

## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594  
Fax 808 586-2572

### AGENDA

**Wednesday, June 18, 2014 ★ 9:30 a.m.**

**No. 1 Capitol District Building**

**250 South Hotel Street - Conference Room 436**

Neil Abercrombie  
*Governor*

Richard C. Lim  
*Director, DBEDT*

Mary Alice Evans  
*Deputy Director, DBEDT*

#### Members

Anthony Borge  
*Vice Chairperson  
Oahu*

Barbara Bennett  
*2<sup>nd</sup> Chairperson  
Kauai*

Craig Takamine  
*Hawaii*

Howard Lum  
*Oahu*

Kyoko Y. Kimura  
*Maui*

Harris Nakamoto  
*Oahu*

Richard C. Lim  
*Director, DBEDT  
Voting Ex Officio*

#### **I. Call to Order**

#### **II. Approval of May 21, 2014 Meeting Minutes**

#### **III. Old Business**

##### **A. Discussion and Action on the Small Business Statement After Public Hearing on Proposed Amendments promulgated by Department of Land and Natural Resources (DLNR) for Hawaii Administrative Rules (HAR), as follows:**

1. Title 13 Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
2. Title 13 Chapter 251, Waikiki and Kaanapali Ocean Waters
3. Title 13 Chapter 253, Registration and Permit Fees
4. Title 13 Chapter 256 Section 3, Commercial Operator Permit Requirements
5. Title 13 Chapter 256 Section 4, Commercial Vessel and Water Sports Equipment Registration Requirements
  - a. For a general description of the proposal, see exhibit 1
  - b. The proposed rule amendments may be viewed in person at: 333 Queen Street, Suite 300, Honolulu, Hawaii, or on the Internet at: <http://dlnr.hawaii.gov/dobor/rules>

##### **B. Discussion and Action on the Small Business Statement After Public Hearing on Proposed New Rules promulgated by Department of Labor and Industrial Relations (DLIR) for HAR Title 12, Subtitle 8, Part 11, in the chapters below:**

1. Chapter 230.1 Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumb-waiters with Automatic Transfer Devices
2. Chapter 232.1 Personnel Hoists
3. Chapter 234.1 Platform Lifts and Stairway Chairlifts
  - a. For the proposed rules, see Exhibit 2

##### **C. Discussion and Action on Small Business Statement After Public Hearing on Proposed Amendments promulgated by DLIR for HAR Title 12, Subtitle 8, Part 11, in the chapters below:**

1. Chapter 229 General, Administrative, and Legal Provisions
2. Chapter 240-1 General
  - a. For the proposed rule amendments, see Exhibit 2

D. Discussion and Action on Small Business Statement After Public Hearing on Proposed Repeal promulgated by DLIR for HAR Title 12, Subtitle 8, Part 11, in the chapters noted below:

1. Chapter 230 Elevators, Dumbwaiters, Escalators, & Moving Walks
2. Chapter 231 Manlifts
3. Chapter 232 Personnel Hoists
4. Chapter 233 Aerial Passenger Tramways
5. Chapter 234 Inclined Passenger Lifts
6. Chapter 235 Existing Inclined Tunnel Lifts
7. Chapter 236 Vertical Wheelchair Lifts
8. Chapter 237 Inclined Wheelchair Lifts
9. Chapter 238 Incline Stairway Chair Lifts
10. Chapter 239 Personal Automatic Trains
  - a. For the proposal, see Exhibit 2

IV. **New Business**

A. Discussion and Action on Proposed New Rules promulgated by the Office of Economic Development, County of Kauai, for Rules and Regulations governing Section 22, Article 23 of the Kauai County Code, pertaining to **Pesticides and Genetically Modified Organisms**, as follows:

1. For a general description of the proposal, see Exhibit 3
2. The proposed rules may be viewed in person at: Office of Economic Development, 4444 Rice Street, Suite 200, Lihue, Hawaii, or on the Internet at: <http://www.kauai.gov>

B. Discussion and Action on Proposed New Rules promulgated by DLNR for HAR Title 13 Chapter 60.8, **Haena Community-Based Subsistence Fishing Area, Kauai**:

1. For a general description of the proposal, see Exhibit 4
2. The proposed rule amendments may be viewed in person at: Kalanimoku Building, 1151 Punchbowl Street, Room 330, Honolulu, Hawaii, and on the Internet at: <http://files.hawaii.gov/dlnr/meeting/submittals/140523/F-7.pdf>

C. Discussion and Action on Proposed Amendments promulgated by the Department of Health for HAR Title 11, Chapter 62, **Wastewater Systems**:

1. For the proposed rule amendments, see Exhibit 5

V. **Administrative Matters**

- A. Action and Voting of Board Chair, pursuant to Section 201M-5(c), Hawaii Revised Statutes, and Election of Vice Chair
- B. Discussion and Action on the Creation of an Investigative Task Force for Fact-Finding Purposes regarding the Sustainability of this Board and the Possibility of Transferring this Board to Another Suitable State Department
- C. Board Member Discussion Leader Assignments for the State Departments and Counties' Administrative Rule Review

**VI. Adjournment**

**VII. Next Meeting:** Scheduled for Wednesday, July 16, 2014, at 9:30 a.m.,  
Conference Room 436, Capitol District Building, Honolulu, Hawaii

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

# June 18, 2014 ~ SBRRB Meeting Checklist

## Member Attendance

	Airline Preference	From	Details	Attend
Chu Lan Shubert Kwok	NA	Oahu	Parking Pass	
Howard Lum	NA	Oahu	Parking Pass	NO
Craig Takamine	HA	Hawaii	Parking Pass	Agenda Packet
Barbara Bennett	HA	Kauai	Parking Pass	✓
Kyoko Kimura (attached screen)	HA	Maui	Parking Pass	✓
Director's ex officio	NA	Oahu	NA	✓
Anthony Borge	NA	Oahu	Parking Pass	✓
Harris Nakamoto	NA	Oahu	Parking Pass	No

## Pre Meeting Checklist

Conference Room #436 (Confirm each month)	X
Make 15 copies of rule packages for board packets - continuous - W/ H/ S/ M	✓
Poll board attendance 5-29-14	X
Prepare TAF for Director's approval - ASAP	✓
Airline booking ASAP - Linda 6-4-14	X
Draft Agenda to Chair Approved 6-5-14	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office	✓
Send Agendas to those people who requested it	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed/ June 9, 10, 12 (Holiday on the 11th)	✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

## STAFF

Margaret Ahn			Yes
Dori Palcovich			Yes

## Post Meeting Checklist


Agenda Packet Done

# Visitors Sign-in-Sheet - Small Business Regulatory Review Board - June 18, 2014

	Name	Title	Organization	Email	Phone
1	Cindy Goldstein	gov affairs manager	Dupont Pioneer	cindy.goldstone.com	6370100-4117
2	Terry Onnellas	President	Kauai County Farm Bureau	terry.onnellas@kai.net	639-6044
3	W. Katoyew	T	Individual	wkatoyew@kai.net	651-3733
4	George Costa	Director	CoK-Of Econ Dev	gcosta@kai.gov	651-5450
5	Bill Hurstman	Asst to Dir	QCLL	w.hurstman@kai.gov	586-7777
6	Lana Ka'apana	Br Sec	Boiler Elevator Board	lana.k.kaapana@kai.gov	586-9141
7	Dennis Mendez	Exec Insp	DLR Bk Board	dennis.l.mendez@kai.gov	582-7774
8	Sina Prader	Prin chief	DOH, EMP - Wastewater	sina.prader@kai.gov	586-4294
9	Mark Tomomitsu	Sup. P&D Sec, WWB	DOH EMD - WWB	mark.tomomitsu@kai.gov	11
10	Micah Alameda	Leg. Aide	State Senate	m-alameda@capital.kai.gov	586-6160
11	Micah Munkata	Govt Affairs	Hawaii Farm Bureau	micah@mfbf.org	848 2074
12	Ed Chokewood	Adminstrator	DLNR - DOBAC	ed.c.chokewood@kai.gov	587-1966
13	Alfred Castillo Jr.	County Atty	County of Kauai	acastillo@kai.gov	241-4930
14	Mar Tahai	Recorder	Horse Manawity	mar.tahai@capital.kai.gov	5867071
15	David Sakoda	Marine Law Fellow	DLNR - DLR	david.sakoda@kai.gov	587-0104
16	Mike Faeye	Pres	Kikilaola Const	mike@kikilaolaconstruction.com	639-3900

# Visitors Sign-in-Sheet - Small Business Regulatory Review Board - June 18, 2014

	Name	Title	Organization	Email	Phone
1	Emma Anders	Partner	DLNR-DAR	Emma.Anders@hawaii.gov	721-6496
2					
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Testimony:

Small Business Regulatory Review Board: 6/18/2014

III. Old Business, Item A

By Rick Gaffney, Co-Chair, Hawaii Fishing & Boating Association

Issues for small ocean recreation businesses inherent in the proposed Amendments promulgated by Department of Land and Natural Resources (DLNR) for Hawaii Administrative Rules (HAR), as follows:

1. Title 13 Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
2. Title 13 Chapter 251, Waikiki and Kaanapali Ocean Waters
3. Title 13 Chapter 253, Registration and Permit Fees□
4. Title 13 Chapter 256 Section 3, Commercial Operator Permit Requirements□
5. Title 13 Chapter 256 Section 4, Commercial Vessel and Water Sports Equipment Registration Requirements

1) the stated purpose of these proposed amendments is to standardize the rules but they actually create new a new category of operator (beach catamarans) with special rights to due process not afforded all other commercial operators anywhere in the rules. Specifically the catamaran rules (13-231-62 (a) 1 and 13-251-17 (d) provide that no commercial use permit may be revoked without a prior hearing. No other DLNR-BOR commercial operator permit holders in the State are afforded that right. These proposed amendments also provide for notification in writing to Kaanapali and Waikiki catamaran permittees, but not to all other kinds of permittees. This is inherently unfair to those small business commercial operators who are not afforded the same rights.

2) The proposed rule amendments include (13-231-66) which limits on the number of commercial permits which may be held by an individual to two, a rule that seriously limits the opportunity for business growth by current and future commercial operators. 13-231-30 arbitrarily and capriciously restricts multiple permits. No justification has been provided for this proposed change. There are numerous businesses statewide that have grown to require more than 2 permits. If this rule had been in effect, those businesses would have been crippled and could not have thrived. If this rule goes into effect the opportunity to grow will be thwarted for many current and future small businesses.

3) Definitions of "all watersports equipment" (13-256-4) are incomplete, vague and therefore place limitations on small business, which must constantly upgrade their equipment and remain innovative and creative to be competitive.

4) the following proposed rule changes and amendments create a great deal of uncertainty for small business owners and operators governed by DLNR-BOR rules:

a) 13-231-6 a calls for the revocation of a use permit if after notice and lapse of a reasonable period of time set by the department, yet the proposed rule amendments do not define a "reasonable period of time."

b) 13-251-1 (a) uses the terms “private gain or purposes” which is nowhere defined in the rule amendments, creating another uncertainty for small business owners.

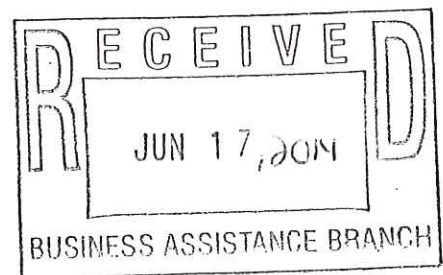
c) 13-251 inadequately defines “Catamaran” which is the focus of that section. Later in 13-251- 3 (a) many other vessel types are included, even though several of these additions are rarely if ever twin hull vessels. Does this section also apply to trimarans, power cats, Hawaiian sailing canoes, monohull sailing vessels, electric powered double hull vessels, etc.? This rule is unclear and creates uncertainties for business owners.

d) 13-251-3 (a) 2 (D) describes a permit reissuance scenarios and states: wherein a reissuance of the certificate or permit would be “fair and warranted.” Who decides what is fair and warranted? That terminology must be legally defined.

5) 13-256-3 (b) changes one of the only requirements for the Department in these amendments—establishment of a Recreational Advisory Committee—from “shall” to “may.” The Department’s history of disenfranchising ocean recreation businesses by excluding them from all processes, takes a step further away from small business operators in the ocean recreation industry, in this proposed change. The wording of this rule should not change and the Recreation Advisory Committee should be convened immediately.

For these reasons, and many others, the Small Business Regulatory Review Board should instruct the Division of Boating and Ocean recreation (DOBOR) to revisit and rewrite these egregiously anti-business rule changes and amendments, so they are not so impactful to the hundreds of small businesses in Hawaii’s ocean recreation industry.

Mahalo,  
Rick Gaffney, Co-Chair  
Hawaii Fishing & Boating Association  
74-425 Kealakehe Parkway, # 3-B  
Kailua-Kona, HI 96740  
808 960-6767 (cell)  
rgaffney@pacificboatsales.com





Kauai County Ordinance 960 Rules

Phil Kleidosty

to:

sbrrb@dbedt.hawaii.gov

06/16/2014 12:35 PM

Hide Details

From: Phil Kleidosty <phil@wecleankauai.com>

To: "sbrrb@dbedt.hawaii.gov" <sbrrb@dbedt.hawaii.gov>

Please respond to Phil Kleidosty <phil@wecleankauai.com>

History: This message has been forwarded.

My name is \_Phil Kleidosty\_ and I thank the Small Business Regulatory Review Board for the opportunity to provide comments.

Was the recession of 2008-2011 that long ago? Did we forget how scaled back tourism became? Had it not been for the Ag community and for the military, the Westside businesses would have been more severely impacted.

In turn this would have had a large ripple effect through the island. Tourism alone is not the way to sustain our economy. Diversity is.

Please think how this impact the small business folks like me.

Phil Kleidosty  
9935 Kaunualii Hwy  
Waimea, HI 96796  
Tel. 808-337-2080  
Fax 808-977-8010

*Serving Hawaii since 1948...*

# SHIOI CONSTRUCTION, INC.

General Contractor • LIC # ABC 12379

Small Business Regulatory Review Board  
No. 1 Capitol District Building  
250 S. Hotel Street Room 436  
Honolulu, Hawaii 96813

[sbrrb@dbedt.hawaii.gov](mailto:sbrrb@dbedt.hawaii.gov)

June 18, 2014

Related to Kauai County Ordinance 960 Rules

My name is Conrad Murashige, President of Shioi Construction and I thank the Small Business Regulatory Review Board for the opportunity to provide comments.

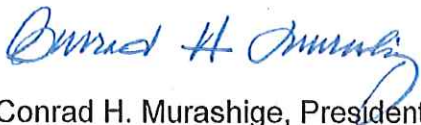
Shioi Construction has worked on facility improvements for over twenty years with Pioneer Seed, Monsanto, DOW, and BASF on Kauai, Oahu, and Molokai. Implementation of Ordinance 960 will directly impact these targeted farming companies on future capital improvement investments. The total economic impact from Ordinance 960 will significantly impact our employees, subcontractors, vendors, and support companies on Kauai.

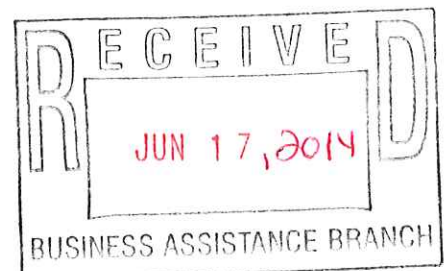
The multiple reporting requirements of the Ordinance will further tax the efficiency of these companies and our County that is responsible for regulatory oversight.

We can readily attest to the stringent safety programs required by these companies while working on their facilities. It is unfortunate that Ordinance 960 duplicates health & safety policies and procedures already performed by all of these companies while further restricting farmable areas.

We need a better balance between regulation and healthy economic growth.

Sincerely,  
Shioi Construction, Inc.

  
Conrad H. Murashige, President

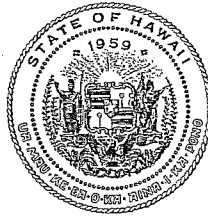
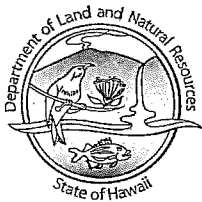


**OAHU**  
98-724 Kuahao Place  
Pearl City HI 96782-3113  
Telephone: (808) 487-2441 \* FAX: (808) 487-2445

**KAUAI**  
4023 Halau Street  
Lihue, Kauai 96766-1415  
Telephone: (808) 245-3975 \* FAX (808) 245-3977

## Exhibit 1

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD  
ADMINISTRATOR  
DIVISION OF BOATING AND OCEAN RECREATION

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING AND OCEAN RECREATION**

333 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813

June 19, 2013

**MEMORANDUM**

**To:** Ms. Chu Lan Shubert-Kwock, Acting Chair  
Small Business Regulatory Review Board  
Department of Business, Economic Development and Tourism

**From:** Edward R. Underwood, Administrator  
Division of Boating and Ocean Recreation

**Subject:** Small Business Impact Statement of the (1) Proposed Amendment and Compilation of Hawaii Administrative Rules, Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; and Chapter 13-253, Registration and Permit Fees; and (2) Amend Hawaii Administrative Rules, Section 13-256-3 Commercial operator permit requirements and Section 13-256-4 Commercial vessel and water sports equipment registration requirements, in Order to Update, Revise, and Reorganize Rules Relating to Commercial Activities in State Navigable Waters and at Boat Harbors and Facilities Under the Department's Jurisdiction

The Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) is submitting a Small Business Impact Statement regarding the subject proposal per Hawaii Revised Statutes, Section 201M-2. The purpose of these amendments is to standardize the requirements and restrictions for commercial use of state navigable waters, reorganize and make clearer language used in the subject chapters, and standardize the commercial use fee for all commercial businesses.

Small Business Impact Statement

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

**Response:** The fees and business documentation to use State ocean waters are paid by all commercial vessel operators. In order to use State waters, commercial vessel operators are required to submit statements of monthly gross receipts, insurance, be in compliance with the Department of Commerce and Consumer Affairs, and other requirements for safety and liability.

Commercial vessel operators such as Kaanapali catamarans, surf schools, thrill craft, and parasail operators statewide are issued commercial use permits to operate their businesses in State ocean waters. The commercial use permit fee for the Kaanapali catamarans is the greater of \$200.00 or 3% of gross per month. They will not be affected by the subject proposal; however, the seven commercial catamaran operators in Waikiki who historically paid \$8.50 per year for exclusive use of Waikiki Beach will now have to pay the same fee as all other commercial vessels the department permits.

The proposed rule amendments will also limit the number of commercial vessels utilizing the state small boat harbor facilities. Operators who are currently in business will not be affected and limits will be addressed through attrition.

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

Response: In the past, the department has not permitted commercial operations that occur in state waters and do not originate from a small boat harbor facility. The new rules will enable the department to issue permits to all commercial entities operating in state waters such as dive companies, surf schools, kayak operators, Stand-up surf board operators, etc. These companies will need to ensure that they have the proper insurance coverage, be in compliance with the Department of Commerce and Consumer Affairs, and pay the commercial permit fees. The commercial Waikiki catamaran operators would now be required to pay the same commercial fees as similar type operations occurring within state waters.

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

Response: At this time, commercial Waikiki catamaran operators as well as other commercial businesses operating in state waters and not using a small boat harbor facility are not required to provide gross receipt statements or submit general excise tax statements so it is unknown how the proposed amendments will affect the fees paid to the State. Fines are set by statute and no changes are proposed. The indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance will not change significantly for any commercial business statewide.

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

Response: DOBOR will receive revenue from commercial operators that have historically not been paying for the use of the state's resources. No other agency is expected to be affected by the proposal. The fees collected are unknown but will be deposited into DOBOR's special

boating fund and will be used to pay for management costs, enforcement costs, and for repairs and maintenance to State boat harbor facilities.

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

Response: As part of the amendment and compilation process, DOBOR is simplifying its rules. Commercial Operator Permits that have been issued to individuals will no longer be required and DOBOR will be concentrating on permitting the numerous businesses that are operating in state waters. DOBOR is attempting to give business more opportunity to operate more effectively and efficiently. These rule amendments will also standardize how commercial permits are issued and the fees assessed to ensure that everyone is being treated fairly and in the same manner statewide.

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

Response: DOBOR has been compiling the rule amendment package for over seven years. There have been numerous outreach meetings regarding the proposed amendments. DOBOR has met with commercial operators and has made amendments based on their input. DOBOR continues to work with commercial operators and the proposed rule amendments should help to provide additional opportunities to small business operators.

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

Response: The proposed rules do not include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards.

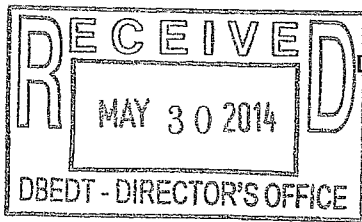
## Exhibit 2

NEIL ABERCROMBIE  
GOVERNOR



DWIGHT TAKAMINE  
DIRECTOR

JADE T. BUTAY  
DEPUTY DIRECTOR

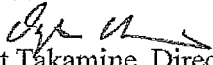


STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

May 20, 2014

TO: The Honorable Neil Abercrombie  
Governor

FROM:   
Dwight Takamine, Director  
Department of Labor and Industrial Relations

SUBJECT: Approval to Adopt Chapters 12-230.1, 12-232.1, 12-234.1; Amendment and Compilation of Chapter 12-229; Amendment of Chapter 12-240-1; and Repeal of Chapters 12-230, 12-231, 12-232, 12-233, 12-234, 12-235, 12-236, 12-237, 12-238, and 12-239 to Hawaii Administrative Rules Part 11 of Title 12, Subtitle 8, Relating to Elevators and Related Systems.

In accordance with Administrative Directive No. 09-01, the Department of Labor and Industrial Relations ("department") respectfully requests your final approval to amend Hawaii Administrative Rules in Part 11 of Title 12, Subtitle 8, Relating to Elevators and Related Systems.

A series of stakeholders' meetings began in 2010 and continued through April 2014 for providing the utmost in public safety in concert with rapid and progressive advancements of the elevator industry.

Participants over the years have included the following:

- \* State Elevator Inspectors
- \* the Hawaii Elevator Industry
- \* Industry Consultants, General Contractors, Elevator Constructors and Mechanics
- \* Building Owners, Homeowner Associations, Realtors, and Property Management Companies
- \* State of Hawaii Department of Commerce and Consumer Affairs and its various regulatory boards

- \* Building Departments of the Counties of Hawaii, Maui, Kauai and the City and County of Honolulu
- \* National Entities such as the Elevator Industry Work Force Preservation Fund, a nonprofit education and training arm of the International Union of Elevator Constructors (IUEC)

In 2012 Thaddeus Tomei, a former International Union of Elevator Constructors (IUEC) business agent, joined the Department of Labor and Industrial Relations (DLIR) to stabilize and maximize the resources of the State Elevator Section and to ascertain the feasibility of proposed amendments to existing Hawaii safety standards and requirements. Under Mr. Tomei's leadership within the last two years, the scope and pace of stakeholder meetings and consultations expanded and accelerated toward consensus among all facets of the industry in support of the recommendation to adopt the 2010 version of American Society of Mechanical Engineers (ASME) A17.1 Safety Code for Elevators and Escalators.

Whereas the National Elevator Industry Inc., of which Hawaii's elevator companies are members, recommends adoption of the 2013 version of the of American Society of Mechanical Engineers A17.1 code with the effective date of April 21, 2013, the proposed Hawaii Administrative Rules, as revised, will adopt American Society of Mechanical Engineers A17.1-2010 Safety Code for Elevators and Escalators.

The DLIR notes that bringing the 1996 elevator safety standards and requirements up to date is a monumental transition. From the start of public awareness and outreach by the DLIR in 2009, despite the intent to achieve parity with the majority of other states, most concerns initially expressed by owners, property managers and elevator companies focused on the increased cost to consumers and industry instead of a more solid guarantee of safety to the riding public.

Since then, the reality of higher implementation costs has been tempered with the more desired effects of optimal and long-term public safety benefits for consumers and sounder investment for the elevator trade and associated industries. Through repeated sharing of information and concerns, stakeholders realized how any initial or start-up costs would be gradually offset through greater efficiency, productivity and improvement in elevator related operations, services, and products.

In addition to the upgrade of technical compliances, the revised Hawaii Administrative Rules also spell out a number of operational procedures, including accident reporting and permit processing, consistent with the upgrading of safety standards and the ongoing transition to enhanced online and electronic processing of permit applications, billings, and eventually, inspections and tests.

Lastly, the proposed amendments will adopt and harmonize various codes e.g., relating to building, occupational safety and health, fire alarm, sprinkler and accessibility. The amendments will also provide a formal avenue for the DLIR to participate with all code agencies to discuss developing issues and jurisdictional ambiguities as well as the means to reach resolution.

