necessary since the last substantive revision.

Mr. Lum states Appendices D, H, and I do not impact small businesses, so there should be no adverse impact from revisions. Appendix M primarily impact government agencies and municipalities. Although there may be contractors or sub-contractors that are small business that are hired for these projects, there should be no adverse impact. These revisions to Appendix M only clarify existing submittal and compliance requirements and are required to comply with Federal regulations. Revisions to HAR 11-55 and Appendix A potentially affect other NPDES permittees, however, most changes are clarifications of current rules, and changes to the field citation penalties don't affect permittees who are in compliance with their permit.

Mr. Lydgate seeks clarification on Appendix M which authorizes point source discharges from the application of pesticides to a State receiving water. And he notes that it seems increasing the fees is the only change and there is no real impact. Mr. Lum responds that DOH is keeping the filing fees the same which is \$500 and that the only increase is the field citation fee. These revisions to Appendix M only clarify existing submittal and compliance requirements and are required to comply with Federal regulations.

Chair Cundiff adds comments regarding DOH's Clean Water Branch and their professionalism and amount of outreach. Chair Cundiff asks how many citations DOH has issued that created the motivation to increase these penalties.

Mr. Kurano, Enforcement Supervisor, claims that there are roughly around 1200 permittees, on average 35-45 field citations a year. There is a growing group particularly in the construction type industry where they rather pay a fine than go through the more costly compliance costs. There has been an increase in non-compliance with certain sub-groups. There is a reasonable amount of non-compliant businesses to have to double the field citation penalties moving forward.

Mr. Yamanaka, motioned to move the proposed amendments to public hearing. Mr. Lee seconded the motion, ten members voted in support of the motion and Tessa Gomes abstained.

## **V. ADMINISTRATIVE MATTERS**

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

Mr. Ritchie indicated that the website taskforce is doing a great job working with NIC on a weekly basis to improve upon the Board's website activity and allowing the public to be more engaged with the Board. Involving Small Business and Government Agencies in the rule making process and assist in tracking rules has been the focus. The new version will look very similar but the improvements will be very organized.

Ms. Palcovich adds that the website should be up live within the next month. Mr. Ritchie notes that NIC will be assisting in the final product presentation once completed.

Chair Cundiff comments on how the taskforce has been very engaged and provided great comments and input. It will be very user friendly, and the new version of the website will address the outreach that the board is trying to accomplish. A press release will be sent out once the website is launched.

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

Mr. Ritchie states that DBEDT has partnered with the SBA and will be hosting the Hawai'i Small Business Fair on Saturday, September 17, 2022, at Leeward Community College. Small Businesses will be able to hear from speakers and exhibitors on how to start or grow a business. The Fair will provide actionable information for small businesses recovering from economic hardships caused by the COVID-19 pandemic. Expert speakers will present step-by-step methods and concrete examples to help you grow and strengthen a business. Business resource providers will speak one-on-one with business owners and entrepreneurs about specific challenges and provide actionable advice for any specific business needs. Small Businesses will be able to connect with financial institutions to discuss SBA-guaranteed loans and other financing.

Also, the SBRRB will have a table set up at the fair to feature the board. Ms. Ariola will be available to answer questions and speak on behalf of the SBRRB.



## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Listing types of discharges that may be discharged without NPDES permit coverage if they're not a significant source of pollutants.
- Requiring a certification statement for all submittals.
- Documenting electronic signature submittal requirements.
- Revisions to Appendix A – Standard General Permit Conditions.
- Reissuance of NPDES general permits:
  - Appendix D authorizing discharges of treated effluent from leaking underground storage tank remedial activities
  - Appendix H authorizing discharges of treated process wastewater associated with petroleum bulk stations and terminals
  - Appendix I authorizing discharges of treated process wastewater associated with well drilling activities
  - Appendix M authorizing point source discharges from the application of pesticides.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

- Addition of offenses that may be addressed by a field citation and increasing of the monetary penalties.
- Reorganization of the zone of mixing rule.

Section	Current	Proposed	Rationale
Throughout		Various formatting, grammatical, and stylistic changes.	Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements.
Title Page	Stamped adoption date.	Placeholder.	Left a placeholder for the adoption date to be stamped after rule making.
11-55-01	None	“Authorized Representative” means an individual who has been duly authorized by the certifying person and given the express, implied, and apparent authority to act on behalf of the certifying person as a signatory for legally binding documents such as reports or other information submitted to the department in accordance with section 11-55-07(b).	Define “authorized representative” as used throughout 11-55.
11-55-01	None	“Certifying Person” means an individual who meets the signatory requirements in section 11-55-07(a).	Define “certifying person” as used throughout 11-55.
11-55-01	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.	“Pest management measure” means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters <u>from pesticide application</u> .	Clarifying this applies to discharges from pesticide application.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-01	None	“Pesticide discharges to State waters from pesticide application” means the discharges that result from the application of biological pesticides or chemical pesticides that leave a residue from point sources to State waters. In the context of this definition of pesticide discharges to State waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law.	Define “pesticide discharges to State waters from pesticide application” as used in Appendix M.
11-55-01	“Pesticide residue” includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	“Pesticide residue” <u>for the purpose of determining whether an NPDES permit is needed for pesticide discharges to State waters from pesticide application, means</u> that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.	Revised definition of “pesticide residue” to match definition used in Appendix M.
11-55-03	General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter.	General prohibition. <u>(a) No person shall violate any provision of section 342D-50, HRS. (b) No person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except in compliance with this chapter 342D, HRS, rules adopted pursuant to chapter 342D, HRS, a permit or variance issued by the director.</u>	Explicitly state that there shall be no discharges to state waters unless authorized by a permit or variance.
11-55-04(a)	Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area,	A person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), complete notice of intent (except for the point source discharges from the application of pesticides, if not required under Appendix M) or “no exposure” certification for certain storm water discharges which meet all	Reorganized statements for clarity.

# Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
	<p>or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion.</p>	<p>requirements for a conditional "no exposure" exclusion:</p> <ol style="list-style-type: none"> <li>(1) Before discharging any pollutant;</li> <li>(2) Before substantially altering the quality of any discharges;</li> <li>(3) Before substantially increasing the quantity of any discharges;</li> <li>(4) Before beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;</li> <li>(5) Before beginning discharge from sources or activities identified and described in 40 CFR §122.23 through §122.27;</li> <li>(6) For small regulated municipal storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e).</li> </ol>	
11-55-04(j)	None	<p><u>Exclusions:</u></p> <ol style="list-style-type: none"> <li>(1) An NPDES permit may not be required provided that the discharges are consistent with the exclusions identified in 40 CFR §122.3 or have a de minimus impact on water quality due to the quantity or quality of the discharge as determined by the director.</li> <li>(2) The discharge shall not be reasonably expected (based on information available to the department) to be significant sources of pollutants to State waters.</li> </ol>	<p>Add list of non-storm water discharges that may be discharged without an NPDES permit if they are not a significant source of pollutants, similar to discharges allowed to permitted MS4s.</p>

# Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		<p>(3) Discharges which do not require an NPDES permit unless found to cause or contribute to a waterbody exceeding narrative or numeric water quality criterion in chapter 11-54 include, but are not limited to, the following:</p> <p>(A) Water line flushing (using potable water);</p> <p>(B) Landscape irrigation (using potable water);</p> <p>(C) Diverted stream flows;</p> <p>(D) &lt;Reserved&gt;</p> <p>(E) Uncontaminated pumped ground water infiltration (as defined in 40 CFR §35.2005[20]) to separate storm sewers;</p> <p>(F) Uncontaminated pumped groundwater;</p> <p>(G) Discharges from potable water sources;</p> <p>(H) Discharges from foundation drains;</p> <p>(I) Air conditioning condensate;</p> <p>(J) Irrigation water (using potable water);</p> <p>(K) Springs;</p> <p>(L) Uncontaminated water from crawl space pumps and footing drains;</p> <p>(M) Lawn watering (using potable water);</p> <p>(N) Individual residential car washing (using potable water);</p> <p>(O) Flows from riparian habitats and wetlands;</p> <p>(P) Dechlorinated freshwater swimming pool discharges to non-marine environments;</p>	

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		<p>(Q) Low pressure rinsing of sidewalks without chemical additives (using potable water); and,</p> <p>(R) Discharges or flows from firefighting activities.</p> <p>Exclusions for agriculture are limited to discharges identified in 40 CFR §122.3, or agricultural land that implements practices consistent with section 11-54-4(d), or section 11-56), but do not include storm water or wastewater discharges from construction or industrial activities associated with the construction or operation of agricultural facilities.</p>	
11-55-07(c)	None	If the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.	Requires a new certifying person to notify the department of the change and provide their contact information so the department can update permit records.
11-55-07(d), formerly (c)	If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	If an authorization under subsection (b) is no longer accurate because <u>the certifying person changed or</u> a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	Requires submittal of new authorization of authorized representative upon change of the certifying person.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-07(e)		Any person signing a document under subsections (a), (b), or (c) shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."	Document the certification statement required for all submittals.
11-55-07(f)		Electronic reporting. If documents described in subsections (a) or (b) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.	Document requirements for signatories providing submittals using an electronic signature.
11-55-34.02(b)(3)	Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated July 13, 2018;	Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated _____;	Update issuance date of Appendix D.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-34.02(b)(7)	Appendix H, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals” for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated July 13, 2018;	Appendix H, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals” for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated _____;	Update issuance date of Appendix H.
11-55-34.02(b)(8)	Appendix I, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities” for the discharge of treated process wastewater effluent associated with well drilling activities, dated July 13, 2018;	Appendix I, titled “NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities” for the discharge of treated process wastewater effluent associated with well drilling activities, dated _____;	Update issuance date of Appendix I.
11-55-34.02(b)(12)	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated July 13, 2018.	Appendix M, titled “NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides”, dated _____.	Update issuance date of Appendix M.
11-55-34.08(e)	Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).	Any notice of intent form submitted to the director shall be signed <u>by the certifying person</u> .	Replaced the rule reference with “certifying person” for clarity.
11-55-34.08(f)	All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).	All other reports or responses to requests for information required by the director shall be signed <u>by either the certifying person or authorized representative</u> .	Replaced the rule reference with “certifying person or authorized representative” for clarity.
11-55-34.08(g)	Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).	Any change <u>of the certifying person or authorized representative</u> which occurs after the issuance of a permit shall be reported to the director. <u>A change in authorized representative</u> shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of <u>section 11-55-07(b)</u> .	In addition to a change of the authorized representative, rule requires notification of change of the certifying person.



# Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-34.08(h)	Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).	Any person signing a document under subsections (e) and (f) shall make the following certification: <u>"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."</u>	Document the certification statement required for all general permit submittals.
11-55-34.08(p)	None	<u>Electronic reporting. If documents described in subsections (e) or (f) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3)(Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.</u>	Document requirements for signatories providing general permit submittals using an electronic signature.
11-55-40(b)(1)(A) formerly 11-55-40(1)(i)	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;	Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in <u>non-compliance of an NPDES permit</u> ;	Language added such that if a discharger does have a permit, but exceeds limits, field citation can be utilized. Prevents unnecessarily large and complex penalties for smaller violations.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-40(b)(1)(B) formerly 11-55-40(1)(A)(ii)	Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Any person who begins an activity <u>or discharge</u> prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;	Added language to clarify that the field citation is applicable when someone who requires permit coverage discharges without a permit, not just starts the activity.
11-55-40(b)(1)(C) formerly 11-55-40(1)(A)(iii)	Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan, best management practices plan, or other plan;	Any person who fails to correctly install, implement, maintain, or repair site best management practices, <u>treatment system, pollution control device or who fails to provide and/or receive training as called for by the applicable NPDES permit, in whole or in part;</u>	Added language to clarify that the Field Citation is applicable when a discharger fails to meet specific requirements such as installing or maintaining required treatment systems or conduct training. The added language facilitates timely resolution to smaller violations as those identified.
11-55-40(b)(1)(D) formerly 11-55-40(1)(iv)	Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;	Any person who fails to <u>conduct monitoring, including visual monitoring or inspections,</u> as required by the applicable NPDES permit, in whole or in part;	Added language to clarify that “monitoring” includes visual monitoring and oversight inspections required to ensure compliance with the permit.
11-55-40(b)(1)(E)(ii) formerly 11-55-40(1)(v)b)	storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,	storm water pollution control plan, <u>storm water pollution prevention plan, storm water management plan,</u> best management practices plan or all other plans required in the NPDES permit <u>or</u> NGPC and all subsequent revisions,	Added language to clarify and account for the various different plan names referenced in various NPDES permits.
11-55-40(b)(1)(F) formerly 11-55-40(1)(vi)	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.	Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to <u>notices of start, discharge monitoring reports, reports of non-compliance,</u> monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation;	Added language to clarify that notices of start and reports of non-compliance, both required by permits, are specifically captured by this Field Citation. Previously, they were captured but were not specifically identified.
11-55-40(b)(1)(G)	None	Any person who fails to update their storm water pollution control plan, storm water pollution prevention plan, best management practices plan, or other plan as required by	Added a category for situations when a discharger fails to update plans as required by the permit. The addition facilitates timely resolution when violation of this nature occur.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
		the applicable NPDES permit, in whole or in part;	
11-55-40(b)(1)(H)	None	Any person who submits a document without the appropriate signature or certification statement.	Category added to provide an option for a Field Citation when this type of violation is identified. The added language facilitates timely resolution for this type of situation.
11-55-40(b)(2)(A) through (C) formerly 11-55-40(2)(i) through (iii)	(i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation; (ii) \$100 for any person who violates paragraph (1)(A)(v) for the first violation, and \$200 for a subsequent violation; (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.	(A) <u>\$1,000</u> for any person who violates paragraphs (b)(1)(A), (B), (C), or (D) for the first violation, and <u>\$4,000</u> for a subsequent violation; (B) <u>\$200</u> for any person who violates paragraph (b)(1)(E) for the first violation, and <u>\$400</u> for a subsequent violation; (C) <u>\$1,000</u> for any person who violates paragraph (b)(1)(F), (G), or (H) for the first violation, and <u>\$2,000</u> for a subsequent violation.	Field citations were initially authorized in 2007. The penalties have not changed since original adoption. The increased penalties maintains levels that promote timely resolution while maintaining the deterrent effect intended.
11-55-41(a)	Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Zones of mixing are defined and authorized for use in NPDES permits in section 11-54-1. <u>This only applies to NPDES individual permits.</u> Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.	Specify that zones of mixing only apply to NPDES individual permits.
11-55-41(b)		Reorganized existing text.	Clarified requirements and reorganized to consolidate similar requirements into their own sections. Except for changes identified in this fact sheet, the original text was only moved/ reorganized and not revised.
11-55-41(b)	All references to "NPDES permit"	NPDES <u>individual</u> permit	Clarify that zones of mixing only apply to NPDES individual permits.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-41(b)(4), now 11-55-41(c)(1)	Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.	Approval of a zone of mixing shall be made after the <u>public participation process in sections 11-55-09 and 11-55-13 for the NPDES individual permit and associated zone of mixing.</u>	Clarify that a public hearing isn't required prior to approving a zone of mixing.
11-55-41(b)(5), now 11-55-41(c)(2)	No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:	No zone of mixing shall be established <u>or approved</u> by the director unless the application and the supporting information clearly show that:	Revised to be consistent with similar language in section 11-55-41 which references approval of a zone of mixing. There is no functional difference as a zone of mixing may only established once approved.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-41(b)(5)(D), now 11-55-41(c)(2)(D)	The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	The discharge occurring or proposed to occur does not violate <u>applicable water quality standards contained in chapter 11-54 (except for pollutants for which dilution is being requested and only within the boundary of the zone of mixing or initial dilution)</u> , will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.	Revised to clarify that the discharge may exceed water quality standards but only within the boundary of the zone of mixing or dilution. These zones by definition allow for dilution of a discharge within a defined area and as such, allow for water quality standard exceedances within the zone of mixing or dilution for approved pollutants. Therefore, such an exceedance should not prevent a zone of mixing or dilution from being granted as that type of exceedance is allowable within a zone of mixing or dilution.  The language was also further clarified to state that the exceedance is only allowed for pollutants that were granted dilution. Any other exceedance of a water quality standard that was not granted dilution is still considered a violation.
11-55-41(b)(11), now 11-55-41(f)(2)	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.	Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee, <u>unless the NPDES individual permit for the facility which has been granted the zone of mixing has been administratively extended.</u>	Revised to clarify that the term of the zone of mixing is effective when the NPDES individual permit for the facility that has the zone of mixing has been administratively extended. Zone of mixing approvals are issued within an NPDES permit and for the same effective term of the NPDES permit. Therefore, when an NPDES permit is administratively extended, the zone of mixing approval is also considered to be extended as it is a part of the NPDES permit.
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.

**RECEIVED**

By SBRRB at 10:27 am, Jan 11, 2023

RTP  
CS

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
HEARINGS OFFICE

REPORT OF THE HEARINGS OFFICER

Virtual Public Hearing on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11, Chapter 11-55, Appendices A, D, H, I and M

Pursuant to HRS § 91-3, and in accordance with other applicable laws and regulations, advance notice of a public hearing on the above-described matters was timely published statewide on October 17, 2022, advising that a virtual public hearing thereon would be held on Friday, November 18, 2022, at 10:00am HST, via Microsoft Teams. The notice advised all persons interested in participating or observing the hearing how to do so by computer or telephone.

The undersigned Hearings Officer called the public hearing to order on November 18, 2022 at approximately 10:00am. Six (6) staff members of the Department of Health were present to provide support. Seven (7) members of the public were present by Microsoft Teams.

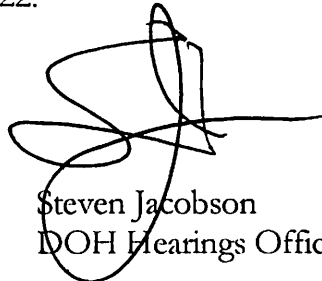
After a brief introduction by the Hearings Officer, all persons who wished to testify were allowed an opportunity to do so. Only one member of the public chose to do.

After that, the Hearings Officer asked if anyone else wanted to speak but no one did.

The Hearings Officer then reminded everyone in person or by Microsoft Teams that written comments on any of the above-described matters could still be offered until 4:30pm that day how to do so. He then closed the hearing at approximately 10:15am.

The Hearings Officer hereby certifies that the public hearing was conducted in accordance with all applicable requirements established by law.

DATED: Honolulu, Hawaii, November 29, 2022.



Steven Jacobson  
DOH Hearings Officer

**Public Comment (October 17, 2022 through November 18, 2022)  
Response to Comments on Proposed Draft Hawaii Administrative Rules (HAR),  
Chapter 11-55 and National Pollutant Discharge Elimination System (NPDES)  
General Permits in HAR, Chapter 11-55, Appendices A, D, H, I, and M**

Between October 17, 2022 through November 18, 2022, the Department of Health (DOH), Clean Water Branch (CWB) sought written input on proposed draft HAR 11-55 revisions and revisions to general permit standard conditions (in HAR 11-55 Appendix A) and NPDES General Permits in HAR 11-55 Appendix D (leaking underground storage tank remedial activities), Appendix H (petroleum bulk stations and terminals), Appendix I (well drilling), and Appendix M (pesticide). Below are the DOH-CWB responses to the early stakeholder outreach comments received.

