

# June 28, 2017 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	Yes
Kyoko Kimura	HA	Maui	Parking Pass	Yes
Harris Nakamoto, Vice Chair	NA	Oahu	NA	Yes <del>No</del>
Director's ex officio - Mark Ritchie	NA	Oahu	NA	Yes
Robert Cundiff	NA	Oahu	Parking Pass	Yes
Nancy Atmospera-Walch	NA	Oahu	NA	No
Garth Yamanaka	HA	B.I.	Parking Pass	No

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance - in process	✓
Draft Agenda to Chair for approval	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF	✓
Copies of Rule Package for Lte. Gov's Office (2) and Scan for Posting on State Calendar	✓
Send Chair Minutes for Approval	✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office	✓✓
Send Agendas to those people who requested it - IMPORTANT	✓
Upload Meeting Documents onto Board's Website in Calendar etc.	✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees	✓
Mail parking permits to those Board members noted (Sent in Nov. 2016 six (6) permits)	X

STAFF				
Dawn Apuna				No Via iPad
Dori Palcovich				Yes

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - June 28, 2017

	Name	Title	Organization	Email	Phone
1	Jacob Herlitz	Rules Specialist	DOTAX	Jacob.C.HERLITZ@hawaii.gov	808 587-5334
2	Kristen Sakamoto	Rules Specialist	DOTAX	kristen.m.sakamoto@hawaii.gov	808 587 1553
3	Anna Hira	Asst Admin	Hawaii Liquor	ahira1@hawaii.gov	768-7302
4	Alec Wong	Chief	DOH CWB	alec.wong@doh.hawaii.gov	586-4309
5	REG BAKER	CPA	RB CPA	reg@regbaker.com	753-6026
6	LARRY ANDERSON	EA	L	harry@acctmgt.com	537-1212
7	Glenn Hae	Eng	DOH-CWB	glenn.hae@doh.hawaii.gov	586-4309
8	Darryl Lum	Eng	DOH-CWB	darryl.lum@doh.hawaii.gov	586-4309
9	Scott Takamoto	Eng	W	clayton.takamoto@doh.hawaii.gov	
10					
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12					
13					
14					
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Small Business Regulatory Review Board Meeting

Wednesday, June 28, 2017

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
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  
Email: [dbedt.sbrb@hawaii.gov](mailto:dbedt.sbrb@hawaii.gov)  
Website: [dbedt.hawaii.gov/sbrb](http://dbedt.hawaii.gov/sbrb)

Tel 808 586-2594

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

### Members

Anthony Borge  
Chairperson  
Oahu

Robert Cundiff  
Vice Chairperson  
Oahu

Garth Yamanaka  
2<sup>nd</sup> Vice Chairperson  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Kyoko Kimura  
Maui

Director, DBEDT  
Voting Ex Officio

## AGENDA

Wednesday, June 28, 2017 ★ 10:00 a.m.

No. 1 Capitol District Building  
250 South Hotel Street - Conference Room 436

### I. Call to Order

### II. Approval of May 17, 2017 Meeting Minutes

### III. Old Business

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing on Title 8, Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**, promulgated by Department of Liquor Control, County of Maui – **Discussion Leader – Kyoko Kimura**

### IV. New Business

- A. Discussion and Action on Proposed Amendments to Title 3, **Rules of the Liquor Commission, City and County of Honolulu, State of Hawaii**, as follows, promulgated by the City and County of Honolulu Liquor Commission – **Discussion Leader – Kyoko Kimura**
1. Chapter 81, **Liquor Commissions**, Section 17.51, **License Fees**
  2. Chapter 81, Section 17.58, **Trade Name; Change; Fee**
  3. Chapter 82, **Licenses and Permits, General Provisions**, Section 33.11, **Applications for Individual Permits to Receive Shipments of Liquor**
  4. Chapter 82, Section 33.6, **Direct Shipment of Wine by Wineries**
  5. Chapter 83, **Procedure for Obtaining License**, Section 54.1, **Filing Fees**
- B. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11, Chapter 55, **Water Pollution Control**, promulgated by Department of Health – **Discussion Leader – Harris Nakamoto**
- C. Discussion and Action on HAR Title 18, Chapter 231, **Administration of Taxes**, as follows, promulgated by Department of Taxation (DoTax) – **Discussion Leader - Harris Nakamoto**
1. Amendments to Section 3-14.17, **Revocation of Licenses because of Abandonment**
  2. Proposed New Section 3-14.26, **Registration of Representatives**
  3. Amendments to Section 9.9-03, **Taxpayers Subject to EFT Program**

D. Discussion and Action on HAR Title 18, Chapter 237, **General Excise Tax Law**, as follows, promulgated by DoTax – **Discussion Leader – Harris Nakamoto**

1. Amendments to Section 8.6, **County Surcharge**
2. Proposed New Section 29.53, **Exported Services**

V. **Administrative Matters**

- A. Discussion and Action on this Board's Nominations of Proposed Board Members for Submission to the Governor, including Lawrence Anderson, Reg Baker, Pamela Tumpap, David S. Chang
- B. Discussion with an eGovernment Services & Customer Services Representative regarding the Development and Implementation of a New Website for the Board
- C. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes

VI. **Next Meeting:** Scheduled for Wednesday, July 19, 2017, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VII. **Adjournment**

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



## II. Approval of May 17, 2017 Meeting Minutes

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING - Draft

May 17, 2017

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 p.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch
- Carl Nagasako

**ABSENT MEMBERS:**

- Kyoko Kimura

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Dawn Apuna

II. **APPROVAL OF APRIL 19, 2017 MINUTES**

Mr. Cundiff made a motion to accept the April 19, 2017 minutes, as presented. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Request to Oppose Proposed Increase in Permit Fees for Commercial Ocean Recreation Activities (CORA), by the County of Maui Budget & Finance Department

Chair Borge explained that CORA representatives have once again come to this Board for support, (as it did two years ago), to oppose the County of Maui Budget & Finance Department’s proposed increase (400%+) of CORA permit fees. In order to be in alignment with the Board’s mandates, Chair Borge asked that Deputy Attorney General Apuna explain the Board’s statutory responsibilities and authority in providing comments to CORA’s request.

Deputy Attorney General Apuna stated that Section 201M-5, HRS, says “for requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.” Her concern and understanding of the statute is that the intent of this Board’s mandate is to review administrative rules, created under state statutes

and county ordinances. However, there should not be a problem with the Board providing CORA with its recommendation or opinion, and noted that the sentence she read in the statute should either be clarified or deleted during a legislative session.

Mr. Cundiff expressed that although CORA is dealing with a proposed county ordinance, and this Board helps small businesses to grow and succeed, the increase in the fees would still have a significant impact on small business. Further, while this Board may or may not necessarily have authority to comment on an ordinance, the scope of this Board's advisory ability would be based on an advisory opinion and comments with the understanding it has no authority or ability to change the proposal.

Chair Borge concurred with Mr. Cundiff's sentiments and did not see where this Board would be over-reaching its boundaries; but instead noted that the Board would be providing input for the best interests of small business. He added that based on the proposed ordinance, CORA would not only incur additional fees from the County of Maui, but also from the State; i.e., Department of Land and Natural Resources. Overall, it was agreed that this Board's interest is to assist Hawaii small businesses.