In the past, confusion and conflict was more the rule than the exception as various code agencies seemingly overlapped with existing elevator code and practices. With adoption, the amendments will offer clearer delineations of legal authority, of particular advantage to state elevator inspectors tasked solely with enforcing elevator code requirements.

The Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, and the Governor's Administrative Directive No. 09-01, requires an assessment of the impact on small business.

The public hearing was held in Honolulu on May 14, 2014, 1:00 p.m. at 830 Punchbowl Street, Room 427. Thirty-one people attended the public hearing and there were a total of three testimonies: one provided through both oral and written testimony, one provided through only oral testimony, and one written testimony that was submitted through email after the hearing.

The following testimonies were submitted:

<u>NAME</u>	<u>REPRESENTING</u>
1. Albert J. Denys Jr.	Community Associations Institute (CAI)
2. Gregg Rogers	Model Legislation and New Technology Elevator Industry Work Preservation Fund (EIWPF)
3. Brian Black & Amy Blankenbiller	National Elevator Industry Inc.(NEII)

A more detailed summary of testimonies is attached. A brief summary of the testimonies follows.

1) Mr. Albert J. Denys Jr. submitted written and oral testimony in support on behalf of the Legislative Action Committee of Community Associations Institute (CAI), an organization composed of condominium homeowners associations. He summarized the position of the CAI as one of appreciation and support for the updating of the present elevator code to reflect current building codes and elevator industry standards.

2) Mr. Gregg Rogers gave oral testimony and commended the Department for the last four years of stakeholders meetings in the effort to upgrade an outmoded elevator code to more accurately reflect technological advancements relating to the elevator industry.

Mr. Rogers, who assists with the Model Legislation and New Technology Elevator Industry Work Preservation Fund (EIWPF) programs of Codes and Global Elevator Union Relations, noted "the big transition" covering a fourteen-year span for revisions to the 1996 Hawaii elevator standards. To eliminate a less massive undertaking in the next round of revisions, he proposed instituting a system of more periodic review coinciding with American Society of Mechanical Engineers (ASME) updates that will occur every three years.

3) Brian Black and Amy Blankenbiller of the National Elevator Industry Inc. (NEII) emailed written testimony after the hearing in support.

Their testimony stated that the National Elevator Industry Inc. (NEII ) is the premier national trade association representing the interest of firms that install, maintain and/or manufacture elevators, escalators, moving walks and other building transportation products; including top elevator companies whom have long-established company outlets successfully operating within the State of Hawaii. The National Elevator Industry Inc. officially prefers the adoption of American Society of Mechanical Engineers (ASME) A17.1-2013 Safety Code for Elevators and Escalators, with an effective date of April 21, 2013. This version is described as state-of-the-art code used almost universally throughout North America, representing the optimum in safety, as developed by the elevator industry in its entirety, from enforcing authorities, mechanical and electrical engineering and design experts, inspectors, consultants, labor authorities, building and facility owners, and installation and maintenance specialists.

In summary, all of the testimony was in support of the proposed changes.

I respectfully request your approval and filing with the Lieutenant Governor's Office by June 20, 2014 so that the amendments will become effective on July 1, 2014.

APPROVED:

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NEIL ABERCROMBIE  
Governor, State of Hawaii

Enclosures (2)

c: Director, Department of Budget and Finance  
Director, Department of Business, Economic Development & Tourism

**RULE MAKING CHECKLIST  
FOR  
SMALL BUSINESS STATEMENT AFTER PUBLIC HEARING**

May 20, 2014

DEPARTMENT OR AGENCY: DLIR/HIOSH  
Chapters and Title: Part 11 of Title 12, Subtitle 8  
Relating to Elevators and Related  
Systems

Name and Phone Number  
Of Contact Person: Bill Kunstman, 586-8845

1. Summarize how the comments or testimonies from small businesses were solicited.

A notice of public hearing was published in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on April 4, 2014 for the public hearing held on May 14, 2014.

2. Summarize the written and oral testimonies received from the public and small business regarding any proposed rule that affects small business.

There were a total of three testimonies in support of the changes to the Elevator Rules: one testifier gave both oral and written testimony in support; one gave oral testimony in support; and one provided written testimony in support.

3. Summarize the department's or agency's response to the comments or testimonies received in item 2.

The Director of Department of Labor and Industrial Relations expressed his appreciation for the collective efforts of numerous individuals who have contributed in benefiting the people of our island community by ensuring greater public safety for all.

4. How many persons attended the public hearing? 31
5. How many persons orally testified at the public hearing? 2

6. How many persons submitted written comments or testimonies in response to the proposed rules?

2

7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.

There were no such requests.

SUMMARY OF TESTIMONIES  
Part 11 of Title 12, Subtitle 8  
Hawaii Administrative Rules  
Relating to Elevators and Related Systems

May 20, 2014

Adoption of Chapters 12-230.1, 12-232.1, 12-234.1; Amendment and  
Compilation of Chapter 12-229; Amendment of Chapter 12-240-1;  
and Repeal of Chapters 12-230, 12-231, 12-232, 12-233, 12-234,  
12-235, 12-236, 12-237, 12-238, and 12-239:

1. Testimony: Albert J. Denys Jr., Legislative Action Committee for Community Associations Institute (CAI); Brian Black, Codes & Safety Director for the National Elevator Industry Inc. (NEII) and Amy Blankenbiller, Government Affairs Director for NEII are in favor of the proposed changes to the Elevators and Related Systems.

Mr. Albert J. Denys Jr. submitted oral and written testimony in support on behalf of the Legislative Action Committee of Community Associations Institute (CAI), an organization composed of condominium homeowners associations. He summarized the position of CAI as one of appreciation and support for the updating of the present elevator code to reflect current building codes and elevator industry standards.

Mr. Denys stated the revisions will help maximize maintenance fees charged to owners, ranging anywhere from \$1,000 a month to \$1 million for modernizations and which are projected 25 years into the future. He expressed gratitude for the inclusion of consumers such as homeowner associations for their participation in the information-gathering and decision-making processes prior to public hearing. In particular, he stated that provisions for Maintenance Control Programs (MCP), despite implementation costs, will prove beneficial to both users and elevator inspectors.

Brian Black and Amy Blankenbiller of the National Elevator Industry Inc. (NEII) emailed written testimony after the hearing in support. The National Elevator Industry Inc. (NEII) is an outgrowth of the Elevator Manufacturers' Association established in 1934, which was renamed in 1969 as the National Elevator Industry Inc.

It is the premier national trade association representing the interest of firms that install, maintain and/or manufacture elevators,, escalators, moving walks and other building transportation products. National Elevator Industry Inc. (NEII) membership includes top elevator companies in the United States and internationally, including Otis Elevator Company, Schindler Elevator Corp., ThyssenKrupp Elevator Corporation, and Kone Inc., all of whom have long-established company outlets successfully operating within the State of Hawaii.

The National Elevator Industry Inc. officially supports the adoption of the American Society of Mechanical Engineers A17.1-2013 Safety Code for Elevators and Escalators. This version is described as state-of-the-art code used almost universally throughout North America, representing the optimum in safety, as developed by the elevator industry in its entirety, from enforcing authorities, mechanical and electrical engineering and design experts, inspectors, consultants, labor authorities, building and facility owners, and installation and maintenance specialists.

DLIR Response: The Director expressed his appreciation for the collective efforts of numerous individuals who have contributed in benefiting the people of our island community by ensuring greater public safety for all.

2. Testimony: Gregg Rogers, National Coordinator and Team Leader, Model Legislation and New Technology Elevator Industry Work Preservation Fund (EIWPF) is in favor of the proposed changes to the Elevators and Related Systems and would like to see similar upgrades happen more frequently.

Mr. Gregg Rogers commended the Department for the last four years of stakeholders meetings in the effort to upgrade an outmoded elevator code to more accurately reflect technological advancements relating to the elevator industry.

Mr. Rogers, who assists with the New Technology Elevator Industry Work Preservation Fund (EIWPF) programs of Codes and Global Elevator Union Relations, noted "the big transition" covering a fourteen-year span for revisions to the 1996 Hawaii elevator standards. To eliminate a less massive undertaking in the next round of revisions,

he proposed instituting a system of more periodic review coinciding with American Society of Mechanical Engineers (ASME) updates that will occur every three years.

DLIR Response: The purpose in upgrading to the 2010 American Society of Mechanical Engineers standards and not the 2013 version was to buy time for a "catch-up" transition until the next revision occurs. The next public hearing will further refine the Hawaii Administrative Rules, as statutorily mandated and as appropriate. It will also entail a review and subsequent adoption of American Society of Mechanical Engineers (ASME) A17.1-2013. Future public hearings of a smaller scope will be more manageable and will thereby allow the Department of Labor and Industrial Relations to keep abreast of timely code updates within the three-year American Society of Mechanical Engineers revision cycle.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Adoption of Chapters 12-230.1, 12-232.1, and  
12-234.1;

Amendment and Compilation of Chapter 12-229;

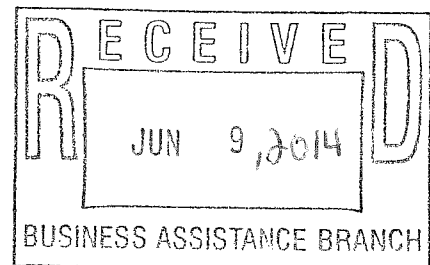
Amendment of Chapter 12-240-1; and

Repeal of Chapters 12-230, 12-231, 12-232, 12-233,  
12-234, 12-235, 12-236, 12-237, 12-238, and 12-239

Hawaii Administrative Rules

May 15, 2014

1. Chapter 12-230.1, Hawaii Administrative Rules,  
entitled "Elevators, Escalators, Dumbwaiters, Moving Walks, and  
Material Lifts and Dumbwaiters with Automatic Transfer  
Devices", is adopted to read as  
follows: \_\_\_\_\_



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 230.1

ELEVATORS, ESCALATORS, DUMBWAITERS, MOVING WALKS, AND  
MATERIAL LIFTS AND DUMBWAITERS WITH  
AUTOMATIC TRANSFER DEVICES

- |              |   |
|--------------|---|
| \$12-230.1-1 | Applicability   |
| \$12-230.1-2 | General requirements  |
| \$12-230.1-3 | Requirements for the installation of new<br>elevators and kindred equipment and/or<br>the relocation of existing equipment                              |
| \$12-230.1-4 | Requirements for existing elevators,<br>escalators, dumbwaiters, moving walks,<br>and material lifts and dumbwaiters with<br>automatic transfer devices |

Historical Note: Chapter 230.1 is based on chapter 230 of  
title 12 of the Hawaii Occupational Safety and Health  
Standards, Rules and Regulations. [Eff. 7/12/82; am 12/19/83;  
am 12/8/86; am, ren, and comp 12/6/90; am 11/5/93; am 7/6/98;  
R ]

\$12-230.1-1 Applicability. The requirements of this  
chapter shall be applicable to the design, construction,  
installation, plans review, testing, inspection, certification

operation, use, maintenance, repair, alteration and relocation of, and investigation of accidents involving elevators and kindred equipment subject to chapter 397, Hawaii Revised Statutes, including elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices. [Eff ] (Auth: HRS \$397-4) (Imp: HRS \$397-4)

\$12-230.1-2 General requirements. (a) All new and existing installations of elevators and kindred equipment shall be reasonably safe to persons and property and in conformity with the provisions of this chapter.

(b) Conditions found not in conformity with the provisions of this chapter for which the director had not previously issued a discrepancy letter may be regarded as discrepancies. All discrepancies shall be satisfactorily resolved as soon as possible or within the time specified by the director. Failure to correct discrepancies or failure to abate an unsafe condition within the time specified shall be deemed a violation.

(c) All passenger elevators shall have a clearly legible "Smoking Prohibited by Law" or "No Smoking" sign installed inside of the cab. The letters on the sign shall not be less than one inch in height. The sign shall be posted in elevators in buildings open to the public, including elevators in apartments and other multi-unit residential buildings. The international no-smoking symbol may be posted in lieu of the sign provided that the diameter of the circle is not less than four inches. [Eff ] (Auth: HRS \$397-4) (Imp: HRS \$397-4)

\$12-230.1-3 Requirements for the installation of new elevators and kindred equipment and/or the relocation of existing equipment. (a) The design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices, and its associated parts, shall conform to

the rules in this chapter and the American Society of Mechanical Engineers A17.1-2010, which is adopted by reference and made a part of this chapter with the following amendments:

- (1) Section 5.2 of the American Society of Mechanical Engineers A17.1, Limited-Use/Limited-Application Elevators, is amended to read: "Limited-use/limited-application elevators (see 1.3) are not permitted to be installed or used, unless:
  - (A) The building is required to be accessible in accordance with the Department of Justice's ADA Standards for Accessible Design (2010), or in accordance with section 103-50, Hawaii Revised Statutes;
  - (B) The building is also on the National or Hawaii Register of Historic Places; and
  - (C) Accessibility cannot otherwise be achieved without adversely altering the historically protected features of the structure".
- (2) Section 8.6.1.2.1(c) of the American Society of Mechanical Engineers A17.1 is amended to read: "A written Maintenance Control Program in electronic or paper form created for the equipment is the property of the equipment owner, and shall be made available to the department and be located on site".
- (3) Section 8.9.2 of the American Society of Mechanical Engineers A17.1 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks".
  - (b) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of eight inches (two hundred mm) or more and no ramp or runway is provided
  - (c) International Building Code, 2012 edition, chapter 30, Elevators and Conveying Systems, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and kindred equipment.
  - (d) International Code Council A117.1-2009, Accessible and Usable Buildings and Facilities, sections 407, 410, and related portions of sections 106, 302, 308, 309, 703, and 705

are adopted by reference and made a part of this chapter, and shall apply to all new installations.

(e) Chapter 21 of the National Fire Protection Association 72 National Fire Alarm and Signaling Code, 2010 edition, and its related annexes and provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(f) Article 620 of the National Fire Protection Association 70, National Electric Code, 2011 edition, and its related provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(g) Paragraph 8.15.5, of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 2010 edition, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and escalators. The annexes A.8.15.5.1 to A.8.15.5.4, D.1.1.9.2, D.1.1.10.2, D.2.23.2.2, and D.2.24.2.2, are explanatory and informational only.

(h) In each machine room, control room, machinery space, control space, and hoistway pit, there shall be provided at least one 125 volt, single phase, 15- or 20-ampere ground fault circuit interrupter (GFCI) duplex receptacle.

(i) A machine room light bulb shall be externally guarded if the bulb is ten feet or lower from the floor.

(j) Section 2.27.8 (switch keys) of American Society of Mechanical Engineers A17.1 is amended to read: "The key switches required by 2.27.2 through 2.27.5 for all elevators in a building shall be operable by the "FEO-K1" key. The keys shall be Group 3 Security (see 8.1). A separate key shall be provided for each switch. These keys shall be kept inside the firefighter's lockbox. The firefighter's lockbox shall be located 6 feet above the floor on the left hand side of the elevator wall when facing the elevator and 6 feet above the floor on the left hand side of the left elevator when facing the elevators for a group of elevators. The fire key switch shall be located adjacent to the firefighter's lockbox. This key shall be of a tubular, 7 pin, style 137 construction and shall have a bitting code of 6143521 starting at the tab sequenced clockwise as viewed from the barrel end of the key. The key shall be coded "FEO-K1". The possession of the "FEO-K1" key shall be limited to elevator personnel, emergency personnel, elevator equipment manufacturers, and authorized

personnel during checking of the Firefighters' Emergency Operation (see 8.1 and 8.6.11.1)". [Eff ]  
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-230.1-4 Requirements for existing elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices. (a) All existing elevators, escalators, moving walks, and dumbwaiters and material lifts without automatic transfer devices shall comply with the code in effect at the time of installation or alteration. If the installation or alteration permit was issued after 1997, then the elevator or kindred equipment shall comply with American Society of Mechanical Engineers A17.3-2011, which is adopted by reference and made a part of this chapter with the following amendments:

- (1) Nonmandatory Appendix C of American Society of Mechanical Engineers A17.3 is mandatory.
- (2) Rule 211.3 of American Society of Mechanical Engineers A17.3 Nonmandatory Appendix C, Firefighter's Service - Automatic Elevators, is amended to read: "All automatic (nondesignated attendant) operation elevators shall conform to the requirements of this rule".

(b) The following provisions of American Society of Mechanical Engineers A17.1-2010 are adopted by reference and shall apply to existing elevators and kindred equipment as stated:

- (1) Part 1, General, shall apply to all existing elevators, escalators, moving walks, dumbwaiters, and material lifts;
- (2) Section 5.10, Elevators Used for Construction, shall apply to all existing elevators used for construction;
- (3) Section 8.1, Security, shall apply to all existing elevators, escalators, and moving walks;
- (4) Section 8.6, Maintenance, Repair, Replacement and Testing, shall apply to all existing elevators, escalators and moving walks, and dumbwaiters and material lifts with automatic transfer devices with the following amendment: Section 8.6.1.2.1(c) of

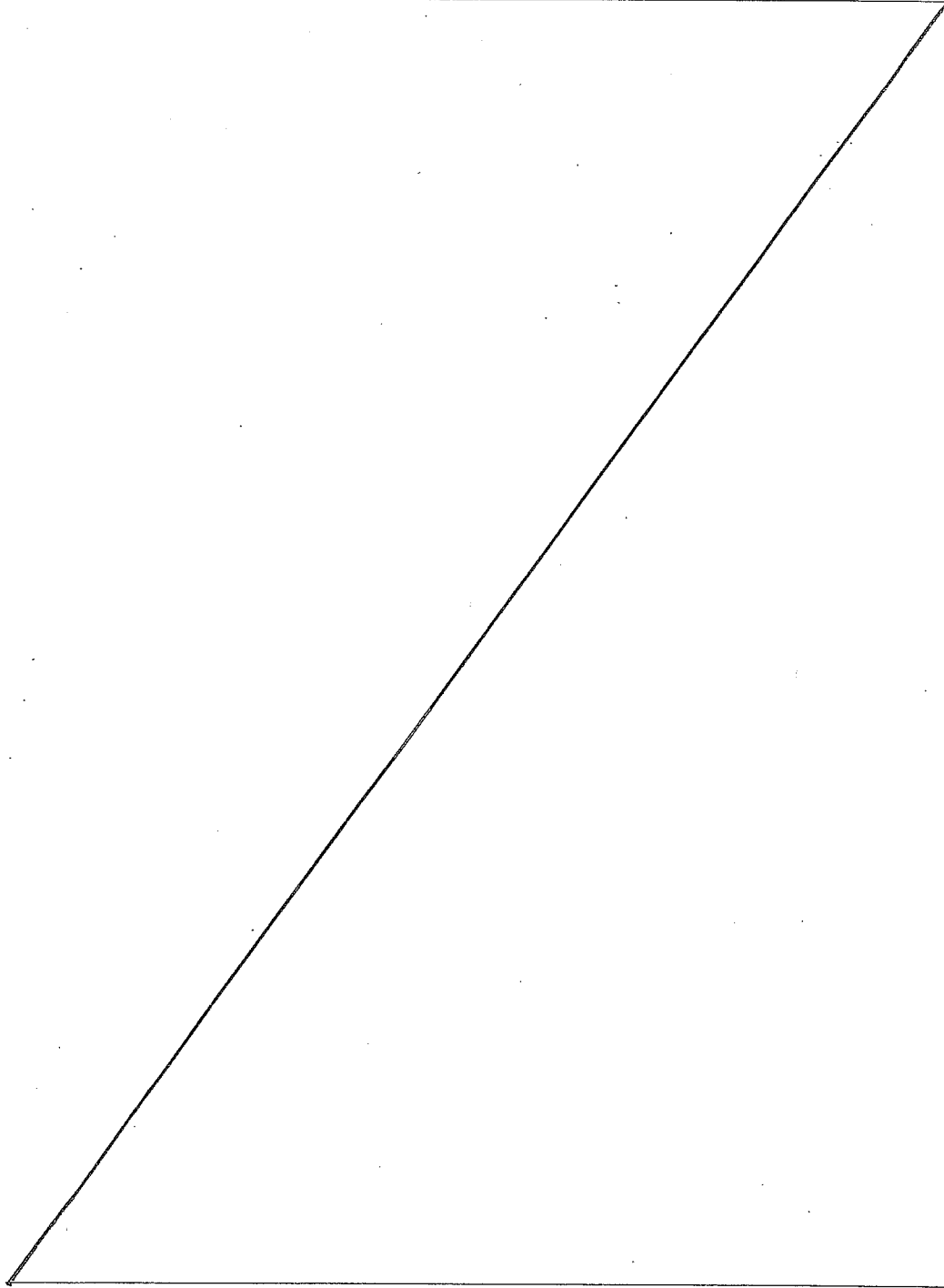
the American Society of Mechanical Engineers A17.1 is amended to read: "The written Maintenance Control Program in electronic or paper form created for the equipment is the property of the equipment owner, and shall be made available to the department and be located on site".

- (5) Section 8.7, Alterations, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.
- (6) Section 8.8, Welding, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.
- (7) Section 8.9, Code Data Plate, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices, except section 8.9.2 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks".
- (8) Section 8.10, Acceptance Inspections and Tests, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.
- (9) Section 8.11, Flood Resistances, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.

(c) Chapter 12-240 shall apply to all elevators where the installation application was received by the department after December 6, 1990.

(d) American Society of Mechanical Engineers 17.6 shall apply to existing elevators with other types of suspension means and steel cables less than three-eighths of an inch in diameter." [Eff ]  
 (Auth: HRS §397-4) (Imp: HRS §397-4)

2. Chapter 12-232.1, Hawaii Administrative Rules,  
entitled "Personnel Hoists", is adopted to read as  
follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 232.1

PERSONNEL HOISTS

\$12-232.1-1 Code adoption  
\$12-232.1-2 Existing personnel hoists

Historical note: Chapter 232.1 is based on chapter 232 of title 12 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/12/82; am and comp 12/6/90; am 7/6/98; R ]

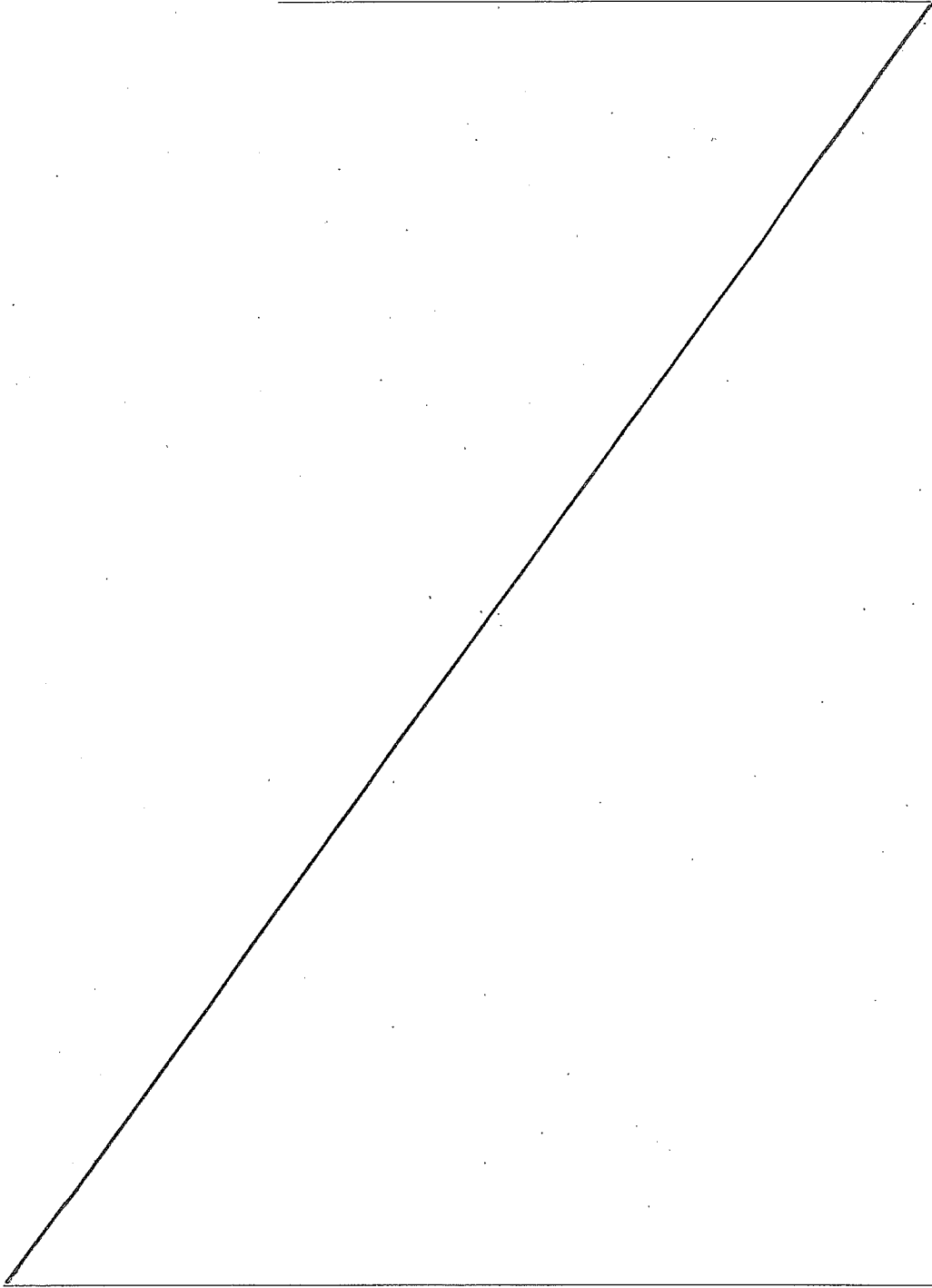
\$12-232.1-1 Code adoption. American National Standards Institute/American Society of Safety Engineers A10.4-2007, is adopted by reference and made a part of this chapter and applies to all new and existing personnel hoists.  
[Eff ] (Auth: HRS §397-4) (Imp: HRS §397-4)

\$12-232.1-2 Existing personnel hoists. Where the application for the installation of a personnel hoist was filed with the department before the effective date of this chapter and the applicant is unable to comply with the current

requirements, the director may grant a temporary variance without publication of a legal notice provided the applicant meets all other requirements of section 12-229-16.1."