**State of Hawaii, Department of Land and Natural Resources, Commission on Water Resource Management**

Comment 1: §11-55-02(a)(2)

*As the lead water agency in the State, CWRM has broad authorities to protect and regulate both water quantity and quality. While DOH has primary jurisdiction and responsibility for the State's water quality and pollution control programs, as co-trustees of water there is an increasing need for CWRM and DOH to work in partnership rather than operating in silos. We can no longer afford to think of water quantity and water quality as separate issues. They are intrinsically linked and connected. This fact should be reflected in the amendments to the HAR so there is consistency within all State agencies that manage, protect and regulate water. As such, CWRM suggests incorporating the following amendment to §11-55-02 General policy of water pollution control. (a) It is the public policy of this State: (2) To protect, maintain, and improve the quality of State waters: (F) For public trust uses of water, including traditional and customary practices.*

Comment 2: §11-55-04(a) and §11-55-39

*Activities that require an NPDES permit may affect Native Hawaiian traditional and customary practices and ground water dependent ecosystems (GDEs). CWRM recommends consultation with the region's 'Aha Moku Advisory Council, Department of Hawaiian Home Lands (DHHL), and/or the Office of Hawaiian Affairs (OHA) as part of the NPDES permit application process. Furthermore, the Hawai'i Supreme Court recognized that the State has an obligation to protect traditional and customary practices to the extent feasible, and that the proponent of an action must show sufficient evidence that these types of practices are protected, if they exist in the location in question. This "Ka Pa'akai framework" was created by the Court "to help ensure the enforcement of traditional and customary native Hawaiian rights while reasonably accommodating competing private development interests."*

*CWRM is obligated to conduct a “Ka Pa‘akai analysis” of a proposed action requiring CWRM approval independent of the entity proposing the action. CWRM recommends that this analysis also be done for NPDES permits to inform any decision on the impact of the proposed action on traditional and customary practices and suggests incorporating the following amendment to §11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address: (7) the impact to traditional and customary practices.*

Comment 3: §11-55-04(j)

*Water is required for certain traditional and customary uses including kalo cultivation. CWRM suggests the following addition to §11-55-02(j) Exclusions: (3) Discharges which may not require an NPDES permit include, but are not limited to, the following: (S) instream use of water for traditional and customary kalo cultivation practices.*

Comment 4: §11-55-40(b)(1)(E)

*The Commission strongly encourages the implementation of water conservation measures, best management practices to mitigate storm water runoff, and the reuse of storm water and the use of other alternative non-potable sources where practicable. The Commission has published a Water Conservation Manual for State of Hawai‘i Facilities (2007) that lists conservation measures for restrooms and shower facilities; kitchens, cafeterias, and staff rooms; and landscaping. The Commission has also published a Handbook for Stormwater Reclamation and Reuse Best Management Practices in Hawai‘i (2008).*

Response: As noted by CWRM, the DOH is the lead agency for water quality within the State. As such, the DOH is only responsible for protection of water quality. The DOH protects all water (in terms of quality) within the State equally in accordance with the water quality standards set by the DOH and as approved by the United States Environmental Protection Agency (USEPA). Following the objective of the Federal Clean Water Act (CWA) and State law/policy, the DOH works to restore and protect water within the State for use by the public where appropriate. As the DOH does not make any determinations on the quantity or access to water resources within the State, by protecting the quality of water within the State equally in line with the CWA and State law/policy, traditional and customary practices should be protected to the extent of DOH’s jurisdiction over water quality.

The Clean Water Branch agrees that protection of traditional and customary practices is a concern of the State. As such, as noted in the comment, there are several agencies within the State that are



important stakeholders and partners in protecting traditional and customary practices such as the Department of Land and Natural Resources, Department of Hawaiian Home Lands, and Office of Hawaiian Affairs. To ensure that the State protects traditional and customary practices, a holistic framework of law, policy, and implementation should be utilized by all affected State agencies. Such a framework should be implemented with coordination between the multiple affected agencies. Changing the rules or policy of one agency in a vacuum is not the most effective way to address these issues. This approach leads to a patchwork of inconsistent and potentially contradictory law and policy with no underlying process for implementation or enforcement. Rather, the State and its affected regulatory agencies should conduct interdepartmental consultations, discussions, and agreements to create a framework to effectively address this issue consistently across each agency's jurisdiction. If the framework developed as a result of such coordination determines that rule or policy changes/development are necessary, then the affected agencies should jointly conduct rulemaking to ensure consistency across each agency.

Therefore, the suggested revisions have not been made. The DOH may make changes to address this concern in a future rulemaking following interdepartmental consultation and coordination as noted above.

**State of Hawaii, Department of Land and Natural Resources, Land Division**

Comment 1: *The proposed amendments include defining the role and responsibilities of the "Certifying Person." According to the proposed definition as found in §11-55-01, a "Certifying Person" means an individual who meets the signatory requirements in section 11-55-07(a). Under §11-55-07(a), the individual who meets the signatory requirements as it relates to State agencies is "either a principal executive officer or a ranking elected official." Further, proposed amendments to §11-55-07(e) defines the responsibilities of the "Certifying Person" which states that the "Certifying Person" is required to make the following certification:*

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

*In addition, the proposed amendments, pursuant to §11-55-07(c), would require that if “the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.” The proposed amendments to §11-55-07(d) would further require that “if an authorization under subsection (b) is no longer accurate because the certifying person changed or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.” Moreso, the proposed amendment to §11-55-40(b)(H) states that “Any person who submits a document without the appropriate signature or certification statement” is considered to be in non-compliance and could be subject to a “Field citation” that could result in a \$1,000 fine pursuant to the proposed amendment to §11-55-40(b)(2)(c).*

*Based on our overall understanding of the roles and responsibilities of the “Certifying Person” we kindly suggest the following:*

- 1. Clarify the definition of “Certifying Person” to include the responsibilities, either in whole or in part, as found in §11-55-07(e); and*
- 2. Clarify the appropriate person for State agencies under §11-55-07(a)(3) as either the Chair or the Director of the Agency in their ex-officio capacity and that they be exempt from compliance with §11-55-07(c) and (d). As you are aware, a Cabinet member’s term is four to eight years, depending on the Administration. Given such turnover, allowing the Chair or Director to sign in an ex-officio capacity will not only simplify things for State Departments, but will also allow Departments to avoid repeated fines due to non-compliance through inadvertent mistake or oversight.*

Response: The current language regarding the requirements for the Certifying Person (excluding the field citation condition) is based on federal regulations contained in Title 40 of the Code of Regulations. The Clean Water Branch’s implementation is based on our current interpretation on how to implement the requirements in practice. The Clean Water Branch is not opposed to making changes in line with the comments and suggestions raised here, however, as the current language is based on federal regulations and current Clean Water Branch practices, these changes will need to be discussed/reviewed internally prior to coming to a decision. It may also be possible that a rule change is not necessary to implement such changes if after internal review it is determined that such changes can be implemented through changes to Clean Water Branch practices rather than State rule.

Therefore, the suggested revisions have not been made.

**City and County of Honolulu, Department of Department of Design and Construction**

Comment 1: Thank you for the opportunity to review and comment. The Department of Design and Construction has no comments to offer at this time.

Response: Thank you for your attention in this matter.

## Par Hawaii Refining

Comment 1: As a supplement to Mr. Rosen comments, please let me add that we are generally opposed to the concept of unifying the discharge limits for Appendix H under the most stringent water quality for Bulk Terminals not only because such an approach will most certainly make meeting the new limits more difficult, the limits being proposed are not representative of the conditions and the locations in which all bulk terminals discharge. Currently Appendix H provides different limits based on saline and fresh water discharges. The key portions of the Appendix H comparison, is provided for 1. Current Par West Saline, and Fresh WQS for theoretical Bulk Terminals that discharge to fresh water and to Most-stringent limits (Proposed).

	Current Appendix H	Current Appendix H		Proposed Appendix H	Current Par West (Saline) to Most Stringent (Proposed) App H Ratio Current / Proposed
	Par West Saline ug/l	Fresh ug/l		Most Stringent ug/l	
Benzene	1,700	1,800		1,700	1.00
Toulene	1,700	5,800		1,700	1.00
Ethyl Benzene	140	11,000		140	1.00
Xylene	NS	NS		2,100	NA
Ammonia - Nitrogen	15(a)	5(b)		5(a)	3.00
Lead, Total Recoverable	140	29		29	4.83
Dissolved Oxygen	>75	>75		>80	1.07
pH	7 - 8.6			6.0 - 8.0	NA
(a)	Based on criteria of not to exceed more than 2% of the time and based on "wet" flow conditions/siting of > 3 million gallons of freshwater				
(b)	Based on criteria of not to exceed more than 10% of the time and based on "dry" flow conditions/siting of > 3 million gallons of freshwater				

As shown in the comparison above the proposed (most stringent) Appendix H limits for Ammonia Nitrogen and Total Recoverable Lead are about 3 times and 5 times more stringent than currently listed on the NGPC Appendix H Permit (21HG295.FNL.21) for the Par West/IES Terminal that was issued on February 21, 2021. If adopted there is much greater risk that select terminals will be immediately out of compliance .

The Total Recoverable Lead limit is proposed to be reduced by nearly a factor of 5, for consistency and to have the most stringent standard everywhere, but the terminals all discharge (principally stormwater) to the ocean (in saline waters). So to be consistent with the general goal of meeting applicable water quality standards, more consistency could be achieved by basing the Appendix H limits on saline waters because there are no terminals in Hawaii (that discharge to freshwater) and that is unlikely to change because most petroleum fuels are delivered first by ship or barge. For bulk petroleum terminals if consistency and accuracy are both important then the limits should be based on the saline WQS.

The Appendix H limit for ammonia is proposed to be reduced by 2/3rds and essentially get 3 times more stringent but seemingly for a somewhat different reason. For decades the WQS in ammonia and other nutrients have been established on a two tier criteria “wet” and “dry” criteria and that two tier scheme has been preserved in the latest (2021) version of HAR 54. For the Par West terminal and others that are located in areas where there is significant fresh water inflow, the difference between the “wet” criteria and the “dry” criteria is 15 vs 9 ug/l for the not to exceed more than 2% of the time basis. For decades NGPC permits haven been issued around the two tiered criteria but the proposed amendment would dismiss that long held distinction from the NGPC permit. Particularly because the State has continued to recognize a distinction in WQS based on the amount of freshwater inflows, the Appendix H permits should reflect that as well (and I believe there is guidance from the EPA to give consideration to the surroundings and siting) which is consistent with the “dry” and “wet” criteria that Hawaii has historically embraced.

The second factor contributes to tightening of the ammonia limit, is because the DOH is proposing to base the Appendix H criteria on the statistical criteria of not to exceed more than 10 percent of the time rather than not to exceed more than 2% of the time. That variance accounts for another nearly 50% reduction drop from 9 to 5 ug/l. And it is not clear how the permit limit would be stated to reflect and parallel the 10% of the time WQS specified in the HAR.

The Appendix H NGPC permit has no provisions for averaging or comparing to the 10% of the time WQS. If the terminals routinely discharged and sampling and testing then the 10% of the time could be made over some period of sampling events. But most discharges are in association with stormwater events, rather than the treated process stream itself. Discharges from some terminals are so infrequent the 10% criteria is not really applicable because there is no statistical basis to give them just consideration. Would the DOH be open to including some numeric limit as to the minimum number of samples that would have to be collected before the 10% of the time exceedance would be recognized. As it stands now the Appendix H appear to proposing to

use a time-based WQS to set an immediate permit limit. If every exceedance is going to be considered a violation then, it would seem that the permit should be set based on the not-to-exceed criteria of 2% of the time (assuming of course that the WQS is deemed to be sufficiently protective of the environment).

The ammonia NPDES limit has been historically difficult to meet at the Chevron and IES/Par refineries when they were in operation. Because the limits were so stringent a Zone of Mixing permit were necessary when outflows were continuous. Lowering the limit from 15 to 5 ug/l would be very difficult to meet (while operating as a terminal) even if the discharge consists mostly of storm water, ( assuming that most treated terminal water could be retained in tanks. Terminals that have a common permitted outlet for stormwater and treated process water, may be at risk, absent the clarification request by Mr. Rosen.

The DOH seeming just relaxed/eliminated that need to conduct ammonia testing on stormwater under Appendix B, in part because of the challenges meeting the State nutrient limits, so this proposal for Appendix H appears a little inconsistent with

Also as shown in the table above Appendix H should retain the allow for a pH of 8.6. A number of federal NPDES limit industries to a pH range of 6 -9. Although there are some exceptions, because most water from terminal operations is neutral to begin with, most terminals do not have treatment trains design to adjust the pH of the process water, which is typically being treated to remove the organics. Moreover, much of the pH is influenced by the native soil and stormwater and run-on. Given the State's long acceptance of 8.6 pH it is unclear why there is additional need for further pH control (tightening) of process water from bulk petroleum terminals. If sampling just on the treated process water the more stringent pH limit may not pose much of a challenge.

Response: The following revisions were made to the effluent limitations from the proposed:

1. Instead of one effluent limitation for all receiving water types, there are now two sets of limits: one for saline waters and one for fresh waters.
2. For total recoverable lead, benzene, toluene, and ethyl benzene, the effluent limitations were reverted to those in the currently effective general permit (issued July 13, 2018) for saline and fresh waters.
3. The ammonia nitrogen, pH, and dissolved oxygen limits have been revised.

For ammonia nitrogen, the revised saline water effluent limitation is based on the 2% not to exceed criteria for wet open coastal waters. The general permit currently covers two facilities, both of which discharge to wet open coastal waters and have an effluent limit based on the 2% not to exceed criteria for open coastal waters. As the CWB does not expect there to be new facilities to be covered under this general permit, the effluent limitations were revised to establish the saline water ammonia nitrogen effluent limitation to be what is established for current facilities. The revised fresh water effluent limitation is based on the 2% not to exceed criteria for estuaries. For fresh waters, only estuary and Pearl Harbor estuary have water quality criteria for ammonia nitrogen. The estuary criteria was selected for the revised effluent limitation over the Pearl Harbor estuary criteria as it was the more stringent of the two.

For pH, the revised saline water effluent limitation is based on the criteria for open coastal waters. The general permit currently covers two facilities, both of which discharge to wet open coastal waters and have effluent limitations based on the criteria for open coastal waters. As the CWB does not expect there to be new facilities to be covered under this general permit, the effluent limitations were revised to establish the saline water pH effluent limitation to be what is established for current facilities. The revised fresh water effluent limitation is based on the most stringent pH range among the fresh water types.

Comment 2: Lastly, we oppose the addition of TPH-diesel and TPH-gasoline sampling and testing because those parameters are not needed to determine if the process water is being properly treated before being released. There are already widely-recognized organic parameters, specifically, COD, O&G and BTEX level that serve as a good means of verifying performance of the water treating facility associated with the bulk terminal before discharge. Though no limits are being proposed at this time because there are no WQS for TPH-diesel and TPH-gasoline, however there are Environmental Action Limits (2.5 ppm and 5 ppm ) which might find their way on to the permit and create challenges in the future.

Making the Appendix H NGPC conditions unduly restrictive may force us to apply for individual NPDES permits and these facilities are not complex.

Response: As discussed in the fact sheet, total petroleum hydrocarbons (TPH) are a potential pollutant that may be discharged from this class of facility. The CWB has determined that monitoring is required to assess whether this class of facility is effectively removing these pollutants prior to discharge. While there are no WQS currently for TPH-diesel or TPH-gasoline, the CWB is currently assessing whether to adopt such

standards. As evidenced by the Environmental Action Limits established by the Department's Hazard Evaluation and Emergency Response Office, elevated discharges of TPH-diesel and TPH-gasoline may be harmful to the environment. As such, monitoring is required to characterize the amount of TPH that may be leaving these types of facilities and entering the environment. It should also be noted that the HAR 11-55 Appendix D NPDES general permit authorizing discharges from leaking underground storage tank remedial activities already require monitoring for (and for certain pollutants, limits) BTEX, TPH-diesel, and TPH-gasoline. The currently proposed revision only includes monitoring requirements for these pollutants.

Therefore, based on the reasons discussed above, the general permit has not been revised.



**National Pollutant Discharge Elimination System**  
**General Permit Fact Sheet for**  
**Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix A**  
**Standard General Permit Conditions**

**The Standard General Permit Conditions is divided into the following sections:**

1. *Basic water quality criteria [Revised]*
2. *Onshore or offshore construction [Revised]*
3. *Sampling requirements and definitions [Revised]*
4. *Duty to reapply [Revised]*
5. *Applications [Revised]*
6. *Duty to comply [Revised]*
7. *Need to halt or reduce activity not a defense [Revised]*
8. *Duty to mitigate [Revised]*
9. *Proper operation and maintenance [Revised]*
10. *Permit actions [Revised]*
11. *Property rights [Revised]*
12. *Duty to provide information [Revised]*
13. *Inspection and entry [Revised]*
14. *Monitoring and records [Revised]*
15. *Signatory requirement [Revised]*
16. *Reporting requirements [Revised]*
17. *Bypass [Revised]*
18. *Upset [Revised]*
19. *Existing manufacturing, commercial, mining, and silvicultural dischargers [Revised]*
20. *Publicly owned treatment works [Revised]*
21. *Reopener clause [Revised]*
22. *Privately owned treatment works [Revised]*
23. *Transfers by modification [Revised]*
24. *Automatic transfers [Revised]*
25. *Minor modification of permits [Revised]*
26. *Termination of permits [Revised]*
27. *Removed substances [Revised]*
28. *Availability of reports [Revised]*
29. *Civil and criminal liability [Revised]*
30. *Oil and hazardous substance liability [Revised]*
31. *Federal facility construction [Revised]*
32. *State law [Revised]*

33. Severability [Revised]

34. Notice of Intent Requirements [Revised]

## **Main**

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### **Original:**

*Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2012 unless otherwise specified.*

### **Revised:**

*Note: All references to Title 40 of the Code of Federal Regulations (40 CFR) are to regulations that are in effect on July 1, 2021 unless otherwise specified.*

### **Rationale:**

*Title 40 of the Code of Federal Regulations has been updated.*

## **Section 1**

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**Original:** Basic water quality criteria (section 11-54-4)

**Revised:** Basic water quality criteria (comply with Section 11-54-4)

### **Rationale:**

*A more detailed reference to the State law was added to this section.*

## **Section 1(b)**

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**Original:** The discharge shall not cause or contribute to a violation of the basic requirements of section 11-54-4(b)

**Revised:** The Permittee shall not cause or contribute to a violation of the basic numeric water quality requirements of Hawaii Administrative Rules, Chapter 11-54, Section 11-54-4(c).

### **Rationale:**

*Revised verbiage to match Standard NPDES Permit Conditions (Version 16) and update the reference to applicable section of 11-54.*

## **Section 2**

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**Original:** Onshore or offshore construction

**Revised:** Onshore or offshore construction (Hawaii Revised Statutes, Section 342D-4)

### **Rationale:**

*Reference to the State law was added to this section.*

### **Section 3**

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**Original:** *Sampling requirements and definitions*

**Revised:** *Sampling requirements and definitions (Hawaii Revised Statutes, Section 342D-4)*

**Rationale:**

*Reference to the State law was added to this section.*

### **Section 3(b)(2)**

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**Original:** *"Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001, 485 pp. (Available from the U.S. Government Bookstore. Order by Stock No. 024-003-00186-4 and ISBN 0-16-061763-4.) (Also available from National Technical Information Service (NTIS). Order by NTIS No. PB2002-100323.)*

**Revised:** *"Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Third Edition, Revised Reprint, 2001 (Available at: <https://www.usbr.gov/tsc/techreferences/mands/wmm.html>.)*

**Rationale:**

*Revised to provide website to access various media versions of document.*

### **Section 3(b)(4)**

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**Original:** *"NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, EPA No. 832B81102, September 1981, 149 pp. (Available from the National Technical Information Service (NTIS). Order by NTIS No. PB82-131178.)*

**Revised:** *"NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 147 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)*

**Rationale:**

*Revised to update agency from which to order document.*

### **Section 4**

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**Original:** *Duty to reapply*

**Revised:** *Duty to reapply (comply with 40 CFR §122.41(b) and Sections 11-55-04, 11-55-34.08 and 11-55-34.09)*

**Rationale:**

*References to the State and Federal laws were added to this section.*

**Section 5**

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**Original:** *Applications (comply with 40 CFR §122.22)*

**Revised:** *Signatories to permit applications and reports (based in part on 40 CFR §122.22 and Section 11-55-07)*

- a. *Applications. All permit applications shall be signed as follows:*
- (1) *For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:*
    - (A) *A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or*
    - (B) *The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*
  - (2) *For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or*
  - (3) *For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:*
    - (A) *The chief executive officer of the agency, or*

- (B) *A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);*
- (4) *For a trust. By a trustee; or*
- (5) *For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.*
- (b) *All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:*
  - (1) *The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);*
  - (2) *The authorization is made in writing by a person designated under subsection (a); and*
  - (3) *The written authorization is submitted to the director.*
- (c) *If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.*
- (d) *Certification. Any person signing a document under subsection a. or b. shall make the following certification:*

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my*

*knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 6**

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**Original:** *Duty to comply (comply with 40 CFR §122.41(a))*

**Revised:** *Duty to comply (comply with 40 CFR §122.41(a) and Section 11-55-03)*

*The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and Hawaii water pollution law and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.*

- a. *The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.*
- b. *The Permittee shall be subject to statutory penalty amounts for violations are set forth in Hawaii Revised Statutes, 342D.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 7**

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**Original:** *Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c))*

**Revised:** *Need to halt or reduce activity not a defense (comply with 40 CFR §122.41(c) and based in part on Hawaii Revised Statutes, Section 342D-4)*

*It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 8**

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**Original:** *Duty to mitigate (based in part on 40 CFR §122.41(d))*

**Revised:** *Duty to mitigate (based in part on 40 CFR §122.41(d) and Hawaii Revised Statutes, Section 342D-4)*

**Rationale:**

*Reference to the State law was added to this section.*

**Section 9**

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**Original:** *Proper operation and maintenance (comply with 40 CFR §122.41(e))*

**Revised:** *Proper operation and maintenance (comply with 40 CFR §122.41(e) and Section 11-55-23(9))*

*The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the Permittee only when the operation is necessary to achieve compliance with the conditions of this permit.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 10**

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**Original:** *Permit actions (comply with 40 CFR §122.41(f))*

**Revised:** *Permit actions (comply with 40 CFR §122.41(f) and Sections 11-55-16 and 11-55-17)*

*This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 11**

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**Original:** *Property rights (comply with 40 CFR §122.41(g))*

**Revised:** *Property rights (comply with 40 CFR §122.41(g) and Sections 11-55-15(g))*

*This permit does not convey any property rights of any sort or any exclusive privilege.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 12**

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**Original:** *Duty to provide information (comply with 40 CFR §122.41(h))*

**Revised:** *Duty to provide information (comply with 40 CFR §122.41(h) and based in part on Hawaii Revised Statutes, Section 342D-4))*

*The Permittee shall furnish to the Director of Health, within a reasonable time, any information which the Director of Health may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also furnish to the Director of Health upon request, copies of records required to be kept by this permit.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 13**

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**Original:** *Inspection and entry (comply with 40 CFR §122.41(i))*

**Revised:** *Inspection and entry (comply with 40 CFR §122.41(i)(3) and Section 11-55-23(5))*

*The Permittee shall allow the Director of Health, or a duly authorized agent (including an authorized contractor acting as a duly authorized agent of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:*



- a. *Enter upon the Permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;*
- b. *Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;*
- c. *Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and*
- d. *Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.*

**Rationale:**

*Reference to the State law was added to this section. Reference to the Federal law was made more specific. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 14**

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**Original:** *Monitoring and records (based in part on 40 CFR §122.41(j))*

**Revised:** *Monitoring and records (based in part on 40 CFR §122.41(j)) and Sections 11-55-29 and 11-55-31)*

**Rationale:**

*Reference to the State law was added to this section.*

**Section 15**

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**Original:** *Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k))*

**Revised:** *Signatory requirement (comply with 40 CFR §§122.22 and 122.41(k)) and Section 11-55-07)*

- a. *All applications, reports, or information submitted to the Director of Health shall be signed and certified. (See section 5 or 40 CFR §122.22)*
- b. *The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.*

**Rationale:**

Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.