It was mentioned that letters were recently sent out on behalf of this Board to all the State legislators who are from Maui, requesting any assistance they may be able to offer. To date, one of the legislators, Representative Angus McElvey, responded that he will pass on the concerns of CORA to the appropriate administration.

Chair Borge made a motion to encourage the Mayor of Maui, Maui's City Council, and the Director of Parks & Recreation to reach out to CORA, and any other stakeholders, to provide input on the impact of the proposed fees and to work in collaboration that is both beneficial and acceptable to the County and respective small businesses. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. LEGISLATIVE MATTERS**

##### **A. Update on House Bill 1382 HD1, SD1, CD1, Relating to Procurement**

Initiated by the State Procurement Office, this measure creates a small business office. The legislature approved an appropriation of \$250,000 during the session; it is currently with the Governor for approval.

##### **B. Update on House Bill 587 HD1, SD1, Relating to Small Business**

This measure appropriates \$28,000 to DBEDT for a permanent administrative assistant position for this Board, effective January 1, 2018. Staff indicated that a "position description" is being drafted and will be sent to DBEDT's personnel office for review.

##### **C. Update on Senate Bill 908, SD1, HD2, CD1, Relating to the Small Business Regulatory Flexibility Act**

This measure clarifies the Board's statute and increases the number of members from nine to eleven with the two new members nominated by this Board. It is now sitting with the



Governor for signature. When the bill takes effect on July 1, 2017, six members will be required for a meeting quorum.

## V. ADMINISTRATIVE MATTERS

### A. Action and Voting on Board Chair, pursuant to Section 201M-5 (c), HRS, and Election of Vice Chair and Second Vice Chair

Ms. Atmospera-Walch made a motion to nominate Mr. Anthony Borge as this Board's Chair; Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

Mr. Nakamoto made a motion to nominate Mr. Robert Cundiff as this Board's Vice Chair; Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

Mr. Nakamoto made a motion to nominate Mr. Garth Yamanaka as this Board's Second Vice Chair; Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

Mr. Larry Anderson, a visitor at the Board meeting, showed an interest in becoming a member of this Board. He was an owner of an accounting firm for thirty years, prior to selling it five years ago, but is still working in the company as an employee. He would bring to this Board knowledge with regards to rules from the department of taxation, and is also aware, through his company, of small businesses' regulatory issues and concerns.

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

#### 1. "Business in Hawaii" Broadcast on June 8, 2017

The members were reminded that the taping of Reg Baker's thinktank.hawaii live-stream show, highlighting this Board, will be taped on Thursday, June 8<sup>th</sup>. Anyone interested in being part of the taping will need to let staff know.

Mr. Baker will meet those members on June 8<sup>th</sup> at 12:30 for lunch at the Plaza Club with broadcasting to begin at 2:00, to be finished by 2:30 p.m. Two members would be an appropriate amount of participants; three would be fine, as well. Last year, Chair Borge, Ms. Kimura, and Mr. Nakamoto participated in the video.

#### 2. Small Business Conference at the Maui Arts and Cultural Center

It was noted that this was the first time the County of Maui put on a small business conference; Ms. Kimura, Mr. Ritchie, and Ms. Palcovich attended. Ms. Pamela Tumpap, Chair of the Maui Chamber of Commerce, who was also in attendance at the conference, is very interested in becoming a member of this Board.

Overall, the conference was educational and a great success. It is the intent of this Board to participate in more of these types of events to get the word out as to what this Board does for small business.

3. May 18<sup>th</sup> Small Business Conference & Expo

Staff will be attending and distributing Board brochures at this small business expo, sponsored by PBN. Next year, Chair Borge would like to be an “exhibitor” at this event. He would also like to have a “tabletop” and/or “banner” created for future events and exhibitions; Ms. Atmospera-Walch offered to assist staff with the design.

Mr. Nagasako indicated that if this Board is interested in purchasing any items before the end of the upcoming fiscal year to give him a list of those items prior to June 30<sup>th</sup>.

Ms. Atmospera-Walch suggested that this Board speak at upcoming events for the Filipino, Korean, and Chinese Chambers of Commerce.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, June 28, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.
- VII. ADJOURNMENT** – Mr. Yamanaka made a motion to adjourn the meeting and Mr. Cundiff seconded the motion; the meeting adjourned at 10:56 a.m.

### **III. New Business**

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to Title 8, Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**, promulgated by the Department of Liquor Control, County of Maui



ALAN M. ARAKAWA  
MAYOR



GLENN MUKAI  
DIRECTOR

MARK T. HONDA  
DEPUTY DIRECTOR

DEPARTMENT OF LIQUOR CONTROL

C O U N T Y O F M A U I

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 243-7753 • FAX (808) 243-7558

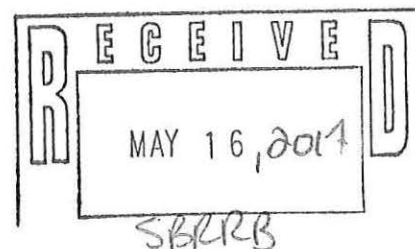
MEMORANDUM

TO: Anthony Borge, Chairperson  
Small Business Regulatory Review Board

FROM: Glenn Mukai, Director  
Department of Liquor Control, County Of Maui

DATE: May 15, 2017

SUBJECT: Proposed Amendments to Title 08, Subtitle 01, Liquor Commission, Chapter 101, "Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui"



Ms. Mahina Martin, resident of Maui, petitioned the Liquor Commission, County of Maui, to amend the following sections of Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, pursuant to Section 91-6, Hawaii Revised Statutes:

1. Section 08-101-22(f)(2)(D) - to restrict the issuance of a Class 5, Category D liquor license to twelve (12).
2. Section 08-101-25(a) - to decrease the hours during which licensed premises may be open for the transaction of business for various classes of liquor license.
3. Section 08-101-28(d) - delete the delivery of liquor to residences and businesses by Class 4, Retail dealer licensee.

The Liquor Commission, at its meeting on May 10, 2017, accepted Ms. Martin's petition and has initiated proceedings for public hearing of the amendments in accordance with Section 91-3, HRS.

The Department of Liquor Control does not have access to licensees' data to determine how the proposed amendments may adversely affect Small Business, should the amendments be adopted.

1. The possible effect of restricting the amount of Class 5, Category D liquor licenses to twelve (12).

Review has shown that when a moratorium is imposed limiting the amount of licenses that are available, it adds value to the license, may create a monopoly of the class and kind of license, licensee may "park" and not exercise their license with the intention to sell to the highest bidder, and is anti-small business and anti-competition.

Anthony Borge, Chairperson  
Small Business Regulatory Review Board  
May 15, 2017  
Page 2

The Liquor Commissions in the City and County of Honolulu, Kauai, and Island of Hawaii do not have any restriction on the amount of similar licenses granted or issued.

2. The effect of decreasing the hours during which licensed premises may be open for the transaction of business may require Small Businesses to adjust their operation, scheduling or reducing their workforce, and service to their patrons or clients. The Department does not have access to licensees' data to determine the economic or operational effect on their business.

The proposed amendment may deny a larger portion of the population the same benefits and options as those primarily working during the day.