[Eff ] (Auth: HRS §397-4) (Imp: HRS §397-4)

3. Chapter 12-234.1, Hawaii Administrative Rules, entitled "Platform Lifts and Stairway Chairlifts", is adopted to read as follows: \_\_\_\_\_



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 234.1

PLATFORM LIFTS AND STAIRWAY CHAIRLIFTS

- \$12-234.1-1 Code adoption
- \$12-234.1-2 Existing platform lifts and stairway chairlifts

Historical note: Chapter 234.1 is based on chapter 234 of title 12 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff. 7/12/82; am 12/19/83; am 12/8/86; am, ren, and comp 12/6/90; am 11/5/93; am 7/6/98; R ]

\$12-234.1-1 Code adoption. American Society of Mechanical Engineers A18.1-2011, is adopted by reference and made a part of this chapter and applies to all new platform lifts and stairway chairlifts. [Eff ]  
(Auth: HRS §397-4) (Imp: HRS §397-4)

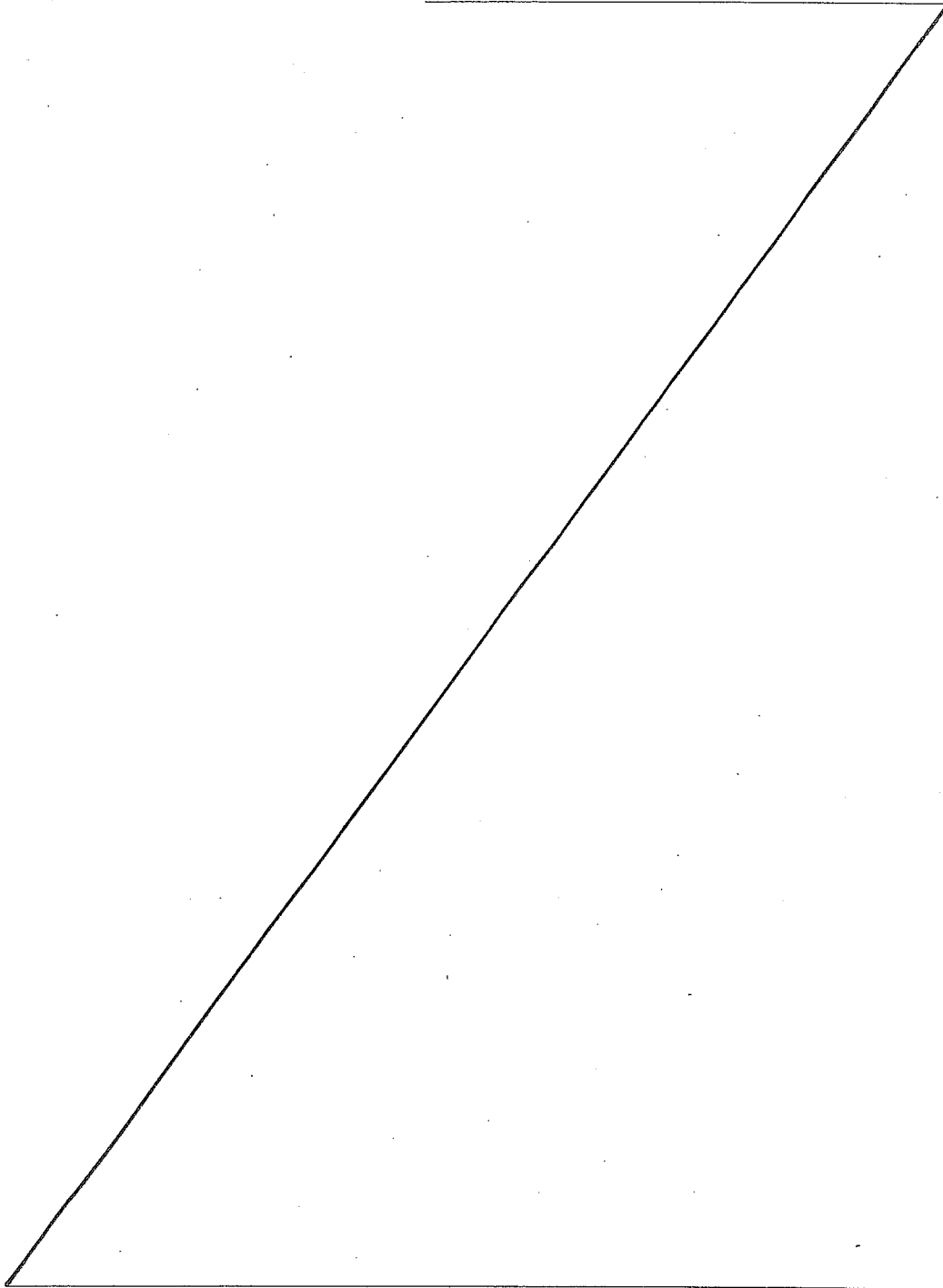
\$12-234.1-2 Existing platform lifts and stairway chairlifts. (a) Existing platform lifts and stairway chairlifts shall comply with American Society of Mechanical

Engineers A18.1 - 1999, Safety Standard for Platform Lifts and Stairway Chairlifts, as copyrighted and published in 1999 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

(b) Where the application for the installation of a platform lift or stairway chairlift was filed with the department before the effective date of this chapter and the applicant is unable to comply with the current requirements, the director may grant a temporary variance without publication of a legal notice provided the applicant meets all other requirements of section 12-229-16.1."

[Eff ] (Auth: HRS §397-4) (Imp: HRS §397-4)

4. Chapter 12-229, Hawaii Administrative Rules, entitled "General, Administrative, and Legal Provisions", is amended and compiled to read as follows: \_\_\_\_\_



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

\$12-229-1	Scope and application
\$12-229-2	Definitions
\$12-229-3	Repealed
\$12-229-3.1	Codes incorporated and adopted by reference
\$12-229-4	Repealed
\$12-229-4.1	Installation and alteration permits
\$12-229-5	Repealed
\$12-229-5.1	Permits to operate
\$12-229-6	Repealed
\$12-229-6.1	Fees
\$12-229-7	Repealed
\$12-229-7.1	Inspections and tests
\$12-229-8	Repealed
\$12-229-8.1	Rights and enforcement
\$12-229-9	Repealed
\$12-229-9.1	Complaints
\$12-229-10	Repealed
\$12-229-10.1	Reporting of accidents
\$12-229-11	Repealed
\$12-229-11.1	Investigations
\$12-229-12	Repealed
\$12-229-12.1	Violations and penalties
\$12-229-13	Repealed
\$12-229-13.1	Review and appeal
\$12-229-14	Repealed
\$12-229-14.1	Trade secrets
\$12-229-15	Repealed

§12-229-15.1	Notifications of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

§12-229-1 [Application.] Scope and application. This part contains [elevator safety] general and administrative rules and legal provisions which apply to [Part 11.] this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private residences provided the equipment or apparatus is not accessible to the general public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
- (3) Material hoists used to raise or lower materials during construction, alteration or demolition (within the scope of ANSI A10.5); and
- (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp ] (Auth: HRS §394-4) (Imp: HRS §397-4)

§12-229-2 Definitions. As used in [part 11:] this part:

"Alteration" means [a] any change [in any item described on the original Manufacturer's Data Report or specification other than maintenance, repair, or replacement; additional mechanical tests are required.] to equipment, including parts, components, or subsystems other than maintenance, repair or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

["ANSI A12.1" means ANSI A12.1-1973, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards.

"ANSI B29.1" means ANSI B29.1-1975, Precision Power Transmission Roller Chains, Attachments, and Sprockets.

"ASME A17.2" means ASME A17.2.1 1996, Inspectors Manual for Elevators and Escalators.]

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator [and], or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means [ASME A17.1-1996,] ASME A17.1, Safety Code for Elevators and Escalators[.], as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the

applicable county, or the code adopted by the State of Hawaii for state buildings.

["Bungee jumping" means jumping, diving, stepping out or otherwise being released into the air while attached to a bungee cord.]

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing [and responsible for the safe operation of] any amusement ride, elevator [and], or kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" [or "DLIR"] means the department of labor and industrial relations, State of Hawaii.

["Diameter" means tread diameter when used in specifying sheaves, wheels, or pulleys.]

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance [of] to codes, standards, rules, or regulations required by [part 11 of this subtitle.] this part.

"Division" [or "HIOSH"] means the Hawaii occupational safety & health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism [permanently installed in a structure, designed to carry passengers,] equipped with a car [or platform which] that moves [in fixed] within guides and serves two or more fixed landings[.], and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

["Elevators and kindred equipment" means elevators, escalators, dumbwaiters, moving walks, manlifts, accessibility lifts, inclined passenger lifts, personnel hoists, aerial tramways, personal automatic trains, and any other similar mechanized equipment used to convey people in places other than a public right-of-way.]

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the effective date of the this chapter.

["Factor of safety" is the number by which a given permissible force, or load, value can be multiplied before the

structure machine or device reaches its ultimate design strength value.]

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii [State Legislature.] state legislature.

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

["Inclined passenger lift" means a device constructed and operated for transporting persons from one elevation to another consisting essentially of a level car or platform traveling on guide rails in an inclined plane. Devices installed indoors on stairways and utilizing chairs for carrying passengers are not considered to be inclined passenger lifts.

"Inspector" means any elevator inspector appointed by the director and employed by the department holding a valid certificate of competency issued by the department.]

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in places other than a public right-of-way, but does not include amusement rides.

"May" means [permissive.] not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70 [1996], National Electrical Code[.], as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator [and], kindred equipment[.], or amusement ride.

"Order" means a command to perform a mandatory act issued by

the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS [who may or may not be the user].

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment or an amusement ride.

"Qualified inspector" means an elevator inspector appointed by the director and employed by the department holding a valid certificate of competency issued by the department. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

["Safe" means freed from harm.

"Safety" means a mechanical device attached to the car frame or to the counterweight, when provided, to stop and hold the car or counterweight in case of predetermined overspeed-or free fall, or if the suspension ropes slacken.]

"Shall" means mandatory.

["Uniform Building Code" means the Uniform Building Code, 1994.]

"Unsafe" means [exposed] potential exposure to [danger or risk.] a recognized hazard.

["User" means any person, firm, or corporation legally in possession and responsible for the operation of any amusement ride, elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Vendor" means any person, firm, or corporation that sells or distributes any amusement ride, and elevator and kindred equipment required to be inspected pursuant to chapter 397, HRS.]

"Violation" means [non-conformance of an item, or part to codes, standards, rules, or regulations required by this subtitle.] the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS.

["Welding documentation" means welding procedure specifications, procedure qualification records, records of performance qualification, and reports of welded repairs or alterations.] [Eff 6/19/00; am and comp ]  
(Auth: HRS §397-4) (Imp: HRS §397-4)

[§12-229-3 Permits. (a) An installation permit shall be issued by the department based on the approval of drawings and specifications pertaining to the installation or alteration of elevators and kindred equipment; operating permits shall be issued by the department on the basis of the report of the acceptance inspection and each permit inspection.

(b) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator and kindred equipment without first obtaining an installation permit from the department. An application on the prescribed form shall be submitted and approved prior to commencement of work. Such application shall consist of applicant's name, address and license number, date of application, building name and address of installation/alteration. The date of installation/alteration and anticipated completion, type of equipment to be installed/altere, manufacturer of equipment, maximum rise and number of floors shall also be included. For personnel hoists, name of installer and proof of new ropes used (letter from rope manufacturers) at time of testing for contractors' use shall be submitted. The application shall be deemed approved if not acted on by the department within thirty working days following the receipt of such application.

- (1) The plans and specifications for installation or alteration of elevators and kindred equipment together with such buildings details as are pertinent to the installation shall be submitted to the department before any work is begun on the installation. Final shop drawings shall be submitted to the department. Plans shall be resubmitted for any project on which the installation has not commenced within three years of the plan approval date. Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department shall be submitted by the installer on any new equipment or appurtenance to be installed for the first time in the State of Hawaii.
- (2) An installation permit as required under subsection (a) above shall be issued only to a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the department of commerce and consumer affairs, State of Hawaii.

- (A) All major repairs performed on elevators, escalators and kindred equipment shall be reported to the department.
- (B) All major repairs performed on elevators, escalators and kindred equipment as described in ASME A17.1 Part XII shall require an installation permit as described in subsection (a) above.
- (C) Any alteration, renovation, or change to the original design of the car's interior need not require an installation permit except:
  - (i) Where the alteration, renovation, or change increases the gross weight of the car by more than five percent;
  - (ii) Where interior components of the car are fastened in other than the original installation method or are less able to withstand breakage or shattering upon impact than the original design components; or
  - (iii) Where the combustibility of the car's interior materials is made greater.
- (D) The owner, user, contractor, or designer shall be responsible for furnishing to the department all documentation required and referenced in the standards and codes adopted by the department for construction, repair, or alteration of any elevator and kindred equipment, or amusement ride. The application shall be deemed approved if not acted on by the department within fifteen working days following the receipt of such application.
- (3) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike which would prevent the applicant or the department from fulfilling application review requirements until such time the emergency conditions improve or are reasonably under control.
- (4) The department shall, before issuance of a permit for installing, constructing, reconstructing, or relocating as required under subsection (a) above, charge and collect a fee for each permit in accordance with the schedule in tables 229-1 and 229-2, in section 12-229-16.
- (c) The department shall issue a "permit to operate" for any elevator and kindred equipment required by the

department to be inspected when they are found to be safe and in compliance with this subtitle by a qualified inspector. It shall be unlawful for any person, firm, association, partnership, or corporation to operate an elevator and kindred equipment regulated by this chapter unless a permit for the operation has been authorized by the department and the permit remains in effect.

- (1) A permit to operate an elevator and kindred equipment shall be issued to the owner or user only after an inspector has found that the device has met all requirements of this chapter.
- (2) A permit to operate elevators and kindred equipment shall be valid for one year; or until the expiration date unless revoked sooner, and may be renewed only upon completion of an inspection by an inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or user.
- (3) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. The permit to operate shall be posted conspicuously in the car of the elevator and on or near the dumbwaiter, escalator, or moving walk. Exception: Elevator operating permits may be posted in a secure manner under a transparent cover or in a suitable case or cabinet and in such a way that they are reasonably easy to read, in a location approved by the department provided that, in each elevator car there is a permanent sign, conspicuously displayed, in letters not less than 1/4-inch high, that identifies the elevator by the owner's designator (number, letter, or name) and states where the operating permits may be seen. The permits for all elevators serving a common main lobby (i.e., those responding to a common main floor call button) may be grouped in a common display providing the permits are arranged in a logical order and are identified by their corresponding car designator.
- (4) The department may immediately revoke any "permit to operate" for any equipment, required to be inspected by this chapter, found to be in an unsafe condition or when a user, owner, or contractor

ignores department orders to correct specific defects or hazards and continues to use or operate the above mentioned apparatus without abating the hazards or defects.

- (5) The department shall re-issue a "permit to operate" to any user, owner, or contractor who demonstrates good faith in proceeding to abate all nonconforming conditions specified in department orders provided the elevators and kindred equipment are safe to operate.
- (6) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any noncomplying elevator and kindred equipment are being brought into full compliance with chapter 397, HRS.
- (7) No amusement ride, or elevator and kindred equipment which is required to be inspected by chapter 397, HRS, or by any rule adopted pursuant to chapter 91, HRS, shall be operated except as necessary to install, repair, or test unless a permit to operate or certificate of inspection has been authorized or issued by the department and remains valid.
- (8) The department may, upon the application of any owner or user or any other person affected thereby, grant a reasonable period of time as may be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time.

(d) Certificates of inspection shall be issued for amusement rides after each inspection if the rides are found to be safe and in compliance with ASTM-F24 and section 12-250-1.]

[Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-3.1 Codes incorporated and adopted by reference.  
The following codes are incorporated and adopted by reference  
and made a part of this chapter and shall apply to elevators,  
kindred equipment, and amusement rides in this part, unless  
otherwise modified by the rules pertaining to elevators,  
kindred equipment, and amusement rides.

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and

- Employee Elevators on Construction and Demolition Sites, as copyrighted and published in 2007 by American National Standards Institute, Inc., 25 West 43<sup>rd</sup> Street, New York, NY 10036.
- (2) ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.
  - (3) ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.
  - (4) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.
  - (5) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.
  - (6) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.
  - (7) International Building Code, 2012 edition, as copyrighted and published in 2012 by the International Code Council, Incorporated, 500 New Jersey Avenue, 6<sup>th</sup> Floor, Washington, DC 20001.
  - (8) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, as copyrighted and published in 2010 by the International Code Council, Incorporated, 500 New Jersey Avenue, NW, 6<sup>th</sup> Floor, Washington, DC 20001.
  - (9) NFPA 1, Uniform Fire Code, 2009 Edition, as copyrighted and published in 2009 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471.
  - (10) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, as copyrighted and published in 2010 by the National Fire Protection

Association, 1 Batterymarch Park, Quincy, MA 02269-7471.

- (11) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, as copyrighted and published in 2010 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471.
- (12) NFPA 70, National Electrical Code, 2011 edition, as published in 2011 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471. [Eff and comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

[§12-229-4 Fees. (a) Departmental inspection fees.

- (1) The department shall charge and collect from the owner, user, or contractor, the fee listed in table 229-2, in section 12-229-16 for each inspection made by an inspector during regular working hours. The department shall charge and collect a permit processing fee as listed in table 229-2 in section 12-228-16 for each object inspected.]
- (2) When it is necessary to make a special trip to witness a test, an additional fee based upon the scale of fees for a permit inspection for the object under test shall be charged.
- (3) For all other inspections and services, the fee shall be \$75 per hour but not less than \$150 per occurrence during regular working hours and \$150 per hour but not less than \$200 per occurrence when performed outside regular working hours at the request of the beneficiary.
- (4) Scheduled inspections delayed or cancelled by the beneficiary, too late to prevent the arrival of the inspector on the premises shall be charged for in accordance with the scheduled fee for the type inspection; however, if the notice of cancellation or delay of the scheduled inspection is given in time to prevent the incurring of travel expenses, fee will be charged.
- (5) The charge for a rescheduled inspection or a call back inspection to allow an elevator and kindred equipment to operate may be at the scheduled fee for the type of

- inspection or for the expenses actually incurred, whichever is greater.
- (6) When an unscheduled inspection is made at the request of and for the benefit of an owner, user, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee.
  - (7) Whenever the beneficiary of an inspection fails to pay the fees required under this section within sixty days after notification, the beneficiary shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification.
  - (8) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred.
  - (9) For those elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
  - (10) The department shall charge and collect the fee listed in table 229-2 in section 12-229-16 for each five or three year test of safety devices, governors, relief valves, pressure containing parts, and other safety equipment, witnessed by personnel of the department during regular working hours.
- (b) Departmental installation permit and test fees.
    - (1) The department shall, before issuance of a permit for installing, constructing, re-constructing, or relocating, charge and collect a fee for each object in accordance with table 229-1 in section 12-229-16.
    - (2) The department shall, before issuance of a permit for a major alteration, charge and collect a fee for each object in accordance with table 229-1 in section 12-229-16.
    - (3) For each instance requiring an installation permit fee, the department shall provide:
      - (A) The plan review, inspection and witnessing of the acceptance test on the installation and one additional followup inspection; the followup inspection shall be at the convenience of the department. Any additional inspections required for final acceptance will be at the expense of the beneficiary of the inspection and may be at

the convenience of the beneficiary provided all the expenses incurred are paid by the beneficiary and forty-eight hours advance notice is given to the department;

- (B) The processing and issuance of the temporary permit to operate; and
- (C) The processing and issuance of the final permit.
- (5) Fees in accordance with table 229-1 in section 12-229-16 or the fee in effect on the application submittal date shall be charged and collected for all installation permits issued.
- (6) For more than one additional inspection for final acceptance, the department may charge and collect from the beneficiary an additional amount in accordance with paragraph (a) (3) above.
- (7) For those elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (8) The department shall charge and collect the sum of \$195 for each test of safety devices, governors, and other safety equipment, witnessed by personnel of the department during regular working hours.
- (9) The department shall charge and collect the sum of \$160 for each test of relief valves, pressure containing parts and other safety equipment, witnessed by personnel of the department during regular working hours.
- (10) For plan and specification reviews and all other services, except for new installation and modernization reviews, the fee shall be \$75 per hour but not less than \$150 per occurrence during regular working hours. For all services rendered outside of regular working hours which have been requested by the beneficiary, the fee shall be \$150 per hour but not less than \$200 per occurrence. Inspections made under this paragraph and paragraph (a) (1) above may include, but are not limited to, field erection inspections, planning or advisory inspections requested by a beneficiary, and other special inspections or reviews.
- (c) Other required fees. Reserved.
- (d) Amusement rides, certificate of inspection fees.
- (1) For a first time inspection and for inspections described in paragraph (3) below, the department shall charge a fee of \$75 per hour during regular working

hours and \$150 per hour at other times. No inspection shall be considered as less than one hour and each fraction of one quarter hour or greater shall be counted as a full hour.

- (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
  - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
  - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within control of the beneficiary;
  - (C) A certificate inspection; and
  - (D) Scheduled inspections delayed or canceled by the beneficiary too late to prevent the arrival of the inspector on the premises.
- (3) When an unscheduled inspection is made at the request of and for the benefit of the owner or user, the sum of expenses incurred shall be charged in addition to the inspection fee.
- (4) Whenever the beneficiary fails to pay the fees required under this section within sixty days after notification, the beneficiary shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification.]  
 [Eff 6/19/00; R ] (Auth: HRS  
 \$397-4) (Imp: HRS \$397-5)

\$12-229-4.1 Installation and alteration permits. (a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator or kindred equipment subject to this part without first obtaining an installation or alteration permit from the department. Owners of new or altered amusement rides must register the new apparatus or its alteration by submitting an application for review and registration of the ride.

The owner shall be responsible for contracting the work with a licensed contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe operation of equipment during the installation, alteration or relocation, until a permit to operate has been issued by the department.

An application on a form prescribed by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of equipment, maximum rise and number of floors;
- (6) The plans and specifications for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
- (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
- (8) For amusement rides, the application to review, approve and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturer's drawings, and engineering and test data; and
- (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the remittance of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter.

- (1) Refunds of the initial installation or alteration processing fee minus the

department's cost to review the application thus far may be refunded upon written request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control of the applicant.

(2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

(1) All alterations to elevators and kindred equipment as described in ASME A17.1, section 8.7, and

(2) Any alteration that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:

(A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or

(B) Work performed on components or equipment affecting or necessary for fire safety (e.g. cab interiors, systems associated with fire recall, etc.); and

(3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the

department shall be posted in a conspicuous place on the jobsite prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number assigned by the department painted on or permanently attached to both the driving mechanism and the controller. The owner is responsible for having the registration number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and

comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

[§12-229-5 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators and kindred equipment. All equipment required by this section to be inspected is exempt from the requirements of this chapter, if under the jurisdiction of the United States government or if serving only a private residence and not accessible to the general public except where the location could affect persons other than the owner or owners.