**Section 16**

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**Original:** Reporting requirements (comply with 40 CFR §122.41(l))

**Revised:** Reporting requirements (comply with 40 CFR §122.41(l) and Hawaii Revised Statutes, Section 342D-4)

- a. *Planned changes. The Permittee shall give notice to the Director of Health as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR §122.29(b); or (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR §122.42(a)(1) or section 19. (3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and the alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.*
- b. *Anticipated noncompliance. The Permittee shall give advance notice to the Director of Health of any planned changes in the permitted facility or activity which may result in noncompliance with this permit's requirements.*
- c. *Transfers. This permit is not transferable to any person except after notice to the Director of Health. The Director of Health may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate other requirements as may be necessary under the Act or Chapter STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 15 of 27 v.16 342D, HRS. (See 40 CFR §122.61; in some cases, modification or revocation and reissuance is mandatory.)*
- e. *Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.*
  - (1) *All monitoring results, including intake monitoring results, effluent, and receiving water, must be reported on a Discharge Monitoring Report Form or forms submitted electronically using NetDMR, or as otherwise specified by the Director for reporting results of*

*monitoring of sludge use or disposal practices. NetDMR is accessed from: <http://www.epa.gov/netdmr>. DMRs shall be submitted electronically no later than the 28th day of the month following the completed reporting period, unless otherwise specified in the permit.*

- (2) *If the Permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form or sludge reporting form specified by the Director.*
- (3) *Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director of Health in this permit.*
- (4) *For the purposes of reporting, the Permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal to or less than the concentration of the minimum level (ML).*

  - (i) *The Permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.*
  - (ii) *The Permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in a sample is below detection limit/no detection.*
  - (iii) *The Permittee shall report sample results and calculations between the ML and MDL as NODI(Q). NODI(Q) means that the concentration of the pollutant in a sample is detected but not quantifiable. STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 16 of 27 v.16*
  - (iv) *For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.*

- (v) *For purposes of calculated geometric means,  $0.25 \times \text{MDL}$  shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.*
  - (vi) *When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.*
- (5) *Should there be no discharges during the monitoring period, the DMR form shall so state.*
- e. *Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.*
- f. *Immediate reports of non-compliance. The Permittee shall report any noncompliance which may endanger human health or the environment as soon as practical. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:*
  - (1) *Any unanticipated bypass which exceeds any effluent limitation in the permit. See 40 CFR §122.41(g).*
  - (2) *Any upset which exceeds any effluent limitation in the permit.*
  - (3) *Violations of a maximum daily discharge limitation for any of the pollutants listed by the Director of Health in the permit to be reported within 24 hours. See 40 CFR §122.44(g)*

*The Director of Health may waive the written report on a case-by-case basis for reports under Section 16.f if the oral report has been received within 24 hours. STANDARD NPDES PERMIT CONDITIONS (Version 16)  
Page 17 of 27 v.16*

- g. Other noncompliance. The Permittee shall report all instances of noncompliance not reported under subsections d., e., and f. at the time monitoring reports are submitted. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*
- h. Other information. Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director of Health, the Permittee shall promptly submit the facts or information.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 17**

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**Original:** *Bypass (based in part on 40 CFR §122.41(m))*

**Revised:** *Bypass (based in part on 40 CFR §122.41(m) and Hawaii Revised Statutes, Section 342D-4)*

**Rationale:**

*Reference to the State law was added to this section.*

**Section 18**

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**Original:** *Upset (based in part on 40 CFR §122.41(n))*

**Revised:** *Upset (based in part on 40 CFR §122.41(n) and Hawaii Revised Statutes, Section 342D-4)*

**Rationale:**

*Reference to the State law was added to this section.*

**Section 19**

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**Original:** *Existing manufacturing, commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a))*

**Revised:** *Existing manufacturing commercial, mining, and silvicultural dischargers (comply with 40 CFR §122.42(a) and Hawaii Revised Statutes, Section 342D-4)*

*In addition to the reporting requirements under 40 CFR §122.41(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director of Health as soon as they know or have reason to believe:*

- a. *That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels”:*
  - (1) *One hundred micrograms per liter (100 µg/l);*
  - (2) *Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;*
  - (3) *Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or*
  - (4) *The level established by the Director of Health in accordance with 40 CFR §122.44(f). STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 20 of 27 v.16*
- b. *That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following “notification levels”:*
  - (1) *Five hundred micrograms per liter (500 µg/l);*
  - (2) *One milligram per liter (1 mg/l) for antimony;*
  - (3) *Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR §122.21(g)(7); or*
  - (4) *The level established by the Director of Health in accordance with 40 CFR §122.44(f).*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

## **Section 20**

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**Original:** *Publicly owned treatment works (comply with 40 CFR §122.42(b))*

**Revised:** *Publicly owned treatment works (comply with 40 CFR §122.42(b) and Hawaii Revised Statutes, Section 342D-4)*

*This section applies only to publicly owned treatment works as defined in 40 CFR §122.2.*

- a. *All publicly owned treatment works must provide adequate notice to the Director of Health of the following:*
  - (1) *Any new introduction of pollutants into the publicly owned treatment works from an indirect discharger which would be subject to Section 301 or 306 of the Act if it were directly discharging those pollutants; and*
  - (2) *Any substantial change in the volume or character of pollutants being introduced into that publicly owned treatment works by a source introducing pollutants into the publicly owned treatment works at the time of issuance of the permit; and*
  - (3) *For purposes of this paragraph, adequate notice shall include information on paragraph (1), the quality and quantity of effluent introduced into the publicly owned treatment works, and paragraph (2), any anticipated impact of the change on the quantity or quality of effluent to be discharged from the publicly owned treatment works.*
- b. *(The following condition has been established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act.) Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR Part 270. Hazardous wastes are defined in 40 CFR Part 261 and include any mixture containing any waste listed under 40 CFR §§261.31-261.33. The Domestic Sewage Exclusion (40 CFR §261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

## Section 21

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**Original:** Reopener Clause (comply with 40 CFR §122.44(c) and 40 CFR §125.123(d)(4);

**Revised:** Reopener Clause (comply with 40 CFR §122.44(c), 40 CFR §122.46(d), and 40 CFR §125.123(d)(4) and Hawaii Revised Statutes, Section 342D-4);

- a. For any discharger within a primary industry category (see 40 CFR Part 122, Appendix A), requirements under Section 307(a)(2) of the Act as follows:
- (1) On or before June 30, 1981:
    - (A) If applicable standards or limitations have not yet been promulgated, this permit shall include a condition stating that, if an applicable standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act and that effluent standard or limitation is more stringent than any effluent limitation in this permit or controls a pollutant not limited in this permit, this permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.
    - (B) If applicable standards or limitations have been promulgated or approved, this permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are “approved” or the purpose of this regulation.)
  - (2) On or after the statutory deadline set forth in Sections 301(b)(2)(A), (C), and (E) of the Act, any permit issued shall include effluent limitations to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by this section.
  - (3) The Director of Health shall promptly modify or revoke and reissue any permit containing the clause required under this section to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act which is promulgated or approved after this permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in this permit, or controls a pollutant not limited in this



*permit. STANDARD NPDES PERMIT CONDITIONS (Version 16)*  
*Page 22 of 27 v.16*

- (4) *For any permit issued to a treatment works treating domestic sewage, including “sludge-only facilities,” the Director of Health shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the Act. The Director of Health may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in this permit, or controls a pollutant or practice not limited in this permit. b. All permits which authorize the discharge of pollutants pursuant to 40 CFR §125.123(c) shall contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director of Health determines that continued discharge may cause unreasonable degradation of the marine environment.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

## **Section 22**

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**Original:** *Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR §122.44(m))*

**Revised:** *Privately owned treatment works (The following conditions were established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act, 40 CFR §122.44(m), and Hawaii Revised Statutes, Section 342D-4.)*

**Rationale:**

*Reference to the State law was added to this section.*

## **Section 23**

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**Original:** *Transfers by modification (comply with 40 CFR §122.61(a))*

**Revised:** *Transfers by modification (comply with 40 CFR §122.61(a) and Section 11-55-34.08(i)(2))*

*Except as provided in section 24, a permit may be transferred by the Permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR §122.62(b)(2)), or a minor modification made (under 40 CFR §122.63(d)), to identify the new Permittee and incorporate other requirements as may be necessary under the Act.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

## **Section 24**

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**Original:** *Automatic transfers (comply with 40 CFR §122.61(b) and section 11-55-34.08(i)(2))*

**Revised:** *Automatic transfers (comply with 40 CFR §122.61(b) and Section 11-55-34.08(i)(2))*

*As an alternative to transfers under section 23, any NPDES permit may be automatically transferred to a new Permittee if:*

- a. The current Permittee notifies the Director of Health at least 30 days in advance of the proposed transfer date in subsection b;*
- b. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and*
- c. The Director of Health does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under 40 CFR §122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection b.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included on the Appendix to match Standard NPDES Permit Conditions Version 16.*

## **Section 25**

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**Original:** *Minor modification of permits (comply with 40 CFR §122.63);*

**Revised:** *Minor modification of permits (comply with 40 CFR §122.63 and Section 11-55-16);*

*Upon the consent of the Permittee, the Director of Health may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR Part 124 draft permit and public notice as required in 40 CFR §122.62. Minor modifications may only:*

- a. *Correct typographical errors;*
- b. *Require more frequent monitoring or reporting by the Permittee;*
- c. *Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;*
- d. *Allow for a change in ownership or operational control of a facility where the Director of Health determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new Permittees has been submitted to the Director of Health;*
- e.
  - (1) *Change the construction schedule for a discharger which is a new source. No change shall affect a discharger's obligation prior to discharge under 40 CFR §122.29.*
  - (2) *Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with the permit limits.*
- f. *(Reserved.)*
- g. *Incorporate conditions of a publicly owned treatment works pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR §403.18) as enforceable conditions of the publicly owned treatment works' permit.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

**Section 26**

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**Original:** *Termination of permits (comply with 40 CFR §122.64)*

**Revised:** *Termination of permits (comply with 40 CFR §122.64, 40 CFR §124.5(d), and Section 11-55-18)*

- a. *The following are causes for terminating a permit during its term, or for denying a permit renewal application:*
  - (1) *Noncompliance by the Permittee with any condition of the permit;*
  - (2) *The Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the Permittee's misrepresentation of any relevant facts at any time;*
  - (3) *A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or*
  - (4) *A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).*
- b. *An NPDES Permittee shall report within 30 days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued. The NPDES permit shall then be surrendered to the Director of Health within 30 days from the date of the report.*
- c. *The Director of Health shall follow the applicable State procedures equivalent to 40 CFR Part 124 in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the Director of Health may terminate the permit by notice to the Permittee. Termination by notice shall be effective 30 days after notice is sent, unless the Permittee objects within that time. If the Permittee objects during that period, the Director of Health shall follow 40 CFR Part 124 of this chapter or applicable State procedures for termination. Expedited permit termination procedures are not available to Permittees that are subject to pending State or Federal of both enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a Permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use 40 CFR Part 22 procedures for NPDES permit terminations.*

- d. *If the Director of Health tentatively decides to terminate a permit under 40 CFR §122.64 where the Permittee objects, the Director of Health shall issue a notice of STANDARD NPDES PERMIT CONDITIONS (Version 16) Page 26 of 27 v.16 intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6.*

**Rationale:**

*Reference to the State law was added to this section. Verbiage included in the Appendix to match Standard NPDES Permit Conditions Version 16.*

## **Section 27**

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**Original:** *Removed substances (under Sections 301 and 405 of the Act and 40 CFR §125.3(g);*

**Revised:** *Removed substances (under Sections 301 and 405 of the Act, 40 CFR §125.3(g), and Hawaii Revised Statutes, Section 342D-4);*

**Rationale:**

*Reference to the State law was added to this section.*

## **Section 28**

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**Original:** *Availability of reports (under Section 308 of the Act);*

**Revised:** *Availability of reports (under Section 308 of the Act and Section 11-55-12);*

**Rationale:**

*Reference to the State law was added to this section.*

## **Section 29**

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**Original:** *Civil and criminal liability (under Section 309 of the Act);*

**Revised:** *Civil and criminal liability (under Section 309 of the Act and Hawaii Revised Statutes, Chapter 342D);*

**Rationale:**

*Reference to the State law was added to this section.*

## **Section 30**

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**Original:** *Oil and hazardous substance liability (under Section 311 of the Act);*

**Revised:** Oil and hazardous substance liability (under Section 311 of the Act and Hawaii Revised Statutes, Section 342D-4);

**Rationale:**

Reference to the State law was added to this section.

### **Section 31**

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**Original:** Federal facility construction (under Section 313(b) of the Act);

**Revised:** Federal facility construction (under Section 313(b) of the Act and Hawaii Revised Statutes, Section 342D-4);

**Rationale:**

Reference to the State law was added to this section.

### **Section 32**

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**Original:** State law (under Section 510 of the Act);

**Revised:** State law (under Section 510 of the Act and Hawaii Revised Statutes, Chapter 342D);

**Rationale:**

Reference to the State law was added to this section.

### **Section 33**

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**Original:** Severability (under Section 512 of the Act);

**Revised:** Severability (under Section 512 of the Act and Section 11-55-37);

**Rationale:**

Reference to the State law was added to this section.

### **Section 34(j)**

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**Original:** Certifying person's name and position title, company name, and telephone and fax numbers.

**Revised:** Certifying person's name and position title, company name, and telephone number.

**Rationale:**

The CWB no longer has a fax number.

**National Pollutant Discharge Elimination System**  
**General Permit Fact Sheet for**  
**Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix D**  
**Authorizing Discharges of Treated Effluent from Leaking Underground Storage**  
**Tank Remedial Activities**

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

*This general permit covers facilities or activities in the State of Hawaii where petroleum hydrocarbons have been released from leaking underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.*

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

*The allowed discharge is of treated ground water which is not commingled with other process water or stormwater.*

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

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

**The General Permit is divided into the following sections:**

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Whole Effluent Toxicity Limitations and Monitoring Requirements [Revised]
8. Corrective Action
9. Reporting Requirements [Revised]
10. Submittal Requirements [Revised]
11. Additional Conditions
12. Record Retention
13. Falsifying Report
14. Renewal [Revised]

15. Forms

Table 34.2 *Effluent Limitations and Monitoring Requirements for Discharge of Treated Effluent from Leaking Underground Storage Tank Remedial Activities [Revised]*

Sections 1 through 5 and 8 through 15 are basic requirements necessary to the General Permit. Sections 6 and 7, and Table 34.2 detail the effluent limitations and monitoring requirements for discharge of treated effluent from leaking underground storage tank remedial activities.

**Basis for Discharge Limitations and Monitoring Requirements**

*There are no effluent guidelines promulgated for discharges resulting from leaking underground storage tank remedial activities.*

*The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.*

*Discharges of treated effluent from leaking underground storage tank remedial activities do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.*

Flow: *The monitoring for flow is for quantification of the discharge.*

Petroleum Hydrocarbons and Lead: *Pollutants in the effluent that may have been contained in the leaking underground storage tank. Therefore, the general permit includes effluent limitations per HAR Section 11-54 for total recoverable lead, benzene, toluene, and ethylbenzene. The general permit also contains monitoring and reporting requirements for total petroleum hydrocarbons as gasoline and diesel, xylenes, and organic lead.*

pH: *The pH effluent limitation is based on HAR Chapter 11-54 for applicable pH criteria.*

Whole Effluent Toxicity: *The Whole Effluent Toxicity limit is based on HAR Chapter 11-54 for toxicity.*



*The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.*

*The permittee shall collect representative discharge samples at the nearest accessible point after final treatment and prior to actual discharge of missing with the receiving state waters.*

**Requirements for Discharge into Class 1 or Class AA Waters**

*Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters. There are no specific requirements for discharges to Class 1 and Class AA waters.*

**Chapter 11-55, Appendix D Revisions**

**Section 2(a)(3) [New]**

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**Original:** (NEW)

**Revised:** Discharges of treated groundwater that the director finds more appropriately regulated under an individual permit.