The Liquor Commissions of City and County of Honolulu, Kauai, and Island of Hawaii have similar opening and closing hours for the majority of the classes of license as our current rule except for hotel, manufacturers, and wholesalers.

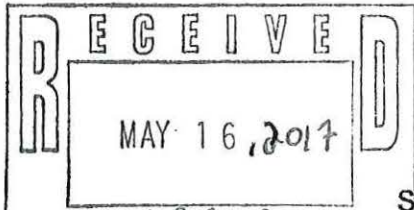
3. The Department does not have any data of the effect should the amendment delete delivery of liquor to residences and businesses. The current rule was adopted to primarily assist disabled or physically challenged persons and those who are home bound, to have the option to purchase liquor and have the retail licensee deliver liquor along with other items they normally purchase. It also allows retailers to fill the demand of delivery of special gift baskets that may contain liquor, normally wine, to homes and businesses during special occasions.

The Liquor Commissions of Kauai and the City and County of Honolulu have similar rules in effect that allow home and business delivery.

The Department does not anticipate that the proposed amendments will increase cost, nor expect to impose or collect any additional fees, should the amendments be adopted.

Should you have any questions or need clarification, please do not hesitate to contact me at (808) 243-7772.





PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE

SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Liquor Control, County of Maui

Administrative Rule Title and Chapter: Title 08, Chapter 101

Chapter Name: Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui

Contact Person/Title: Glenn Mukai, Director

Phone Number: (808) 243-7772

E-mail Address: liquor@mauicounty.gov Date: May 15, 2017

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

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes  No  (If Yes, please provide webpage address and when and where rules may be viewed in person©)

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New  Repeal  Amendment  Compilation

II. Will the proposed rule(s) affect small business? Yes  No  (If No, no need to submit this form.)

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

\* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes  No  (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes  No  (If Yes, no need to submit this form.)

\* \* \*



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

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

See attached memorandum.

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

Unknown.

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

- a. Amount of the current fee or fine and the last time it was increased.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

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

None.

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

Refer to attached memorandum.

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

- a. Description of the public purposes to be served by the proposed rule.

N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

N/A

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

N/A

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

N/A

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

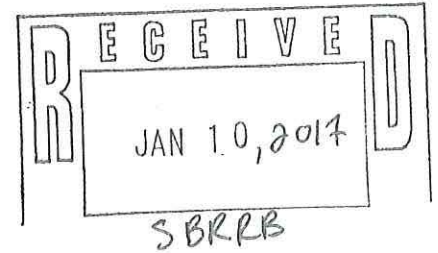
Email: [dbedt.sbrrb@hawaii.gov](mailto:dbedt.sbrrb@hawaii.gov)

This Statement may be found on the  
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>



Amendment to Title 08, Chapter 101,  
Rules Governing the Manufacture and Sale  
of Intoxicating Liquor of the County of Maui



1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the definition of "condominium hotel" to read as follows:

"Condominium hotel" means an establishment consisting of one or more buildings that includes:

(a) Guest rooms that are units, as defined in section 514B-3, HRS, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of a unit in the condominium hotel operation; and

(b) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests[; and].

[(c) A suitable and adequate kitchen and dining room, where meals are regularly prepared and served to guests and other customers.]

A condominium hotel does not include a hotel that may be part of a condominium property regime established under chapter 514B, HRS, that does not have guest rooms that are separate units, as defined in section 514B-3, HRS. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the definition of "hotel" to read as follows:

"Hotel" means a premises consisting of one or more buildings which contain at least forty separate rooms, units, or apartments, providing sleeping accommodations for adequate pay to transient or permanent guests[, and a suitable and adequate kitchen and dining room, where meals are regularly prepared and served to hotel guests and other customers]. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the definition of "open for business" to read as follows:



““Open for business” means whenever any type of service or consumption is performed within the licensed premises; or when the licensee solicits and receives an order for; have or keep or offer or expose for sale; deliver for value or in any other way, including purely gratuitously; peddle; keep with intent to sell; or traffic in any liquor or merchandise]; or when any person other than an on-duty employee of the licensee is within the premises]. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

4. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the definition of “premises” or “licensed premises” to read as follows:

““Premises” or “licensed premises” means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of a class 12 hotel license, “premises” includes the hotel premises; provided further that in the case of a class 15 condominium hotel license, “premises” includes [units,] apartments, as defined in section 514B-3, HRS, that are used to provide transient lodging for periods of less than thirty days under a written contract with the owner or owners of each unit in, and common elements for access purposes as established by the declaration of condominium property regime of the condominium hotel; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, “premises” means the establishment. As used in this definition, “establishment” means a single physical location where the selling of liquor takes place. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-10, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) The commission is established in accordance with the provisions of chapter 281, HRS, and chapter 13 of the [Charter of the County.] revised charter of the County of Maui (1983), as amended. The commission shall have the sole jurisdiction, power, authority, and discretion, subject to the rules of the commission and chapter 281, HRS:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or [sells] purchases any liquor without being authorized pursuant to the rules of the commission; provided the liquor control adjudication board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the



liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;

- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education, provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, licensees, and their employees and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten percent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;
- (4) From time to time to make, amend, and repeal such rules, not inconsistent with chapter 281, HRS, as in the judgment of the commission seem appropriate for carrying out the provisions of chapter 281, HRS, and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission, which rules, when adopted as provided in chapter 91, HRS, shall have the force and effect of law;
- (5) Subject to chapters 76 and 77, HRS, to appoint and remove a director, who may also be appointed an investigator, and who shall be responsible for the operations and activities of the staff. The director may hire and remove hearings officers, investigators, and clerical, or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator within the scope of the investigator's duties shall have the powers of a police officer]. A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

- (a) Notifies the commission in writing of the employee's intent to support, advocate, or aid in the election or defeat of a candidate for public office; and

- (b) If a candidate for public office, takes a leave of absence in accordance with section 78-23, HRS, for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office;

Notwithstanding chapter 11, HRS, or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

- (a) Punishable by summary dismissal of the employee; and

- (b) Subject to fines in accordance with section 11-410, HRS];
- (6) To limit the number of licenses of any class or kind within the County or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
  - (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
  - (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the County as to each class respectively;
  - (9) To prescribe all forms to be used for the purposes of the rules of the commission not otherwise provided for in the rules of the commission, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
  - (10) To investigate violations of the rules of the commission, State liquor laws, State liquor tax laws, and, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, and to report such violations to the prosecuting officer for prosecution and, where appropriate, the [director] department of taxation to hear and determine complaints against any licensee;
  - (11) To prescribe by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of liquor licenses;
  - (12) To prescribe by rule, the term of any license or solicitor's and representative's permit authorized by the rules of the commission, the annual or prorated amount and the manner of payment of fees for such licenses and permits, and the amount of filing fees; and
  - (13) To prescribe by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor. [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"



6. Section 08-101-19, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-19 [(Reserved)] Political activities of commission employees. (a) A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

(1) Notifies the commission in writing of the employee's intent to support, advocate, or aid in the election or defeat of a candidate for public office; and

(2) If a candidate for public office, takes a leave of absence in accordance with section 78-23, HRS, for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.

(b) Notwithstanding chapter 11, HRS, or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

(1) Punishable by summary dismissal of the employee; and

(2) Subject to fines in accordance with section 11-410, HRS. [Eff]

(Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

7. Section 08-101-21, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-21 Licensee purchases from class 1 manufacturers, [and] class 3 wholesalers, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee only.