(b) Elevators, dumbwaiters, escalators, and moving walks.

(1) All safety inspections and witnessing of tests of elevators, dumbwaiters, escalators, and moving walks, as required under this chapter, shall be made in conformance with the procedures set forth in ASME A17.1 1996 and ASME A17.2 1996 and shall be performed by inspectors employed by the department.

(2) Where notations of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable rule or standard of ASME A17.1 1996, ASME A17.2 1996, or of this chapter.

(3) The owner or user of any elevator, dumbwaiter, escalator, or moving walk operated within the state

shall have it inspected in accordance with the following schedules:

- (A) Elevators, dumbwaiters, manlifts, aerial tramways, personal automatic trains and kindred equipment shall be inspected once in each twelve month period. The period between the first inspection, or the inspection used as a basis for the issuance of a permit to operate, and the subsequent inspection each year shall not exceed thirteen months nor be less than eleven months;
- (B) Escalators, moving walks, speed ramps, inclined passenger lifts, and deep well elevators shall be inspected twice in each twelve month period. The period between the first inspection or the inspection used as a basis for the issuance of a permit to operate and the second or interim inspection each year shall not exceed seven months nor be less than five months;
- (C) For electric elevators, a full-load, full-speed performance test shall be made of safeties, governors, and oil buffers at intervals not greater than sixty months; and
- (D) For hydraulic elevators, the over-pressure protection device shall be tested for proper operation and the pressure containing parts for soundness when subjected to a load of 1-1/4 times the design capacity at intervals not exceeding thirty six months unless more frequent tests are specified by the department. The load test may be waived or the interval extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection.

The period between inspections may be extended by the department for cause. A written application by the owner-user must be received

- (4) Any elevator, dumbwaiter, escalator, or moving walk not inspected in accordance with paragraph (3) shall be taken out of service by the department.
- (5) When an inspector discovers an unsafe condition in connection with an inclined passenger lift that is not specifically addressed in section 12-235-1, the

inspector shall issue an order requiring the owner to make all changes, improvements, or repairs as may be necessary.

- (6) Each inclined passenger lift shall be inspected twice each year by the department.
- (d) Amusement devices.
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and section 12-250-7 at least semi-annually, for all mechanically- or electrically-operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. Safety standards for amusement rides are prescribed in chapter 12-250. This section shall not apply to any coin-operated, mechanically-, or electrically-operated devices considered or known in the amusement trade as kiddie rides.
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months.
- (3) Certificate of inspection. If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a certificate of inspection bearing upon its face the date of the inspection.
- (4) No ride shall be operated unless it has affixed to it a certificate of inspection bearing a date less than seven months past.]

[Eff 6/19/00; R ] (Auth: HRS  
\$397-4) (Imp: HRS \$397-4)

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for any person, firm, association,

partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device, or apparatus meets all applicable requirements of this part. A permit to operate elevators or kindred equipment shall be valid for one year, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and kindred equipment after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspections of closed buildings by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b) (4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. The permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment. Where posting the permit to operate in the elevator car is impractical or infeasible, the owner may petition the director to allow posting in another location in the building.

The petition for an alternate posting location shall only apply to regular operating permits, and shall comply with the following conditions:

- (1) The current permit to operate must be available for review by passengers of the elevator whenever the elevator is in operation; and
- (2) There is a permanent sign within the elevator, conspicuously displayed, in letters not less than 1/4-inch high, that identifies the equipment by the state registration number and states where the operating permit may be viewed.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects.

The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;
- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device, or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall

be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid.

[Eff and comp ] (Auth: HRS §397-4) (Imp: HRS §397-4)

[§12-229-6 Rights and enforcement. (a) Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, and elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS.
- (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter.
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.

(b) Enforcement.

- (1) Whenever right of entry to a place to inspect amusement ride, or elevator and kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the place exists for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court.
- (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected by this chapter is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or standards and codes and deliver the same to the contractor, owner, or user. Each order shall be in writing and may be delivered by mail or in person. The department may in the order direct that,

in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance with the purposes and provisions of chapter 397, HRS. The owner, user, or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties.

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided.
- (4) Pursuant to paragraph 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe.
- (5) Pursuant to paragraph 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts.
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
  - (A) Immediately take steps to obtain abatement by informing the owners, users, contractors, and all persons in harms way of the hazard by meeting, posted notice, or otherwise;

- (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the user, owner, contractor, or their representative is not available;
  - (C) Take steps to obtain immediate abatement when the nature and imminency of the danger or hazard does not permit a search for the owner, user, or contractor; and
  - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner, user, or contractor.
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-6.1 Fees. (a) Departmental inspection fees.

The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector.

- (1) The fees for scheduled inspections delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection scheduled; however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time.
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the

- appropriate inspection fee must be paid prior to the re-scheduling of the inspection.
- (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.
  - (4) When an unscheduled inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee.
  - (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department. If the online fee transaction fails due to insufficient funds or inadequate financial routing instructions, an additional fee of \$5 shall be assessed for the cost of the initial notification to the requester of the failed transaction.
  - (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred.
  - (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
  - (8) The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated July 1, 2012 which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified

inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.

(b) Departmental installation and alteration permit and test fees.

- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter.
- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. If the online fee transaction fails due to insufficient funds or inadequate financial routing instructions, an additional fee of \$5 shall be assessed for the cost of the initial notification to the requester of the failed transaction. Any subsequent transaction failure shall void the application.
- (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial acceptance test on the installation, any resulting permit to operate, and one additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department.
- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date

- shall be charged and collected for all applications for installation or alteration permits.
- (5) For additional follow-up inspections for final acceptance, the fee shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.
  - (6) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
  - (c) Amusement rides, fees.
    - (1) The fee for an inspection of an amusement ride shall be \$100.
    - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
      - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
      - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;
      - (C) A permit to operate; and
      - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays).
    - (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee.
    - (4) For additional follow-up inspections for final acceptance, the fee shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.
    - (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty per cent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees

must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. If the online fee transaction fails due to insufficient funds or inadequate financial routing instructions, an additional fee of \$5 shall be assessed for the cost of the initial notification to the requester of the failed transaction. [Eff and comp ] (Auth: HRS §397-4) (Imp: HRS §397-5)

[§12-229-7 Complaints (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainant or witness to release his or her name, or unless it has been determined by the attorney general that disclosure is necessary for enforcement and review of this chapter.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-7.1 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment.

(1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter, shall be performed by qualified inspectors employed by the department.

(2) Where notations of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard.

(3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test

Intervals (In Months)", dated July 1, 2012, which is made a part of this chapter and located at the end of this chapter.

- (A) Internal inspections of escalators and moving walks shall be performed at intervals of thirty-six months.
- (B) Personnel hoists shall be load tested at intervals of six months.
- (C) The category 3 test may be waived or the interval extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection.
- (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review.
- (4) Any elevator or kindred equipment which is out-of-service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the following:
  - (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends;
  - (B) All electric power shall be removed by disconnecting and removing the power feeders; and
  - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry.
- The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection made.
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides.

- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and section 12-250-7, at least semi-annually, for all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public.
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months.
- (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date.
- (4) No ride shall be operated unless it has affixed to it a current permit to operate. [Eff and  
comp ] (Auth: HRS §397-4) (Imp:  
HRS §397-4)

[§12-229-8 Reporting of accidents. (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner, user, or maintenance company shall promptly notify the division by submitting a detailed accident report. For reporting purposes, accident is defined as an occurrence resulting in damage to an elevator and kindred equipment and amusement device rendering it inoperative or any occurrence resulting in physical injury to person(s) requiring treatment by a physician.

(b) Whenever an accident occurs which results in loss of life or inpatient hospitalization, the owner, user, or maintenance company shall promptly notify the division by telephone at (808) 586-9141, or messenger within forty-eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life and limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director.] [Eff 6/19/00;  
R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-8.1 Rights and enforcement. (a) Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS.
- (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter.
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.

(b) Enforcement.

- (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court.
- (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to

submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties.

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided.
- (4) Pursuant to section 397-4(d) (4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe.
- (5) Pursuant to section 397-4(d) (5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts.
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:

  - (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all persons in harm's way of the hazard by meeting, posted notice, or otherwise;

- (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
  - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
  - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or contractor.
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS.  
 [Eff and comp ] (Auth: HRS §397-4)  
 (Imp: HRS §§397-4, 397-6, 397-8)

[§12-229-9 Investigations. The department shall investigate, in accordance with section 12-229-8 accidents involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the cause factors.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-9.1 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp ]  
 (Auth: HRS §397-4) (Imp: HRS §397-7)

[§12-229-10 Violations and penalties. (a) The may assess all civil penalties provided in this section, giving due respect to the gravity of the violation, the good faith of the owner, user, consultant, contractor, or vendor, and the history of previous violations.

(b) Violations

- (1) Any owner, user, consultant, contractor, or vendor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation.
- (2) Each day a violation continues shall constitute a separate violation except during an abatement period.

(c) Discrepancies and penalties.

- (1) Any conditions found not in conformance with applicable standards or codes, adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner, user, consultant, contractor, or vendor by letter or written "order to correct" or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious or imminent hazard, it may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section.
- (2) Assessing penalties.
  - (A) Consideration shall be given to the gravity of the violation. For a violation that could not or probably would not result in serious harm to life or property, the penalty may be reduced by forty per cent.
  - (B) Consideration shall be given to the good faith of the owner, user, consultant, contractor, or vendor. For immediate correction or for attempts to make corrections or abate hazards that have been thwarted by conditions beyond the control of the owner, user,

consultant, contractor, or vendor, the penalty may be reduced by forty per cent.

- (C) Consideration shall be given for the history of previous violations. For few or no previous violations by the owner, user, consultant, contractor, or vendor, the penalty may be reduced by twenty per cent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, shall, upon conviction, be punished by fine or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the attorney general for purposes of initiating appropriate action.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-10.1 Reporting of accidents. (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to person(s).

An accident report shall be submitted to the department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator or kindred equipment involved;
- (3) Name and address of the victim(s);
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;

(8) The investigators' conclusions as to the cause of the accident; and

(9) The name and contact information of the investigator.  
For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp ]  
 (Auth: HRS §397-4) (Imp: HRS §397-4)

[§12-229-11 Review and appeal. (a) Any order of the director shall be final and conclusive against an owner, user, vendor, consultant, or contractor unless an appeal is made in writing, clearly stating what items are being contested. Such request for reconsideration must be addressed to the administrator and received or, if mailed, postmarked no later than the 20th calendar day following receipt of such an order.

(b) An owner, user, vendor, consultant, or contractor may petition the director for modification of the abatement requirements in an order, as provided in chapter 397-9, HRS.]  
 [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of

the causal factors. [Eff and comp ] (Auth:  
HRS §397-4) (Imp: HRS §§397-4, 397-6)

[§12-229-12 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director concerned with carrying out chapter 397, HRS.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-12.1 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations.

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation.
- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten per cent for history of past violations.
- (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations.
- (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided.

- (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only.
- (6) Owners who fail to properly take an elevator or kindred equipment out-of-service as specified in section 12-229-7.1(b) (4) shall be assessed a civil penalty of not more than \$10,000.
- (7) Each day a violation continues shall constitute a separate violation except during an abatement period.
- (c) Discrepancies and penalties.
  - (1) Any conditions found not in conformance with applicable standards or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section.
  - (2) Assessing penalties.
    - (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty per cent.
    - (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make corrections or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty per cent.
    - (C) Consideration shall be given for the history of previous violations. For few or no previous violations by the owner or contractor, the penalty may be reduced by ten per cent.
  - (d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, shall, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the state attorney general for

purposes of initiating appropriate action. [Eff and  
comp ] (Auth: HRS §397-4) (Imp: HRS §397-8)

[§12-229-13 Notification of transfer and location. (a)  
The contractor, erector, seller, vendor, or any person  
responsible for the transfer of ownership shall notify the  
department in writing within 30 calendar days giving the address,  
name, and phone number of the purchaser for any elevator and  
kindred equipment except those exempted by subsection 12-229-5(a)  
sold in this jurisdiction.

(b) The owner or user of any elevator, dumbwaiter,  
escalator, or moving walk who sells, gives, or removes the  
device shall report the transaction and the name and address of  
the new owner or user within ten calendar days of the  
transaction to the department.] [Eff 6/19/00;  
R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-13.1 Review and appeal. (a) Any order or  
citation of the director shall be final and conclusive against  
an owner or contractor, unless an appeal is made in writing,  
clearly stating what items are being contested. The notice of  
contest must be addressed to the director and received or, if  
mailed, postmarked by no later than the twentieth calendar day  
following receipt of the order or citation.

(b) The director or the director's designee may hold a  
formal hearing, which shall result in a decision and order by  
the director. Any party who disagrees with the director's  
decision may appeal in writing to the director within twenty  
calendar days of receipt of the decision and order. The  
director shall promptly notify the labor and industrial  
relations appeals board of the notice of contest. Where a prior  
formal hearing is held at the department level, the labor and  
industrial relations appeals board shall conduct a case review  
using only the record.

(c) An owner or contractor may petition the director  
for modification of the abatement requirements in an order, as  
provided in section 397-9, HRS. [Eff and  
comp ] (Auth: HRS §397-4) (Imp: HRS  
§397-9)

[§12-229-14 Variances. (a) In cases of practical difficulties, undue hardships, or new developments, an owner, user, contractor, or vendor may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a citation has been issued to the owner or user involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending.

(c) Every final action granting a variance shall be published in a paper of general circulation within thirty calendar days following the action. The cost of such publication shall be borne by the petitioning party. Every final action shall specify the alternative to the standard involved which the particular variance permits.

(d) If an application does not conform to the applicable section, the director may deny the application. Notice of the denial of an application shall be given to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application. If a variance is not acted upon within ninety calendar days, it shall be deemed granted.

(e) Requests for hearing on applications denied. Any affected owner/user may file with the director, in triplicate, a request for a hearing on the application.

(1) A request for a hearing filed pursuant to subsection

(a) above shall include:

- (A) A concise statement of facts showing how the owner/user would be affected by the relief for which the application was made;
- (B) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (C) Any views or arguments on any issue of fact or law presented.

(f) Notice of hearing.

- (1) Upon request for a hearing pursuant to this chapter, the director shall serve reasonable notice of hearing.
- (2) A notice of hearing shall include:
  - (A) The time, place and nature of the hearing;
  - (B) The legal authority under which the hearing is to be held;
  - (C) A specification of issues of fact and law; and
  - (D) A designation of a hearing examiner appointed by the director to preside over the hearing.
- (3) A copy of a notice of hearing shall be referred to the hearing examiner together with the original application and any written request for a hearing.]  
 [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp ] (Auth: HRS §397-4) (Imp: HRS §397-11)

[§12-229-15 Records. Records shall be maintained by the elevator inspection branch for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to these rules. These reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda shall be maintained for a period of not less than five years for elevators and kindred equipment.] [Eff 6/19/00; R ] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-15.1 Notifications of transfer and location. (a) The seller of any elevator or kindred equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the registration number (HAW number), location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp  
] (Auth: HRS §397-4) (Imp: HRS §397-4)

Table 229-1

ELEVATOR AND KINDRED EQUIPMENT INSTALLATION FEES

September 1, 1998

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Dumbwaiter	\$265]
Escalator, electric stairway, or moving walk	\$375
Incline stairway lift	\$190
Incline wheelchair lift	\$190
Manlift	\$225
Vertical wheelchair lifts	\$190
<u>Elevator</u>	
8-floor rise or under	\$300
9-floor rise but not over 18 floors	\$340
19-floor rise but not over 28 floors	\$375
29-floor rise but not over 38 floors	\$415
39-floor rise and over	\$450
Temporary use of permanent elevators	\$150
Aerial tramways	\$355
Personnel hoists	\$200
Inclined lifts	\$300
Alteration Permit	\$150

TABLE 229-2

ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

September 1, 1998

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Dumbwaiter	\$ 90
Escalator, electric stairway, or moving walk	\$100
Hand elevator, man lift, or stage lifts	\$100
Inclined stairway lift	\$100
Inclined wheelchair lift	\$100
Vertical wheelchair lifts	\$100
<u>Power elevators</u>	
Hydraulic elevator	\$105
8-floor rise or under	\$155
9-floor rise but not over 18 floors	\$175
19-floor rise but not over 28 floors	\$200
29-floor rise but not over 38 floors	\$230
39-floor rise and over	\$255
Aerial tramways	\$300
Personnel hoists	\$120
Inclined lifts	\$160
3-Year Safety Test	\$160
5-Year Safety Test	\$195
Report and permit processing	\$20]
[Eff 6/19/00; R	] (Auth: HRS \$397-4) (Imp:
HRS \$397-4)	

§12-229-16.1 Variances. (a) In cases of practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general circulation notifying all potentially affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days after the thirty-day period stated in the public notice.

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing.
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence.
- (3) The director shall provide a written determination to all parties.

- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required.
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.
- (f) If the variance application does not include all relevant information as indicated in subsection (a), the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.
- (g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.
  - (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter.
  - (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in in section 12-229-13.1. [Eff and  

comp

]

(Auth: HRS §397- 4) (Imp: HRS §397-4)

§12-229-17 Records. Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, and elevators, and kindred equipment." [Eff and  

comp

]

(Auth: HRS §397-4) (Imp: HRS §397-4)

**EXHIBIT A**  
**ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND**  
**ALTERATION FEES**

**July 1, 2012**

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**Alterations<sup>1</sup>:**

Involving only the replacement of up to two parts (such as a valve, a jack or a cylinder)	\$150
Involving only cosmetic changes (such as car interior modernizations)	\$300
Involving more than two parts, or components and/or subsystems:	
1-3 floors	\$600
4-9 floors	\$650
10-19 floors	\$700
20-29 floors	\$750
30-39 floors	\$800
40 or more floors	\$900

**New Installations<sup>2</sup>**

Dumbwaiter or material lift	\$500
Escalator, moving walk, or moving ramp	\$500
Platform lifts or stairway chairlifts	\$500
Elevator:	
1-3 floors	\$600
4-9 floors	\$650
10-19 floors	\$700
20-29 floors	\$750
30-39 floors	\$800
40 or more floors	\$900
Personnel hoists	\$250
Temporary use permits (construction car)	\$450

**Additional inspections:**

Normal workday, up to two hours	\$300/day
Normal workday, more than two hours	\$600/day
Overtime hours, up to two hours	\$600/day
Overtime hours, more than two hours	\$1,200/day

<sup>1</sup>Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

<sup>2</sup>For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

**EXHIBIT B****ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES****July 1, 2012****Permit and Renewal Inspection Fees:**


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Dumbwaiter or material lift	\$140
Escalator, moving walk, or moving ramp	\$150
Platform Lift or Stairway Chairlift	\$150
Hydraulic elevator - holed	\$150
Hydraulic elevator - holeless	\$200

**Traction elevators:**

1-3 floors	\$225
4-9 floors	\$250
10-19 floors	\$275
20-29 floors	\$325
30-39 floors	\$400
40 or more floors	\$475

Personnel hoist	\$175
Temporary Use Permit (construction car)	\$150

**Safety, load or internal test (witness fees):**

Category 3 test	\$200
Category 5 test	\$300
Escalator, internal	\$100

Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.

## EXHIBIT C

## INSPECTION AND TEST INTERVALS (IN MONTHS)

July 1, 2012

Equipment Type	Permit Renewal	Category 3	Category 5
Electric elevators	12	N/A	60
Hydraulic elevators	12	36	N/A
Escalators and moving walks <sup>1</sup>	6	N/A	N/A
Dumbwaiters	6	36	60
Material lifts	6	36	60
Platform lifts and stairway chairlifts	6	N/A	N/A
Inclined elevators	12	36	60
Screw-column elevators	12	36	60
Roof-top elevators	12	36	60
Limited-use/limited- application elevators	3	36	60
Construction cars	3	36	60
Personnel hoists <sup>2</sup>	3	N/A	N/A
Amusement rides	6	N/A	N/A

<sup>1</sup>Internal inspections of escalators and moving walks shall be performed at intervals of 36 months.

<sup>2</sup>Personnel hoists shall be load tested at intervals of 6 months.

Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, the appropriate testing interval is dependent on whether the lifting mechanism is rope or hydraulic or a combination of rope and hydraulic".

5. Section 12-240-1, Hawaii Administrative Rules, is amended to read as follows:

"§12-240-1 General. Passenger elevators which have had their architectural plans reviewed for installation permit after December 6, 1990, shall have accessible elevators on an accessible route and shall comply with American National [standards] Standards Institute specifications for making building and facilities accessible to and usable by persons with disabilities (ANSI A117.1-1986) and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ASME A17.1 1996. This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be required to meet the requirements of this section, unless the only elevators provided are used as combination passenger and freight elevators for the public and employees." [Eff 12/6/90; am 11/5/93; am 7/6/98; am ] (Auth: HRS §397-4) (Imp: HRS §397-4)

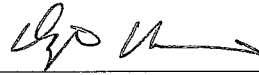
6. Chapters 12-230, 12-231, 12-232, 12-233, 12-234, 12-235, 12-236, 12-237, 12-238, and 12-239, Hawaii Administrative Rules, are repealed.

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

8. Additions to update source notes to reflect these amendments are not underscored.

The adoption of chapters 12-230-1, 12-232.1, and 12-234.1, the adoption and compilation of chapter 12-229, the amendments to chapter 12-240, and the repeal of chapters 12-230, 12-231, 12-232, 12-233, 12-234, 12-235, 12-236, 12-237, 12-238, and 12-239, 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 May 15, 2014, and filed with the Office of the Lieutenant Governor.

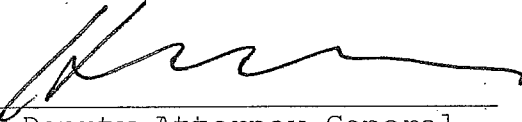


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DWIGHT TAKAMINE

Director, Department of  
Labor and Industrial  
Relations

APPROVED AS TO FORM:

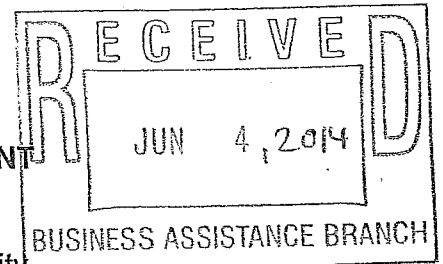


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Deputy Attorney General

## Exhibit 3

**SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2,HRS)**



**Department of Agency:** Office of Economic Opportunity,  
County of Kaua'i

**Chapter and Title:** Rules and Regulations governing Section 22, Article  
23 pertaining to Pesticides and Genetically Modified  
Organisms

**Contact Information:** George Costa, Director  
County of Kaua'i  
Office of Economic Development  
4444 Rice Street, Suite 200  
Līhu'e, Hawai'i 96766  
(808) 241-4949

Mona W. Clark, Deputy County Attorney  
Office of the County Attorney  
4444 Rice Street, Suite 220  
Līhu'e, Hawai'i 96766  
(808) 241-4940

**A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:**

**B. Rule Description:**

1. ☒ New ☐ Repeal ☐ Amendment ☐ Recompilation

2. Nature of Proposed Changes:

a. Is the proposed rule authorized by a federal or state law, statute or ordinance that does not require an agency to interpret or describe the requirements of the law or statute?

☐ Yes ☒ No

The promulgation of these rules stems from the enactment in 2013 of Ordinance 960, which has been codified as Section 22, Article 23 of the Kaua'i County Code ("KCC"). This legislation, which pertains to pesticides and genetically modified organisms, authorized the Office of Economic Development ("OED") to engage in any rulemaking it deemed necessary or proper to effectuate the legislation.

The rules have three basic objectives. First, these rules require large commercial agricultural entities which have utilized five (5) pounds or fifteen (15) gallons of a single restricted use pesticide in the prior calendar year ("disclosure-regulated commercial agricultural entities") to disclose their pesticide usage. Second, disclosure-regulated commercial agricultural entities are required to create buffer zones to protect specified groups from exposure to pesticides. As a result of the high threshold for purchase or usage, small agricultural businesses are unaffected by the rules pertaining to pesticide disclosure and the creation of buffer zones. Third, the rules require all commercial agricultural entities to file annual reports disclosing the growth of genetically modified organisms ("GMOs"). It is the requirement that an annual report of GMO activity be filed which has an effect on small businesses.

b. Is the proposed rule an emergency regulation?

☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees?