**Rationale:**

*Added this restriction to reflect Item 2(b) regarding a discharge that would be more appropriately regulated under an individual permit.*

**Section 2(c)(1) through (6) [New]**

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**Original:** (NEW)

**Revised:** (c) Permittees authorized by this general permit are required to comply with the following requirements:

- (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;

- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and
- (6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

**Rationale:**

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
  - *Achieves results similar in nature to numeric requirements.*
  - *Ensures that the receiving water isn't visually degraded by the authorized discharge.*
  - *Reflects recognized variability in receiving water criteria.*

- *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
- *Strengthens enforceability including enforcement associated with complaints.*
- *Reduces the complexity and cost of discharge monitoring.*
- *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

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

---

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

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

**Rationale:**

*This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.*

### **Section 3(b)**

---

**Original:** *A notice of general permit coverage under this general permit expires:*

- (1) Five years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(3) are adopted,*

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

**Revised:** *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

**Rationale:**

*Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal Notice of Intent (NOI) prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified three scenarios in accordance with this renewal procedure. The Clean Water Branch (CWB) is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).*

**Section 3(c) [New]**

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**Original:** (NEW)

**Revised:** *If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:*

*(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;*

*(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or*

*(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.*

**Rationale:**

*Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the*

*reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until sixty days after effective date of the reissued general permit, unless one of three actions are taken by the permittee. In the new process, permittees would have sixty days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.*

#### **Section 4(a)**

---

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

**Revised:** *The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall submit the NOI no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.*

*As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was also added to this section. Further, while the owner or operator's certifying person or duly authorized representative may submit the notice of intent as applicable, the requirement to submit the notice*

*of intent is still the owner or operator's responsibility. To provide clarity, the duly authorized representative language is removed from this section.*

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

---

**Original:** *The owner or its duly authorized representative shall include the following information in the notice of intent:*

**Revised:** *The owner or operator shall include the following information in the notice of intent:*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall provide information for the NOI. As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was added to this section. Further, while the owner or operator's certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator's responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

#### **Section 4(d)**

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

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

**Revised:** *The initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that DOH has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).*

**Rationale:**

*The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and*

*authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.*

#### **Section 4(e) [New]**

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**Original:** *[From the previous section 4(d)] The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

**Revised:** *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

**Rationale:**

*Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit a complete notice of intent to the DOH address listed. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the NOI is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

#### **Section 6(a)**

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**Original:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

**Revised:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.2.*

**Rationale:**

*The effluent limits are no longer receiving water specific.*

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

---

**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Section 9(a)(6) was added to describe the reporting of the method detection limit (MDL), minimum level (ML), and reporting of results below the MDL.*

**Section 9(a)(2)**

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**Original:** *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

**Revised:** *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

**Rationale:**

*Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general*



permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

### **Section 9(a)(6) [New]**

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**Original:** (NEW)

**Revised:** For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory’s ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory’s MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means, 0.25\*MDL shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory’s numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

**Rationale:**

This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that

*include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.*

#### **Section 10(a)**

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

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

**Revised:** *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

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

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

#### **Sections 10(b)**

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

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

*penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

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

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

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Sections 10(c)**

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**Original:** *The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

**Revised:** *The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

## Section 14

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**Original:** *Renewal*

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

**Revised:** *Administrative Extension*

*Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:*

*(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or*

*(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.*

**Rationale:**

*Request for renewals requires the permittee to certify in the NOI that they will comply with the new general permit. Request for renewals should not be submitted before the new general permit is issued. The permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within 60 days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.*

## Table 34.2

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**Original:** TABLE 34.2

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGE  
OF TREATED EFFLUENT FROM  
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

<i>Effluent Parameter</i>	<i>Effluent Limitations {1}</i>		<i>Monitoring Requirements</i>	
	<i>For Saline Water</i>	<i>For Fresh Water</i>	<i>Minimum Frequency</i>	<i>Type of Sample</i>
<i>Flow (GPD)</i>	<i>{2}</i>	<i>{2}</i>	<i>Continuous</i>	<i>Calculated or Estimated</i>
<i>Total Petroleum Hydrocarbons as Gasoline (mg/l) {3}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Total Petroleum Hydrocarbons as Diesel (mg/l) {3}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Benzene (mg/l) {4}</i>	<i>1.7</i>	<i>1.8</i>	<i>Weekly</i>	<i>Grab</i>
<i>Toluene (mg/l) {4}</i>	<i>2.1</i>	<i>5.8</i>	<i>Weekly</i>	<i>Grab</i>
<i>Xylenes (mg/l) {4}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Ethylbenzene (mg/l) {4}</i>	<i>0.14</i>	<i>11</i>	<i>Weekly</i>	<i>Grab</i>
<i>Lead (mg/l) {5}</i>	<i>0.14</i>	<i>0.029</i>	<i>Weekly</i>	<i>Grab</i>
<i>Organic Lead (mg/l) {6}</i>	<i>{2}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>pH (standard units)</i>	<i>{7}</i>		<i>Weekly</i>	<i>Grab {8}</i>
<i>Whole Effluent Toxicity</i>	<i>Pass {9}</i>		<i>Monthly</i>	<i>Composite</i>
<i>Toxic Pollutants mg/l {10}</i>	<i>{11}</i>		<i>Annually</i>	<i>{12}</i>

GPD = gallons per day  
mg/l = milligrams per liter

**Revised:** Table 34.2

**EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR DISCHARGE  
OF TREATED EFFLUENT FROM  
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES**

<i>Effluent Parameter</i>	<i>Effluent Limitations {1}</i>	<i>Monitoring Requirements</i>	
		<i>Minimum Frequency</i>	<i>Type of Sample</i>
<i>Flow (GPD)</i>	<i>{2}</i>	<i>Continuous</i>	<i>Calculated or Estimated</i>
<i>Total Petroleum Hydrocarbons as Gasolines (mg/l) {3}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Total Petroleum Hydrocarbons as Diesel (mg/l) {3}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Benzene (mg/l) {4}</i>	<i>1.7</i>	<i>Weekly</i>	<i>Grab</i>
<i>Toluene (mg/l) {4}</i>	<i>2.1</i>	<i>Weekly</i>	<i>Grab</i>
<i>Xylenes (mg/l) {4}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>Ethylbenzene (mg/l) {4}</i>	<i>0.14</i>	<i>Weekly</i>	<i>Grab</i>
<i>Lead (mg/l) {5}</i>	<i>0.029</i>	<i>Weekly</i>	<i>Grab</i>
<i>Organic Lead (mg/l) {6}</i>	<i>{2}</i>	<i>Weekly</i>	<i>Grab</i>
<i>pH (standard units)</i>	<i>6.0 to 8.0</i>	<i>Weekly</i>	<i>Grab {7}</i>
<i>Whole Effluent Toxicity</i>	<i>Pass {8}</i>	<i>Monthly</i>	<i>Composite</i>

GPD = gallons per day  
mg/l = milligrams per liter

**Rationale:** 40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.

Effluent limitations for pH were revised to apply one standard pH range to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. Thus, the proposed range is expected to be protective of all types of waterbodies while still prohibiting discharge of extreme pH values from leaking underground storage tank

*remedial activities that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.*

*Effluent limitations for benzene, ethylbenzene, toluene, and lead were also revised to apply to all discharges. The more stringent limits from the previous general permit were retained, therefore, the limits are at least as stringent as the previous permit.*

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**Table 34.2 Footnote {2}**

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**Original:** *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result. The department may include discharge limitations specified in section 11-55-19.*

**Revised:** *The permittee shall monitor and report the analytical result.*

**Rationale:**

*The effluent parameters that use footnote {2} in the “Effluent Limitations” column do not have standards listed in chapter 11-54 at this time so the reference is not applicable.*

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**Table 34.2 Footnote {7}**

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**Original:** *The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.*

**Revised:** *[REMOVED]*

**Rationale:**

*The pH range is specified as “6.0 to 8.0” for all discharges, regardless of receiving water.*

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**Table 34.2 Footnote {8}**

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**Original:** *{8} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

**Revised:** *{7} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

**Rationale:**

*Renumbered due to the deletion of the previous footnote {7}.*

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**Table 34.2 Footnote {9}**

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**Original:** *{9} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.*

**Revised:** {8} *Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.*

**Rationale:**

*Renumbered due to the deletion of the previous footnote {7}.*

**Table 34.2 Footnotes {10}, {11}, and {12}**

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**Original:** {10} *The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.*

{11} *Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.*

{12} *The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

**Revised:** [REMOVED]

**Rationale:**

*Toxic parameters not listed in the table are not allowed to be discharged, therefore, footnotes {10}, {11}, and {12} are no longer applicable.*

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

*Not applicable.*

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

*Refer to HAR 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix G within HAR Chapter 11-55, Water Pollution Control.*

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



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

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

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

*For this permit, the limits are based on WQBELs because no effluent limitation guidelines (ELG) and TBELs apply.*

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

*Not applicable.*

## National Pollutant Discharge Elimination System

### General Permit Fact Sheet for

#### Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix H

#### Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals

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

*This general permit covers facilities or activities in the State of Hawaii that discharge treated process wastewater associated with petroleum bulk stations and terminals to State receiving waters.*

*This revision defines "Process Wastewater Effluent" to include tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas. "Treated Process Wastewater Effluent" is defined as process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with the general permit.*

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

*The allowed discharge is of process wastewater associated with petroleum bulk stations and terminals that have been treated such that, prior to discharge, any pollutant in the effluent is at or below Hawaii's waterbody-specific water quality standard for that pollutant. The process wastewater may include tank water draws, product displacement process wastewater, wash down and fire hydrant system test waters, service station tank draws, recovered groundwater and contaminated stormwater runoff from the product storage and handling areas.*

*The most notable pollutants in the discharge are petroleum hydrocarbons, however, additional pollutants may be present in the discharge dependent upon the source of the process water and groundwater.*

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

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits).

**The General Permit is divided into the following sections:**

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [Revised, Renamed]
14. Forms [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.6 detail the effluent limitations and monitoring requirements for discharges of treated process wastewater associated with petroleum bulk stations and terminals.

**Basis for Discharge Limitations and Monitoring Requirements**

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for discharges of treated process wastewater associated with petroleum bulk stations and terminals.

The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.

Discharges of treated process wastewater associated with petroleum bulk stations and terminals do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

Quantity of Discharge: The monitoring for flow is for quantification of the discharge.

Oil and Grease: The effluent limitations for oil and grease were based on the individual NPDES permits that were issued for this type of discharge. The limitation for oil and grease are to ensure that pumps and other mechanical equipment are being properly operated and maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent.

Total Recoverable Lead, Petroleum Hydrocarbons, and Ammonia Nitrogen: Pollutants in the process wastewater or stormwater that indicate presence of petroleum or byproducts or waste products generated from petroleum product manufacture. Therefore, the general permit includes effluent limitations per HAR Chapter 11-54 for total recoverable lead, benzene, toluene, xylenes, and ethyl benzene. The general permit also now contains monitoring and reporting requirements for total petroleum hydrocarbons as gasoline and diesel. The requirements and monitoring procedures for these hydrocarbons are similar to those contained in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tank remedial activities. Effluent limitations for ammonia nitrogen are the applicable criteria established in HAR Chapter 11-54.

pH: The pH effluent limitation is based on HAR Chapter 11-54 for applicable pH criteria.

Dissolved Oxygen (DO): The DO effluent limitation is based on HAR Chapter 11-54 for applicable DO criteria. It is protective of aquatic life that require DO.

The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.

### **Discharge into Class 1 or Class AA Waters**

Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters.

### **Chapter 11-55, Appendix H Revisions**

#### **Section 1(a)**

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**Original:** This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Treated process wastewater effluent covered by this general permit includes tank water draws; product displacement process wastewater; wash down and fire hydrant

*system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas.*

**Revised:** *This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Process wastewater effluent includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and storm water runoff from the product storage and handling areas that have been commingled with other process wastewater effluent prior to discharge. Treated process wastewater effluent covered by this general permit is process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with this general permit including effluent limitations in this general permit.*

**Rationale:**

*This revision is to clarify what types of discharges are covered under the general permit. The intent of this general permit is to cover only treated process wastewater discharges that are generated by the facility that are then discharged. Notably, under the previous general permit contaminated storm water runoff was considered to be a treated process wastewater. The previous description of treated process wastewater did not explicitly state that such runoff needed to be captured and treated prior to discharge. Storm water runoff is typically permitted differently under the NPDES program, as managing runoff from a site is different from managing wastewater from industrial activities that can be fully captured and treated. This revision makes this distinction explicit that the permit is not authorizing runoff from the site, but runoff that is generated, fully captured, and treated like other process wastewater. This revision also explicitly specifies that treated process wastewater is wastewater that has undergone treatment to remove pollutants.*

**Section 2(c)(1) – (6) [New]**

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**Original:** (NEW)

**Revised:** (c) Permittees authorized by this general permit are required to comply with the following requirements:

(1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to

minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

(2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;

(3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;

(4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;

(5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and

(6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

**Rationale:**

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.
- Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.

- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
  - *Achieves results similar in nature to numeric requirements.*
  - *Ensures that the receiving water isn't visually degraded by the authorized discharge.*
  - *Reflects recognized variability in receiving water criteria.*
  - *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
  - *Strengthens enforceability including enforcement associated with complaints.*
  - *Reduces the complexity and cost of discharge monitoring.*
  - *Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.*

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

---

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

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

**Rationale:**

*This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.*

### **Section 3(b)**

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**Original:** *A notice of general permit coverage under this general permit expires:*

- (1) *Five years after the effective date of this general permit;*
- (2) *When the notice of general permit coverage specifies; or*
- (3) *When amendments to section 11-55-34.02(b)(5) are adopted,]*  
*whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).*

**Revised:** Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

**Section 3(c) [New]**

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**Original:** (NEW)

**Revised:** If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.



**Rationale:**

*Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.*

**Section 4(a)**

---

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

**Revised:**

*(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added,*

*which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.*

*As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

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

---

**Original:** *The owner or its authorized representative shall include the following information in the notice of intent:*

**Revised:** *The owner or operator shall include the following information in the notice of intent:*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

#### **Section 4(d)**

---

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

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

**Revised:** *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be*

signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).

**Rationale:**

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

**Section 4(e) [New]**

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**Original** [From the previous section 4(d)]: The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

**Revised:** The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

**Rationale:**

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To

*provide clarity, the duly authorized representative language is removed from this section.*

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**Section 6(a)**

---

**Original:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

**Revised:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6.*

**Rationale:**

*As discussed later in this rationale for changes to effluent limitations in Table 34.6, there will no longer be separate effluent limitations for saline waters and fresh waters. Therefore, this language is removed in this section as it is unnecessary due to the aforementioned revision to effluent limitations in Table 34.6.*

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

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**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(3).*

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**Section 8(a)(2)**

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**Original:** *The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

**Revised:** *The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

**Rationale:**

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit’s reporting requirements.

### **Section 8(a)(3)**

---

**Original:** *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

**Revised:** *(3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).*

*(A) The permittee shall report sample results and calculations at or above the laboratory’s ML on DMRs as the measured concentration or calculation.*

*(B) The permittee shall report sample results and calculations below the laboratory’s MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.*

*(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.*

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means,  $0.25 \times \text{MDL}$  shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

**Rationale:**

Requirements on reporting when collecting additional data are now solely identified in Table 34.6 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

**Section 8(c)(2)**

---

**Original:** The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

**Revised:** The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

**Rationale:**

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and

*also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.*

### **Section 8(c)(3)**

---

**Original:** *The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Revised:** *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Rationale:**

*Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.*

### **Section 9(a)**

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

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

**Revised:** *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

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

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee*

*(the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Section 9(b)**

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

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

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

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

**Rationale:**

*Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Section 9(c)**

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**Original:** *The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).*



**Revised:** The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

**Rationale:**

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

### Section 13

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**Original:** Request for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

**Revised:**

Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

**Rationale:**

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. The new renewal process also now gives 60 from adoption of the new general permit for permittees who want to retain coverage under the new general permit to submit an NOI to maintain coverage. Section 13 was revised in accordance with this new process.

**Table 34.6**

**Original:**

TABLE 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR DISCHARGES OF TREATED EFFLUENT FROM  
PETROLEUM BULK STATIONS AND TERMINALS

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{3}	{3}	Once/Batch Discharge {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	Once/Batch Discharge {10}	Grab {4}
Total Recoverable Lead (mg/l) {5}	0.14	0.029	Once/Batch Discharge {10}	Grab
Benzene (mg/l) {6}	1.7	1.8	Once/Batch Discharge {10}	Grab
Toluene (mg/l) {6}	2.1	5.8	Once/Batch Discharge {10}	Grab
Xylenes (mg/l) {6}	{3}	{3}	Once/Batch Discharge {10}	Grab
Ethyl benzene (mg/l) {6}	0.14	11	Once/Batch Discharge {10}	Grab

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix H

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Turbidity (NTU)	{7}	{7}	Once/Batch Discharge {10}	Grab
Ammonia Nitrogen (NH <sub>4</sub> -N mg/l)	{7}	{7}	Once/Batch Discharge {10}	Grab
pH (standard units) {8}	{7}	{7}	Once/Batch Discharge {10}	Grab {9}
Dissolved Oxygen (%saturation)	{7}	{7}	Once/Batch Discharge {10}	Grab

mg/l = milligrams per liter

NTU = nephelometric turbidity units

**Revised:**

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>		<u>Monitoring Requirements</u>	
	<u>For Saline Water</u>	<u>For Fresh Water</u>	<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Quantity of Discharge (gallons)</u>	<u>{2}</u>	<u>{2}</u>	<u>Once/Batch Discharge {3}</u>	<u>Calculated or Estimated</u>
<u>Oil and Grease (mg/l)</u>	<u>15</u>	<u>15</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab {4}</u>
<u>Total Recoverable Lead (µg/l) {5}</u>	<u>140</u>	<u>29</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons as Gasoline (µg/l) {6}</u>	<u>{2}</u>	<u>{2}</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix H

<u>Effluent Parameter</u>	<u>Effluent Limitations</u> <u>{1}</u>		<u>Monitoring Requirements</u>	
	<u>For Saline Water</u>	<u>For Fresh Water</u>	<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Total Petroleum Hydrocarbons as Diesel (µg/l) {6}</u>	<u>{2}</u>	<u>{2}</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Benzene (µg/l) {7}</u>	<u>1700</u>	<u>1800</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Toluene (µg/l) {7}</u>	<u>2100</u>	<u>5800</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Xylenes (µg/l) {7}</u>	<u>{2}</u>	<u>{2}</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Ethyl benzene (µg/l) {7}</u>	<u>140</u>	<u>11,000</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>Ammonia Nitrogen (NH<sub>4</sub>-N µg/l)</u>	<u>15</u>	<u>20</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>
<u>pH (standard units) {8}</u>	<u>7.0 - 8.6</u>	<u>7.0 - 8.0</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab {9}</u>
<u>Dissolved Oxygen (%saturation)</u>	<u>&gt;75</u>	<u>&gt;80</u>	<u>Once/Batch Discharge {3}</u>	<u>Grab</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

***Rationale:***

*(Note: Revisions to each footnote shall be discussed later in this fact sheet)*

*40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.*

*Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition of visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a*

*water quality standard within a water body. Since there is no longer a turbidity limit, the unit explanation for NTU (nephelometric turbidity units) was removed.*

*New monitoring requirements for total petroleum hydrocarbons as gasoline and diesel were added. As stated earlier, total petroleum hydrocarbons are a potential pollutant that may be discharged from these facilities. While there are currently no established water quality standards for these specific forms of total petroleum hydrocarbons, monitoring is necessary to assess whether the facility is effectively removing these pollutants prior to discharge. The monitoring requirements are similar to those contained in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tank remedial activities.*

***The effluent limitations for total recoverable lead, benzene, toluene, xylenes, and ethyl benzene were retained for saline and fresh water discharges.***

***For ammonia nitrogen, the revised saline water effluent limitation is based on the 2% not to exceed criteria for wet open coastal waters. The general permit currently covers two facilities, both of which discharge to wet open coastal waters and have an effluent limit based on the 2% not to exceed criteria for open coastal waters. As the CWB does not expect there to be new facilities to be covered under this general permit, the effluent limitations were revised to establish the saline water ammonia nitrogen effluent limitation to be what is established for current facilities. The revised fresh water effluent limitation is based on the 2% not to exceed criteria for estuaries. For fresh waters, only estuary and Pearl Harbor estuary have water quality criteria for ammonia nitrogen. The estuary criteria was selected for the revised effluent limitation over the Pearl Harbor estuary criteria as it is the more stringent of the two.***

***For pH, the revised saline water effluent limitation is based on the criteria for open coastal waters. The general permit currently covers two facilities, both of which discharge to wet open coastal waters and have effluent limitations based on the criteria for open coastal waters. As the CWB does not expect there to be new facilities to be covered under this general permit, the effluent limitations were revised to establish the saline water pH effluent limitation to be what is established for current facilities. The revised fresh water effluent limitation is based on the most stringent pH range among the fresh water types.***

***For dissolved oxygen, the revised saline water effluent limitation is consistent with criteria for all saline waters as they all have a criteria of***

**greater than 75% saturation. The revised fresh water effluent limitation is based on the stream criteria as it is the most stringent (i.e., highest minimum saturation) criteria between all fresh water criteria.**

*Effluent limitations were also converted to be expressed in micrograms per liter (except for oil and grease and as applicable) to be consistent with how the water quality criteria are expressed in HAR 11-54 (i.e., criteria are in micrograms per liter).*

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**Table 34.6 Footnote 2**

**Original:** *No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.*

**Revised:** Report. The permittee shall monitor and report the analytical result.

**Rationale:**

*As discussed in the revisions to Section 1(a), this permit does not authorize any storm water discharges that are not collected, treated, and discharged with any other treated process wastewater, therefore monitoring of storm water discharges should not be required. To account for renumbering, the text for footnote 2 is revised to be the previous footnote 3.*

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**Table 34.6 Footnote 3**

**Original:** *Report. The permittee shall monitor and report the analytical result.*

**Revised:** If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.

**Rationale:**

*To account for renumbering, the text for footnote 3 is revised to be the previous footnote 10.*

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**Table 34.6 Footnote 6**

**Original:** *The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005:), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the*

*measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.*

**Revised:** The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

**Rationale:**

*This footnote was added to provide monitoring instructions for sampling total petroleum hydrocarbons as gasoline and diesel, which is a new requirement. The methods specified are the same as used in HAR 11-55 Appendix D, which is the general permit for discharges from leaking underground storage tanks, which also monitors for gasoline and diesel. The previous footnote 6 has been renumbered as footnote 7.*

**Table 34.6 Footnote 7**

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***Original:*** *Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.*

**Revised:** The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005:), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.