(a) It shall be unlawful for any licensee, except a class 1, 3, or 10 licensee, to purchase, acquire, possess, serve, or sell any liquor from any person other than a class 1[,] manufacturers' licensee, or a class 3[,] wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer, pursuant to this rule, except as otherwise provided in this chapter.

(b) It shall be unlawful for any licensee to obtain any liquor from a class 1[,] manufacturers' licensee, or a class 3[,] wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer except for use under the terms of their license. [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

8. Section 08-101-22, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:



“§08-101-22 Licenses, classes. (a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturer license.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the [state] State in any quantity to any person for private use and consumption.

(2) Under this license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer;

(B) Wine;

(C) Alcohol; and

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this section for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor by applying and obtaining approval for a catering permit while performing food catering functions; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption, provided that the licensee has the appropriate kind of license pursuant to paragraph (4); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon.

(2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar; or

- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
  - (i) Premises in which recorded background music is provided; and
  - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.
- (5) Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding and operating a class 5 dispenser license who meets the requirements of a class 2 license.
- (6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable State department of health and County of Maui department of fire control approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least thirty percent of the establishment's gross revenue must be derived from the sale of foods.
- (d) Class 3. Wholesale dealer license.
  - (1) A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license provided that a class 3 licensee may sell samples of liquor back to the manufacturer.
  - (2) Under a class 3 license no liquor shall be consumed on the premises except as authorized by the commission.
  - (3) Of this class, there shall be the following kinds:
    - (A) General (includes all liquor except alcohol);
    - (B) Beer and wine; and
    - (C) Alcohol.



- (4) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the [state,] State, or to aviation companies who operate an aerial transportation enterprise subject to chapter 269, HRS, and engaged in flight passenger services between any two or more airports in the [state] State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the [state.] State.
- (e) Class 4. Retail dealer license.
- (1) A license to sell liquor at retail or to class 10 licensees, shall authorize the licensee to sell the liquor therein specified in their original packages.
- (2) Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission.
- (3) Of this class, there shall be the following kinds:
- (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Alcohol.
- (f) Class 5. Dispenser license.
- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises.
- (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
- (A) A standard bar;
  - (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission;
  - (C) Premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:
    - (i) Premises in which recorded background music is provided;
    - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission; or



- (D) Premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission]. The restrictions of this category shall be:
  - (i) Employees, entertainers, or any other persons therein shall be twenty-one years of age or older.
  - (ii) There shall be no more than twelve category D, class 5, dispenser licenses in the County.]; provided that all employees, entertainers, or other persons or patrons therein shall be twenty-one year of age or older.
- (3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.
- (5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.
- (g) Class 6. Club license.
  - (1) A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club, and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member, for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public in accordance with commission rules.
  - (2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises. The categories of this class shall be as follows:
    - (A) A standard bar; or
    - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
      - (i) Premises in which recorded music is provided; or

- (ii) Premises in which live entertainment or recorded music is provided.
- (3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).
- (4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.
- (5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.
- (h) Class 8. Transient vessel license.
  - (1) A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the [state] State and within any port of the [state.] State.
  - (2) Sales shall be made only for consumption by passengers and their guests on board the vessel.
  - (3) The license shall be issuable in each county where the sales are to be made.
  - (4) The application for the license may be made by any agent representing the owner.
- (i) Class 9. Tour or cruise vessel license.
  - (1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the [state;] State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the [state,] State, unless otherwise approved by the commission.
  - (2) The license shall be issuable in the county where the home port of the vessel is situated.
  - (3) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.
  - (4) A license under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
    - (A) A standard bar; or
    - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (j) Class 10. Special license.



- (1) A special license may be granted by the director for the sale of liquor for a period not to exceed three consecutive days at the same location for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquor in its original package for off-premises consumption.
- (2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's section 501(c)(3), 501(c)(4), 501(c)(10), or 501(c)(19) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the [state] State campaign spending commission, to their application.
- (3) Of this class, there shall be the following kinds:
  - (A) General (includes all liquor except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.
- (4) Liquor sold under a class 10 license shall be consumed on the premises.
- (k) Class 11. Cabaret licenses.
  - (1) A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises.
  - (2) This license shall be issued only for premises where:
    - (A) Food is served;
    - (B) Facilities for dancing by the patrons are provided, including a dance floor of not more than one hundred square feet; and
    - (C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.
  - (3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:
    - (A) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
    - (B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.
  - (4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.
  - (5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain



unclothed shall not be transferable after June 30, 2000, except upon approval by the commission, and pursuant to rules adopted by the commission.

- (6) [Notwithstanding any rule of the commission to the contrary, cabarets in] A cabaret license in a resort areas may be open for the transaction of business until 4:00 a.m. throughout the entire week.
  - (7) Any cabaret premises not located within a county zoned resort district shall operate only during the hours prescribed for dispenser premises.
  - (8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.
- (l) Class 12. Hotel license.
  - (1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.
    - (A) A hotel licensee may be granted a catering permit while performing food catering functions.
    - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.
    - (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
  - (2) Procedures such as room service, self-service [no host,] no-host minibars, or similar service in guest rooms, and service at parties in areas that are the property of, and contiguous to the hotel are permitted subject to liquor laws, rules of the commission, and the following conditions:
    - (A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.

- (B) Room service:
- (i) Liquor may be sold by the individual drink, or in its original manufacturer sealed container for consumption within a registered guest's room;
  - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room; and
  - (iii) The sale and service of liquor shall be made by an employee approved by the director.
- (3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:
- (A) Minibars or honor bars:
- (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests;
  - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor;
  - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters; and
  - (iv) At no time nor under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
- (B) At no time nor under any circumstances shall a licensee permit liquor to be furnished:
- (i) To any person under twenty-one years of age;
  - (ii) To any person, who at the time, is under the influence of liquor; or
  - (iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
- (C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the



adult guest. Minibar and room service sales shall be restricted to registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.

- (5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license(s) of a licensee holding and operating a class 12 hotel license, who meets the requirements of a class 2 license.

(m) Class 13. Caterer license.

- (1) A general license may be granted to any class 2[,] restaurant licensee, or any applicant, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing thirty percent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions. At least thirty percent of the gross revenues of the catered event shall be food sales.
- (2) No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13[,] caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.
- (3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize the licensee to sell and serve alcoholic beverages for consumption on the premises.
- (4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized the use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.
- (5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive



- control of the property for the sale, service, and consumption of liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.
- (6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12[,] hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three consecutive days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.
- (7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5, or a similar class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.
- (8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.
- (n) Class 14. Brewpub license.
- (1) A brewpub licensee:
- (A) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
  - (B) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3[,] wholesale dealer licensees pursuant to conditions imposed by the [county] County by ordinance or rule;
  - (C) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises;
  - (D) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premise consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed;
  - (E) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and

are securely sealed on the licensee's premises to consumers for off-premises consumption;

- (F) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages;
  - (G) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by the county departments of planning, public works, and environmental management and regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees; and
  - (H) May conduct the activities under paragraphs (A) through (G) at one location other than the licensee's premises; provided that:
    - (i) The manufacturing takes place in Hawaii; and
    - (ii) The other location is properly licensed under the same ownership.
- (2) The categories of establishments shall be as follows:
- (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
    - (i) Premises in which recorded music is provided; or
    - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (o) Class 15. Condominium hotel license.
- (1) A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service by applying and obtaining approval for a catering permit while performing food catering functions.