☒ Yes ☐ No

The rules require all commercial agricultural entities to file annual public reports pertaining to the genetically modified organisms which these entities grow. Therefore, this portion of the rules and the hearing procedures will affect small businesses.

2) Will cause a direct and significant economic burden upon a small business?

☐ Yes ☒ No

These rules will have a limited effect on small businesses. Small businesses will be required to 1) file one annual report each year with OED and 2) to provide the report to the Hawaii Department of Agriculture. OED will post the report on OED's website. The report is limited to the disclosure of the following information:

a. A general description of the GMO being grown (e.g. "GMO Corn" or "GMO Soy").

- b. The Tax Map Key upon which the GMO is being grown or developed.
- c. The ahupua'a where each GMO is being grown or developed.
- d. The date each GMO was initially introduced to the land in question.

The limited information and general terms in which such information may be provided place a minimal burden on a small business.

The civil fines for failure to file the annual reports on GMO activity are set at the lowest dollar amount permitted under KCC Article 22, Section 23 and therefore do not involve the exercise of any discretion by the OED in the rulemaking process which negatively impacts a small business. The Director is granted the authority to waive or reduce fines upon small businesses as set forth in H.R.S. §201M-8.

- 3) Is directly related to the formation, operation or expansion of a small business?

☐ Yes ☒ No

3. Summarize the proposed rule(s) and reasons for the proposed rule(s):

Impact on Large Businesses. The proposed rules govern the disclosure of pesticide usage and buffer zone creation by commercial agricultural entities which have purchased or used in excess of 5 pounds or 15 gallons of a single restricted use pesticide during the prior calendar year. This high threshold for purchase or usage makes the rules inapplicable to small businesses on the island.

Impact on Small and Large Businesses. All commercial agricultural entities will have to file an annual report on GMO activity. The report contains minimal information which is disclosed in nonscientific terms: GMO generic description, applicable TMK, applicable ahupua'a and date the GMO was introduced on the lands on which the GMO plant is being grown.

- C. Are there new or increased fees or fines?

☒ Yes ☐ No

Civil fines are provided under Article 22, Section 23.7 and are to be in the range of \$10,000 to \$25,000 for a violation. The fine for failure to file the required annual report on GMO activity is set at \$10,000, the smallest permitted under the legislation. Any discretionary authority has been exercised solely to lessen the impact on small businesses. The rules also grant the Director of OED to waive or reduce fines assessed against small businesses in accordance with H.R.S. §201M-8.

No fees are imposed under the rules on any small business.

D. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule?

☒ Yes      ☐ No      If no, why not?

After Ordinance No. 960 was enacted on November 16, 2013, draft rules were developed and meetings held with groups in favor of the ordinance and opposed to it. On April 30, 2014, draft rules were posted on the County of Kaua'i's website and feedback solicited. Contemporaneously, an email, with the draft rules attached, was sent to those individuals who had attended prior meetings. A County press release was issued May 5, 2014 informing people that the County would hold five community meetings to discuss the draft rules. A mass email, which provided notification of the community meetings, was sent to people who had attended the earlier meetings on the rules. Meetings were held in Waimea, Kōloa, Līhu'e, Kapa'a and Hanalei and provided opportunities for people throughout the county to provide comments on the draft rules. The mailing list for the draft rules and community meetings included Randal Francisco, the president of the Kaua'i Chamber of Commerce, Barbara Bennett, the Kaua'i representative and member of the SBRRB, Jerry Ornellas, Co-Chair of the Kaua'i Economic Development Board, and a number of small business owners and farmers.

E. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

Though comments were received on the proposed rules, comments did not address the annual reports on GMO activity, except for one person who commented that he would prefer that his location not be disclosed due to the negative feeling in the community concerning GMO activity. Article 22, Section 23.4(b)(2) requires the geographic location of the GMO activity to be disclosed.

F. Departmental Impact (i.e. fiscal, personnel, program)?

☒ Yes      ☐ No

(If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of

the proposed rule that may result in a savings or shortfall under the current program budget.)

OED will be responsible for implementation and enforcement of the proposed rules. OED has hired a compliance officer who will be responsible for implementation and enforcement. It is anticipated that 95% of his time will be devoted to activities involving large commercial agricultural entities. The 5% of the compliance officer's time which may be devoted to obtaining annual reports constitutes an insignificant portion of the budget cost.

G. Impact on General Public (i.e. individuals, consumers, and large businesses)?

☒ Yes ☐ No

(If yes, describe long and short range impacts due to the enforcement, implementation, or execution of the proposed rule.)

Rules regulating large commercial agricultural entities. The purpose of the rules applicable to large commercial agricultural entities is to establish procedures to inform the public of the use of pesticides and to create buffer zones which limit potential exposure to pesticides.

Rules regulating both large and small commercial agricultural entities. The rules applicable all commercial agricultural entities require reports on the types of GMOs grown on the island and the location of these activities. It is anticipated that the reports will be useful in evaluating whether GMO activity is associated with any long term negative health and safety issues.

H. Impact on State economy?

☐ Yes ☒ No

The impact, if any, of the regulations affecting large commercial agricultural entities is unknown. The reports which small businesses must file should not impact the State economy.

I. Final result anticipated from the proposed rule change.

GMO Reports. It is anticipated that the annual reports on GMO activity will be useful in evaluating whether GMO activity is associated with any long term negative health and safety issues.

Pesticide and Buffer Zone regulations. The anticipated result is that people will be notified prior to pesticide spraying occurs and will be able to take precautions (such as closing windows, going to another location) which would limit exposure arising from pesticide drift. Buffer zones would similarly limit exposure arising from pesticide drift. Post-application reports will provide a record of the

pesticides applied and assist in evaluating health and safety concerns associated with both short and long term exposure to pesticides.

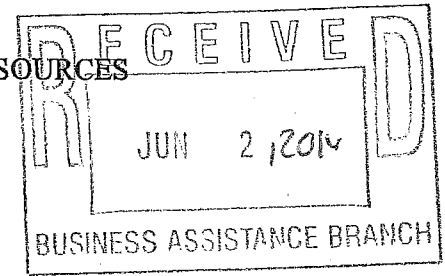
J. Alternatives explored to carry out the statutory purpose other than rulemaking.

None, Article 22, Section 23.8 authorizes OED to promulgate these rules necessary or proper to effectuate Section 23. The Rules were promulgated to clarify the requirements of KCC Article 22, Section 23.

## Exhibit 4

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawaii 96813

May 23, 2014



Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REQUEST FOR APPROVAL TO HOLD PUBLIC MEETINGS AND HEARINGS TO  
ADOPT A NEW CHAPTER UNDER HAWAII ADMINISTRATIVE RULES ("HAR")  
AS TITLE 13 CHAPTER 60.8, HĀ'ENA COMMUNITY-BASED SUBSISTENCE  
FISHING AREA, KAUA'I, TO MANAGE AND PROTECT FISH STOCKS AND TO  
REAFFIRM TRADITIONAL AND CUSTOMARY NATIVE HAWAIIAN  
SUBSISTENCE FISHING PRACTICES WITHIN THE AHUPUA'A OF HĀ'ENA**

Submitted for your consideration and approval is a request to hold public hearings to adopt Hawaii Administrative Rules ("HAR") chapter 13-60.8 to establish new aquatic resource regulations for the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i ("Hā'ena CBSFA"), to better manage and protect fish stocks and to reaffirm traditional and customary native Hawaiian subsistence fishing practices within the ahupua'a of Hā'ena.

**HISTORY**

In 2006, the Legislature enacted Act 241, part I of which established the Hā'ena CBSFA. The Legislature found that a traditionally managed fishery wherein the inhabitants of the ahupua'a assist in the development and enforcement of traditional regulations was necessary to address growing problems of indiscriminate fishing practices that adversely impacted fish stocks and threatened the integrity of coral reef habitat in the area. The legislation, codified as Hawaii Revised Statutes ("HRS") §188-22.9, instructed the Department of Land and Natural Resources ("DLNR") to consult with Hā'ena inhabitants and other interested parties to develop administrative rules regulating various uses and activities in the area.

Act 241's passage led the Hā'ena community to form a Fisheries Committee comprised of Hā'ena community members, other interested parties, and members of the Hui Maka'āinana o Makana, a non-profit organization made up of members of traditional families of Hā'ena. Beginning in 2006, DLNR's Division of Aquatic Resources ("DAR") began consulting with the Hā'ena Fisheries Committee to assist with the development of a management plan for the area. Between 2006 and 2011, numerous community meetings were held with Hā'ena residents, fishers, and other ocean users, including commercial kayak operators, surfers, windsurfers, and kiteboarders. In 2011, the Hā'ena Fisheries Committee submitted to DLNR a management plan and proposed

regulations that would protect traditional subsistence fishing practices. Since 2011, DAR has worked with the Hā'ena community, the Division of Conservation and Resources Enforcement ("DOCARE"), the Division of Boating and Ocean Recreation ("DOBOR"), and the Office of the Attorney General to draft these proposed administrative rules.

### PURPOSE

DAR proposes to adopt a new chapter, HAR chapter 13-60.8, to establish rules and regulations governing marine resource uses and activities within the legislatively designated Hā'ena CBSFA.

Section 1 describes the purpose of the chapter. Section 2 provides definitions of relevant terms as used in the chapter. Section 3 delineates the boundaries of the Hā'ena CBSFA, including three subzones: the 'Ōpihi Management Area, the Makua Pu'uhonua, and the Vessel Transit Boundary. Section 4 establishes procedural and substantive requirements for the development and review of a management plan for the Hā'ena CBSFA.

Section 5 prescribes the activities that are allowed and prohibited within the Hā'ena CBSFA. The regulations in this section have been crafted to allow for the continuance of fishing practices that are customarily and traditionally exercised for native Hawaiian subsistence, culture, and religion within the area. Traditional or otherwise accepted subsistence fishing gear and methods, such as hook-and-line, throw net, three-prong spear, pa'ipa'i net, surround net, and hand harvest are allowed, while certain over-efficient fishing gear and methods, such as nighttime spearing, spearguns, and lay gill nets are prohibited. In addition, the rules set stricter bag and possession limits for certain target species to prevent over-harvesting while allowing for the continuance of subsistence levels of take. The language in this section is worded to prohibit all take and possession of marine resources unless specifically allowed, in order to close potential loopholes where unforeseen fishing gear or methods are not addressed in the rules. In line with the purpose and intent of the Statute, the proposed rules prohibit the sale of marine life taken from the area as well as the take of marine life for commercial purposes. This section also recognizes native Hawaiian traditional and customary rights and gives deference to a determination of these rights by appropriate agencies once a claims procedure is established.

Section 6 makes it unlawful for any person to enter the Makua Pu'uhonua without a special activity permit issued by the Board. HRS §188-22.9(c)(4) calls for the establishment of no harvesting zones within the Hā'ena CBSFA. The shallow interior portion of the reef at Makua was selected as a no harvesting zone due to its importance as nursery habitat for a number of culturally and recreationally important species. The rules prohibit not only harvest but all entry into the area to ensure thorough protection of this important habitat as well as the fish themselves as determined appropriate by the Hā'ena Fisheries Committee in consultation with the broader community.

Section 7 establishes minimum and maximum administrative fines for first, second, and third or subsequent violations of this chapter. It also reaffirms that administrative fines

imposed for any violation of this chapter do not preclude the imposition of criminal penalties as provided by law.

The proposed rules drafted in Ramseyer format are attached as **Exhibit 1**.

RECOMMENDATIONS:

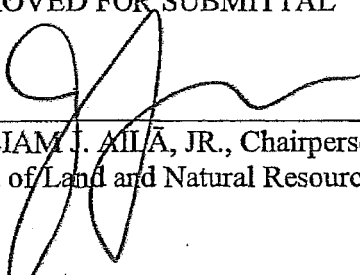
That the Board:

1. Authorize and approve the holding of public meetings and hearings to adopt Hawaii Administrative Rules chapter 13-60.8, Hā'ena Community-Based Subsistence Fishing Area, Kaua'i.
2. Delegate to the Chairperson the authority to appoint a hearings officer to conduct the aforementioned public meetings and hearings.

Respectfully submitted,

  
\_\_\_\_\_  
FRAZER MCGILVRAY, Administrator  
Division of Aquatic Resources

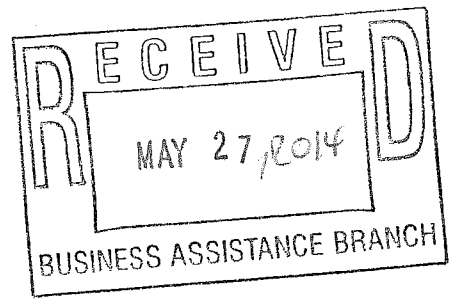
APPROVED FOR SUBMITTAL

  
\_\_\_\_\_  
WILLIAM J. AILĀ, JR., Chairperson  
Board of Land and Natural Resources

Attachment:

Exhibit 1 – Proposed rules (Ramseyer format)

## Exhibit 5



Rules Amending Title 11  
Hawaii Administrative Rules

( )

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

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 62

WASTEWATER SYSTEMS

Subchapter 1 Prohibitions and General  
Requirements

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

## Subchapter 2 Wastewater Treatment Works

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

## Subchapter 3 Individual Wastewater Systems

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

## Subchapter 4 Wastewater Sludge Use and Disposal

\$11-62-41	General requirements and prohibition
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\$11-62-41.1	Relation to federal law
\$11-62-42	Land application of exceptional quality wastewater sludge
\$11-62-43	Land application of other than exceptional quality wastewater sludge to agricultural land, forest, public contact site, or reclamation site
\$11-62-44	Land application of domestic septage to agricultural land, forest, or reclamation site
\$11-62-45	Surface disposal
\$11-62-46	Pathogens
\$11-62-47	Vector attraction reduction
\$11-62-48	Sampling method

#### Subchapter 5 Wastewater Management Permits and Registration

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

[§11-62-55.05	Notice of intent (NOI)
[§11-62-55.06	Notice of intent review, coverage notice (CN), additional conditions, terms, renewal, effective dates and automatic coverage]
[§11-62-55.07	Review of coverage issues and NOI and CN decisions]
[§11-62-55.08	General permit compliance]
§11-62-56	Standard permit conditions
§11-62-57.01	Transfer of permits
§11-62-57.02	Modification or revocation and reissuance of permits
§11-62-57.03	Termination of permits
§11-62-57.04	Renewal of permits
§11-62-58	Conflict of interest

#### Subchapter 6 Wastewater and Wastewater Sludge Pumpers and Haulers

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

#### Subchapter 7 Variances, Penalties and Severability

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

#### Subchapter 8 Field Citations

§11-62-81	Purpose
§11-62-82	Offer to settle; [penalties] <u>settlement amounts</u>
§11-62-83	<u>Resolution</u> of field citation
§11-62-84	Form of citation

SUBCHAPTER 1

PROHIBITIONS AND GENERAL REQUIREMENTS

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

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

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

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

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

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

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

- (7) Are consistent with the State's administration of the National Pollutant Discharge Elimination System.
- (b) These rules seek to advance the appropriate uses of recycled water and wastewater sludge.
- (c) This chapter allows and does not preempt provisions in county codes, rules or ordinances that are not inconsistent with these rules, including, without limitation:
  - (1) Plumbing requirements in county plumbing codes or rules, including county adoptions of all or parts of the Uniform Plumbing Code;
  - (2) Sanitary sewer system and wastewater treatment works use permission and pretreatment requirements in county ordinances or rules regarding the introduction of fats, oils, grease, septage, sludge, or wastewater into sanitary sewers or wastewater treatment works, requirements on the use of grease traps, and requirements on wastewater and wastewater sludge pumping and hauling;
  - (3) Storm sewer system use permission requirements in county ordinances or rules; or
  - (4) Water recycling requirements in county ordinances or rules, including requirements for connection to or use of available recycled water. [Eff 12/10/88; am and comp 12/09/2004; am and comp ]  
(Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50[;] , 342E-3; HRS ch. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 501, 503)

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

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

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

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

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

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

"BOD<sub>5</sub>" means five days biochemical oxygen demand as measured by a standard test indicating the quantity of oxygen utilized by wastewater under controlled conditions of temperature and time.

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

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

"Cesspool" means an individual wastewater system consisting of an excavation in the ground whose depth is greater than its widest surface dimension, which receives untreated wastewater, and retains or is

designed to retain the organic matter and solids discharging therein, but permits the liquid to seep through its bottom or sides to gain access to the underground formation.

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

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

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

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

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

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

"County" means any county of the state.

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

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

"Department" means the department of health.

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

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

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

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

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

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

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

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

"Dwelling" means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants and includes, but is not limited to, apartment houses, single family houses, duplex houses, cluster houses, townhouses, and planned developments, but excludes hotels and lodging houses.

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

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

"EPA" means the U.S. Environmental Protection Agency.

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

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

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

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

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

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

"Grab sample" means a single discrete sample of wastewater collected at a particular time and place which represents the composition of the source at that time and place.

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

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

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

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

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

"Individual wastewater [system] systems" [means] mean [a facility] facilities, such as septic systems, aerobic treatment units, and cesspools, [which is] that are not connected to a sewer and are used and designed to receive and dispose of:

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

(2) [Each individual wastewater system includes all connected plumbing, treatment (if any), and disposal components that could, if not connected, serve as separate wastewater systems.] Greater than one thousand gallons of domestic wastewater from buildings with highly variable flows.

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

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

"Large capacity cesspool" means a cesspool that serves more than one residential dwelling or, for a non-residential cesspool, has the capacity to serve 20 or more persons per day.

"Living area" means the portion(s) of a dwelling unit including, but not limited to, the bedroom,

kitchen, bathroom, living room, family room, covered lanai, den and library, but excluding the garage, carport, open lanai, fence, and utility shed.

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

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

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

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

"MPN" means most probable number.

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

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

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

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

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

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

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

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

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sludge, or a person who changes the quality of wastewater sludge.

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

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

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

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

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

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

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

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

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

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

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

"Seepage pit" means an excavation in the ground whose depth is greater than its widest surface dimension and which receives the discharge from treatment units and permits the effluent to [seep] exit through its bottom or sides [to gain access to

the underground formation] for gradual seepage into the ground.

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

"Septic system" means an individual wastewater system that usually consists of a septic tank, piping, and a drainage field where there is natural biological decontamination as it is filtered through soil.

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

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

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

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

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

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

"Standard methods" means the [17th] 22<sup>nd</sup> edition, [1989] 2014, of "Standard Methods for the Examination of Water and Wastewater" as published by the American

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Water Works Association, American Public Health Association and the Water Pollution Control Federation unless another edition is specified by the director.

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

"Subsurface disposal system" means a disposal system [which permits effluent to reach the underground geologic formation] that allows the gradual seepage of effluent into the ground, such as a seepage pit, cesspool, injection well, soil absorption system or other facility used in the disposal of wastewater including any wastewater transmission lines, pumps, power or other equipment associated with the disposal of wastewater.

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

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

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

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

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

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

"Treatment unit" means any plant, facility, or equipment used in the treatment of wastewater

including the necessary pumps, power equipment, blowers, motors, holding tanks, flow splitter, and other process equipment.

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

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

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

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

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

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

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

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

§11-62-04 County wastewater advisory committee.

(a) The mayor of each county may request that the director form a county wastewater advisory committee ("committee"), and the mayor may nominate its members, who may include representatives of the county water supply, public works, planning, and land utilization

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departments, labor, industry, environmental groups, and other interested people. The chief of the environmental management division on Oahu and the district environmental health program chiefs on the neighbor islands shall serve as ex-officio members of their respective county committees. The department shall provide technical and support services for the committee.

(b) The primary role of the committee is to review and make recommendations to the director on the application of these rules on matters which are unique to each county, on the establishment of critical wastewater disposal areas, on proposals which are not specifically addressed in these rules, and upon the director's request, for applications for variances. The committee's recommendations shall seek to advance the purposes of this chapter. [Eff 12/10/88; am 8/30/91; am and comp 12/09/2004; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

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

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

(b) The director may impose more stringent requirements than those specified in these rules for wastewater systems located or proposed to be located within [any designated critical wastewater disposal area] areas that require additional protection. Requirements that the director may impose include, but are not limited to, meeting higher effluent standards

for wastewater systems, limiting the method of effluent disposal and requiring flow restriction devices on water fixtures.

[(c) Proposed cesspools shall be severely restricted or prohibited in any designated critical wastewater disposal area. (d) Areas designated as critical wastewater disposal areas pursuant to subsection (a) are indicated on the CWDA maps dated March 16, 1990 and revised April 15, 1997, which are attached to this chapter in appendix E, entitled CWDA Maps, dated April 15, 1997. Larger and more detailed copies of the maps are incorporated by reference and are available for examination at the department's environmental management division and district health offices. In case of a conflict between maps, the more detailed tax map key map designations shall control.] [Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-06 General requirements. Owners shall comply with these requirements:

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

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

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

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

- (1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, the Reuse Guidelines, and wherever applicable the department's Guidelines for Livestock Waste Management (Animal Waste Guidelines) dated July 1996. The Reuse Guidelines and the Animal Waste Guidelines are available for inspection and purchase at the department's environmental management division and the district health offices. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining the adequacy of compliance with the provisions of section 11-62-02.
- (2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts or conservation districts may be exempt from the provisions of subchapters 2 and 3, provided that such buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. However, the owner shall submit for the director's approval plans or engineering reports or both for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Such information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of section 11-62-02. ] ~~[(e)]~~ (d) Operation and maintenance. All wastewater systems and parts thereof that are installed or used by persons to achieve compliance with this rule and the conditions of any [permit] Department approval for use issued

under this rule shall at all times be properly operated and maintained. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures as specified by the director. Effluent testing shall be performed by an independent laboratory. Proper operation and maintenance also includes operation of any required back-up or auxiliary facilities or similar systems as specified by the director to be installed to achieve compliance with this rule and the conditions of any [permit] Department approval for use issued under this rule.

[(f)](e) No holding tank, except for public facilities, and no privy shall be used. No portable toilets shall be used for any permanent structure unless approved by the director.

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

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

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- (10) Contamination, pollution, or endangerment of drinking waters, except in compliance with a permit issued under chapter 11-23.

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

[(i)](h) In case of a violation of this chapter, the director, at his or her discretion, shall initiate enforcement action against the owner(s) of the wastewater system [and] [initiate enforcement action against other persons] to have the offending condition abated, corrected, or removed [, destroyed, or prevented]. In addition, once a violation of this chapter occurs, the director shall order the [owner of the wastewater system] owner(s) to take immediate actions to protect public health and safety.

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

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

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

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

- (1) A county does not issue a building permit for a private building within [one year] five years after the director approves the wastewater system, or the construction of the wastewater system has not [begun] been

- completed within [one year] five years of the approval; [and] or
- (2) [A] The Director revokes approval to construct or a county revokes [or rescinds] a building permit and the building is to be served by a wastewater system that was approved in conjunction with the building permit application.

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

[(n)](m) [Whenever] The Director may, at his or her discretion, require that a wastewater system be upgraded to meet the applicable requirements of this rule whenever a building modification is proposed that may change the nature or quantity of the wastewater flowing to the wastewater system. Such modifications may include for example without limitation adding additional bedrooms to a dwelling or adding a restaurant to a shopping complex. The Director also may, at his or her discretion, require that a wastewater system be upgraded[, the wastewater system serving the building shall be required to be upgraded in order to meet the applicable requirements of this rule]if any of the following conditions exists:

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

[Upon the director's discretion and the engineer's recommendation, for a cesspool located below the Underground Injection Control Line, not disposing

wastewater directly into the groundwater table, located in suitable soil, and meeting all distance requirements of Table II, the installation of a septic tank before the cesspool shall temporarily meet this upgrade requirement until such time that the director determines a new wastewater system is required.]

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

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

[(q)](p) Duty to comply. The owners of any wastewater system shall comply with all applicable provisions of this chapter. In addition, all [permittees] owners shall comply with all conditions of any [permit] department approval for use issued under this chapter. Any noncompliance constitutes a violation and is grounds for: enforcement action; [for permit] department approval for use termination, revocation and reissuance, or modification; or denial of a [permit] department approval for use renewal application.

[(r)](q) In cases where the director is required to conduct an inspection at a location outside the State, the owner of the wastewater system shall be required to cover all costs related to the inspection.

(r) Upon transfer of ownership of any building served by an existing cesspool, the building shall, no later than 180 days after ownership transfer, be connected to a sewer or, where a sewer connection is not feasible, the cesspool shall be replaced with a new wastewater system, other than a cesspool, that meets the applicable requirements of Subchapter 3 of this rule.