**Rationale:**

*As discussed in the revisions to Table 34.6, there are no longer waterbody-specific effluent limitations in this general permit, therefore the previous footnote 7 language is not necessary. To account for renumbering, the text for footnote 7 is revised to be the previous footnote 6.*

**Table 34.6 Footnote 8 [Removed]**

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***Original:*** *The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring*

*specification shall be set forth in a monitoring program as approved by the director.*

**Revised:** *[Removed]*

**Rationale:**

*This footnote was removed to be consistent with compliance monitoring requirements in all other general permits. Current general permits do not allow for compliance to be assessed by sampling the receiving water(s). As most receiving water bodies are or can be influenced by a variety of other external inputs (such as runoff from neighboring facilities or land) receiving water monitoring may not be representative of the quality of the discharge from the regulated facility. Therefore, the allowance for an alternative compliance determination based on receiving water sampling has been removed.*

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**Table 34.6 Footnote 9**

**Original:** *{9} the pH shall be measured within fifteen minutes of obtaining the grab sample.*

**Revised:** *{8} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

**Rationale:**

*To account for the deletion of the previous footnote 8, footnote 9 has been renumbered to footnote 8.*

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**Table 34.6 Footnote 10 [Removed]**

**Original:** *If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.*

**Revised:** *[Removed]*

**Rationale:**

*To account for renumbering and changes to effluent limitations, footnote 10 was removed, as it was not necessary.*

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

*Not applicable.*

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



- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

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

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

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

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

*For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.*

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

*Not applicable.*

**CHAPTER 11-55 APPENDIX H**

NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF TREATED  
PROCESS WASTEWATER ASSOCIATED WITH  
PETROLEUM BULK STATIONS AND TERMINALS

This General Permit is effective on

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

1. Coverage under this General Permit
  - (a) This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. ~~[Treated process]~~Process wastewater effluent ~~[covered by this general permit]~~ includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and ~~[contaminated storm water runoff]~~storm water runoff from the product storage and handling areas that have been commingled with other process wastewater effluent prior to discharge. Treated process wastewater effluent covered by this general permit is process wastewater effluent that has been captured and undergone treatment (i.e., subject to wastewater pollution controls to remove pollutants) prior to discharge in compliance with this general permit including effluent limitations in this general permit.
  - (b) This general permit covers all areas of the State except for discharges into natural

## CHAPTER 11-55 APPENDIX H

freshwater lakes, saline lakes, and anchialine pools.

### 2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
  - (1) Discharges of treated effluent into a sanitary sewer system and
  - (2) Discharges of treated effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.
- (c) Permittees authorized by this general permit are required to comply with the following requirements:
  - (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive

## CHAPTER 11-55 APPENDIX H

treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

- (2) Prohibit visible plume from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater is expected to contain these materials;
- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and

## CHAPTER 11-55 APPENDIX H

(6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

### 3. Term of General Permit

(a) This general permit becomes effective ten days after filing with the office of the lieutenant governor~~[-]~~ and shall expire five years after the effective date, unless amended earlier.

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

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

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

~~(3) When amendments to section 11-55-34.02(b)(7) are adopted,~~

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

(b) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

## CHAPTER 11-55 APPENDIX H

(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

### 4. Notice of Intent Requirements

## CHAPTER 11-55 APPENDIX H

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

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

(b) The owner or ~~[its duly authorized representative]~~operator shall include the following information in the notice of intent:

- (1) Information required in section 34 of appendix A of chapter 11-55;
- (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
- (3) Brief description of the nature of business conducted at the facility;
- (4) Description of the following for each outfall:
  - (A) All operations contributing wastewater and contaminated storm water runoff to the effluent;

## **CHAPTER 11-55 APPENDIX H**

- (B) The average flow contributed by each operation and contaminated storm water runoff;
  - (C) The treatment received by the wastewater and contaminated storm water runoff; and
  - (D) The average and maximum daily flow rates of the effluent discharge;
- (5) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of discharge(s); and
- (7) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail. The plan shall include a sampling plan and a detailed schedule for sampling and analysis of the effluent. The treatment system operations plan shall be modified by the permittee as requested by the director. The plan, and all subsequent revisions,



## CHAPTER 11-55 APPENDIX H

shall be retained on-site or at a nearby field office.

(c) The director may require additional information to be submitted.

(d) The initial notice of intent shall be signed by the permittee's certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the permittee's certifying person or duly authorized representative as described in section 11-55-07(b).

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

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

### 5. Standard Conditions

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

### 6. Effluent Limitations and Monitoring Requirements

## CHAPTER 11-55 APPENDIX H

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.6. [~~(Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)~~]

(1) Sampling Points

The permittee shall collect representative discharge samples at the end of effluent discharge point(s) prior to entering the receiving state water or separate storm water drainage systems.

(2) Collection of samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of the volume and nature of the total discharge.

(3) Type of Sample

"Grab Sample" means an individual sample collected within the first fifteen minutes of a discharge.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants that conform with regulations published under Section 304(h) of the Act.

## CHAPTER 11-55 APPENDIX H

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

(C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv).  
~~[If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.]~~

### (5) Recording of Results

The permittee shall comply with section 14(c) of appendix A of chapter 11-55 for each measurement or sample taken under the requirements of this general permit.

### (b) Basic Water Quality Criteria and Inspections

(1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.

## CHAPTER 11-55 APPENDIX H

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

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

- (c) The permittee shall collect the following information for each batch discharge: date, duration (in hours), starting and ending times, and volume.
- (d) There shall be no discharge of floating solids or visible foam.
- (e) There shall be no visible oil sheen in the effluent.

### 7. Corrective Action

## CHAPTER 11-55 APPENDIX H

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

### 8. Reporting Requirements

#### (a) Reporting of Monitoring Results

(1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.6 and other requirements of this general permit.

(2) The permittee shall submit monitoring results obtained during the previous calendar month and the results shall be postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).

~~[(3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly~~

## CHAPTER 11-55 APPENDIX H

~~average values for each parameter on the discharge monitoring report.]~~

- (3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).
- (A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.
- (B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.
- (C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.
- (D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting

## CHAPTER 11-55 APPENDIX H

average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means,  $0.25 \times \text{MDL}$  shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

- (4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to

## CHAPTER 11-55 APPENDIX H

electronic reporting upon written notification by the director.

(b) Monitoring Report

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

(c) Reporting of Noncompliance, Unanticipated Bypass, or Upset

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
  - (A) Violation of an effluent limitation specified in Table 34.6 or a basic water quality criteria specified in section 6(b) of this general permit;
  - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;  
or
  - (C) Unanticipated bypass or upset.
- (2) The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State



## CHAPTER 11-55 APPENDIX H

Hospital Operator at (808) 247-2191  
outside of regular office hours.

- (3) The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
    - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
    - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
    - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
    - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
  - (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR

## CHAPTER 11-55 APPENDIX H

§122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

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

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

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

"I certify under penalty of law that this document and all attachments were prepared

## CHAPTER 11-55 APPENDIX H

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

- (c) The [~~owner~~]permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

### 10. Additional Conditions

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

### 11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative

## CHAPTER 11-55 APPENDIX H

enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

### 12. Falsifying Report

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

### 13. ~~[Renewal]~~ Administrative Extension

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

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

- (a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

## CHAPTER 11-55 APPENDIX H

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

### 14. Forms

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

**CHAPTER 11-55 APPENDIX H**

TABLE 34.6

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR DISCHARGES OF TREATED EFFLUENT FROM  
PETROLEUM BULK STATIONS AND TERMINALS

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements [+2+]	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	[+3+] {2}	[+3+] {2}	Once/Batch Discharge [+10+] {3}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	Once/Batch Discharge [+10+] {3}	Grab {4}
Total Recoverable Lead [ <del>(mg/l)</del> ] (µg/l) {5}	[ <del>0.14</del> ] 140	[ <del>0.029</del> ] 29	Once/Batch Discharge [+10+] {3}	Grab
Total Petroleum Hydrocarbons as Gasoline (µg/l) {6}	{2}	{2}	Once/Batch Discharge {3}	Grab
Total Petroleum Hydrocarbons as Diesel (µg/l) {6}	{2}	{2}	Once/Batch Discharge {3}	Grab
Benzene [ <del>(mg/l)</del> ] +6+] (µg/l) {7}	[ <del>1.7</del> ] 1700	[ <del>1.8</del> ] 1800	Once/Batch Discharge [+10+] {3}	Grab

# CHAPTER 11-55 APPENDIX H

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements [{2}]	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Toluene ( <del>[mg/l]</del> {6}] ( <u>µg/l</u> ) {7}	[ <del>2.1</del> ] <u>2100</u>	[ <del>5.8</del> ] <u>5800</u>	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab
Xylenes ( <del>[mg/l]</del> {6}] ( <u>µg/l</u> ) {7}	[ <del>{3}</del> ] {2}	[ <del>{3}</del> ] {2}	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab
Ethyl benzene ( <del>[mg/l]</del> {6}] ( <u>µg/l</u> ) {7}	[ <del>0.14</del> ] <u>140</u>	[ <del>11</del> ] <u>11,000</u>	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab
[ <del>Turbidity</del> ( <del>NTU</del> )	<del>{7}</del>	<del>{7}</del>	<del>Once/Batch Discharge</del> <del>{10}</del>	<del>Grab]</del>
Ammonia Nitrogen [ <del>(NH<sub>4</sub>-N mg/l)</del> ] ( <u>NH<sub>4</sub>-N µg/l</u> )	[ <del>{7}</del> ] <u>15</u>	[ <del>{7}</del> ] <u>20</u>	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab
pH (standard units) {8}	[ <del>{7}</del> ] <u>7.0 - 8.6</u>	[ <del>{7}</del> ] <u>7.0 - 8.0</u>	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab {9}
Dissolved Oxygen (%saturation)	[ <del>{7}</del> ] <u>&gt;75</u>	[ <del>{7}</del> ] <u>&gt;80</u>	Once/Batch Discharge [ <del>{10}</del> ] {3}	Grab

mg/l = milligrams per liter

µg/l = micrograms per liter

[~~NTU = nephelometric turbidity units~~]

## NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges

## CHAPTER 11-55 APPENDIX H

indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

- {2} ~~[No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.]~~Report. The permittee shall monitor and report the analytical result.
- {3} ~~[Report. The permittee shall monitor and report the analytical result.]~~ If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} ~~[The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.]~~ The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004)



## CHAPTER 11-55 APPENDIX H

method 5030/8015 for the measurement of Total Petroleum Hydrocarbons as Gasoline and EPA method 3550/8015 shall be used for the measurement of Total Petroleum Hydrocarbons as Diesel.

{7} ~~[Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.]~~ The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.

~~[{8} The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.]~~

~~[{9}]~~ {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.

~~[{10} If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly~~

**CHAPTER 11-55 APPENDIX H**

~~minimum, and monthly average values on the  
discharge monitoring report.]~~

## National Pollutant Discharge Elimination System

### General Permit Fact Sheet for

#### Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix I

#### Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling

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

*This general permit covers facilities in the State of Hawaii that discharge treated process wastewater associated with well drilling activities into storm drain systems and/or State receiving waters.*

*This general is not intended for discharge of treated or untreated process wastewater associated with well drilling activities into a sanitary sewer system. It is also not intended for discharges of well pump testing wastewaters that are not associated with well drilling activities.*

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

*The allowed discharge is of process wastewater associated with well drilling activities that have been treated such that, prior to discharge, any pollutant in the effluent is at or below Hawaii's waterbody-specific water quality standard for that pollutant. The process wastewater may include well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.*

*The most notable pollutants in the discharge are petroleum-based lubricants, slurry fines, silt, and mud, however, additional pollutants may be present in the discharge dependent upon the source of the process water and groundwater.*

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

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits).

#### **The General Permit is divided into the following sections:**

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]

5. *Standard Conditions*
6. *Effluent Limitations and Monitoring Requirements [Revised]*
7. *Corrective Action*
8. *Reporting Requirements [Revised]*
9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Revised, Renamed]*
14. *Forms [Revised]*

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.7 detail the effluent limitations and monitoring requirements for discharges of treated process wastewater associated with well drilling activities.

#### **Basis for Discharge Limitations and Monitoring Requirements**

*The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for well drilling activities.*

*The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELs for a parameter exist, then the more protective effluent limitation is selected.*

*Discharges of treated process wastewater associated with well drilling do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.*

**Quantity of Discharge:** *The monitoring for flow is for quantification of the discharge.*

**Suspended Solids, Oil and Grease:** *The effluent limitations for suspended solids and oil and grease were based on the individual NPDES permits that were issued for this type of discharge. The limitation for oil and grease are to ensure that*

*pumps and other mechanical equipment are being properly operated and maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent. The limitation for suspended solids is to ensure that the operation and maintenance of the well drilling system does not result in excessive discharge of particulate material.*

*Benzene and Ammonia Nitrogen: The effluent limitation for benzene and ammonia nitrogen are based on the applicable water quality standard in HAR Chapter 11-54.*

*pH: The pH effluent limitation is based on HAR Chapter 11-54, Water Quality Standards, for applicable pH criteria.*

*The general permit contains a narrative prohibition that there shall be no discharge of compounds used in closed-loop systems.*

*The discharges are not subject to regulations that govern the design and operation of intake structures [316(b) rule] as it has been determined that the discharges are short duration, of limited volume, and result in de minimis impacts.*

*The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.*

**Requirements for Discharge into Class 1 or Class AA Waters**

*For discharges to Class 1 and Class AA waters, the treatment system plan will be submitted with the NOI to allow for review of the plan.*

**Chapter 11-55, Appendix I Revisions**

**Section 2(a)(4) [New]**

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***Original:*** (NEW)

***Revised:*** Discharges of treated process wastewater with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and

***Rationale:***

*This limitation was added to prevent treated process wastewater discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).*

**Section 2(a)(5) [New]**

---

***Original:*** (NEW)

***Revised:*** Discharges of treated process wastewater that the director finds more appropriately regulated under an individual permit.

**Rationale:**

*This limitation was added to explicitly specify that the director may (as allowed by HAR 11-55-34.05) require that an individual apply for an obtain an individual permit instead of general permit coverage in instances where it is appropriate.*

**Section 2(c)(1) – (6) [New]**

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**Original:** (NEW)

**Revised:** (c) Permittees authorized by this general permit are required to comply with the following requirements:

- (1) Treat process wastewater discharges with controls to minimize discharges of pollutants. Appropriate controls include but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of treated process wastewater controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if treated wastewater are expected to contain these materials;
- (4) At all points where treated process wastewaters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed in the receiving waters;
- (5) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process; and
- (6) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications.

**Rationale:**

*Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.*

*To better protect water quality and improve the permit effectiveness, the following changes are proposed:*

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. “bag”) filtration to reduce the potential for the discharge of pollutants. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
  - *Achieves results similar in nature to numeric requirements.*
  - *Ensures that the receiving water isn’t visually degraded by the authorized discharge.*
  - *Reflects recognized variability in receiving water criteria.*
  - *Provides a qualitative limit that can continuously be monitored by discharger personnel.*
  - *Strengthens enforceability including enforcement associated with complaints.*
  - *Reduces the complexity and cost of discharge monitoring.*
  - *Simplifies permit data tracking and compliance with EPA’s E-Reporting Rule.*

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

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

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

**Rationale:**

*This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.*

**Section 3(b)**

---

**Original:** *A notice of general permit coverage under this general permit expires:*

- (1) Five years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(5) are adopted,]*  
*whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).*

**Revised:** *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

**Rationale:**

*Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).*



### **Section 3(c) [New]**

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**Original:** (NEW)

**Revised:** If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

(1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly

*required information in the NOI to request coverage under the reissued general permit.*

#### **Section 4(a)**

---

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

**Revised:**

*(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall submit the notice of intent no later than thirty days prior to discharge for new dischargers, and thirty days prior to expiration of their NGPC for existing dischargers. However, dischargers intending to be covered under the general permit must also submit their NOI prior to the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. As CWB also needs time to process the NOI, a thirty-day deadline (thirty days prior to the expiration of the general permit) was added, which is the same timeframe for a new proposed discharge. The requirement for permittees to submit an NOI prior to the expiration date of their NGPC was removed, to prevent conflict with the new renewal process.*

*As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

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

---

**Original:** *The owner or its authorized representative shall include the following information in the notice of intent:*

**Revised:** *The owner or operator shall include the following information in the notice of intent:*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

**Section 4(d)**

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

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

**Revised:** *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

**Rationale:**

*The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.*

**Section 4(e) [New]**

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**Original [From the previous section 4(d)]:** *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch*

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

**Revised:** *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

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

**Rationale:**

*Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

**Section 6(a)**

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**Original:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.7. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

**Revised:** *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.7.*

**Rationale:**

*As discussed later in this rationale for changes to effluent limitations in Table 34.7, there will no longer be separate effluent limitations for saline waters and fresh waters. Therefore, this language is removed in this section as it is unnecessary due to the aforementioned revision to effluent limitations in Table 34.7.*

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

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**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(3).*

### **Section 8(a)(2)**

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**Original:** *The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

**Revised:** *The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

**Rationale:**

*Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. Section 8(a)(5) specifies that permittees must submit a DMR specifying "no discharge" when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to*

*have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the notice of general permit coverage is effective, in accordance with the intent of the general permit's reporting requirements.*

### **Section 8(a)(3)**

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**Original:** *If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.*

**Revised:** (3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means,  $0.25 \times \text{MDL}$  shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

**Rationale:**

Requirements on reporting when collecting additional data are now solely identified in Table 34.7 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections,

*new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.*

### **Section 8(c)(2)**

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**Original:** *The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

**Revised:** *The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

**Rationale:**

*Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.*

### **Section 8(c)(3)**

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**Original:** *The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Revised:** *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Rationale:**

*Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.*

### **Section 9(a)**

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

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

**Revised:** The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

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

**Rationale:**

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

### **Section 9(b)**

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

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



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

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

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Section 9(c)**

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**Original:** The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

**Revised:** The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Section 13**

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**Original:** Request for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.

**Revised:**

### Administrative Extension

Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

### **Rationale:**

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. The new renewal process also now gives 60 from adoption of the new general permit for permittees who want to retain coverage under the new general permit to submit an NOI to maintain coverage. Section 13 was revised in accordance with this new process.