- (A) A condominium hotel licensee may be granted a catering permit while performing food catering functions.
  - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.
  - (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
- (2) Room service, self-service no host minibars, or similar service in apartments, and service at parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval and subject to the following conditions:
- (A) Room ~~[Service:]~~ service:
    - (i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's apartment.
    - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the apartment's room service menu at all times within the interior of each guest apartment.
    - (iii) The sale and service of liquor shall be made by an employee approved by the director.
  - (B) Minibars or honor bars:
    - (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests[;].
    - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor.
    - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters[;].
    - (iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device



to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.

- (3) At no time or under any circumstances shall a licensee permit liquor to be furnished:
  - (A) To any person under twenty-one years of age;
  - (B) To any person, who at the time, is under the influence of liquor; or
  - (C) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
- (4) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (5) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in condominium hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the condominium hotel of legal drinking age and consumption of liquor shall be restricted to the condominium hotel guest room.
- (6) Unless authorized by law, a condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.
- (7) Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.
- (p) Class 16. Winery license.  
A winery licensee:
  - (1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year;
  - (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
  - (4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed;
  - (5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption;

- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and
- (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees, pursuant to conditions imposed by the county departments of planning, public works, and environmental management and rules governing class 3 wholesale dealer licensees.
- (q) Class 18. Small craft producer pub license. A small craft producer pub licensee:
  - (1) Shall manufacture not more than:
    - (A) Sixty thousand barrels of malt beverages;
    - (B) Twenty thousand barrels of wine; or
    - (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty one gallons or wine gallons of liquor;
  - (2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the [county] County by ordinance or rule;
  - (4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
    - (A) A standard bar; or
    - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
  - (5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed;
  - (6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
    - (A) One gallon per container for malt beverages and wine; and



- (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol;
- (8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees; and
- (9) May conduct the activities under paragraphs (1) through (8) at one location other than the licensee's premises; provided that:
  - (A) The manufacturing takes place in Hawaii; and
  - (B) The other location is properly licensed under the same ownership.

(r) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than \$1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(s) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1[,] manufacturers' licensee, or a class 3[,] wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

(t) A patron may remove from a class 2 restaurant licensee, class 5 dispenser licensee, class 6 club licensee, class 12 hotel licensee, class 14 brewpub licensee, class 15 condominium hotel licensee, and class 18 small craft producer pub licensee, licensed premises, who has on file with the department a current yearly approved financial report that shows at least thirty percent of



establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its State of Hawaii department of health and County of Maui, department of fire and public safety approved kitchen facilities, any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee, for consumption with a meal; provided that it is recorked or resealed in its original container as provided in section 281-31(u), HRS. A licensee wishing to exercise this privilege shall inform the patron of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 of the Hawaii Revised Statutes. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

9. Section 08-101-25, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

- (1) Dispensers, restaurants, clubs, transient vessels, tour or cruise vessels, and specials: any hour of the day from ~~[8:00]~~ 6:00 a.m. to 2:00 a.m., the following day.
- (2) Cabarets: any hour of the day from ~~[8:00]~~ 6:00 a.m. to 4:00 a.m., the following day.
- (3) Hotels and condominium hotels: any hour of the day [from 6:00 a.m. to 4:00 a.m., the following day].
- (4) Retailers: any hour of the day [from 6:00 a.m. to 11:00 p.m].
- (5) Manufacturers and wholesalers: any hour of the day [from 6:00 a.m. to 9:00 p.m].
- (6) ~~[Brewpub:]~~ Brewpubs: any hour of the day from ~~[8:00]~~ 6:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
- (7) Small craft producer ~~[pub:]~~ pubs: any hour of the day from ~~[8:00]~~ 6:00 a.m. to 2:00 a.m., the following day for [of-premise] on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for [off-premise] off-premises retail liquor sales.
- (8) Caterers: any hour of the day from 6:00 a.m. to 2:00 a.m., the following day.
- (9) Wineries: any hour of the day for manufacture and wholesale, and from 6:00 a.m. to 11:00 p.m. for off-premises retail sales and on premises wine tasting activities. [Eff 7/1/00; am and comp 6/18/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

10. Section 08-101-28, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:



“§08-101-28 Special conditions for class 4[,] retail dealer's licenses. (a) Every retail licensee shall display and expose for view, within the liquor sales area of the licensed premises, a price for each size of each brand of liquor sold.

(b) If a retail dealer's licensed premises are open to the public during hours when the sale of liquor is not permitted, the licensee shall post conspicuous signs in the area or areas where liquor sales are usually made, giving notice to customers that the sale of liquor is prohibited during that time.

(c) Customers making purchases at retail premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle or the licensee delivers liquor to the vehicle, or both, is prohibited.

(d) This section shall not be construed to prohibit assistance to any person who is physically unable to walk, lift, or carry purchases of liquor due to a disability, or allowing the delivery of liquor product to a physically challenged person's vehicle or primary residence. Liquor orders may be made on the licensee's website or by telephone call to the licensed premises. Deliveries of liquor products to private residences or businesses with a bona fide order from the purchaser by a class 4[,] retail dealers' licensee is permitted, provided:

- (1) An employee of the licensee, who is approved by the director pursuant to section 08-101-70 of the rules of the commission, makes the delivery of the liquor product directly to the purchaser;
- (2) That the employee ensures that the person receiving the delivery is twenty-one years of age or older, licensee produces a receipt of delivery signed by a person verified to be of legal age and the person receiving the product is not under the influence of liquor or drug(s) at the point of delivery; and
- (3) The licensee or employee is not in violation of any rules or State laws.

(e) It shall be unlawful for any holder of a retail dealers' license, or any person acting as an agent or representative for any holder of a retail dealers' license, directly or indirectly, or through any subsidiary or affiliate to solicit or obtain any financial assistance, or anything of value from any industry member.

(f) Retail licensee shall be permitted to offer discounts on liquor in connection with the sale of the same or other liquor provided the discount price shall be posted and liquor shall not be sold below cost of liquor. Cost of liquor shall mean the licensee's wholesale purchase price including any tax, shipping, and handling cost. [Eff 7/1/00; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

11. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor's permit, or change of partner(s) in a partnership, limited



liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five percent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original forms or documents which may be prescribed from time to time by the commission, which shall be considered as part of the application.