[Eff 12/10/88; am 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 322-8(a), 342D-4, 342D-5, 342D-15, 342E-3) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342E-3; HRS chs. 340E; 33 U.S.C. §§1311, 1342, 1345; 40 CFR Parts 122, 123, 40 CFR §501.15(b)(6))

[§11-62-07.1] §11-62-07 Requirements for non-domestic wastewater. (a) The director will review the use and disposal of non-domestic wastewater on a case-by-case basis.

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

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

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

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- (1) Wherever applicable, the director shall use the requirements for non-domestic wastewater as set forth by the EPA, the Reuse Guidelines, and wherever applicable the department's Guidelines for Livestock Waste Management (Animal Waste Guidelines) dated January 10, 2010. The Reuse Guidelines and the Animal Waste Guidelines are available on-line at the Wastewater Branch section of the department's website and are available for inspection and purchase at the department's environmental management division and the district health offices. Construction plans and engineering reports for proposed non-domestic wastewater systems shall be sufficient in scope and depth for determining compliance with the provisions of this chapter.
- (2) Any building or facility which is located within the state agricultural land use district, county agricultural zoned districts or conservation districts may be exempt from the provisions of subchapters 2 and 3 for its non-domestic wastewater, provided that such buildings or facilities are essential to the operation of an agricultural enterprise or consistent with the conservation district use intent. However, the owner shall submit for the director's approval plans or engineering reports or both for the wastewater systems proposed to accommodate the wastewater generated from any building or facility in this category. Such information submitted shall be sufficient in scope and depth for determining the adequacy of performance of the wastewater system in meeting the provisions of this chapter.

[(e)](d) The director in determining treatment requirements for the non-domestic wastewater shall use requirements for non-domestic wastewater as set forth by EPA, 40 CFR 257, subchapter 4, the Reuse

Guidelines, and the Animal Waste Guidelines. [Eff and  
comp 12/09/04; am and comp ]  
(Auth: HRS §§321-11, 322-8(a), 342E-3) (Imp: HRS  
§§321-11, 322-1 to 322-4, 322-8, 342E-3)

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

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

(b) No person shall construct, [or] modify the construction of, or modify the use of a wastewater system without the approval of the director. The

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following documents shall be submitted to the director prior to such approval:

- (1) Construction plans prepared by or under the supervision of an engineer indicating the following:
  - (A) Acreage, address, and tax map key number(s) of the project site;
  - (B) Plot plan drawn to scale showing the location of the proposed and any existing wastewater system and its distances from existing and proposed buildings, structures, legal boundaries, property lines, adjacent surface bodies of water, drinking water sources and existing public sewers within 2,000 feet of the nearest property line; and
  - (C) Sufficient details to show compliance with all applicable requirements of this chapter.
- (2) Construction plans for an individual wastewater system prepared by the engineer shall show sufficient details to enable the contractor to construct the individual wastewater system.
- (3) Wastewater sludge use and disposal plan indicating how the wastewater sludge facility will comply with subchapter 4.
- (c) Whenever applicable, the design flow of any development to be served by a wastewater system shall be based on Table I, except as provided by section 11-62-24(b).
- (d) Measures to control public accessibility to all treatment units shall be provided to prevent accidents, drownings, vandalism and interference with the treatment process. At a minimum, the provisions shall include:
  - (1) Fencing or other secured enclosures at least six feet in height with no more than 3½ inch clear openings or spaces for treatment units with exposed water surfaces or equipment; or
  - (2) Completely enclosed treatment units with unexposed water surfaces and equipment. Access openings to completely enclosed

treatment unit(s) and equipment shall be secured and properly identified, and be large enough to allow removal of equipment from the facility.

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

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

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

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

- (1) The name and address of any person seeking or obtaining registration, an individual permit, or [general permit coverage] Department approval for use of an individual wastewater system; and
- (2) Registration information and forms, registrations, individual permit applications and permits, [notices of intent to be covered by a general permit] Department approval for use of an individual wastewater system, [general permit coverage notices,] sludge and effluent data, and

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reports required to be submitted under this chapter. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

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

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

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

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

§11-62-11 Incorporation by reference. Appendices A through F, dated April 15, 1997, and form A located at the end of this chapter, is made a part of this chapter. [Eff and comp 12/09/04; comp  
] (Auth: 342D-4, 342D-5) (Imp: 342D-4, 342D-5, 342D-6)

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

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

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

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

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

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

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

(h) Any action taken and any wastewater system or sludge facility built, modified, or operated under an automatic approval shall comply with all applicable requirements of this chapter, and the automatic

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approval is effective for a period of one year. [Eff  
10/21/00; comp 12/09/04; com ] (Auth:  
HRS §§91-13.5, 322-11, 322-8(a), 342D-4, 342D-5) (Imp:  
HRS §91-13.5)

## SUBCHAPTER 2

### WASTEWATER TREATMENT WORKS

§11-62-21 REPEALED [R 8/30/91]

§11-62-22 REPEALED [R 8/30/91]

§11-62-23 REPEALED [R 8/30/91]

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

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

owner to the operation and maintenance manual.

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

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

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

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

- (1) A written declaration signed and dated by the engineer responsible for the preparation of the operation and maintenance manual for the treatment works, that the operation and maintenance manual meets paragraph (2) and that if the treatment works is operated in accordance with the manual, all applicable effluent requirements will be met; and
- (2) An operation and maintenance manual prepared by the engineer. The manual shall, as a minimum, provide the details on the following:
  - (A) Operation and maintenance instructions for each pump station and treatment unit or process under normal and

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- emergency conditions such as power outage and equipment malfunction;
  - (B) Operation and maintenance instructions for the disposal system including procedures for purging or chemical "shock loading" to prevent or eliminate biological growth in the subsurface disposal system;
  - (C) List of required sampling frequencies and analyses to be conducted by the operator;
  - (D) Troubleshooting, corrective, and preventive measures to be taken to maintain process control and treatment performance;
  - (E) Start-up procedures;
  - (F) Applicable state effluent requirements;
  - (G) Instructions on wasting and disposal of wastewater sludge;
  - (H) Manpower requirements needed to operate and maintain the treatment works;
  - (I) List of critical parts of the treatment works;
  - (J) "As-built" drawings of the treatment works;
  - (K) List of required daily activities, checks and observations;
  - (L) Logs or report forms for all operation and maintenance activities performed;
  - (M) Flow schematic diagrams with details of piping and valving;
  - (N) Plot plan of the treatment works and project site including all collection lines and equipment;
  - (O) Details on all safety equipment at the treatment works site, any applicable spare parts, maintenance and operation instructions; and
  - (P) Details on all monitoring equipment including spare parts, maintenance and operating instructions.
- (e) No person shall operate a treatment works until it has been inspected to the director's

satisfaction and the director has authorized in writing the use of the treatment works.

- (1) The owner's engineer shall inspect the treatment works and submit to the director a final inspection report stating whether the wastewater treatment works has been constructed according to the submitted plans approved by the director and identifying any discrepancies and their resolutions. Any discrepancy between the constructed treatment works and the approved plans is sufficient reason to withhold approval to operate the treatment works.
- (2) Before operation of the treatment works, the owner shall resolve all discrepancies.
- (3) Any changes to the approved plan shall be resubmitted to the director for approval before the final inspection.
- (4) The inspection shall not be considered final until the constructed treatment works conforms to the approved plans.
- (f) After the first year of operation, the [owner] owner's engineer [of the treatment works] shall submit to the director a written statement based on results of actual sampling and [the] professional judgment of [the owner's engineer] whether or not the treatment works is meeting and at the design flow will meet the applicable effluent requirements of sections 11-62-26 and 11-62-27. If the treatment works is not meeting the applicable effluent requirements, the [owner] owner's engineer shall submit to the director a corrective action report containing:
  - (1) An analysis of the cause of the treatment works' failure to meet the effluent requirements and an estimate of the scope of the corrective action necessary to enable the treatment works to be in compliance;
  - (2) A schedule for undertaking the corrective actions; and
  - (3) A date by which the treatment works shall be in compliance with the applicable effluent requirements.
- (g) Treatment works shall be designed with

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safety in mind and comply with appropriate provisions of the Occupational Safety and Health Standards of the State of Hawaii, Department of Labor and Industrial Relations.

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

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

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

(k) For all treatment works which produce recycled water, the director shall be guided by the requirements of subchapter 1, other applicable sections of this subchapter, and the Reuse Guidelines for all decisions on production of recycled water.

[Eff 8/30/91; am and comp 12/09/04; am and comp

] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

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

- (1) For sludge digesters or aerated sludge holding tanks constructed after December 10, 1988, the sludge digesters or aerated sludge holding tanks shall treat and store at least

the amount of sludge generated over a twenty day period;

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

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breathing apparatus, chlorine gas mask, warning signs, and an emergency eyewash and shower.

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

(1) Private wastewater treatment works with design flows greater or equal to 100,000 gallons shall have solids dewatering equipment included in the facility design.

[Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

§11-62-25 Wastewater effluent disposal systems.

(a) New and proposed [subsurface] effluent disposal systems.

(1) [Subsurface] Effluent disposal systems shall at least consist of a primary disposal component and a separate 100 per cent back-up disposal component.

(2) The primary disposal component and the back-up disposal component shall each be designed to handle the peak flow. The peak flow shall be determined in accordance with the design standards of their respective county. If a county does not have design standards, the design standards of the City and County of Honolulu shall be used. Other means of determining the peak flow, as recommended by the design engineer, may be approved by the director.

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

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

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

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

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

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

(1) Biochemical oxygen demand (BOD<sub>5</sub>).

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

(B) For wastewater treatment works excluding wastewater pond systems with [design] actual flows less than 100,000 gallons per day, the owner or operator

shall perform grab sampling at least monthly.

(C) For wastewater pond systems with actual flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.

(D) For wastewater pond systems with actual flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.

~~[(C)]~~ (E) The BOD<sub>5</sub> in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.

~~[(D)]~~ (F) The BOD<sub>5</sub> in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample.

(2) Suspended solids.

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

(B) For wastewater treatment works except for wastewater pond systems with [design] actual flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.

(C) For wastewater pond systems with actual flows greater than or equal to 100,000 gallons per day, the owner or operator shall perform grab sampling at least weekly.

(D) For wastewater pond systems with actual flows less than 100,000 gallons per day, the owner or operator shall perform grab sampling at least monthly.

- [(C)] (E) The suspended solids in the effluent from a treatment works shall not exceed 30 milligrams per liter based on the [arithmetic] monthly average of the results of the analyses of composite samples.
- [(D)] (F) The suspended solids in the effluent from a treatment works shall not exceed 60 milligrams per liter based on a grab sample
- (3) Owners or authorized agents shall submit suspended solids and BOD<sub>5</sub> lab data to the director no later than thirty days after the last day of the following months June and December.
- [(3)] (4) The dissolved oxygen, pH, and 30 minutes settleability of the contents of the aeration tank shall be sampled and analyzed at least weekly.
- [(4)] (5) Effluent chlorine residual, if any, shall be sampled and analyzed at least weekly.
- [(5)] (6) Total daily flow shall be monitored at least weekly.
- [(6)] (7) The volume of wastewater sludge wasted, the solids concentration of wastewater sludge wasted, the name of the wastewater sludge pumping and hauling firm, and the dates of pumping and hauling, if applicable, shall be recorded.
- (8) The operator shall maintain a servicing log book at the wastewater treatment works.
- [(7)] (9) Alternative effluent limitations as permitted by EPA regulations, (40 CFR 125 and 40 CFR 133), relating to the definition of secondary treatment or other industrial categories, may be utilized by the director.
- [(8)] (10) For the purposes of this section, the arithmetic average of the results of the analyses of composite samples shall be based upon one or more analyses made within a 30 consecutive calendar day period. The arithmetic average shall be the sum of the results of all analyses divided by the

number of analyses made during the 30 consecutive calendar day period.

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

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

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

or more throughout which the chlorine residual is 0.5 milligrams per liter or greater; and

- (ii) Automatic [control of chlorine dosage and automatic] continuous measuring and recording of chlorine residual shall be provided. The chlorine facilities shall have adequate capacity to maintain a residual of 2 milligrams per liter.

(B) For non-chlorine disinfection processes.

- (i) The disinfection process shall demonstrate to the director's satisfaction the ability to meet the requirements of paragraph (d)(2); and
- (ii) Automatic controls shall be provided to continuously measure and record disinfection dosage and residuals, if any.

(3) Monitoring shall be by grab samples that shall be taken at a point following disinfection.

(d) In addition to subsection (b) and (c), treatment works producing R-1 water or R-2 water for recycled water systems shall meet the following daily fecal coliform requirements unless other sampling frequencies are approved by the director. Monitoring shall be by grab samples that shall be taken at a point following disinfection.

(1) R-1 water.

- (A) The median density measured in the disinfected effluent shall not exceed 2.2/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed;
- (B) The density shall not exceed 23/100 milliliters in more than one sample in any thirty day period; and

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- (C) The density in any one sample shall not exceed 200/100 milliliters.
- (2) R-2 water.
  - (A) The median density as measured in the disinfected effluent shall not exceed 23/100 milliliters using the bacteriological results of the last seven days for which analyses have been completed; and
  - (B) The density of shall not exceed 200/100 milliliters in more than one sample in any thirty day period.
- (e) In addition to subsections (b) through (d), treatment works producing R-1 water for recycled water systems shall provide continuous turbidity monitoring and recording prior to the filtration process and at a point after the filters and before application of the disinfectant. [For granular media filtration units, the effluent turbidity shall not exceed 2.0 nephelometric turbidity units (NTUs). For membrane filtration units, the effluent turbidity limitations shall be determined by the director on a case by case basis.]  
The R-1 water shall meet the following turbidity limits:

- (1) For filtration systems utilizing sand or granular media, cloth or other synthetic media, the turbidity shall not exceed any of the following:
  - (A) An average of two (2) nephelometric turbidity units (NTU) within a 24-hour period;
  - (B) 5 NTU more than 5 percent of the time within a 24-hour period; and
  - (C) 10 NTU at any time.
- (2) For filtration systems utilizing membrane filtration, the turbidity shall not exceed any of the following:
  - (A) 0.2 NTU more than 5 percent of the time within a 24-hour period; and
  - (B) 0.5 NTU at any time.
- (f) When using media filtration for existing R-1 facilities the following performance criteria shall apply:

- (1) The design UV dose shall be at least 100 mJ/cm<sup>2</sup> under maximum daily flow; and
- (2) The filtered UV transmittance shall be 55 percent or greater at 254 nanometers (nm).
- (g) When using membrane filtration for existing R-1 facilities, the following performance criteria shall apply:
  - (1) The design UV dose shall be at least 80 mJ/cm<sup>2</sup> under maximum daily flow; and
  - (2) The filtered effluent UV transmittance shall be 65 percent or greater at 254 nm.
  - (h) The minimum acceptable design requirements and commissioning of new UV disinfection systems shall comply with the Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Third Edition, 2012, published by the National Water Research Institute.
- [(f)](g) The analysis, including the handling and preservation of samples, to determine compliance with effluent requirements shall be performed in accordance with Standard Methods or EPA's Methods for Chemical Analysis of Water and Wastes. The director may approve alternative methods for analyzing the effluent limits of this section. The alternative test methods when approved, may be used by the director to determine compliance with effluent limits as stated in this rule. [Eff 12/10/88, am 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

S11-62-27 Recycled water systems. (a) No recycled water system shall be constructed, used, or modified without written approval by the director.

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

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

- (1) Name, address, and phone number of the owner and party responsible for the application of

- recycled water at the site (if different from the owner);
- (2) Clear identification of the people who will actually operate and maintain the system, if different from paragraph (1);
  - (3) Detailed site information on the water recycling application site and its surroundings, including site name, address, and tax map key number(s), a map indicating specific areas of use, areas of public access, surrounding land use, location of all wells within a one-fourth mile radius, description of nearest housing or public area, setbacks, general location of existing and proposed water and sewer lines, the direction of drainage with a description of how the drainage will flow and the depth to groundwater underlying the irrigated area with a description of the ground water quality; and
  - (4) Information sufficient to show compliance with the requirements of subsection (h), and identification of best management practices.
- (d) Before using recycled water, the owner of the recycled water system shall also submit to the director for approval an engineering report. The report shall include the following information and shall clearly identify all best management practices to be implemented:
- (1) An irrigation use plan that includes information on application rates, intended uses and schedules for recycled water use. The irrigation use plan shall also include information on types of vegetation, types and methods of irrigation, proposed irrigation schedules, vegetative consumption rates, water balance calculations, nutrient balance calculations, and the corresponding acreage to be used for irrigation;
  - (2) An overflow control plan that includes detailed best management practices to control or minimize runoff or ponding or recycled water;

- (3) A management plan that includes establishment and delineation of the responsibilities of operation and maintenance of the recycled water system;
- (4) A public information and access plan, to minimize public contact with the recycled water, that includes methods to adequately inform the public that recycled water is being used, and that the recycled water is unfit for human consumption; and methods to control public access to the recycled water system and areas of recycled water use;
- (5) A labeling plan to distinguish piping and appurtenances which carry or contain recycled water from those for potable water;
- (6) An employee training plan that describes the training that the employees will receive to ensure compliance with these rules and any other features specified by the director;
- (7) A vector control plan (if applicable); and
- (8) A groundwater monitoring plan (if applicable) including formulation of a strategy for the observation and surveillance of groundwater for possible sources of pollution.

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

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

- (1) Name, address, and phone number of the owner and party responsible for the recycled water distribution system (if different from the owner);

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

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

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

- (1) Irrigate at a rate not greater than the plants use it;
- (2) Minimize recycled water runoff and ponding on the ground;
- (3) Post signs or other devices warning the public not to drink, swim, or otherwise come into contact with the recycled water;
- (4) Keep the public away from the areas being irrigated with recycled water;
- (5) Clearly mark pipes, tanks, valves, and equipment used in recycled water use systems such that they are easily differentiated from potable water systems;
- (6) Provide training to employees such that they are aware of these rules and any conditions

the director imposed on the recycled water use system;

(7) Provide control measures to minimize vector nuisances; and

(8) Monitor groundwater as required by the director.

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

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

(k) For recycled water systems, the owner or the owner's duly authorized agent shall, unless otherwise directed, report the following information to the director:

(1) The volume of recycled water used, the volume of recycled water stored, the volume and location of any recycled water spills, and details on the irrigated areas including water budgets, precipitation, evaporation, application rates, and monitoring of best management practices; and

(2) Reported information shall be submitted by February 19 of each year and shall be in a monthly summary format for the preceding calendar year unless otherwise specified or agreed to by the director. [Eff and comp 12/09/04; comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1311, 1342; 40 CFR Parts 122, 123)

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

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

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

§§11-62-29 (Reserved)

### SUBCHAPTER 3

#### INDIVIDUAL WASTEWATER SYSTEMS

§11-62-31 REPEALED [R 8/30/91]

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

(1) Developments involving dwellings.

(A) There shall be 10,000 square feet of land area for each individual wastewater system;

- (B) Total development of an area shall not exceed [fifty] fifteen single family residential lots or exceed [fifty] fifteen dwelling units [, except for developments consisting of one dwelling unit per acre or greater;].
  - (C) Area of the lot shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed.
  - (D) The total wastewater flow into one individual wastewater system shall not exceed one thousand gallons, and one individual wastewater system shall not serve more than five bedrooms, whether they are in one dwelling unit or two.
- (2) Developments involving buildings other than dwellings.
- (A) There shall be 10,000 square feet of usable land area for each individual wastewater system. Usable land area shall not include the area under buildings;
  - (B) The total wastewater flow of the development shall not exceed 15,000 gallons per day;
  - (C) Area of the lot shall not be less than 10,000 square feet except for lots created and recorded before August 30, 1991. For lots less than 10,000 square feet which were created and recorded before August 30, 1991, only one individual wastewater system shall be allowed; and

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- (D) The total wastewater flow into each individual wastewater system shall not exceed one thousand gallons per day.
- (b) Whenever an individual wastewater system is allowed under subsection (a) the following shall apply:
  - (1) The director may allow an individual wastewater system other than a cesspool to be used for two dwelling units which may or may not be located within the same building provided:
    - (A) Both of the dwelling units are located on the same single family residential lot; and
    - (B) The individual wastewater system used shall meet the current requirements of this chapter.
  - (2) A building may use more than one individual wastewater system where each individual wastewater system shall connect to a single dwelling unit;
  - (3) For buildings without any dwelling units:
    - (A) More than one individual wastewater system may be used provided that the building is owned by one person; or
    - (B) Upon the director's discretion, buildings may connect to one individual wastewater system other than a cesspool provided the buildings are located on the same lot and the buildings generate wastewater of similar strength and character[;].
  - (4) For buildings, other than dwellings with highly variable wastewater flow rates, such as but not limited to schools, parks, and churches, the individual wastewater system excluding cesspools may exceed a design flow rate of 1000 gallons per day provided that the density does not exceed 1000 gallons per day per 10,000 square feet of useable land area and the development is owned by one person.

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

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

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

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

- (1) An operation and maintenance manual developed pursuant to section 11-62-23.1(d)(2) as applicable shall be submitted and approved by the director; and
- (2) The owner of the individual wastewater system shall certify that the individual wastewater system shall be operated and maintained in accordance with all of the provisions of the operation and maintenance manual developed pursuant to paragraph (1). The certification shall include a statement that upon sale or transfer of ownership of the individual wastewater system, the sale or transfer will include the appropriate transfer documents and provisions binding the new owner to the operation and maintenance manual.

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

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

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- (A) The owner resolves all discrepancies recorded as a result of any inspections conducted.
- (B) The engineer furnishes a final inspection report to the director within thirty days after the completion of the construction which provides the following information:
  - (i) A certification that the individual wastewater system was constructed and installed in accordance with the approved plans and specifications or that changes made to the approved plans and specification are accepted by the engineer; and
  - (ii) An "as-built" plan of the individual wastewater system; and
- (2) The director may inspect the individual wastewater system or its site at any time before approving the system and may require advance notice of the engineer's inspection.
- (g) A graywater system shall be designed in accordance with Chapter 183 of Title 3, Hawaii Administrative Rules, entitled "State Plumbing Code", dated October 13, 2009. [the following criteria:
  - (1) Design of graywater systems for dwelling units shall be based on a minimum graywater flow of 150 gallons per day per bedroom. The design flow of graywater systems for buildings other than dwellings or from specific graywater sources shall be determined on a case-by-case basis;
  - (2) Graywater treatment units when required shall be sized with no less than a 600 gallon tank capacity and for graywater tanks shall conform to the requirements of section 11-62-33.1(a);
  - (3) Effluent from a graywater tank may be conveyed to a sand filter, absorption trenches and beds, mounds or seepage pits, or used for subsurface irrigation;
  - (4) Graywater from a residential washing machine may be used for subsurface irrigation; and

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- (5) Graywater use or disposal shall not interfere with the operation of the other parts of the wastewater system or any other individual wastewater systems.]
- (h) Each individual wastewater system shall be an independent system and shall have all of its plumbing, treatment (if any), and disposal components separate from any other wastewater system.
- (i) Wastewater into an individual wastewater system from buildings other than dwellings shall meet the pretreatment standards and local pollutant limits as set by the respective county. If the county does not have any local pollutant limits, the local limits as set forth by the City and County of Honolulu shall be used.] [Eff 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50)

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

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

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

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

- (1) Thickness of layers or horizons;
- (2) Texture of soil layers;
- (3) General color, and color variation (mottling);
- (4) Depth to water, if observed;
- (5) Depth to estimated seasonal high groundwater table;

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- (6) Depth to and type of bedrock, if observed; and
- (7) Other prominent features such as structure, stoniness, roots, etc.
- (e) Percolation tests.
- (1) Soil percolation tests shall be conducted at a minimum depth of three feet. If at the time of construction, the soil profile at five feet is different than at three feet, another percolation test shall be performed at the depth of the bottom of the absorption system;
- (2) Percolation tests shall follow the falling head test procedure in appendix [D] C, entitled Falling Head Test Procedure, dated April 15, 1997, located at the end of this chapter; and (3) Additional percolation tests may be required to identify the existence of a limiting layer.
- (f) The site evaluation information shall be reported on forms developed by the director.
- (g) If, during construction the actual site conditions differ from the site conditions upon which the wastewater system was approved, the design engineer shall revise the wastewater plans to reflect the actual site conditions. The plans of the revised wastewater system shall be submitted to the director for approval pursuant to section 11-62-31.1(f). [Eff 8/30/91, am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5)  
(Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

§11-62-32 Spacing of individual wastewater systems. No individual wastewater system shall be located at any point having less than the minimum distances indicated in Table II attached to this chapter in appendix [F] D, entitled Tables, dated April 15, 1997 and located at the end of this chapter unless otherwise approved by the director. The minimum distances indicated in Table II shall be measured from the outer edge of each item. [Eff

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12/10/88, am 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-6, 342D-50

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

- (1) All wastewater shall discharge into the septic tank. Roof, footing, garage, surface water drainage, cooling water, and graywater disposed of in accordance with section 11-62-31.1(g)(4) shall be excluded.
- (2) Septic tanks shall meet the International Association of Plumbing and Mechanical Officials (IAPMO) material and property standards for prefabricated septic tanks, IAPMO [PS 1-93] ANSI Z1000-2013. Septic tanks shall be approved and listed by IAPMO.
- [(3)] Septic tanks which currently meet the requirements of the Ten States Standards and are being distributed in the State shall comply with paragraph (2) within two years after the effective date of this rule.]
- [(4)] (3) Plans for cast-in-place septic tanks shall be submitted with the application for the individual wastewater system. The plans for the septic tank shall be designed and stamped by a licensed structural engineer and shall meet the IAPMO design specifications.