**Table 34.7**

### **Original:**

TABLE 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR DISCHARGE OF TREATED EFFLUENT  
FROM WELL DRILLING ACTIVITIES

Effluent Parameters	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix I

Effluent Parameters	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	{2}	Daily {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	{3} {10}	Grab {4}
Benzene (mg/l) {5}	1.7	1.8	{3} {10}	Grab
Total Suspended Solids (mg/l)	{6}	{6}	{3} {10}	Grab
Turbidity (NTU)	{6}	{6}	{3} {10}	Grab
Ammonia Nitrogen (NH <sub>4</sub> -N/l) {7}	{6}	{6}	{3} {10}	Grab
pH (standard units)	{6}	{6}	{3} {10}	Grab {8}
Toxic Pollutants {7}	{6}	{6}	{3} {10}	{9}

mg/l = milligrams per liter

NTU = nephelometric turbidity units

**Revised:**

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix I

<u>Effluent Parameter</u>	<u>Effluent Limitations {1}</u>	<u>Monitoring Requirements</u>	
		<u>Minimum Frequency</u>	<u>Type of Sample</u>
<u>Quantity of Discharge (gallons)</u>	<u>{2}</u>	<u>Daily {3}</u>	<u>Calculated or Estimated</u>
<u>Oil and Grease (mg/l)</u>	<u>15</u>	<u>{3}</u> <u>{4}</u>	<u>Grab {5}</u>
<u>Benzene (µg/l) {6}</u>	<u>1700</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>Total Suspended Solids (mg/l)</u>	<u>55</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>Ammonia Nitrogen (NH<sub>4</sub>-N µg/l)</u>	<u>5</u>	<u>{3}</u> <u>{4}</u>	<u>Grab</u>
<u>pH (standard units)</u>	<u>6.0 - 8.0</u>	<u>{3}</u> <u>{4}</u>	<u>Grab {7}</u>

mg/l = milligrams per liter

µg/l = micrograms per liter

***Rationale:***

*(Note: Revisions to each footnote shall be discussed later in this fact sheet)*

*40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.*

*Effluent limitations for oil and grease were not functionally changed as the limit for both water types were the same, although visually, consistent with the change to one effluent limitation for all water types, there is only one effluent limitation value for oil and grease.*

*Effluent limitations for benzene were changed from being water body dependent, to being one standard for all waterbodies. The revised limitation is the most stringent of the previous saline and freshwater limitation. The proposed revision is intended to standardize the limit set associated with these pollutants for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitations are the most stringent criteria for each of these pollutants.*

*A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was added. 55 mg/l is the applicable dry season water quality criteria for intermittent discharges to inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.*

*Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition of visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. Since there is no longer a turbidity limit, the unit explanation for NTU (nephelometric turbidity unit) was removed.*

*The effluent limitation for ammonia nitrogen was revised to apply only one standard effluent limitation to all discharges. The revised effluent limitation is the most stringent 10% water quality criteria of waters (not including oceanic waters as discharges to waters that far offshore are not expected), which is the water quality criteria for dry embayments. As the effluent limitation is the most stringent applicable criteria, it is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with ammonia nitrogen for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for ammonia nitrogen.*

*Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. The pH range is the most stringent pH range of waters (not including oceanic waters as discharges to waters that far offshore are not expected) and therefore is protective of all applicable types of waterbodies. The proposed revision is intended to standardize the limit set associated with pH for this general permit and provide a standard minimum protection for all types of receiving waters, as the revised limitation is the most stringent applicable criteria for pH.*

*In addition, Toxics (except for benzene as it is a particular pollutant of concern for the category of activity) were also removed due to the newly required treatment requirements under section 2(c), numeric limits for TSS, and inclusion of the narrative prohibition of discharges which cause exceedances of basic water quality criteria. Based on these new limitations which are more stringent than those in the previous general permit, there is no reasonable potential for toxics to cause or contribute to an exceedance of water quality standards and as such, toxic effluent limitations (except for benzene) were removed from the table.*

*Effluent limitations were also converted to be expressed in micrograms per liter (except for oil and grease, and TSS and as applicable) to be consistent with how the water quality criteria are expressed in HAR 11-54 (i.e., criteria are in micrograms per liter).*

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**Table 34.7 Footnote 3**

**Original:** *For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.*

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

**Rationale:**

*To account for renumbering, the text for footnote 3 is revised to be the previous footnote 10.*

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**Table 34.7 Footnote 4**

**Original:** *Oil and Grease shall be measured by EPA Method 1664, Revision A.*

**Revised:** *For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.*

**Rationale:**

*To account for renumbering, the text for footnote 4 is revised to be the previous footnote 3.*

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**Table 34.7 Footnote 5**

**Original:** *The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.*

**Revised:** *Oil and Grease shall be measured by EPA Method 1664, Revision A.*

**Rationale:**

*To account for renumbering, the text for footnote 5 is revised to be the previous footnote 4.*

**Table 34.7 Footnote 6**

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**Original:** *Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.*

**Revised:** The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.

**Rationale:**

To account for renumbering, the text for footnote 6 is revised to be the previous footnote 5.

**Table 34.7 Footnote 7**

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**Original:** *The permittee shall measure for toxic pollutants, as identified in appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.*

**Revised:** The pH shall be measured within fifteen minutes of obtaining the grab sample.

**Rationale:**

To account for renumbering, the text for footnote 7 is revised to be the previous footnote 8.

**Table 34.7 Footnotes 8 – 10 [Removed]**

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**Original:**

{8} *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

{9} *The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

{10} *If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly*

*minimum, and monthly average values on the discharge monitoring report.  
For pH, only report monthly minimum and monthly maximum.*

**Revised: [Removed]**

**Rationale:**

*To account for renumbering and changes to effluent limitations,  
footnotes 8, 9, and 10 were removed, as they were not necessary.*

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

*Not applicable.*

- (6) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
  - (ii) Procedures for requesting a hearing and the nature of that hearing; and
  - (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix I within HAR Chapter 11-55, Water Pollution Control.*

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

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

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

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

*For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.*

- (9) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

*Not applicable.*



**National Pollutant Discharge Elimination System****General Permit Fact Sheet for****Hawaii Administrative Rules Chapter 11-55, Appendix M****Authorizing Discharges from the Application of Pesticides**

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

*This general permit covers point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to State waters.*

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

*This general permit covers the discharge of pesticides (biological pesticides and chemical pesticides which leave a residue) to State Waters resulting from the following use patterns: (1) Mosquito and Other Flying Insect Pest Control; (2) Weed and Algae Control; (3) Animal Pest Control; and (4) Forest Canopy Pest Control.*

*The PGP excludes pesticide applications that result in discharges of any pesticide to (1) waters impaired for that pesticide or a degradate of such an active ingredient, except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director or (2) any "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director; or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term basis, or to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.*

*This permit requires Operators to control discharges as necessary to meet applicable water quality standards. When the Operator, the State or EPA determines a discharge will cause or contribute to an excursion above any WQS, including failure to protect and maintain existing designated uses of receiving waters, the Operator must take corrective action to ensure that the situation is eliminated and will not be repeated in the future. (See Section 6). If additional Pest*

*Management Measures are required, the State and EPA expects the Operator to vigilantly and in good-faith follow and document, as applicable, the process for Pest Management Measure selection, installation, implementation and maintenance, and cooperate to eliminate the identified problem within the timeframe stipulated in Section 6 of the permit.*

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

*Not applicable.*

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

The Hawaii Department of Health, Clean Water Branch administers the NPDES Permit Program through Title 11 of the Hawaii Administrative Rules, Chapter 55 (HAR Chapter 11-55) – Water Pollution Control. Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as this Pesticide General Permit.

**The General Permit is divided into the following sections:**

1. *Coverage under this General Permit [Revised]*
2. *Technology-Based Effluent Limitations [Revised]*
3. *Water Quality-Based Effluent Limitations*
4. *Monitoring*
5. *Pesticide Discharge Management Plan (PDMP)*
6. *Corrective Action*
7. *Recordkeeping and Annual Reporting [Revised]*
8. *Notice of Intent Requirements [Revised]*
9. *Administrative Extension [New]*

Sections 1 through 9 are basic requirements necessary to the General Permit.

**Basis for Discharge Limitations and Monitoring Requirements**

*The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality*

*criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELS for a parameter exist, then the more protective effluent limitation is selected.*

*There are no effluent guidelines promulgated for discharges resulting from point source discharges from the application of pesticides. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that most discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.*

*The Director of Health determined that:*

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected; and*
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met.*

*Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent (NOI). Effluent limitations for these parameters are based on applicable water quality criteria in HAR Section 11-54-4.*

*The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-54, Appendix A.*

#### **Section 1(c)(1)**

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

**Revised:** *This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.*

**Rationale:**

*This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.*

#### **Section 1(c)(2)**

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**Original:** *A notice of general permit coverage under this general permit expires:*

- (A) Five years after the effective date of this general permit;
- (B) When the notice of general permit coverage specifies; or
- (C) When amendments to section 11-55-34.02(b)(5) are adopted,

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

**Revised:** Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 1(c)(3) of this general permit.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 1(c)(3) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the notice of general permit coverage, the notice of general permit coverage expires five years after the effective date of the general permit, unless it is administratively extended under the new section 1(c)(3). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 1(c)(3).

**Section 1(c)(3) [New]**

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**Original:** (NEW)

**Revised:** If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (A) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(B) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(C) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

**Section 1(f)**

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**Original:** All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60-calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those already covered within the same treatment area under another NOI.

*Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.*

**Revised:**

*All Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 1-2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs such that discharges from different activities are authorized at different times*

**Rationale:**

*This revision is to be consistent with the 2021 EPA PGP*

**Section 2(b)(3)(B)**

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**Original:**

- (i) No action*
- (ii) Prevention*
- (iii) Mechanical or physical methods*
- (iv) Biological control agents'*
- (v) Pesticides*

**Revised:**

- (i) No action*
- (ii) Prevention*
- (iii) Mechanical or physical methods*
- (iv) Biological control agents*
- (v) Pesticides*
- (vi) Cultural Methods*

**Rationale:**

*Added "cultural methods" to the list of pest management options for animal pest control to clarify that cultural methods can be used as a pest management option for animal pest control.*

**Section 7(g)(2) and 7(g)(3)**

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**Original:** *The operator or its duly authorized representative shall;*

**Revised:** The permittee or its duly authorized representative shall;

**Rationale:**

Previously, the term “operator” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

### **Section 8(a),(b), & (c)**

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**Original:** The owner or duly authorized representative shall;

**Revised:** The owner or operator shall;

**Rationale:**

The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.

### **Section 9 [New]**

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Any notice of general permit coverage issued under the general permit dated July 13, 2018, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would

*need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.*

- (4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

- (5) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under 40 CFR §124.10 and the address where comments will be received;
  - (ii) Procedures for requesting a hearing and the nature of that hearing; and
  - (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR Section 11-1-51 procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix M within HAR Chapter 11-55, Water Pollution Control.*

- (6) Name and telephone number of a person to contact for additional information.

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

- (7) For NPDES permits, provisions satisfying the requirements of 40 CFR §124.56.

*The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations reflecting, among other things, the technological capability of permittees to control pollutants in their discharges.*



*Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.*

*For this permit, the effluent limits are based on Hawaii's water quality standards because no effluent limitation guidelines apply.*

- (8) Justification for waiver of any application requirements under 40 CFR §122.21(j) or (q) of this chapter.

*Not applicable.*

Amendment and Compilation of Chapter 11-55  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

\$11-55-01	Definitions
\$11-55-02	General policy of water pollution control
\$11-55-03	General prohibition
\$11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
\$11-55-05	Receipt of federal information
\$11-55-06	Transmission of information to regional administrator
\$11-55-07	Identity of signatories to NPDES forms
\$11-55-08	Formulation of tentative determinations and draft permit
\$11-55-09	Public notice of applications

§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits
§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to regional administrator of proposed NPDES permits
§11-55-26	Transmission to regional administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms

§11-55-34.04 General permit conditions  
 §11-55-34.05 Requiring an individual permit  
 §11-55-34.06 Reserved  
 §11-55-34.07 Degree of waste treatment  
 §11-55-34.08 Notice of intent  
 §11-55-34.09 Notice of intent review, notice of  
                   general permit coverage, additional  
                   conditions, terms, renewals, effective  
                   dates, and automatic coverage  
 §11-55-34.10 Review of coverage issues and notice of  
                   intent and notice of general permit  
                   coverage decisions  
 §11-55-34.11 Notice of general permit coverage  
                   revocation and/or termination  
 §11-55-34.12 General permit compliance  
 §11-55-35 Penalties and remedies  
 §11-55-36 Hearings and appeals  
 §11-55-37 Severability clause  
 §11-55-38 Repealed  
 §11-55-39 Public interest  
 §11-55-40 Field Citations; non-compliance with  
                   NPDES requirements  
 §11-55-41 Zones of mixing  
 §11-55-42 Intake credits

Appendix A Department of Health Standard General  
                   Permit Conditions  
 Appendix B NPDES General Permit Authorizing  
                   Discharges of Storm Water Associated  
                   with Industrial Activities  
 Appendix C NPDES General Permit Authorizing  
                   Discharges of Storm Water Associated  
                   with Construction Activity  
 Appendix D NPDES General Permit Authorizing  
                   Discharges of Treated Effluent from  
                   Leaking Underground Storage Tank  
                   Remedial Activities

Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

**§11-55-01 Definitions.**

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2018 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence.

Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M.

For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three\_thousand-acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each treatment area as a separate area treated.

Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if



pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile-long reach of stream will count as a total of twenty-four linear miles (three miles \* two banks \* four applications per year = twenty-four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Authorized Representative" means an individual who has been duly authorized by the certifying person and given the express, implied, and apparent authority to act on behalf of the certifying person as a signatory for legally binding documents such as reports or other information submitted to the department in accordance with section 11-55-07(b).

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations

of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that is a:

- (1) Eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) Procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) Parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)). "Plant-incorporated protectant"

means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Certifying Person" means an individual who meets the signatory requirements in section 11-55-07(a).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut[-]downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage

of a facility's intake flow that is used for cooling purposes in 40 CFR §125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any

pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is

intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads

with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter



promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure"

exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(f) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters from pesticide application.

"Pesticide" means the same thing as defined in section 11-54-4(f) (1).

"Pesticide discharges to State waters from pesticide application" means the discharges that result from the application of biological pesticides or chemical pesticides that leave a residue from point sources to State waters. In the context of this definition of pesticide discharges to State waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law.

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" [~~includes~~] for the purpose of determining whether an NPDES permit is needed for pesticide discharges to State waters from pesticide application, means that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

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

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load

allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute State waters.

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

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

#### **§11-55-02 General policy of water pollution**

**control.** (a) It is the public policy of this State:

- (1) To conserve State waters;
- (2) To protect, maintain, and improve the quality of State waters:



- (A) For drinking water supply, and food processing;
  - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
  - (C) For oceanographic research;
  - (D) For the conservation of coral reefs and wilderness areas; and
  - (E) For domestic, agricultural, industrial, and other legitimate uses;
- (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
  - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
  - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS

§§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

**§11-55-03 General prohibition.** (a) No person shall violate any provision of section 342D-50, HRS [~~or any NPDES permit issued under this chapter.~~].

(b) No person, including any public body, shall discharge any water pollutant into State waters, or cause or allow any water pollutant to enter State waters except in compliance with this chapter 342D, HRS, rules adopted pursuant to chapter 342D, HRS, a permit or variance issued by the director. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ]  
(Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

**§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion.**

~~[(a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the~~

~~quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a]~~

(a) A person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), [~~submit a~~] complete notice of intent[~~7~~] (except for the point source discharges from the application of pesticides, if not required [~~refer to~~] under Appendix M) or[~~7~~] "no exposure" certification for certain storm water discharges which meet all requirements for a conditional "no exposure" exclusion[~~7~~]:

- (1) Before discharging any pollutant;
- (2) Before substantially altering the quality of any discharges;
- (3) Before substantially increasing the quantity of any discharges;
- (4) Before beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;
- (5) Before beginning discharge from sources or activities identified and described in 40 CFR §122.23 through §122.27;
- (6) For small regulated municipal storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e).

Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection [~~(e)~~](f).

(b) An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least three hundred sixty days before the expiration date of the existing permit. The director may waive this three hundred sixty-day requirement by issuing the permit with an effective date before the three hundred sixty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;
- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal,

state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR

§122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

~~[(b)]~~ (c) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

~~[(e)]~~ (d) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

~~[(d)]~~ (e) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application; and
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

~~[(e)]~~ (f) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

~~[(f)]~~ (g) (Reserved)

~~[(g)]~~ (h) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

~~[(h)]~~ (i) (Reserved)

(j) Exclusions:

- (1) An NPDES permit may not be required provided that the discharges are consistent with the exclusions identified in 40 CFR §122.3 or have a de minimus impact on water quality due to the quantity or quality of the discharge as determined by the director.
- (2) The discharge shall not be reasonably expected (based on information available to



the department) to be significant sources of pollutants to State waters.

- (3) Discharges which may not require an NPDES permit include, but are not limited to, the following:
- (A) Water line flushing (using potable water);
  - (B) Landscape irrigation (using potable water);
  - (C) Diverted stream flows;
  - (D) <Reserved>
  - (E) Uncontaminated pumped ground water infiltration (as defined in 40 CFR §35.2005[20]) to separate storm sewers;
  - (F) Uncontaminated pumped groundwater;
  - (G) Discharges from potable water sources;
  - (H) Discharges from foundation drains;
  - (I) Air conditioning condensate;
  - (J) Irrigation water (using potable water);
  - (K) Springs;
  - (L) Uncontaminated water from crawl space pumps and footing drains;
  - (M) Lawn watering (using potable water);
  - (N) Individual residential car washing (using potable water);
  - (O) Flows from riparian habitats and wetlands;
  - (P) Dechlorinated freshwater swimming pool discharges to non-marine environments;
  - (Q) Low pressure rinsing of sidewalks without chemical additives (using potable water); and,
  - (R) Discharges or flows from firefighting activities.

Exclusions for agriculture are limited to discharges identified in 40 CFR §122.3, or agricultural land that implements practices consistent with section 11-54-4(d), or section 11-56), but do not include storm water

or wastewater discharges from construction or industrial activities associated with agricultural facilities. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

**§11-55-05 Receipt of federal information. (a)**

The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree.

(b) Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the

director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

**§11-55-06 Transmission of information to regional administrator.** (a) The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree.

(b) Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any

- category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,

342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

**§11-55-07 Identity of signatories to NPDES**

**forms.** (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
  - (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather

complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
  - (A) The chief executive officer of the agency, or
  - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or
- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having

responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);

- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If the certifying person changes, the new certifying person shall notify the department and provide their contact information on a form as specified by the director.

~~[(c)]~~ (d) If an authorization under subsection (b) is no longer accurate because the certifying person changed or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(e) Any person signing a document under subsections (a), (b), or (c) shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(f) Electronic reporting. If documents described in subsections (a) or (b) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 3; 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

**§11-55-08 Formulation of tentative determinations and draft permit.** (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:



- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
  - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
  - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
  - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
  - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp  
] (Auth: HRS §§342D-4, 342D-5,

342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

**§11-55-09 Public notice of applications. (a)**

The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) Notice shall comply with section 1-28.5, HRS;
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations

with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of the draft permit prepared under section 11-55-08(b);

- (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
- (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp ]  
 (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

**§11-55-10 Fact sheet.** (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that

incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
  - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
  - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
  - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
- (3) The tentative determinations required under section 11-55-08;

- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
  - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
    - (A) The thirty-day comment period required by section 11-55-09(b);
    - (B) Procedures for requesting a public hearing and the nature thereof; and
    - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
  - (6) The name and telephone number of a person to contact for additional information; and
  - (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.
- (c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

**§11-55-11 Notice to other government agencies.**

(a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

**§11-55-12 Public access to information.** (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.



(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

**§11-55-13 Public hearings.** (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

§11-55-13

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit, provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

**§11-55-14 Public notice of public hearings.** (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published in accordance with section 1-28.5, HRS;
  - (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
  - (3) Mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
  - (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.
- (b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:
- (1) Name and address of the agency holding the public hearing;
  - (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
  - (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
  - (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
  - (5) Information regarding the date, time, and location of the hearing;
  - (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
  - (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

**§11-55-15 Issuance of NPDES permits.** (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any

additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
  - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
  - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
- (5) The facility shall comply with effluent standards and limitations, water quality

- standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
- (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
- (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
- (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
- (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).
- (f) Notwithstanding the provisions of subsections (a) through (e), the director shall not

issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4[~~-~~](g). The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. "Interested" means any person with "standing" as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.



- (1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.
- (2) Any revisions made to the permit during the appeals process shall comply with ~~[HAR]~~ section 11-55-16.
  - (i) The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

**§11-55-16 Modification or revocation and reissuance of NPDES permits.**

(a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification as defined in 40 CFR 122.63. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

**§11-55-17 Termination of permits and denial of renewal.** (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).
- (5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.
- (6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is

permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6.

[Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

**§11-55-18 Reporting discontinuance or dismantlement.** An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by

§11-55-18

submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.64, 124.5)

**§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements.** (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
  - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
  - (B) Necessary to meet any other federal law or regulations including, but not limited to:
    - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
    - (ii) Secondary treatment regulation in 40 CFR Part 133;

- (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
  - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
  - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
  - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and

- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants;
  - (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it;
  - (9) Intake credits in accordance with 40 CFR §122.45(g) and section 11-54-12; and
  - (10) Recreational criteria for all State waters in section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty-day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty-day period.
- (b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp

10/22/07; comp 06/15/09; am and comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp  
 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

**§11-55-20 Effluent limitations in issued NPDES permits.** In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp  
 ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C.