- (1) Department of health clearance;
- (2) State and federal tax clearances or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments;
- (3) Floor plans (not construction plans) drawn to scale;
- (4) Tax map (drawn to scale) and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;
- (5) Personal history statement;
- (6) Verification of any corporation, partnership, association, limited liability company, limited liability partnership, or any other entity;
- (7) Affidavit of mailing of notices of public hearing and certificate of mailing as verified by the United States Postal Service;
- (8) Transferor's gross sales report;
- (9) Transferor's endorsement of transfer;
- (10) Executed copy of agreement of sale, lease, rental agreement, which states that the premises and its operation must be under the licensee's exclusive control at all times;
- (11) Additional fee assessment agreement;
- (12) Coast guard documentation;
- (13) Zoning clearance;
- (14) Building permit;
- (15) Criminal history record check;
- (16) Stockholder's list;
- (17) Certificate of occupancy, miscellaneous inspection report, and clearance from the department of fire control (miscellaneous inspection report and clearance from the department of fire control shall indicate that all governmental regulations and administrative rules have been complied with);
- (18) Guaranty or bond; and
- (19) Copy of a federal or [state] State governmental picture identification and social security card for each person. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"



12. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (e) and (f) to read as follows:

“(e) The director may reject, refuse to accept, or return any application or request that is incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or section of chapter 281, HRS, or revoke any action taken after discovering that any information contained within the application, any document submitted or affidavit is false.

(f) Licensee shall apply for and secure the commission's approval, in writing, prior to a change in ownership of any number of shares of the stock which results in a person thereof becoming the owner of twenty-five percent or more of the outstanding voting capital stock. In addition, the partnership, limited liability partnership, limited liability company, corporate licensee, or any other person, or any person in a subdivision, or management agreement thereof, shall, on the proper application forms and the filing of all required documents, within thirty days from the date of admission, election, or withdrawal of any partner in a partnership or limited liability partnership, officer, or director of a corporation, or member, manager, organizer, or person of a limited liability company, or any other person, or any person within a subdivision, or management agreement thereof, notify the commission in writing of the change. If the commission finds any partner in the partnership, limited liability partnership, member, manager, organizer, or any other person of a limited liability company, or officer, director, or any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, or any subdivision, or management agreement thereof, an unfit or improper person to hold a license in their own right pursuant to section 281-45, HRS, or the rules of the commission, it may revoke the license or suspend the license until a new transfer of such capital stock or ownership is effected to a fit or proper person pursuant to section 281-45, HRS, or the rules of the commission, or until the unfit or improper partner, officer, member, manager, organizer, director, or any person, or any person in a subdivision, or management agreement thereof, is removed or replaced by a fit and proper person pursuant to section 281-45, HRS, or the rules of the commission.

Application for the admission, election, or withdrawal of any officer, director, or a person owning or controlling twenty-five percent or more of the corporate stock, member of a limited liability company, or partner in a partnership or limited liability partnership, or any person, or any person of a subdivision, or management agreement thereof, shall include, but not limited to, the application form, corporate minutes, secretary's certification of the minutes, or its like submitted by the licensee which shall include the listing of all the officers, directors, and any person owning or controlling twenty-five percent or more of the corporate stock, members in a limited liability company, or partners of a partnership or limited liability partnership, or any person, or any subdivision or any person of a subdivision, or management agreement thereof, and all other



requirements. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

13. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization’s officers, directors, and any person owning or controlling twenty-five percent or more of the outstanding stock are fit and proper persons to have a license;
- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually;
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a [signed] tax clearance certificate from the [director] department of taxation, and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the State or federal governments any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five percent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five percent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the



date of the application for any like or other license under the rules of the commission;

- (5) To any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;
- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or
- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

14. Section 08-101-32, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) No license shall be transferred unless the transferor's licensed premises was operated and open for business throughout the year prior and up



to the filing of the application for transfer, except for good cause shown to the commission. [Eff 7/1/00; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

15. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State and [Federal] federal tax clearances, and other required documents. State and federal tax clearances shall be dated within sixty days of the acceptance of the application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

16. Section 08-101-41, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-41 Criminal history record check. (a) The commission shall request a background check on an applicant for a liquor license. For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

- (1) A search for the individual's fingerprints in the national criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted by the Hawaii criminal justice data center, Maui police department, or any governmental agency; provided that the Hawaii criminal justice data center, Maui police department, or any other governmental agency may charge a reasonable fee for criminal history record checks performed.  
The background check, at a minimum, shall require the applicant to disclose whether:
  - (A) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and
  - (B) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the commission by means of information obtained through the Hawaii criminal justice data center, Maui police department, or any other governmental agency. The applicant shall provide the Hawaii criminal justice data center, Maui police department, or any other governmental agency with personal identifying information which shall include, but not limited to, at a minimum, the applicant's name, social security number, date of birth, sex, and the applicant's fingerprints. This information shall be



secured only for the purpose of conducting the criminal history record check authorized by this section.

(b) The applicant shall submit to the commission:

- (1) A statement signed under penalty of perjury whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (2) Written consent to the commission to request and obtain criminal history record information for verification;
- (3) Permission to be fingerprinted and completed fingerprint card; and
- (4) Any reasonable fee assessed for criminal history record checks performed by the Hawaii criminal justice data center, Maui police department, or any governmental agency, which shall be submitted at the time of the submittal of application and made payable to the governmental agency performing the criminal history record check.

(c) The commission shall obtain criminal history record information through the Hawaii criminal justice data center, Maui police department, or any other governmental agency on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable State or [Federal] federal laws or rules currently or hereafter in effect.

(d) Any applicant, including but not limited to, all persons, partners in the partnership or limited liability partnership, officers, directors, or persons owning or controlling twenty-five percent or more of the applicant's outstanding corporate stock, members, managers, organizers, or any persons of a limited liability company, or any person, or entity or any person within an entity or its subdivision, that is in good standing and can legally do business in the State is required to submit all completed criminal history request(s) and fingerprint card(s) at the time of filing of the application to the department and to have local, [state,] State, and national criminal law enforcement agencies provide such person's criminal history abstract directly to the department, if said abstracts cannot otherwise be obtained by the department. The commission may waive this requirement upon the applicant showing of good cause. Good cause shall include, but not limited to, applicant's inability to obtain the necessary clearance after due diligence, or have on file with the department a criminal record check that is less than [one year] two years old, had the criminal record check process through the Federal Bureau of Investigation "Rap Back" program, or the applicant's fingerprints are not adequate for accurate classification and/or identification due to applicant's age, medical reason, disfigurement, or other abnormalities.

(e) Fingerprint cards. All fingerprint cards submitted by the applicant shall contain the required fingerprints and be completely filled out. Those fingerprinted by any personnel other than from the department or the Maui police department, must be accompanied by a letter from the fingerprint technician which contains the following:

- (1) Fingerprint technician's name, signature, address, telephone number, and fingerprint technician's certification issued by a law



enforcement agency; and identity, social security number, and date the person was fingerprinted; [or]

- (2) The identity of the law enforcement agency that the fingerprint technician represents, the law enforcement agency's address, and telephone number; or
- (3) Fingerprint technician's name, signature, address, telephone number, identity of the entity the fingerprint technician represents, and a letter of certification issued by a law enforcement agency that the entity the fingerprint technician is employed at is in good standing and have provided fingerprinting service to, and the fingerprints have been accepted by the law enforcement agencies within the [state.] State.

(f) The department may utilize criminal history record clearance obtained from an approved governmental agency.

(g) Licensee or any applicant shall submit, within thirty [calender] calendar days, a completed fingerprint card of any person whose fingerprints appearing on the fingerprint card that was not adequate for accurate classification and/or identification by the Federal Bureau of Investigation and the required processing fee, upon receipt of notification. Any licensee who fails to comply shall not exercise the license until said completed fingerprint card is duly processed by the department.