- [(5)] (4) The following schedule shall apply to septic tank sizing:

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

- (5) For wastewater flows greater than 1,000 gallons or five bedrooms, the formula  $Q(\text{flow}) = 1,000 + (Q - 800) \times 1.25$  shall be used.

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- (6) Concrete septic tanks shall be coated to protect the tank from leakage and corrosion by acceptable means. The coating shall cover the entire tank interior.
- (7) Manholes or removable covers to [the] septic tanks shall be [extended to within twelve inches of the finished grade. If the manhole or removable cover is brought to grade, it shall be secured from unwanted entry. If the manhole or removable cover does not extend to the finished grade, a permanent inspection port with a minimum diameter of six inches expanding through the cover shall be brought to the finished grade and fitted with a screw type cap. The inspection port shall be located such that the downward projection of the inspection port clears the inlet and outlet devices by not less than two inches.] brought to grade. The cover shall be secured to prevent unauthorized entry/opening of the tank.
- (8) When septic tanks are installed in ground water or in clay soils with an expansive nature, the engineer shall design or provide adequate protection to prevent the tank from floating, moving, or crushing.
- (9) The excavation to receive the tank shall be large enough to permit the proper placement of the tank and backfill. Tanks shall be installed on a solid base that will not settle and shall be level. Where rock or other undesirable protruding obstructions are encountered, the bottom of the hole shall be excavated an additional six inches and backfilled with sand, crushed stone or gravel to the proper grade. Backfill around and over the septic tank shall be placed in such a manner as to prevent undue strain or damage to the tank or connected pipes.
- (10) When a septic tank is installed under a driveway, parking lot, in a heavy saturated soil or other areas subject to heavy loads, the tank shall be capable of withstanding an

- H-20 wheel load as defined by the American Association of State Highway Officials.
- (11) Effluent from a septic tank shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit [permitted] approved for use by the director.
  - (b) Household aerobic units.
    - (1) All wastewater shall discharge into the household aerobic unit. Roof, footing, garage, surface water drainage, and cooling water, and graywater disposed of in accordance with section 11-62-31.1(g) (4) shall be excluded.
    - (2) Household aerobic units shall be approved by the director based upon the "Standard No. 40" for Class I units as set forth by the National Sanitation Foundation. The performance data shall have been obtained by an agency such as a university or an independent research laboratory acceptable to the director or from the National Sanitation Foundation (NSF) Testing Laboratory, Ann Arbor, Michigan.
    - (3) Owners of proposed and existing household aerobic units shall have an active service contract for the proper maintenance of the aerobic unit and its disposal system with a certified operator or factory certified representative. The contract shall also include pumping service to maintain the household aerobic unit. For proposed household aerobic units, a copy of an executed service contract shall be submitted prior to the final approval of the individual wastewater system and a copy of an active service contract shall be resubmitted annually to the Department.
    - (4) As a minimum, the aerobic treatment unit service contract shall include the term of contract period (start and end dates) and the following requirements:

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- (A) Inspect all aerobic treatment unit equipment to ensure its proper operation at least every six (6) months.
  - (B) Provide regular maintenance of equipment as required by the manufacturer.
  - (C) Verify the aerobic treatment unit is providing adequate mixing and aeration of the microbes;
  - (D) Measure the depth or volume of sludge in the aerobic treatment unit every six months, and assess whether sludge removal by pumping is necessary. Provide sludge pumping, as needed. If pumping is necessary, record the depth of sludge or percentage of sludge volume in the ATU prior to pumping; and
  - (E) Maintain a log of all service provided.
- [(4)] (5) Effluent from an aerobic unit shall be discharged into a soil absorption system, sand filter, subsurface irrigation system as approved by the director, or other treatment unit or disposal system [permitted] approved for use by the director.
- [(5)] (6) In areas below (makai of) the Underground Injection Control Line established pursuant to chapter 11-23, a new household aerobic unit may discharge its effluent [directly into the groundwater] into an elevated mound or drip irrigation system or, with a variance approved by the director and if the effluent is disinfected, to a seepage pit [provided the effluent is disinfected].
- (c) Subsurface and recirculating sand filters shall be reviewed on a case-by-case basis by the director. [Eff 8/30/91; am and comp 12/09/04; am and comp ] (Auth: HRS §§321-11, 342D-4, 342D-5) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 342D-2, 342D-4, 342D-5, 342D-50)

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

(1) Location.

- (A) Absorption trenches shall be located in accordance with section 11-62-32.
- (B) Absorption trenches shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.
- (C) Absorption trenches shall be located on the property to maximize the vertical separation distance from the bottom of the absorption trench to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater vertical separation where water-bearing formations are in danger of contamination.
- (D) Absorption trenches shall not be constructed in unstabilized fill.

(2) Design.

- (A) The minimum absorption area for any absorption trench system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III located in Appendix [F] D, entitled Tables, dated April 15, 1997 and located at the end of this chapter.
- (B) The absorption area shall be computed using the bottom area of the absorption trench.
- (C) Each absorption trench system shall have a minimum of two trenches.
- (D) Each distribution line shall be equal in length.
- (E) The maximum length of any one trench shall be one hundred feet.

- (F) Absorption trenches shall be at least eighteen inches wide but no more than thirty-six inches wide.
  - (G) The bottom of absorption trenches shall be at least eighteen inches below the finished grade.
  - (H) Gravity fed absorption lines and trenches shall have a slope at the rate of two to four inches per hundred feet.
  - (I) Absorption trenches shall not be installed on land with a slope gradient greater than twelve per cent.
  - (J) On rolling or sloping land, each absorption trench shall approximate the land surface contour.
  - (K) A distribution box or header shall be installed between the treatment unit and the absorption trenches.
  - (L) Each distribution line shall connect individually to the distribution box.
  - (M) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap or cover.
  - (N) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
  - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.

- (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
- (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
  - (A) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to assure stability and provide access for inspection of the distribution lines.
  - (B) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
  - (C) If a header is used it should be made of water-tight construction.
  - (D) When the trenches have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
  - (E) At least six inches of gravel or crushed stone shall be placed in the bottom of the trench.
  - (F) The distribution line shall be carefully placed on the bedding at a uniform slope and covered with at least two inches of gravel or stone.
  - (G) The ends of the distribution lines shall be capped or plugged.
- (b) Deep absorption trenches. Deep absorption trenches may be considered where the depth of suitable soil is insufficient to permit the installation of a

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

- (1) The site evaluation procedure shall include soil profile observations of at least three soil observation pits constructed to a minimum depth of three feet below the proposed trench bottom. Monitoring to establish depth to seasonal soil saturation or high groundwater may be considered;
  - (2) Deep absorption trenches shall be constructed at least one foot into the suitable soil; and
  - (3) The distribution piping in deep absorption trenches shall be installed with the invert of the piping at a depth of not more than thirty inches. Gravel or crushed stone shall be placed from the bottom of the trench excavation to a point two inches above the top of the distribution piping.
- (c) Absorption beds.
- (1) Location.
    - (A) Absorption beds shall be located in accordance with section 11-62-32.
    - (B) Absorption beds shall not be constructed in soils with a percolation rate slower than sixty minutes per inch or where rapid percolation may result in contamination of water-bearing formations or surface waters.
    - (C) Absorption beds shall be located on the property to maximize the vertical separation distance from the bottom of the absorption bed to the seasonal high groundwater level, bedrock, or other limiting layer, but under no circumstance shall the vertical separation be less than three feet. The director may require a greater

vertical separation where water-bearing formations are in danger of contamination.

- (D) Absorption beds shall not be constructed in unstabilized fill.

(2) Design.

- (A) The minimum area for any absorption bed system shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III dated April 15, 1997 and located at the end of this chapter.
- (B) The absorption area shall be computed using the bottom area of the absorption bed.
- (C) Each soil absorption bed system shall have a minimum of two distribution lines.
- (D) If more than one absorption bed is designed, each absorption bed shall be equal in area.
- (E) The maximum length of any distribution line shall be one hundred feet.
- (F) Distribution lines within an absorption bed shall be uniformly spaced no more than six nor less than four feet apart.
- (G) Distribution lines within an absorption bed shall be placed no more than three feet nor less than eighteen inches from the sidewall of the bed.
- (H) The bottom of absorption beds shall be at least eighteen inches below the finished grade.
- (I) Absorption beds shall not be installed on land with a slope gradient greater than eight per cent.
- (J) A distribution box or header shall be installed between the treatment unit and the absorption bed.
- (K) Each distribution line shall connect individually to the distribution box.
- (L) If a header is used, there shall be an equal number of distribution lines on each side of the influent junction. An

- inspection port shall be provided on the header and shall be brought to grade and fitted with a screw type cap.
- (M) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Materials.
- (A) The engineer shall be responsible for the choice of materials used in the soil absorption system.
  - (B) Pipe used for distribution lines shall meet the appropriate ASTM standard or those of an equivalent testing laboratory. Fittings used in the absorption system shall be compatible with the materials used in the distribution lines.
  - (C) Gravel or crushed stone shall be washed and shall range in size from three-fourths to two and one-half inches.
  - (D) The material used to cover the top of the stone shall be a filter fabric material or equal.
- (4) Construction.
- (A) The floor of the absorption bed shall be level.
  - (B) A distribution box or header shall be set level and arranged so that effluent is evenly distributed to each distribution line. Adequate provisions shall be taken to assure stability and provide access for inspection of the distribution lines.
  - (C) The pipe connecting the distribution box to the distribution line shall be of a tight joint construction laid on undisturbed earth or properly bedded throughout its length.
  - (D) If a header is used it should be made of watertight construction.

- (E) When the beds have been excavated, the sides and bottom shall be raked to scarify any smeared soil surfaces. Construction equipment and other materials not needed to construct the system should be kept off the area to be used for the absorption system to prevent undesirable compaction of the soils. Construction shall not be initiated when the soil moisture is high.
- (F) At least six inches of gravel or crushed stone shall be placed in the bottom of the bed.
- (G) The distribution line shall be carefully placed on the bedding with no slope and covered with at least two inches of gravel or stone.
- (H) The ends of the distribution lines shall be capped or plugged.
- (d) Seepage pits.
  - (1) Location.
    - (A) Seepage pits shall be located in accordance with section 11-62-32.
    - (B) Seepage pits shall not be constructed in soils having a percolation rate slower than ten minutes per inch (weighted average) or where rapid percolation through such soils may result in contamination of water-bearing formations or surface water.
    - (C) The seepage pit shall be located on the lot to maximize the vertical separation distance from the bottom of the seepage pit to the seasonal high groundwater table, bedrock, or other limiting layer. The vertical separation shall not be less than three feet unless otherwise approved by the director and the requirements of section 11-62-33.1(b)(5) are met. Where water-bearing formations are in danger of contamination, greater vertical separation may be required.

(2) Design.

- (A) Seepage pits shall be used only when one of the following are met:
  - (i) Slope of the finished elevation of the lot is greater than twelve per cent and the use of absorption beds or trenches is not feasible.
  - (ii) The presence of a limiting layer more than seven feet in depth which overlies suitable soils of sufficient thickness.
  - (iii) Insufficient land area exists to install absorption trenches or beds.
- (B) The minimum area in any seepage pit shall be based upon a flow of 200 gallons per bedroom per day and in accordance with Table III dated April 15, 1997 and located at the end of this chapter.
- (C) The surface dimension is measured as the mean distance of the clear opening below the inlet pipe.
- (D) The minimum surface dimension is six feet.
- (E) The effective depth of the seepage pit shall be measured from the bottom of the inlet pipe to the bottom of the pit, with the thickness of strata of soils having percolation rates slower than thirty minutes per inch deducted.
- (F) The minimum effective depth is ten feet and shall be greater than its widest surface dimension.
- (G) The effective area of the seepage pit shall be the vertical wall area of the areas corresponding to the effective depth of the pit excavation. No allowance shall be made for the bottom area.
- (H) When more than one seepage pit is used, a distribution box shall be installed between the treatment unit and all

seepage pits. Each seepage pit shall individually connect to the distribution box.

- (I) When more than one seepage pit is used, each pit shall have an equal effective area.
- (J) If a distribution box is used, a permanent inspection port with a minimum interior diameter of six inches shall be secured to the box cover, brought to the finished grade, and fitted with a screw type cap or cover.
- (3) Construction.
  - (A) Seepage pits shall include a sidewall lining constructed of durable material that will permit free passage of wastewater without excessive plugging while still excluding the entry of surrounding soil.
  - (B) Seepage pits shall include a cover which extends at least twelve inches beyond the seepage pit excavation, unless a concrete ring is used.
  - (C) The lining and cover of any seepage pit shall be capable of supporting the normal loads imposed. The engineer shall submit written justification for the deletion of any sidewall lining.
  - (D) The distance between the outer diameter of the lining and the excavation diameter shall be at least six inches, but not more than twelve inches. The space between lining and the excavation diameter shall be filled with washed gravel or crushed stone ranging in size from three-fourths to two and one-half inches. The placement of the gravel or stone shall fill the annular space between the pit lining and excavation diameter. Gravel and stone shall not be placed within the seepage pit itself.
  - (E) The watertight cover shall be provided and at least one watertight manhole

either round or square, tapered to a minimum of twelve inches in dimension shall be provided in the cover for inspection or for emptying the contents when required.

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

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

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(a), (b), and (c), except for chambered system where the director may approve of a reduction factor as deemed appropriate.

(D) If chambered systems are used, the chamber units shall be placed up against the sidewall of the excavation. In absorption beds, the adjacent chambers shall abut one another.

(E) The use of filter fabric, unless specified by the director, shall follow the manufacturer's recommendation.

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

§11-62-35 Other individual wastewater systems.

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

(b) The director may approve an innovative wastewater system based on the following conditions:

- (1) The innovative system provides or may provide a benefit to the people of the State;
- (2) The owner of the innovative system shall agree that for a period of up to twelve months after the initiation of the operation of the innovative system, operational data

shall be gathered and submitted to the director; and

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

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

[(b) Design.

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

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

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

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

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

[(e)] The director may require a cesspool card from an owner whose cesspool has no cesspool card on

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

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

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

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

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

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

§§11-62-38 to 11-62-39 (Reserved)

#### SUBCHAPTER 4

#### WASTEWATER SLUDGE USE AND DISPOSAL

§11-62-41 General requirements and prohibition.

(a) No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except:

- (1) In compliance with:
  - (A) A permit or Department approval for use of an individual wastewater system obtained under this chapter;
  - (B) [General permit coverage under this chapter;
  - (C)] A registration under this chapter; or
  - [(D)] (C) An exemption from permitting or registration provided by section 11-62-50.
- (2) In a municipal solid waste landfill unit which is in compliance with the sludge related conditions in a permit issued under chapter 11-58.1:
  - (A) Where that permit was issued following public participation procedures at least as open to the public as those specified in subchapter 5; and

- (B) Incorporates the requirements of 40 CFR Part 258.
  - (3) By incineration in a facility in compliance with the requirements of 40 CFR Part 503, Subpart E, Incineration, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions;
  - (4) In a facility in compliance with the sludge related conditions in a National Pollutant Discharge Elimination System (NPDES) permit issued under chapter 11-55 or issued by the U.S. EPA, where that permit includes or incorporates the requirements of 40 CFR Part 503, Subpart B, Land Application, Subpart C, Surface Disposal, Subpart D, Pathogens and Vector Attraction Reduction, and 40 CFR §503.8, Sampling and analysis, and §503.9, General definitions and any applicable requirements of this chapter;
  - (5) For hauling, by a county, state, or federal agency, or by a person or an operation registered under § 11-62-50(b)(4); or
  - (6) As otherwise authorized in writing by the director.
- (b) Direct enforceability. No person shall generate, treat, prepare, store, haul, apply, place, use, or dispose of wastewater sludge except in compliance with the requirements of this chapter and all applicable federal rules, whether or not a permit has been issued, general permit coverage has been obtained, or registration has been made.
- (c) Exclusion. This chapter does not apply to operations and facilities involved with the collection, handling, storage, treatment, use, disposal, or transportation of the following:
- (1) Wastewater sludge co-fired in an incinerator with other wastes or incinerators in which the wastewater sludge and other wastes are co-fired;
  - (2) Wastewater sludge generated at an industrial facility during the treatment of industrial wastewater, including wastewater sludge generated during the treatment of industrial

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- wastewater combined with domestic wastewater;
- (3) Wastewater sludge determined to be hazardous under state rule or federal regulation;
  - (4) Wastewater sludge containing polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis);
  - (5) Incinerator ash generated during the firing of wastewater sludge in a wastewater sludge incinerator;
  - (6) Grit and screenings;
  - (7) Drinking water treatment sludge; and
  - (8) Commercial and industrial septage that contains no domestic wastewater. [Eff and comp 12/09/04; am and comp ]  
(Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Parts 258, 501, 503, 40 CFR 503 Subparts B, C, D, E, 40 CFR §§501.15, 503.1(b), 503.3, 503.4, 503.6, 503.7, 503.8, 503.9)

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

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

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

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

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

"Permitting authority" means the director.

"Sewage" means wastewater.

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

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

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

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

(c) Recordkeeping.

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

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- (2) The preparer shall sign complete certification form, form A, entitled Certification Form - Land Application, dated April 15, 1997 and located at the end of this chapter, items 1, 2.a, and 3.a, and retain the form for five years; and
- (3) The preparer shall develop and retain information for five years on the volume of wastewater sludge bagged, distributed, or land applied.

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

(e) The exceptional quality sludge shall be applied to the land at a rate that is less than ten dry tons per acre and equal to or less than the agronomic rate.

- (1) The preparer shall provide to each land applier a fact sheet which contains the nitrogen, phosphorus, and potassium concentrations of the wastewater sludge; and
- (2) When the wastewater sludge is applied in bulk to agricultural land, forest, a public contact site, or a reclamation site, the director may require a nutrient balance to be submitted prior to the application to the land. [Eff and comp 12/09/04; comp  
] (Auth: HRS §§342D-4, 342D-5)  
(Imp: HRS §§342D-2,  
342D-4, 342D-5, 342D-6, 342D-50; 40 CFR  
§§503.1, 503.5, 503.10, 503.13, 503.15(a),  
503.16(a), 503.17(a), 503.18, 503.32,  
503.33(b))

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

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

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

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

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

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

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

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

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

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

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

(f) Monitoring. Non-exceptional quality wastewater sludge shall be monitored at least as often as required by 40 CFR § 503.16(a). References in §503.16(a) to federal pollutant limit tables are replaced with Table IV dated April 15, 1997, and located at the end of this chapter. To determine compliance with section 11-62-43(c), wastewater sludge shall be monitored not more than sixty days before land application unless otherwise specified by the director. The director may also specify more

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monitoring, to better protect human health or the environment.

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

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

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

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

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

CFR §503.33(b)(1) through (8) is met,  
when one is met.

- (3) The preparer shall sign and complete certification form, form A entitled Certification Form - Land Application dated April 15, 1997, and located at the end of this chapter, items 1, 2, and 3, and retain the form for five years; and
- (4) The preparer shall develop and retain for five years information on the volume of wastewater sludge prepared for land application, names of persons taking wastewater sludge from the facility, the date and time the wastewater sludge was taken, and the amount taken.
- (j) Recordkeeping, applicers of non-exceptional quality wastewater sludge to the land.
  - (1) The applicer shall meet the information requirements of 40 CFR §503.17(a)(3)(ii)(B) and (C); or §503.17(a)(4)(ii)(B), (C), (D), and (E);
  - (2) The applicer shall sign and complete the certification form, form A entitled Certification Form - Land Application, dated April 15, 1997 and located at the end of this chapter, items 4, 5, and 6, and retain the form for five years; and
  - (3) The applicer shall develop and retain for five years the following information:
    - (A) The location, including street address and tax map key number, of the site on which wastewater sludge is applied;
    - (B) The number of acres in each site on which wastewater sludge is applied;
    - (C) The date and time the wastewater sludge is applied to each site;
    - (D) The amount of wastewater sludge applied to each site; and
    - (E) A nutrient balance.
- (k) Reporting. The test results and records required in subsections (f), (i), and (j) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.

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

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

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

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

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

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

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

(e) Recordkeeping.

- (1) The applier shall meet the information requirements of 40 CFR §503.17(b)(2), (3), (4), (5), (7), and (8);
  - (2) The applier shall develop and retain for five years the location, including street address and tax map key number, of the site on which septage is applied; and
  - (3) The applier shall sign and complete the certification form, form A entitled Certification Form - Land Application dated April 15, 1997 and located at the end of this chapter, items 7, 8, 9, and 10, and retain the form for five years.
- (f) Reporting. The test results and records required in subsection (e) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.
- (g) Spacing and site restrictions.
    - (1) Horizontal distances. The land application of domestic septage shall meet the minimum horizontal limits in Table VI dated April 15, 1997 and located at the end of this chapter.
    - (2) Vertical separation. The land application of domestic septage shall be at least five feet above the seasonal high groundwater table.
    - (3) The site restrictions in:
      - (A) 40 CFR §503.32(b)(5); or
      - (B) The pathogen requirement of 40 CFR §503.32(c)(2) and the site restrictions of 40 CFR §503.32(b)(5)(i) through (iv) shall be met for domestic septage.
  - (h) Management practices. The management practices required by 40 CFR §503.14(a), (b), (d), (e)(1), and (e)(2) for wastewater sludge shall be met for domestic septage, and domestic septage shall not be applied to the land so that the septage or any pollutant from septage enters state waters. [Eff and comp 12/09/04; comp ] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR §§503.12(c), 503.13(c), 503.14, 503.15(b), (d), 503.16(b), 503.17, 503.18, 503.32, 503.33)

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§11-62-45 Surface disposal. (a) The requirements of 40 CFR Part 503, Subpart C, Surface Disposal, §§503.20 through 503.28, shall be met with the modifications and exclusions made by this section.

(b) Applicability. This section does not adopt the exclusion in 40 CFR §503.20(c), and this section applies to wastewater sludge treated on the land and land on which wastewater sludge is treated.

(c) Pollutant limits. The pollutant concentrations of wastewater sludge, other than domestic septage, placed on an active wastewater sludge unit without liner and leachate collection system shall not exceed the limits in Table VII dated April 15, 1997 and located at the end of this chapter. 40 CFR §503.23(a) is not adopted.

(d) Monitoring. Wastewater sludge in surface disposal shall be monitored at least as often as required by 40 CFR §503.26(a) and (c). References in §503.26(a) to federal tables are replaced with Table IV dated April 15, 1997 and located at the end of this chapter. To determine compliance with section 11-62-46, wastewater sludge shall be monitored not more than sixty days before surface disposal unless otherwise specified by the director. The director may also specify more monitoring, to better protect human health or the environment.