§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.45(f), 123.25(a))

**§11-55-21 Schedule of compliance in issued NPDES permits.** (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
  - (A) Applicable effluent standards and limitations;
  - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
  - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of

progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

**§11-55-22 Compliance schedule reports. (a)**

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; comp

09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

**§11-55-23 Other terms and conditions of issued NPDES permits.** In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
  - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
  - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
  - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
  - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
  - (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and

- 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
- (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
  - (C) The quality and quantity of effluent to be introduced into a treatment works; and
  - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;
- (9) The permittee at all times shall maintain in good working order and operate as

efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit;

- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4,  
342D-5, 342D-6; 33 U.S.C. §§1251, 1342,  
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C.  
§§1251, 1284, 1311, 1316, 1317, 1318, 1342,  
1370, 1251-1387; 40 CFR Parts 122; 123; 124,  
Subparts A and D; 125; 403; §§122.41,  
122.42, 122.44, 123.25(a))

**§11-55-24 National pretreatment standards and users of publicly owned treatment works.** (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
- (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
- (3) Sample any discharge of pollutants or effluent.



(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

- (1) Establish and maintain records;
- (2) Make reports;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent and State waters;
- (5) Provide access to and copying of any records which are maintained; and
- (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §122.41(i))

**§11-55-25 Transmission to regional administrator of proposed NPDES permits.** (a) The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j).

(b) Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

**§11-55-26 Transmission to regional administrator of issued NPDES permits.** The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

**§11-55-27 Renewal of NPDES permits.** (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least three hundred sixty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices;

nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and

- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period:

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp

09/22/97; comp 01/06/01; am and comp 11/07/02; comp  
08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12;  
comp 12/06/13; comp 11/15/14; comp 02/09/19; am and  
comp 10/22/21; comp 01/15/22; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C.  
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,  
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-  
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;  
125; §§122.21(d), 122.29, 122.41(b), 122.41(l),  
122.44, 123.25(a))

**§11-55-28 Monitoring.** (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

- (1) Flow (in gallons per day or cubic feet per second); and
- (2) All of the following pollutants:
  - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to

reduction or elimination under the terms and conditions of the NPDES permit;

- (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
- (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
- (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

**§11-55-29 Recording of monitoring activities and results.** When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
  - (A) The date, exact place, and time of sampling or measurements;
  - (B) The individual(s) who performed the sampling or measurements;
  - (C) The date(s) the analyses were performed;
  - (D) The individual(s) who performed the analyses;
  - (E) The analytical techniques or methods used; and
  - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.41(j))

**§11-55-30 Reporting of monitoring results.** The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.41(l)(4), 122.44(i))

**§11-55-31 Sampling and testing methods.** (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and



other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

**§11-55-32 Malfunction, maintenance, and repair of equipment.** (a) There shall be no shut[-]down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut[-]down.

(b) In the case of a shut[-]down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut[-]down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut[-]down period;

- (4) Measures that will be taken to minimize the length of the shut[-]down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ]  
 (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

**§11-55-33 Agency board membership.** (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of

§11-55-33

the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(c))

**§11-55-34 General permit definitions.** As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
  - (A) Involve the same or substantially similar types of operations;
  - (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
  - (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
  - (D) Require the same or similar monitoring; and
  - (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp

10/22/07; comp 06/15/09; comp 10/21/12; comp  
12/06/13; comp 11/15/14; comp 02/09/19; comp  
10/22/21; comp 01/15/22; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C.  
§§1342, 1370, 1251-1387; 40 CFR §122.28)  
(Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-  
1387; 40 CFR Parts 122; 123; 124; 125;  
§§122.2, 122.28, 123.25(a)(11))

**§11-55-34.01 General permit policy.** It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

**§11-55-34.02 General permit authority and adoption.** (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water

associated with certain industrial activities as identified in 40 CFR §§122.26(b) (14) (i) through 122.26(b) (14) (ix) and §122.26(b) (14) (xi), dated January 15, 2022;

- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated February 9, 2019;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated [~~July 13, 2018,~~]  
\_\_\_\_\_;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated January 15, 2022;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated January 15, 2022;

- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity, dated January 15, 2022;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated ~~[July 13, 2018,]~~ \_\_\_\_\_;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities, dated ~~[July 13, 2018,]~~ \_\_\_\_\_;
- (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;
- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated January 15, 2022;
- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from

- decorative ponds or tanks, dated February 9, 2019; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides", dated [~~July 13, 2018.~~] \_\_\_\_\_. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; am and comp 01/15/22; am and comp \_\_\_\_\_] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 123.25(a) (11))

**§11-55-34.03 General permit terms.** General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp \_\_\_\_\_] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a) (11))



§11-55-34.04

**§11-55-34.04 General permit conditions.** (a)

Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a) (11))

**§11-55-34.05 Requiring an individual permit.**

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
  - (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
  - (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
  - (4) A water quality management plan containing requirements applicable to the point sources is approved;
  - (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
  - (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
  - (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
    - (A) The location of the discharge with respect to State waters;
    - (B) The size of the discharge;
    - (C) The quantity and nature of the pollutants discharged to the State waters; and
    - (D) Other relevant factors.
- (b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-

55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp

01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07;  
comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am  
and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp  
01/15/22; comp ] (Auth: HRS §§342D-4,  
342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;  
40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387;  
40 CFR Parts 122; 123; 124; 125; §122.28(b)(3),  
123.25(a)(11))

**§11-55-34.06 (Reserved)**

**§11-55-34.07 Degree of waste treatment.** All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
  - (A) To meet any existing federal laws or regulations; or
  - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and

- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

**§11-55-34.08 Notice of intent.** (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

- (b) A notice of intent shall:
- (1) Be submitted on forms provided by the director;
  - (2) Comply with the notice of intent requirements of the respective general permit; and
  - (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed ~~[in accordance with section 11-55-07(a).]~~ by the certifying person.

(f) All other reports or responses to requests for information required by the director shall be signed ~~[in accordance with section 11-55-07(b).]~~ by either the certifying person or authorized representative.

(g) Any change ~~[in]~~ of the ~~[written authorization submitted to the director under subsection (f)]~~ certifying person or authorized representative which occurs after the issuance of a permit shall be reported to the director. A change in authorized representative shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of ~~[subsections (e) and (f).]~~ section 11-55-07(b).

(h) Any person signing a document under subsections (e) and (f) shall make ~~[a]~~ the following certification ~~[in accordance with 40 CFR §122.22(d).]~~ : "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

(1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;

(2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500; and

(3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

(1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;

(2) The beginning of any construction activity which is covered under Appendix C, unless

coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than thirty calendar days after the start of construction activities;

- (3) The expiration date of the existing general permit; or
- (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).
- (l) (Reserved).
- (m) A notice of intent shall be submitted to the

director for:

- (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power[-]plant, or uncontrolled sanitary landfill; or
- (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if



the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty-day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty-day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty-day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire.

(p) Electronic reporting. If documents described in subsections (e) or (f) are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; am and comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a),

342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

**§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage.**

(a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the permittee otherwise. The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for coverage, shall remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The permittee's submittal of a notice of cessation;
- The issuance of an individual NPDES permit;
- A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit; or
- A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.

The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance may be terminated and may be

required to apply for individual NPDES permit coverage.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit

coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e) (2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp ]

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

**§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions.** Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren §11-55-34.10, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

**§11-55-34.11 Notice of general permit coverage revocation and/or termination.** A notice of general permit coverage and automatic coverage under section 11-55-34.09(e) (2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

**§11-55-34.12 General permit compliance.** Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

**§11-55-35 Penalties and remedies.** Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

**§11-55-36 Hearing and appeals.** Hearings before the director on any violations of these rules and

appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

**§11-55-37 Severability clause.** If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

**§11-55-38 Repealed.** [R 6/15/09]

**§11-55-39 Public interest.** (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public



interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05;

comp 10/22/07; comp 06/15/09; comp 10/21/12; comp  
12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21;  
comp 01/15/22; comp ] (Auth: HRS  
§§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4,  
342D-5, 342D-6)

**§11-55-40 Field citations; non-compliance with  
NPDES requirements.**

(a) This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

~~[(1)]~~ (b) Offer to settle.

~~[(A)]~~ (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

~~[(i)]~~ (A) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in ~~[excess of limitations established by]~~ non-compliance of an NPDES permit;

~~[(ii)]~~ (B) Any person who begins an activity or discharge prior to obtaining the required individual NPDES permit, coverage under a

- general permit, and/or  
authorization from the director;
- ~~[(iii)]~~ (C) Any person who fails to  
correctly install, implement,  
maintain, or repair site best  
management practices, treatment  
system, pollution control device  
or who fails to provide and/or  
receive training as called for  
[in their storm water pollution  
control plan, best management  
practices plan, or other plan,]  
by the applicable NPDES permit,  
in whole or in part;
- ~~[(iv)]~~ (D) Any person who fails to  
~~[monitor]~~ conduct monitoring,  
including visual monitoring or  
inspections, as required by the  
applicable NPDES permit, in whole  
or in part;
- ~~[(v)]~~ (E) Any person who fails to  
retain on-site or at a nearby  
office or field office:  
~~[a)]~~ (i) a copy of the NPDES permit  
application or notice of intent  
or "no exposure" certification,  
~~[b)]~~ (ii) storm water pollution  
control plan, storm water  
pollution prevention plan, storm  
water management plan, best  
management practices plan or all  
other plans required in the NPDES  
permit [and] or NGPC and all  
subsequent revisions,  
~~[c)]~~ (iii) individual NPDES permit,  
notice of general permit  
coverage, or conditional "no  
exposure" exclusion, or

- ~~[(d)]~~ (iv) discharge monitoring reports;
- ~~[(vi)]~~ (F) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to notices of start, discharge monitoring reports, reports of non-compliance, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation~~[-]~~;
- (G) Any person who fails to update their storm water pollution control plan, storm water pollution prevention plan, best management practices plan, or other plan as required by the applicable NPDES permit, in whole or in part;
- (H) Any person who submits a document without the appropriate signature or certification statement.
- ~~[(B)]~~ (2) A field citation shall indicate the following amounts:
- ~~[(i)]~~ ~~[\$500]~~ (A) \$1,000 for any person who violates paragraphs ~~[(1)(A)(i), (ii), (iii), or (iv)]~~ (b) (1) (A), (B), (C), or (D) for the first violation, and ~~[\$2,000]~~ \$4,000 for a subsequent violation;
- ~~[(ii)]~~ ~~[\$100]~~ (B) \$200 for any person who violates paragraph ~~[(1)(A)(v)]~~ (b) (1) (E) for the first violation, and ~~[\$200]~~ \$400 for a subsequent violation;

- ~~[(iii)]~~ ~~\$500]~~ (C) \$1,000 for any person who violates paragraph ~~[(1)(A)(vi)]~~ (b) (1) (F), (G), or (H) for the first violation, and ~~[\$1,000]~~ \$2,000 for a subsequent violation.
- ~~[(2)]~~ (c) Resolution of field citation.
- ~~[(A)]~~ (1) A person issued a field citation may accept the citation by:
- ~~[(i)]~~ (A) Signing the field citation;
- ~~[(iii)]~~ (B) Paying the full amount indicated on the field citation.
- Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
- ~~[(iii)]~~ (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
- ~~[(iv)]~~ (D) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- ~~[(B)]~~ (2) By signing the field citation, the person to whom it was issued agrees to:
- ~~[(i)]~~ (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or

otherwise challenge the field citation;

~~[(i)]~~ (B) Pay the amount indicated; and

~~[(ii)]~~ (C) Correct the violation;

~~[(C)]~~ (3) If the field citation is not accepted in compliance with paragraph ~~[(2)(A)]~~, (c)(1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

~~[(3)]~~ (d) Form of citation. The department shall prescribe a field citation form. [Eff and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; am and comp ]  
(Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

**§11-55-41 Zones of mixing.** (a) Zones of mixing are defined and authorized for use in ~~[discharge]~~ NPDES permits in section 11-54-1. This only applies to NPDES individual permits. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.

~~[(b) Establishment, renewal, and termination.~~

~~(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and~~

~~the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.~~

- ~~(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.~~
- ~~(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.~~
- ~~(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being~~

~~considered concurrently with the discharge permit.~~

- ~~(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:~~
  - ~~(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;~~
  - ~~(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;~~
  - ~~(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and~~
  - ~~(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.~~
  - ~~(E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.~~
- ~~(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:~~
  - ~~(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the~~



~~adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;~~

~~(B) The director may issue a zone of mixing for a period not exceeding five years;~~

~~(C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established.~~

~~Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and~~

~~(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other~~

~~controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.~~

- ~~(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.~~

- ~~(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.~~
- ~~(9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.~~
- ~~(10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.~~
- ~~(11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee.]~~
- (b) Application for a zone of mixing.
- (1) Application for establishment of a zone of mixing shall be made concurrently with any applications for an NPDES individual permit whenever applicable.
- (2) Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to

- standards, and other information as the director may prescribe.
- (3) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.
- (c) Approval and establishment of a zone of mixing.
- (1) Approval of a zone of mixing shall be made after the public participation process in sections 11-55-09 and 11-55-13 for the NPDES individual permit and associated zone of mixing.
- (2) No zone of mixing shall be established or approved by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
- (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
- (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public;
- (D) The discharge occurring or proposed to occur does not violate applicable water quality standards contained in chapter 11-54 (except for pollutants for which dilution is being requested and only within the boundary of the zone of

- mixing or initial dilution), will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control; and
- (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
- (4) Conditions of a zone of mixing shall be incorporated as conditions of the NPDES individual permit for the facility that has been granted a zone of mixing.
- (5) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it

shall be allowed only until the  
necessary means for prevention, control  
or abatement become practicable, and  
subject to the taking of any substitute  
or alternative measures that the  
director may prescribe;

(B) The director may issue a zone of mixing  
for a period not exceeding five years;

(C) Every zone of mixing established under  
this section shall include conditions  
requiring the applicant to perform  
effluent monitoring, at a minimum, for  
pollutants with effluent limitations  
established in the permit, and  
receiving water quality monitoring, at  
a minimum, for pollutants for which a  
zone of mixing is established.

Additional effluent and receiving water  
monitoring, including monitoring of  
bottom biological communities, may be  
required as appropriate. The results  
of all required monitoring shall be  
reported to the director. A program of  
research to develop reasonable  
alternatives to the methods of  
treatment or control in use by the  
applicant may be required if research  
is deemed prudent by the director; and

(D) In order to prevent high temperature  
discharges from violating section 11-  
54-04(a)(4), no new or increased  
domestic, industrial, or other  
controllable source shall discharge at  
a maximum temperature which will cause  
temperatures to exceed three degrees  
Celsius above ambient, or thirty  
degrees Celsius, whichever is less,  
within one meter of the bottom within a  
zone of mixing. For discharges with or

without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

- (6) Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. §1251).
- (7) When establishing numeric effluent limitations for pollutants for which a zone of mixing or zone of initial dilution has been granted, the director shall account for dilution applicable to that pollutant when determining final numeric effluent limitation values.
- (d) Renewal of a zone of mixing.
- (1) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41.
- (2) The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state and federal anti-degradation and anti-backsliding regulations as applicable.
- (3) No renewal shall be allowed except upon application.

- (4) Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.
- (5) No renewal of a zone of mixing established under this section shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved.
- (e) Revocation, suspension, or modification of a zone of mixing.
  - (1) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS, and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS, have been violated.
  - (2) In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters.
  - (3) The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (f) Termination of a zone of mixing.
  - (1) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
  - (2) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee, unless the NPDES individual permit for the facility which has been granted the zone of mixing has been administratively extended.



(g) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law. [Eff and comp 10/22/21; comp 01/15/22; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

**§11-55-42 Intake credits.** (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant that is present in the intake water body.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific

factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and
- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;
- (2) The facility does not chemically or

physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;

- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,
- (4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water" or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and
- (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee:

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained

during the permit term; and

(2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply." [Eff and comp 10/22/21; comp 01/15/22; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

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

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

4. These amendments to and compilation of chapter 11-55, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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ELIZABETH A. CHAR, M.D.  
Director  
Department of Health

APPROVED AS TO FORM:

*Dale K. Sakata*

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Deputy Attorney General

## **IV. Administrative Matters**

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

B. Discussion on the Board's Fiscal 2023 – 2024 Goals

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

June 18, 2020

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Mary Albitz
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walsh
- James (Kimo) Lee

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF MAY 21, 2020 MINUTES**

Chair Cundiff officially welcomed Ms. Taryn Rodighiero as this Board's newest member. Ms. Rodighiero stated that she is originally from California but has been in Hawaii for about fourteen years. She started Kaikini, LLC in 2010, having taught herself to sew and now sells the Kaikini line of clothing all over the world. She is very involved in Hawaii's fashion industry, is involved in Kauai's small business community and is very excited to be part of this Board.

Second Vice Chair Lydgate made a motion to accept the May 21, 2020 meeting minutes, as presented. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

III. **STRATEGIC PLANNING DISCUSSION**

- A. Discussion and Action on the Board's fiscal year-to-date 2020 actual budget and projected fiscal year 2021 budget

Chair Cundiff briefed the members on this Board's budget, explaining that it will end fiscal year 2020 spending about \$10,400, slightly below the budgeted figures. This is largely due to the Board saving expenses by not having three (3) live board meetings during the year. Saving on expenses has allowed the Board to purchase two brand new computers to enable DBEDT staff to work remotely.

Anticipated expenses for fiscal year 2021 total \$18,600. The increase includes a presumption that all neighbor island board members will participate in “live” board meetings each month. However, DBEDT’s 2021 expected budget for this Board is \$12,000, which would result in a sizeable budget shortfall; the Board’s final budget will depend on the results from the Legislative session, which begins June 22, 2020.

Second Vice Chair Lydgate stated that given the projected shortfall in the Board’s upcoming budget, he would be willing to continue attending the monthly board meetings remotely in order to help save on travel costs to and from the neighbor island.

Mr. Ritchie noted that once the Sunshine Law restrictions no longer allow for leniency due to COVID-19, neighbor island board members would be required to post the meetings’ addresses on the agendas to allow the general public to attend board meetings. He suggested that attending a board meeting in a County office would be more amenable than having a meeting held in one’s own home. Ms. Albitz added that she could offer public space on Maui, which is also handicapped-accessible, should she need to work remotely.

Deputy Attorney General Polk-Waihee confirmed that Sunshine Law requires that addresses of each location must be shown on the agendas and made available to the public. However, the law does not require a board member, who is sick or disabled at home, to post his or her home address.

B. Discussion and Action on the Board’s Strategic Plan regarding: 1) Outreach Activities, and 2) Events to Attend during Fiscal 2021 pursuant to Section 201M-5, HRS

1. Outreach Activities

a. ThinkTech Hawaii and Akaku-Maui Community Media – Approach media platforms with small business audience to plan, schedule and participate in information program segment

As an overview, Chair Cundiff explained where the Board is right now and how to improve upon its effectiveness and awareness regarding outreach to Hawaii’s small business community. He reminded the members that he and Ms. Albitz participated in a ThinkTech Hawaii presentation recently and that representatives from ThinkTech were interested in doing more live presentations with this Board. Through Ms. Albitz, the Board was approached by Akaku-Maui Community Media which is another way in which this Board can perform outreach.

Chair Cundiff confirmed with Ms. Rodighiero that many of the Hawaii chambers of commerce have been extremely supportive of this Board, and it would be a very positive move to bring information about the Board to various chamber trade association meetings.



The Board's social media outreach includes monthly posts from the Board's Instagram account, Facebook page, and Twitter account. Mr. Ritchie stated that Phase 2 of the Board's website, created last year, would allow small businesses to sign up for specific industry-related administrative rules; this has been placed on hold due to the circumstances of COVID-19.

Chair Cundiff added that Hawaii Information Consortium created the Board's website, which was very well done. The website's Phase 2 will address how this Board can be more proactive with the small business community and allow the website to be more user-friendly so business owners can navigate more easily and smoothly.

- b. Discussion and outreach letter to send to various organizations, review draft letter for approval, and create a list of organizations and contact information

Chair Cundiff stated that one way to improve upon this Board's awareness is to send out a letter to industry associations to help educate and promote this Board by asking to attend meetings, as well as for board members to provide outreach through presentations and distributing collateral material.

DBEDT staff will email a list of the organizations that receive monthly newsletters and agendas for the board members' review.

- c. Association Meetings – Discussion on attending meetings to educate associations, when, who, and talking points

It is important for board members to have enough information for “talking points” available for inquiries about this Board. This type of information could then be used to distribute and share at association meetings.

Mr. Ritchie suggested that outreach to the Hawaii Chamber of Commerce would be helpful in order to refresh and reconnect with the legislative bodies at the Chamber; Chair Cundiff added that other organizations and chambers should be reconnected as well.