(h) The license applicant or licensee shall be responsible to ensure that every person named in an application discloses to the commission any felony conviction. The obligation to disclose such information shall be continuing even after the license is issued. [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

17. Section 08-101-50, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (c) and (d) to read as follows:

“(c) Temporary, solicitors', representatives', duplicate license, certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof, alcohol, and other fees.

- (1) Temporary license. The fee for a temporary license of any class and kind shall be \$200 for an initial period of one hundred twenty (120) days, or any part of such initial period, and an additional \$200 for one additional one hundred twenty (120) day renewal or any part of such renewal period of such license.
- (2) The fees for solicitors' and representatives' permits shall be for each license year commencing July 1 and ending on the succeeding June 30 or fraction thereof and shall be in the following amounts:
  - (A) General \$1,800
  - (B) Beer and Wine \$1,200
  - (C) Alcohol \$ 200



Every individual solicitor and or representative is required to obtain an individual permit in his or her name.

- (3) The annual fee for a permit to purchase alcohol for non-beverage purposes shall be \$50 for each fiscal year, commencing July 1 and ending the succeeding June 30, or a fraction thereof. The director may waive the fee for a permit to purchase alcohol for non-beverage purposes for any County or State governmental agencies.
- (d) Percentage fee.
- (1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, 14, 15, 16, 18, and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1[,] manufacturers' licensee, class 3[,] wholesale dealers' licensee, class 14[,] brewpub licensee, class 16[,] winery licensee, and class 18[,] small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.
- (2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS} = \text{Percentage}$$

EE = Estimated Expenditures (current fiscal year)

BF = Basic Fees (current fiscal year)

C = Carryover (prior fiscal year)

(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

EGS= Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of July falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the filing

of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.

The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.

- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.
- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.
- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.
- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records,



including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.

- (12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.
- (13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class. [Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

18. Section 08-101-63, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (b) to read as follows:

“(a) No licensee shall have any illegal liquor or liquor not purchased from a class 3[,] wholesale dealers’ licensee, or a class 1[,] manufacturers’ licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer, on any portion of the licensed premises; provided that a class 2 restaurant licensee, class 5 dispenser licensee, class 12 hotel licensee and class 15 condominium hotel licensee may allow patrons to bring wine onto the licensed premises for consumption with a meal.

(b) The finding of any illegal liquor or liquor not purchased through the liquor license issued from a class 3[,] wholesale dealers’ licensee, [or a] class 1[,] manufacturers’ licensee, class 14 brewpub licensee, class 16 winery licensee, or class 18 small craft producer pub licensee, on a licensed premises under circumstances warranting the belief that it is being kept, served, or distributed by the licensee shall be sufficient evidence for summary suspension or revocation of the license covering such premises. [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

19. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new section to be appropriately designated and to read as follows:

“§08-101-65.1 Obstructing departmental operations. No licensee shall allow the obstruction, hampering, or interfering with investigation and inspections or any of the department’s operation in any way, including but not limited to, the sounding of alarms, flashing of lights, or use of a public address system or other advance warning announcing the arrival or presence of the department’s liquor control officers. [Eff] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

20. Section 08-101-69, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise, or offer to sell "all the liquor you can drink", or more than two drinks of alcoholic beverage for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that involves the consumption of liquor or the awarding of liquor as a prize;
- (2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, and class 12 licensees:
  - (A) When such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions; [or]
  - (B) Where champagne may be inclusive with brunch; [or]
  - (C) Where liquor may be inclusive with luaus; or
  - (D) Where liquor may be inclusive with tour or cruise vessel operations;
- (3) Employ any person for the purpose of selling, furnishing or serving liquor under any scheme, plan, or arrangement involving the payment for such services on the basis of any commission, percentage, or such similar method of payment without the prior approval of the commission. [Eff 7/1/00; am and comp 4/2/07; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

21. Section 08-101-82, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-82 Rules available at all times. Every licensee shall have a copy of the current rules of the commission and chapter 281, HRS, available at all



times on the licensed premises for examination by employees and customers. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

22. Section 08-101-84, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-84 Preparation of drinks; clearing of tables. (a) On the premises licensed for the sale and consumption of liquor thereon, liquor service to a customer shall be made by the licensee or an employee of the licensee, except by special permit.

(b) No more than two drinks of any liquor at one time to an individual shall be permitted; provided however, distilled spirits may be served in container(s) up to one quart in capacity for any special occasion upon obtaining a special permit therefor from the director. Beer or wine may be served in a container, not to exceed the U.S. liquid measurement of one quart (.946 liter) to two or more persons.

(c) Any drink consisting of one kind of liquor and a mixer or water without other ingredients, which is prepared, served, sold, or offered for sale by any licensee upon whose premises liquor is permitted to be sold or consumed, shall contain not less than one fluid ounce of liquor, when said liquor is poured into the service glass by the licensee or any employee the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mixer or water has not been added. A measuring device which measures not less than one fluid ounce shall be utilized at all times in the preparation of any drink consisting of any liquor. The foregoing requirement shall not apply to a drink served in a jigger as a straight drink with or without a chaser. Any straight drink shall be served in a jigger of not less than one fluid ounce capacity.

(1) Any drink consisting of one kind of liquor and a mixer or water without other ingredients, which is prepared, served, sold, or offered for sale by any licensee upon whose premises liquor is permitted to be sold or consumed, may contain not less than one-half fluid ounce of liquor, when the following apply:

(A) The patron requests a drink that contains less than one fluid ounce of liquor and is informed at the time of service that the drink does contain less than one fluid ounce of liquor and the fraction of ounce of liquor that the drink contains; or

(B) When all of the following apply:

(i) The licensee lists all alcoholic beverages that contains less than one fluid ounce of liquor, which shall at all times be conspicuously posted and exposed to view of patrons within the interior of the licensed premises authorized to sell liquor for consumption on the premises. The listing shall clearly state the fraction of ounce of liquor each drink contains. For the purpose of this rule, either legible posters, signs, menus, or table tents are acceptable;



- (ii) The patron requests a drink that contains less than one fluid ounce of liquor; and
- (iii) The licensee or employee must inform the patron at the time of ordering and time of service that the drink contains less than one fluid ounce of liquor and the fraction of ounce of liquor that the drink contains.

(d) If the portion of the licensed premises open to customers is equipped with a bar, the preparation of all drinks shall be on the top surface of the bar in such manner as to permit any interested customer or customers to have a clear and unobstructed view of the bartender's operations.

(e) All empty glasses and containers shall be removed by the persons serving the customers at the time of or before serving another drink. Any and all containers of liquor including, but not limited to, glasses, cups, or open bottles, shall be removed from all areas of the licensed premises which are open to the public no later than the legal closing time for liquor sales.

(f) All mixed alcoholic drinks shall be freshly made for immediate consumption. Pre-mixed drinks may be utilized by obtaining a permit, pursuant to subsection (b), or an approval letter from the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, or both, and filing such document(s) with this department.

[(g) A patron may remove from any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal service for consumption with a meal; provided that it is recorked or resealed in its original container.