(e) Recordkeeping. The requirements of 40 CFR §503.27(a) and the following shall be met:

- (1) The preparer of the wastewater sludge shall develop and retain for five years information on the volume of wastewater sludge prepared for surface disposal, names of persons taking wastewater sludge from the site, the date and time the wastewater sludge was taken, and the amount taken;
- (2) The person who places domestic septage in an active sludge unit shall develop and retain for five years information on the volume of domestic septage treated, the location of active wastewater sludge unit, volume of domestic septage placed on the active wastewater sludge unit, and the date and time the domestic septage was placed on the active wastewater sludge unit; and

- (3) The owner or operator of a surface disposal site shall develop and retain for five years information on the amount of wastewater sludge disposed to the site.
- (f) Reporting. The test results and records required in subsection (e) shall be kept on site and unless otherwise specified copies shall be submitted to the director on February 19 of each year.
- (g) Setbacks.
- (1) Horizontal distances. The surface disposal site shall meet the minimum horizontal distances specified in Table VI dated April 15, 1997 and located at the end of this chapter.
- (2) Vertical separation. For active wastewater sludge units without liner and leachate collection system, there shall be a minimum of five feet separation between the bottom of the active wastewater sludge unit and the seasonal high groundwater table. [Eff and comp 12/09/04; comp ] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart C, 40 CFR §§503.20 - 503.28)

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

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

(3) Class A - alternative 1. The requirements

- of 40 CFR §503.32(a)(3) apply, except that the requirements of §503.32(a)(3)(i) are replaced with those of paragraph (8).
- (4) Class A - alternative 2. The requirements of 40 CFR §503.32(a)(4) apply, except that the requirements of §503.32(a)(4)(i) are replaced with those of paragraph (8).
  - (5) Class A - alternative 3. The requirements of 40 CFR §503.32(a)(6) apply, except that the requirements of §503.32(a)(6)(i) are replaced with those of paragraph (8).
  - (6) Class A - alternative 4. The requirements of paragraph (8), and subsection (d), Process to Further Reduce Pathogens (PFRP), apply.
  - (7) Class A - alternative 5. The requirements of paragraph (8) apply and, as determined by the director, a process equivalent to one in subsection (d), Process to Further Reduce Pathogens (PFRP), shall be used.
  - (8) Pathogen density at the time the wastewater sludge is used, disposed, or prepared for sale or give away in a bag or other container for land application, shall meet the following:
    - (i) Unless otherwise specified by the director, seven samples shall be analyzed; and
    - (ii) For each sample the fecal coliform shall be less than 1000 MPN per gram of total solids (dry weight basis) or for each sample the Salmonella sp. bacteria shall be less than three MPN per four grams of total solids (dry weight basis).
- (b) Wastewater sludge - class B. The requirements of 40 CFR §503.32(b) shall be met for a wastewater sludge to be classified class B with respect to pathogens.
- (c) Domestic septage. The requirements of 40 CFR §503.32(c) apply.
- (d) Processes to further reduce pathogens (PFRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section B, Processes

to Further Reduce Pathogens, apply, except for section B.1 which is replaced by paragraph (1).

(1) Composting.

- (A) Windrow. The temperature of the wastewater sludge is maintained at 55 degrees Celsius or higher for at least fifteen consecutive days during the composting period. In addition, during the high temperature period, the windrow must be turned at least five times and turned at least once every three days.
- (B) Static aerated pile. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
- (C) Within vessel method. The wastewater sludge must be maintained at operating temperatures of 55 degrees Celsius or greater for three consecutive days.
- (2) Heat Drying. See Part 503, appendix B, section B.2.
- (3) Heat Treatment. See Part 503, appendix B, section B.3.
- (4) Thermophilic Aerobic Digestion. See Part 503, appendix B, section B.4.
- (5) Beta ray irradiation. See Part 503, appendix B, section B.5.
- (6) Gamma ray irradiation. See Part 503, appendix B, section B.6.
- (7) Pasteurization. See Part 503, appendix B, section B.7.
- (e) Processes to significantly reduce pathogens (PSRP). The requirements of 40 CFR Part 503, appendix B, Pathogen Treatment Processes, section A, Processes to Significantly Reduce Pathogens, apply.
  - (1) Aerobic Digestion. See Part 503, appendix B, section A.1.
  - (2) Air Drying. See Part 503, appendix B, section A.2.
  - (3) Anaerobic Digestion. See Part 503, appendix B, section A.3.

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- (4) Composting. See Part 503, appendix B, section A.4.
- (5) Lime Stabilization. See Part 503, appendix B, section A.5. [Eff and comp 12/09/04; comp ] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, Appendix B, 40 CFR §503.32)

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

- (1) One of the vector attraction reduction requirements in 40 CFR §503.33(b)(1) through (8) shall be met before exceptional quality wastewater sludge is land applied.
- (2) The requirements of 40 CFR §503.33(a)(1), (4), and (5) apply.
- (b) Vector attraction reduction requirements.  
The requirements of 40 CFR §503.33(b) apply. [Eff and comp 12/09/04; comp ] (Auth: HRS §342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 503, Subpart D, 40 CFR §503.33)

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

SUBCHAPTER 5

WASTEWATER MANAGEMENT PERMITS AND REGISTRATION

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

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

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

[(d)](c) Owners or operators or both shall obtain an individual permit for their:

- (1) Treatment works that generate wastewater sludge that is directly land applied;
- (2) If different from the generator, facilities or operations that treat or prepare wastewater sludge that is land applied or surface disposed;
- (3) Treatment works not located in the State but generate wastewater sludge that is directly land applied in the State;
- (4) Facilities or operations not located in the State that treat or prepare wastewater sludge that is land applied or surface disposed in the State;
- (5) Land used for the surface disposal of wastewater sludge; and
- (6) Other facilities, operations, or land, if directed by the director.

(e) The department may accept and issue consolidated registrations [, general permit coverage notices,] and individual permits (collectively "authorizations"), and for the consolidated authorizations the department may charge the fee for only the most expensive authorization. The department may also charge the fees for all or some of the authorizations. [Eff and comp 12/09/04; am and comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-13, 342D-50; 40 CFR §§501.15, 503.3(a))

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

- (1) For a new operation, facility, or land, the fee is \$30;

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

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

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

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

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to the State of Hawaii.

- (1) To submit a notice of intent for a new or existing operation, facility, or land, the fee is \$100;
- (2) To submit a notice of intent to modify general permit coverage to cover a substantial alteration or addition to an operation, facility, or land, the fee is \$100;
- (3) To submit a notice of intent to modify general permit coverage to cover a change in the location of the covered operation or facility the fee is \$100;
- (4) To transfer ownership or to modify general permit coverage to show only a change in ownership, the fee is \$25; and
- (5) To submit a notice of intent to modify general permit coverage to cover a change other than those covered above, the fee is \$25.]

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

- (1) The fee for submitting a registration form late is \$5; and
- (2) [The fee for submitting a notice of intent late is \$25; and]
- (3)] The fee for submitting an application for an individual permit late is \$250.

[(e)](d) Relation to other fees. The foregoing fees are subject to section 11-62-50(e) and do not include any public participation costs

(for notices, hearings, etc.) that the would-be registrant or permittee may be required to pay under other sections. [Eff and comp 12/09/04; am and comp ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-13, 342D-50)

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

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

§11-62-53 Wastewater management registration.

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

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

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

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

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

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

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

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

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

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

(i) Filing suspension. If the director considers a registration form incomplete, lacking

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

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

- (1) For existing lands, facilities, operations, and lands, not later than one year after the effective date of this section; and
- (2) New facilities, operations, and lands, not later than one hundred eighty days before the facilities, operations, or lands are used or begin activity. The director may waive this one hundred eighty day requirement by issuing the permit before the one hundred eighty days expire;

(b) Information and forms. Applicants for individual permits shall complete and submit one original and one copy of the form(s) furnished by the director. Applicants shall provide at least the type of information required by 40 CFR Part 501 and the following information:

- (1) The type of activities conducted by the applicant which requires a permit to be obtained;
- (2) The name, mailing address, and location of the wastewater or wastewater sludge collection, handling, storage, treatment, use, disposal, or transportation facility, operation, or land;
- (3) The owner's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
- (4) The operator's name, address, telephone number, ownership status, status as federal,

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state, private, public or other entity, and operator's certification number under chapter 11-61, if applicable; (5) A listing of all environmental permits received or applied, including all federal, state, or local permits;

(6) A topographical map or other map if a topographical map is unavailable extending one mile beyond the property boundaries of the sludge management facility, depicting the treatment and disposal sites, the location of all water bodies, the locations of potable water wells within one-quarter mile of the property boundaries;

(7) Any sludge monitoring data and for land application and surface disposal sites, any available groundwater monitoring data, with a description of the well locations and approximate depth to the groundwater;

(8) A description of the applicant's sludge use and disposal practices, including where applicable, the location of any sites where the applicant transfers wastewater sludge for treatment, disposal or both, as well as the name of the applier who applies the wastewater sludge to the land if different from the applicant, and the name of any distributors when the sludge will be distributed, if different from the applicant;

(9) For each land application site the applicant will use during the life of the permit, the applicant will supply information necessary to determine if the site is appropriate for land application and a description of how the site is, or will be managed. Applicants intending to apply wastewater sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum:

- (A) Describes the geographical area covered by the plan;
- (B) Identifies the site selection criteria;
- (C) Describes how the site will be managed;
- (D) Provides for advanced notice to the director of specific land application sites; and
- (E) Provides for

advance public notice and notice to landowners and occupants adjacent to or abutting the proposed land application site;

- (10) Annual sludge production volumes; and
- (11) Any information required to determine the appropriate standards for permitting under 40 CFR Part 503.

(c) The director may require the submission of additional information after an individual permit application has been submitted.

(d) Records. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least five years from the date the application is submitted, unless otherwise specified by the director.

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

(f) Processing suspension. If the director considers permit application incomplete, lacking payment of the fee, otherwise deficient, or considers more information necessary, the director shall order that the permit application shall not be processed or a permit issued until the applicant supplies the missing information or otherwise corrects the deficiency. [Eff and comp 12/09/04; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-6, 342D-13, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a), (d))

\$11-62-54.02 Draft individual permits. After an application for a new, modified, or renewed permit is complete, the director shall tentatively decide to prepare a draft individual permit or deny the application. If the director tentatively proposes to revoke and reissue a permit, the director shall prepare a draft individual permit. A draft permit shall contain the necessary conditions to implement the requirements of this chapter, 33 U.S.C. §1345, and

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the incorporated sections of 40 CFR Parts 501 and 503.  
[Eff and comp 12/09/04; comp ] (Auth:  
HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2,  
342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR  
§501.15(d)(3))

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

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

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

§11-62-54.04 Public notices of draft individual permits; public comments and hearing requests. (a) The director shall notify the public that a draft individual permit has been prepared and that the public has thirty days to comment on it. The comment period may be extended at the discretion of the director. The director may require the permit applicant to have the notice published.

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

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

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

(e) Public comments and hearing requests. During the public comment period, any person may submit comments in writing and may ask in writing for a public hearing.

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A request for hearing shall state the nature of the issues that the hearing should cover. [Eff and comp 12/09/04; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(5), (6))

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

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

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

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

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

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

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director is a basis to deny issuance of a permit.  
[Eff and comp 12/09/04; comp ] (Auth:  
HRS §§342D-4, 342D-5, 342D-6, 342D-13) (Imp: HRS  
§§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40  
CFR §501.15(d)(5))

\$11-62-54.07 Response to comments. When a final individual permit is issued, the director shall issue a written response to written comments as required by 40 CFR §501.15(d)(8). [Eff and comp 12/09/04; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 40 CFR Part 501, 40 CFR §501.15(d)(8))

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

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

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

§11-62-54.09 Schedules of compliance.

Individual permits may contain schedules of compliance that are at least as stringent as those allowed by 40 CFR §501.15(a). [Eff and comp 12/09/04; comp ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(a)(6))

[§11-62-55.01 General permit authority and adoption. (a) The director may adopt general permits.

(b) Appendix B entitled General Permit for Treatment Works dated April 15, 1997, and located at the end of this chapter is adopted and made a part of this chapter as a general permit for treatment works that may qualify for general permit coverage in accordance with section 11-62-50(c). [Eff and comp 12/09/04; am and comp ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)]

[§11-62-55.02 General permit conditions and terms. (a) General permits shall comply at a minimum with the federal requirements for general permits, especially 40 CFR §122.28.

(b) General permits shall at a minimum require compliance with:

(1) The more stringent of the wastewater sludge standards in 40 CFR Part 503 and this chapter; and

(2) Water quality standards in chapter 11-54.

(c) The standard permit conditions in appendix A entitled Wastewater Management Individual and General Permit Standard Conditions dated April 15, 1997, and located at the end of this chapter apply to each general permit as specified in that appendix.

(d) Special conditions apply as specified in each general permit, e.g. appendix B entitled General Permit for Treatment Works dated April 15, 1997, and located at the end of this chapter.

(e) General permits are for terms of not more

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than five years. [Eff and comp 12/09/04; am and comp  
] (Auth: HRS §§342D-4, 342D-5) (Imp:  
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR Part  
122, 501, 503, 40 CFR §§122.28, 501.15(a)(5),  
503.3(a), 503.13, 503.32, 503.33; HAR ch. 11-54)]

\$11-62-55.03 Requiring an individual permit.

[Notwithstanding the provisions of a general permit,  
the director may require any person covered by a  
general permit or seeking coverage under a general  
permit to apply for and obtain an individual permit.]  
Cases where an individual permit may be required  
include, but are not limited to the following:

[(1) The wastewater system is not in  
compliance with the conditions of the  
general permit;]

[(2) Circumstances have changed since  
the notice of intent was submitted so that  
the wastewater system is no longer covered  
by the general permit;]

[(3)](1) The wastewater system  
generates wastewater sludge that is land  
applied or placed into a surface disposal  
site; and

[(4)](2) Other relevant factors. [Eff  
and comp 12/09/04; am and comp  
] (Auth: HRS §§342D-4,  
342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-6, 342D-50; 40 CFR Part 122, 40 CFR  
§122.28(b)(3)(i))

[\$11-62-55.04 Relationship of general and  
individual permits.

(a) Any owner or operator  
covered by a general permit may request to be excluded  
from the general permit coverage by applying for an  
individual permit. The owner or operator shall submit  
an application with reasons supporting the request to  
the director.

(b) 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.

(c) An owner or operator of a wastewater systems excluded from a general permit solely because the wastewater system already has an individual permit may request that the individual permit be terminated, and that the wastewater system be covered by a general permit. Upon revocation of the individual permit, the general permit shall apply to the wastewater system.  
[Eff and comp 12/09/04 ] (Auth: HRS  
§§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-6, 342D-50; 40 CFR Part 122, 40 CFR  
§§122.28(b)(3)(iii), (iv), (v))]

[§11-62-55.05 Notice of intent (NOI)]. (a)  
Persons seeking coverage under a general permit shall submit a notice of intent.

(b) A notice of intent shall be submitted on forms provided by the director. A notice of intent shall comply with the notice of intent requirements of the respective general permit. A notice of intent shall be accompanied by all pertinent information which the director may require in order to establish wastewater effluent and wastewater sludge limitations, 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 all reports, plans, specifications, and other material submitted to the director be prepared by a licensed engineer.

(d) All materials submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-62-52.

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-62-52.

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the coverage notice shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of

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subsections (e) and (f).

(h) A filing fee in accordance with section 11-62-51 shall accompany each notice of intent submitted to the director.

(i) The notice of intent for an existing facility, operation, or land shall be submitted to the director no later than one hundred eighty days after the effective date of this rule.

(j) The notice of intent for a proposed facility, operation, or land shall be submitted at least ninety days before the facility, operation, or land needs coverage. The submittal date is the date the department receives the notice of intent. The ninety day period includes weekends and holidays. If the director notifies the owner or operator or its authorized representative that the notice of intent is incomplete, the ninety day period shall start over upon receipt of the revised notice of intent. The director may waive this ninety day requirement by notifying the owner or operator in writing of general permit coverage before the ninety days expire. [Eff and comp 12/09/04 ] (Auth: HRS §§342D-4, 342D-5, 342D-13) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR Parts 122, 501, 40 CFR §§122.22, 122.28(b)(2), 501.15(a)(4))]

[§11-62-55.06 Notice of intent review, coverage notice, additional conditions, terms, renewal, effective dates and automatic coverage.] (a) After receipt of a notice of intent, the director may notify the owner or operator in writing that the notice of intent is complete or incomplete, whether the facility, operation or land is covered under a general permit, or whether an individual permit is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator 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 coverage notice 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 coverage notice or add conditions to an issued coverage notice to ensure that the activity complies with the terms and conditions of the general permit and to ensure that wastewater effluent and wastewater sludge standards and other laws administered by the director will not be violated.

(c) A coverage notice may limit coverage under the general permit to a term of less than five years.

(d) The director may administratively extend a coverage notice upon receipt of a notice of intent for renewal of a coverage notice before the expiration of the general permit or the term of the coverage notice, whichever occurs first. The permittee who submits a notice of intent for renewal of the coverage notice shall be treated as an owner or operator applying for renewal under section 342D-6(h), HRS.

(e) Authorization under the general permit is effective upon the earlier of:

- (1) Notification by the director of general permit coverage under subsection (b), or
- (2) The ninetieth day after receipt at the wastewater branch of the department of a complete notice of intent for a new coverage notice and the applicable filing fee, unless before the ninetieth day the director notifies the owner or its authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a coverage notice.

(f) A person claiming coverage under the automatic provision of subsection (e)(2), instead of a coverage notice under an issued coverage notice 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;

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- (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 revoke automatic coverage and issue a notice of general permit coverage or terminate under sections 11-62-55.07.02 and 11-62-57.03.

(g) A person may waive automatic coverage under subsection (e)(2) by notifying the director in writing that the person will wait for a coverage notice before starting the activity.

(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 authorized representative. [Eff and comp 12/09/04 ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6(e), 342D-50; 40 CFR Parts 122, 501, 40 CFR §§122.28(b)(2), 501.15(c)(2), (3), (d)(2))]

[§11-62-55.07 Review of coverage issues and NOI and CN decisions. Any interested person may petition the director in accordance with section 91-8, HRS, for a declaratory ruling on whether an individual permit is required or a general permit covers a facility, operation, or land. 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 12/09/04] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§91-8, 342D-2, 342D-4, 342D-5, 342D-50)]

[§11-62-55.08 General permit compliance. Any person covered by a general permit shall comply with sections 11-62-55.01 through 11-62-55.08, all general permit standard conditions, all applicable special conditions, and all additional applicable coverage notice conditions. [Eff and comp 12/09/04] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b))]

§11-62-56 Standard permit conditions. Standard

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

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

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

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

(c) All applications under section 342D-7, HRS, for a variance from the requirements of subchapter 4 shall be treated as an application for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years and may be renewed upon application. [Eff and comp 12/09/04; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 40 CFR Part 501, §501.15(c)(2), (d)(2))

§11-62-57.03

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

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

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

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

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

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

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

[(e)](d) Individual permits [and general permit coverage] may be renewed for the reasons and under the procedures specified in section 342D-6(c), HRS, and renewal may be denied for noncompliance with the permit. [Eff and comp 12/09/04; am and comp

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] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 40 CFR Part 501, 40 CFR §501.15(b)(14))

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

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

## SUBCHAPTER 6

### WASTEWATER AND WASTEWATER SLUDGE PUMPERS AND HAULERS

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

§11-62-61 Registration requirements. In addition to meeting the registration requirements of sections 11-62-50(b)(4) and 11-62-53, each pumper shall submit with its registration:

- (1) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm attesting that: (A) The

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owner has read, understands, and shall follow all applicable rules regarding the collection, disposal, monitoring, recordkeeping, and reporting of pumping and hauling wastewater and wastewater sludge, including septage from individual wastewater systems and other wastewater systems; and

- (B) The owner has and will continue to provide employees of the pumping and hauling firm with adequate training in the proper pumping, collection, hauling, and disposal of wastewater and wastewater sludge;
- (2) Copies of authorization to dispose of wastewater and wastewater sludge into any state, county, federal, or private facility or site; and
- (3) A statement signed by the owner of the wastewater and wastewater sludge pumping and hauling firm describing the firm's prior and current involvement in the activity of cesspool pumping. [Eff and comp 12/09/04; comp ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50)

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

- (1) Number of wastewater systems, including individual wastewater systems and grease traps pumped;
- (2) Names of the owner of each wastewater system and grease trap pumped;
- (3) Location (street address or tax map key or both) of each wastewater system and grease trap pumped;
- (4) Date of pumping;
- (5) Type of wastewater or wastewater sludge

- pumped;
- (6) Volume of wastewater or wastewater sludge pumped;
  - (7) Results of any test analyses performed on the wastewater or wastewater sludge;
  - (8) Disposal site of the pumped wastewater or wastewater sludge; and
  - (9) Date of such disposal.
- [(b) Reports or copies of forms containing the tabulated information required in subsection (a) shall be submitted to the director no later than thirty days after the last day of the following months - March, June, September, and December.
- (1) Each report shall tabulate information for the preceding three months;
  - (2) Special reports covering shorter periods than three months shall be submitted on request by the director or a county, state, or federal agency responsible for wastewater or wastewater sludge management or control;
  - (3) The "wastewater pumping and hauling report form" as furnished by the director shall be the format used by the wastewater sludge pumping and hauling firms to report information to the director; and
  - (4) The owner or operator of wastewater sludge pumping and hauling firm shall sign and certify the reports in accordance with section 11-62-52.] [Eff and comp 12/09/04; am and comp ] (Auth: HRS §§342D-4, 342D-5) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50, 342D-55)

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## SUBCHAPTER 7

### VARIANCES, PENALTIES, AND SEVERABILITY

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

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

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

§11-62-72 Penalties and remedies. Any person who violates any provision of this chapter shall be subject to the penalties and remedies for violations provided for in chapters 321, 322-part I, 342D, and 342H, HRS. [Eff 12/10/88; §11-62-42; ren, am and

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comp 12/09/04; comp ] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 322-4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

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

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

## SUBCHAPTER 8

### FIELD CITATIONS

§11-62-81 Purpose. This subchapter authorizes field citations to effectively and quickly settle easily verifiable violations of chapters 322 and 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under HRS §342D-9[Eff and comp 12/09/04; comp

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] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, and 342D-31) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-31, 342D-50)

§11-62-82 Offer to settle; settlement amounts[penalties]. (a) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a filed citation by personal service or certified mail to:

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

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

- (1) [Any person who violates] \$200 for a first violation, and \$500 for a subsequent violation for:
  - violating HAR [section] sections 11-62-06(a), 11-62-06[(g)](f)(1-4) and (f)6-9, 11-62-08(b) or 11-62-31.1(f);
  - failing properly to operate or maintain an

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- aerobic treatment unit;
  - failing to provide an effective contract for an aerobic treatment unit;
  - failing to respond to department inspection reports;
  - having a cesspool without a concrete cover;
  - not having a secured manhole cover for the cesspool; or
  - a collapsed cesspool [shall be fined \$100 for a first violation, and \$250 for a subsequent violation];
- (2) [Any person who violates section 11-62-06(a) shall be fined \$100 for a first violation, and \$250 for a subsequent violation; and
- (3) Any person who violates section 11-62-08(b) or 11-62-31.1(f) shall be fined \$100 for a first violation, and \$250 for a subsequent violation.] \$500 for a first violation, and \$2,000 for a subsequent violation for violating HAR sections 11-62-06(f)(5) or (f)(10); and,
- (3) \$1,000 for a first violation, and \$2,500 for a subsequent violation for constructing an individual wastewater system without Department approval to construct. [Eff and comp 12/09/04; am and comp
- ] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50)

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

- (1) Signing the field citation;
- (2) Paying the full amount [assessed] indicated by the field citation. Payment shall be made payable to the "State of Hawaii" by check, cashier's check, [or] money order, or

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as otherwise specified by the director [made payable to the State of Hawaii];

- (3) Mailing or delivering the signed citation and full payment to the wastewater branch in Honolulu, or the district health office for the county where the violation occurred. The department must receive the signed filed citation and full payment within twenty days after the person receives the field citation; and

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

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

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

(c) If the field citation is not accepted in compliance with subsection (a), the director may seek for that cited violation any remedies available under this chapter, chapters 321, 322, 342D, HRS, or any other applicable law. For all other violations the director retains authority to seek any available remedies. [Eff and comp 12/09/04; am and comp

] (Auth: HRS §§321-11, 322-8(a), 342D-1, 342D-4, 342D-5, 342D-9, 342D-11, 342D-30, 342D-31, 342D-50) (Imp: HRS §§321-11, 322-1 to 4, 322-8, 322-9, 342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

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

Amendments to and compilation of chapter 62,  
title 11, Hawaii Administrative rules, on the Summary  
Page dated \_\_\_\_\_ were adopted on  
following public hearings held in Kona on [December  
10, 2002], 2014, in Hilo on [December 11, 2002] 2014,  
in Oahu on [December 13, 2002] 2014, in Kauai  
on [December 16, 2002] 2014, and in Maui on [December  
17, 2002] 2014, after public notice was given in the  
Honolulu Star-[Bulletin] Advertiser, Hawaii Tribune-  
Herald, The Maui News, The Garden Island News, and  
West Hawaii Today publications on [November 8, 2002]  
2014.

These amendments shall take effect ten days after  
filing with the Office of the Lieutenant Governor.

\_\_\_\_\_  
[CHIYOME L. FUKINO, M.D.]  
LINDA ROSEN, M.D., M.P.H.  
Director  
Department of Health

\_\_\_\_\_  
[LINDA LINGLE]  
NEIL AMBERCROMBIE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

\_\_\_\_\_  
Filed

APPROVED AS TO FORM:

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