- d. Board Brochures / Handouts – Review all current marketing material and update / change as needed

The Board's brochures and up-to-date PowerPoint presentation were distributed to the members for review. The presentation is a key marketing tool for outreach and is located on the Board's website; the presentation's script, which will be sent to each member, clarifies the PowerPoint.

The vision and mission statements noted in the PowerPoint were reviewed and discussed. The vision statement states, “Make Hawaii the most business-friendly state in the nation,” and the mission statement states, “Work toward a regulatory environment that encourages & supports the vitality of small business in Hawaii.”

Mr. Ritchie suggested that rather than use the term “business-friendly” the Board instead use “business-supportive” as the Board wants to help grow and support businesses in the regulatory arena. Ms. Rodighiero agreed that “business-friendly” may be a bit too general.

- e. State/County Agency Meetings – Review meetings conducted to date; formalize a plan for Board members to visit State and County Agencies to include talking points

The list of the Board members’ previously accomplished meetings with the State agencies’ directors was reviewed. The purpose of the meetings is to introduce the “discussion leader” board members of the respective agencies and to discuss the administrative rule process.

## 2. Other Considerations

- a. U.S. Small Business Administration (SBA) on Oahu and Maui – Explore working with local SBA offices for purposes of outreach and other small business purposes

Chair Cundiff asked that if anyone is aware of upcoming events or venues that this Board may attend, to share that information with the Board. Mr. Ritchie suggested that the Board create a webinar with factual information about this Board that can be included on the website. He also suggested that the SBA’s current Hawaii regional director might be included in the webinar.

- b. Discussion on identifying other small business organizations to explore cooperative outreach

Chair Cundiff stated that when Board members attend small business events, such as the annual Maui small business event, it allows the Board to perform outreach to not only small businesses but to the community at large. He added that he would like to keep in contact with the Maui Chamber of Commerce.

- c. Discussion on attending Industry/Association events – which events, who to attend, materials to share

Moving forward, this Board will discuss which industries and which events to attend. DBEDT staff will email the organization lists currently used to send out the Board’s e-newsletters.

**IV. ELECTION BY THE BOARD OF THE FOLLOWING OFFICERS:**

A. Chairperson, under Section 201M-5 (c), HRS

Mr. Yamanaka made a motion to elect Mr. Cundiff as Chair of the Board under Section 201M-5 (c), HRS; Ms. Albitz seconded the motion and the Board members unanimously agreed.

B. Vice Chair

Mr. Yamanaka made a motion to elect Ms. Albitz as Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

C. Second Vice Chair

Ms. Albitz made a motion to elect Mr. Yamanaka as the Second Vice Chair of the Board; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

**V. NEXT MEETING** - Thursday, July 16, 2020 at 10:00 a.m.

**VI. ADJOURNMENT** – Mr. Shick made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:33 a.m.

# Small Business Regulatory Review Board (SBRRRB)

Department of Business, Economic Development and Tourism

# How was the SBRRB established?

- Created- 1980 U.S. Congress passed the Regulatory Flexibility Act (RFA)
- Purpose- Ensure regulators do not burden small businesses disproportionately by imposing uniform regulations on all entities, regardless of size.
- Created- 1998 Hawaii's Small Business Regulatory Flexibility Act went into effect based on the federal act by creating Chapter 201M HRS.

# SBRRB's Vision and Mission

## Vision

Make Hawai'i the most  
business-friendly state  
in the nation

## Mission

Work toward a  
regulatory  
environment that  
encourages &  
supports the vitality of  
small business in  
Hawai'i

# What is the SBRRB's Purpose?

- Chapter 201M, HRS created SBRRB:
  - Advocates for “for-profit” small business & entrepreneurs
    - Small business defined as a “for profit” “with fewer than 100 FT/PT employees,”  
Section 201M-1, HRS
- Authority to comment, make recommendations on small business regulations & administrative rules

# BOARD MEMBERS

*DBEDT Staff:*  
*Dori Palcovich*  
*Jetaime Ariola*



*Taryn Rodighiero*  
**Kaua'i County**



*Mark Ritchie*  
**DBEDT Director**  
**designated**  
**Representative**



*Mary Albitz*  
**Vice Chair**  
**Maui County**



*Garth Yamanaka*  
**Hawai'i County**



*James Lee*  
**Hawai'i County**



*Sanford Morioka*  
**City & County of Honolulu**



*Tessa Gomes*  
**City & County of Honolulu**



*Robert Cundiff*  
**Chair**  
**City & County of Honolulu**



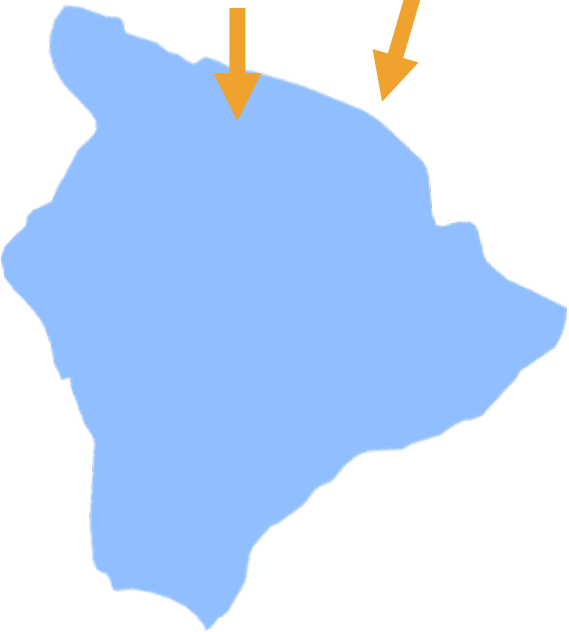
*Dr. Nancy Atmospera-Walch*  
**City & County of Honolulu**



*Jonathan Shick*  
**Second Vice Chair**  
**City & County of Honolulu**



*William Lydgate*  
**Kaua'i County**





# What Can the SBRRB Do for Small Businesses?

- Identify Burdensome Regulations
  - Suggest alternatives for compliance and recommend modifications to rules that unevenly impose burdens on small business
- Work with State and County agencies to avoid unnecessary burdens on small businesses during rule writing

## How Small Business Can Help the SBRRB

The SBRRB wants to hear from you!

- Get involved as rules are being written
- Submit a *Regulation for Review* through the SBRRB website
- Submit a *Petition* for Regulatory Review  
*Chapter 201M-6 HRS*

# Tools for Small Businesses on our website

<https://sbrrb.hawaii.gov/>

- Rule Making Process
- Rule Status Tracker
- Meeting Dates, Agenda, Minutes  
& Packet Information
- Regulation for Review



# How to CONTACT the SBRRB



<https://sbrrb.hawaii.gov/>



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



(808) 798-0737



**Visit Monthly SBRRB meetings**

Currently, meetings are hybrid via Zoom and at the No. 1 Capitol District Building, 250 S. Hotel Street – Conference Room 436, Honolulu, HI 96813



[@SBRRBHI](#)

On Behalf of  
The Small  
Business  
Regulatory  
Review Board

**MAHALO**

**SBRRB Budget Records**  
**Monthly Expenses**  
**FY 22-23**

7/1/2022 - 7/31/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - VERIZON				\$ 278.36			
Sub-Total	\$ -	\$ -	\$ -	\$ 278.36	\$ -	\$ -	
Total Monthly Expense							\$ 278.36

8/1/2022 - 8/31/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee	\$ 136.60						
William Lydgate							
Garth Yamanaka	\$ 142.20	\$ 72.00	\$ 15.00				
Taryn Rodighiero						\$ 1.44	
Dori Palcovich							
Hybrid Meeting Supplies						\$ 65.96	
Amazon Business PRIME				\$ 187.43			
Sub-Total	\$ 278.80	\$ 72.00	\$ 15.00	\$ 187.43	\$ -	\$ 67.40	
Total Monthly Expense							\$ 620.63

9/1/2022 - 9/30/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							

Dori Palcovich							
SBRRB - SPECIAL FUNCTION PARKING PASSES FOR BOARD MEMBERS			\$ 800.00				
SBRRB - VERIZON				\$ 92.92			
Sub-Total	\$ -	\$ -	\$ 800.00	\$ 92.92	\$ -	\$ -	
Total Monthly Expense							\$ 892.92

10/1/2022 - 10/31/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - OWL Membership DUES					\$ 270.86		
SBRRB							
SBRRB - VERIZON				\$ 92.76			
Sub-Total	\$ -	\$ -	\$ -	\$ 92.76	\$ 270.86	\$ -	
Total Monthly Expense							\$ 363.62

11/1/2022 - 11/30/2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz	\$ 67.81	\$ 72.00	\$ 15.00				
James (Kimo) Lee	\$ 77.30	\$ 72.00					
William Lydgate							
Garth Yamanaka	\$ 77.30		\$ 15.00				
Taryn Rodighiero							
Dori Palcovich							
SBRRB - VERIZON						\$ 92.66	
Postage - Mailing of SBRRB Parking Passes						\$ 5.28	
Postage - Mailing of SBRRB 2022 201M-7 Report						\$ 6.72	

Sub-Total	\$ 222.41	\$ 144.00	\$ 30.00	\$ -	\$ -	\$ 104.66	
Total Monthly Expense							\$ 501.07

12/1/2022 - 12/31-2022

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - VERIZON				\$ 102.66			
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ 102.66	\$ -		
Total Monthly Expense							

1/1/2023 - 1/31-2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - Phone Bill							
SBRRB - Stamps							
SBRRB - PBN Subscription							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

2/1/2023 - 2/28/2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							



James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

3/1/2023 - 3/31/2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

4/1/2023 - 4/30/2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich							
SBRRB - phone accessories							
SBRRB - Stamps							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

5/1/2023 - 5/31/2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships; Registrations	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
Dori Palcovich - Hawaii Small Business Conference Maui							
SBRRB - Phone Bill							
SBRRB - Stamps							
SBRRB - phone screen protector							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

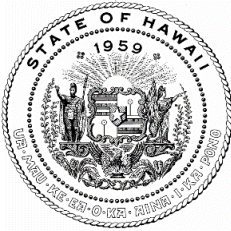
6/1/2023 - 6/30/2023

Names	Air	Car/Taxi	Parking	Subscriptions	Memberships	Supplies; Equipment; Postage	TOTAL
Mary Albitz							
James (Kimo) Lee							
William Lydgate							
Garth Yamanaka							
Taryn Rodighiero							
PBN Subscription							
SBRRB - WEBSITE PHASE II DEVELOPMENT							
SBRRB - Stamps							
SBRRB - Supplies							
Sub-Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Monthly Expense							\$ -

Monthly Expenses for 7/2022 - 6/2023

Months	Air	Car/Taxi	Parking	Subscriptions	Memberships; Registrations	Supplies; Equipment; Postage	TOTAL
July	\$ -	\$ -	\$ -	\$ 278.36	\$ -	\$ -	

August	\$ 278.80	\$ 72.00	\$ 15.00	\$ 187.43	\$ -	\$ 67.40	
September	\$ -	\$ -	\$ 800.00	\$ 92.92	\$ -	\$ -	
October	\$ -	\$ -	\$ -	\$ 92.76	\$ 270.86	\$ -	
November	\$ 222.41	\$ 144.00	\$ 30.00	\$ -	\$ -	\$ 104.66	
December	\$ -	\$ -	\$ -	\$ 102.66	\$ -	\$ -	
January	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
February	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
March	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
April	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
May	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
June	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total Expenses</b>	<b>\$ 501.21</b>	<b>\$ 216.00</b>	<b>\$ 845.00</b>	<b>\$ 754.13</b>	<b>\$ 270.86</b>	<b>\$ 172.06</b>	
							<b>\$ 2,759.26</b>



**David Y. Ige**  
*Governor*

**Michael McCartney**  
*DBEDT Director*

**Members**

Robert Cundiff  
*Chairperson*  
*O'ahu*

Garth Yamanaka  
*Vice Chairperson*  
*Hawai'i*

William Lydgate  
*2nd Vice Chairperson*  
*Kaua'i*

Harris Nakamoto  
*O'ahu*

Dr. Nancy Atmospera-  
Walch  
*O'ahu*

Mary Albitz  
*Maui*

Jonathan Shick  
*O'ahu*

James Kimo Lee  
*Hawai'i*

Director, DBEDT  
*Voting Ex Officio*

## 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](mailto:dbedt.SBRRB.info@hawaii.gov)  
Website: [dbedt.hawaii.gov/SBRRB](http://dbedt.hawaii.gov/SBRRB)

Tel: (808) 586-2419

Date

Chamber / Organization

Address

Address

Subject: Small Business Regulatory Review Board

Dear Name:

As the Chair of the Small Business Regulatory Review Board (SBRRB), I am pleased to re-introduce the SBRRB to you and your organization.

The SBRRB has been in existence since 1998 with the mission to work toward a regulatory environment that encourages and supports the vitality of small business in Hawaii. Board members meet monthly and review State and County Hawaii Administrative Rules (HAR) that impact small business, both before and after the public hearings. Upon review of the rules and public testimony from stakeholders, we make recommendations to the Governor, the Mayors and the Agencies on whether to proceed or any other recommendation deemed necessary to support a regulatory environment where small business can grow and succeed.

We also consider requests from small business owners for review of proposed, amended or adopted HAR and will make recommendations to State and County agencies or the Legislature regarding the need for a rule change or legislation.

The SBRRB's website can be viewed at - <https://sbrrb.hawaii.gov/>

Even though the SBRRB has been around for over 22 years, it seems that many small businesses may not know or understand how we can support their efforts. In this regard, our objective is to increase the community outreach to small business, and an introduction through your organization would be a great platform to accomplish this objective. Please let us know if you would be interested in scheduling a time where we can speak to you and/or your organization's members about this very important board. Please contact our DBEDT staff support at (808) 586-2594 at your earliest convenience.

Thank you for your consideration and support. We look forward to hearing from you.

Sincerely,

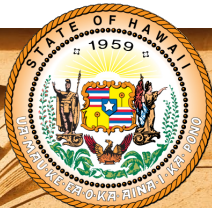
Robert Cundiff, Chair

cc: Governor David Y. Ige or  
Mayor XXXX, County of XXX  
Enclosure (SBRRB Brochure)

# SBRRB Strategic Goal Discussion

January 2023

Small Business Regulatory Review Board

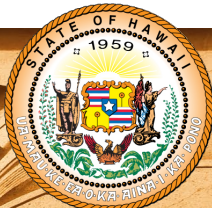


# SBRRB Strategic Discussion

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- Where Are We Now?
- What do We Want to Accomplish?
  - Awareness
  - Effectiveness
  - Specific Goals

Small Business Regulatory Review Board

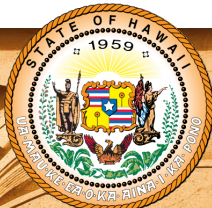


# SBRRB Strategic Discussion

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- Improved Awareness (Outreach)
  - Media & Social Media Coverage
  - Letter to Industry Associations
  - Association Meetings
  - SBRRB Brochure
  - SBRRB Presentation
  - State/County Agency Meetings
  - Strategic Event Attendance
  - Other Thoughts?

Small Business Regulatory Review Board

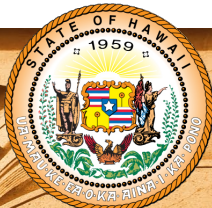




# Improved Awareness

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- Media Coverage
  - ThinkTech Hawaii Interview
  - Akaku-Maui Community Media
  - Other Thoughts?
- Social Media Coverage
  - Facebook & Instagram postings

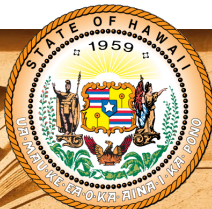




# Improved Awareness

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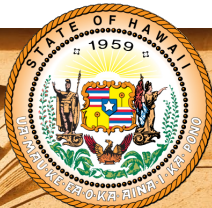
- Send Letter to Industry Associations
  - Educate & Promote SBRRB
  - Ask for Meeting and/or Presentation to Members
- Review List of Associations & Add Others as Needed (This list will be sent separately and not be reviewed as part of agenda)



# Improved Awareness

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- Association Meetings
  - Update List of Associations
  - Develop/Update Talking Points & Material for Meeting
  - Attend Meeting with Association Leaders
  - Attend Meeting with Association Members

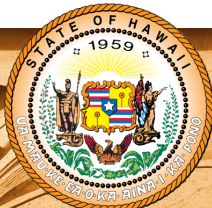


# Improved Awareness

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- SBRRB Brochure
  - Recently updated
  - Thoughts on Improvements?

Small Business Regulatory Review Board

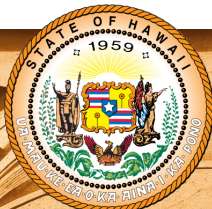


# Improved Awareness

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- SBRRB Presentation
  - Recently Updated
  - Agree with Vision/Mission/Purpose?
  - Other Thoughts?

Small Business Regulatory Review Board

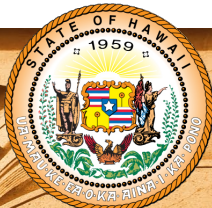




# Improved Awareness

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- State/County Agency Meetings
  - Where Are We?
    - Review Matrix
  - Plan Moving Forward
    - Review Discussion Leader Assignments
    - Schedule Meetings

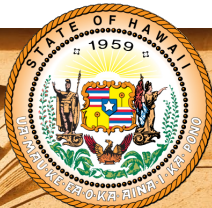


# Improved Awareness

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- Strategic Event Attendance
  - Maui SBA Event
  - Oahu Small Business Events

Small Business Regulatory Review Board

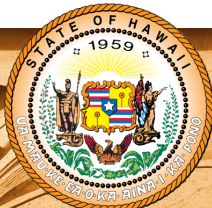


# Improved Awareness

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- Other Thoughts?

Small Business Regulatory Review Board

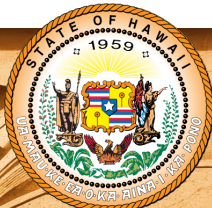


# SBRRB Strategic Discussion

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- Improved Effectiveness
  - Achieved Full Board Membership
  - Continue State/County Agency Meetings
  - Better Use of Improved Website
  - Meetings with Industry Associations
  - Other Thoughts?

Small Business Regulatory Review Board



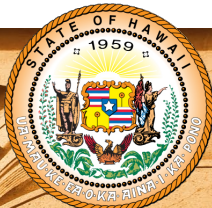


# Improved Effectiveness

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- State/County Agency Meetings
  - Educate/Promote SBRRB
  - Rule Making Process
    - Stakeholder Involvement (small business)
    - Consider Small Business Impacts
    - Open to Input & Change

Small Business Regulatory Review Board

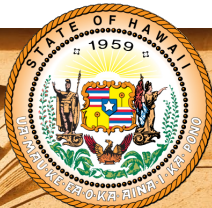


# Improved Effectiveness

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- Regulation for Review Process
  - Convenient
    - Website Access & Submission
  - ProActive
  - Specific to Rule & Impact
  - Suggest Change
  - SBRRB can Facilitate

Small Business Regulatory Review Board

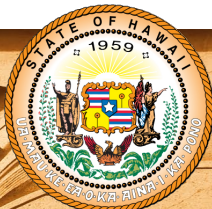


# Improved Effectiveness

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- Meetings with Industry Associations
  - Educate & Promote SBRRRB
  - How We Can Help?
  - How You Can Help Us?

Small Business Regulatory Review Board

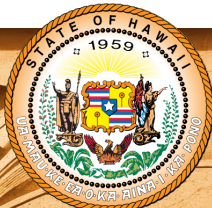


# Improved Effectiveness

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- Other Thoughts?

Small Business Regulatory Review Board

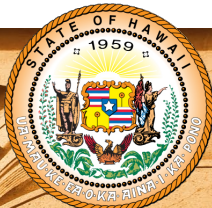




# 3-5 Year Goals

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- Improved Awareness & Effectiveness
  - Meeting with Agency & Counties
    - 6 meetings per year
  - Presentations to Industry Associations
    - 3 presentations per year
  - Social Media Utilization
    - Minimum 1 posting per week
    - 10% Subscription increase annually
  - Website Utilization
    - % hits increase



# 3-5 Year Goals

---

- Improved Awareness & Effectiveness
  - Maintain Full Board Status
    - 11 Members at all times
  - Board Meeting on a Neighbor Island
    - Once annually

Small Business Regulatory Review Board