(h) The licensee may store a bottle of distilled spirits or wine purchased from the licensee at the guest's request, properly labeled identifying the bottle to be for the guest only, for future use by the guest provided that licensee obtains a Bottle Service permit from the director. Pouring of the bottle of liquor (along with any mixers) or wine may be made at the guest's table provided that an on-duty employee of the licensee provides this service and that guests shall not serve their own drinks.] [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

23. Sections 08-101-88 and 08-101-89, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, are amended to read as follows:

"[§§08-101-88 to 89 (Reserved)] §08-101-88 Posting of license. The original license issued and in effect under this chapter shall at all times be conspicuously posted and exposed to view, convenient for inspection, and on the licensed premises. For failure thereof the license may be suspended or revoked by the liquor commission or liquor control adjudication board pursuant to section 281-71, HRS. [Eff] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)

§08-101-89 Posting of HRS sanctions. All licensed premises shall post a sign in or about the premises containing and notifying all customers and other



persons of the possible sanctions that may be imposed for operating a vehicle under the influence of an intoxicant under sections 291E-41 and 291E-61, HRS. The sign shall be conspicuously positioned in order to be seen by an ordinarily observant person. [Eff] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

24. Section 08-101-94, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) All licensed premises, authorized to sell and serve liquor for consumption on premises, shall contain separate and adequate toilet facilities for males and females which have been approved by the State department of health, provided the commission may approve the use of toilet facilities located outside the licensed premises if located within a reasonable distance from the licensed premises. The entire walkway to the approved outside bathroom facilities shall be properly well lighted. Approval of use of toilet facilities located outside of the licensed premises shall be subject to the applicant or licensee obtaining the necessary [clearance] clearances from the [state,] State department of health, and other governmental agencies. [Eff 7/1/00, am and comp 7/15/02; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

25. Section 08-101-99, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

- “(b) Additional non-consumption areas for class 12 hotel licensees:
- (1) Parking areas;
  - (2) Roadways;
  - (3) Main lobby areas up to ten feet from check-in counter;
  - (4) Retail outlets;
  - (5) [Swimming pools, spas] Swimming pool slides and saunas, except by commission approval], and excluding all grassed, paved, tiled and other surfaced areas abutting a swimming pool]; and
  - (6) Tennis courts. [Eff 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17; 281-78) (Imp: HRS §281-17)”

26. Section 08-101-100, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-100 Deliveries by manufacturers, wholesalers, retailers; peddling prohibited; exception.

(a) Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing any liquor from a licensed premises for delivery to a customer under the manufacturer's or wholesaler's and/or retail dealer's license, the licensee must have in hand in his office, store, or warehouse, a bona fide order therefor. Provided, however, duly licensed wholesale dealers



may, without a bona fide and specific order therefor, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquors at retail in their original packages or dispense liquor for consumption on the premises.

(b) A manufacturer or wholesaler licensee shall deliver any liquor ordered or purchased by a retailer into the retailer's premises. Delivery of any liquor to any other location except the retailer's licensed premises is strictly prohibited. Provided, however, any retailer or its duly authorized employee may pick up any order of liquor directly from the wholesaler's or manufacturer's licensed premises, and such liquor must come to rest within the retailer's premises prior to any sale.

(c) Deliveries to a licensee's catered or other location by permit. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

27. Section 08-101-106, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-106 Manufacturer, brewpub, and wholesale dealer licensees; special restrictions. The control of alcoholic beverages in the County has been established by the commission, as a "three-tier system." The three tiers of this system are designated as manufacturer, wholesaler, and retailer. Each of these three tiers shall operate separately and apart from each other for the purpose of control. In order for this control to be effectively administered, it is necessary to prevent any type of direct interlocking interest by and between the three separate levels.

(a) It shall be unlawful for any person holding a manufacturers' license, or a wholesale dealers' license, within or without the County or State, or any person acting as an agent or representative for any manufacturer or wholesale dealer licensee, within or without the County or State, directly or indirectly, or through any subsidiary or affiliate, to:

- (1) Acquire or hold any interest in any license of a retailer;
- (2) Acquire any interest in the real or personal property owned, occupied, or used by a retailer in the conduct of its business, unless the holding of such interest is permitted under the rules of the commission[.];
- (3) Furnish, give, rent, lend, or sell to any licensee any equipment, fixtures, signs, supplies, money, services or anything of value, subject to the exceptions contained in this section. Any service or anything of value as provided by the exceptions contained in this section, shall be offered to all retailers on the same terms without business reasons present to justify the difference in treatment[.]; or
- (4) Deliver, traffic in, ship or cause to be shipped, any liquor to any person who is not a liquor licensee within the County for display, sampling, or tasting on a not-for-sale basis, who:



(A) Is not permitted or authorized to receive such shipments of liquor, pursuant to chapter 281, HRS, or the rules of the commission; and

(B) Who has not applied for and received approval from the commission or its director to receive such shipment of liquor.

Liquor shipped into the County under this subsection shall be in 750 milliliter-sized containers, be appropriately marked "Sample - Not For Resale," and shall come to rest at the warehouse of a holder of a class 3[,] wholesale dealers' licensee, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor.

(b) It shall be unlawful for any person holding a brewpub license from within or without the County or State, to:

(1) Acquire or hold any interest in any license of a class 3[,] wholesale dealers' license, or a class 2 or class 4 through 13 license; or

(2) Acquire any interest in the real or personal property owned, occupied, or used by a class 3[,] wholesale dealers' license, or a class 2 or class 4 through 13 license in the conduct of its business, unless the holding of such interest is permitted under the rules of the commission or statement thereof has been filed with and approved by the commission.

(c) Non-beer manufacturer licensee. Section 08-101-22(b)(4) of the rules of the commission shall not apply to the holder of a non-beer manufacturer license under the rules of the commission, chapter 281, HRS, under the law of another jurisdiction, or from within or without the County, from maintaining an indirect interest in the license or licensed premises of a wholesale dealer licensee. The holder of any non-beer manufacturer license, from within and without the State, is prohibited from having a direct ownership of a wholesale dealers' license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the wholesale dealers' license; or having any interlocking officers or directors in the corporation, managers or members in any limited liability company, partner in a partnership, or its like, in the establishment, maintenance, or operations in the business of any wholesaler; except as may be provided in the rules of the commission, or in section 281-97, HRS[; or].

(d) Beer manufacturer licensee. Section 08-101-22(b)(4) of the rules of the commission shall not apply to the holder of a beer manufacturer license under the rules of the commission, chapter 281, HRS, under the law of another jurisdiction, or from within or without the County or State, from maintaining an indirect interest in the license or licensed premises of a beer and wine wholesale dealers' licensee. Any beer manufacturer from within and without the State, is restricted to maintaining an indirect interest in the license or licensed premises of a beer and wine wholesale dealer, who shall be limited to wholesale distribution of beer. The holder of any beer manufacturer license, from within and without the State, is prohibited from having a direct ownership of a



wholesale dealers' license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the wholesale dealers' license; or having any interlocking officers or directors in the corporation, managers or members in any limited liability company, partner in a partnership, or its like, in the establishment, maintenance, or operations in the business of any wholesaler; except as may be provided in the rules of the commission, or in section 281-97, HRS[; or].

(e) No manufacturer or wholesaler, within or without the County or State, shall have any financial interest, directly or indirectly, by stock ownership, or through interlocking partners, officers, directors, or any person owning outstanding stock in the corporation, any member or manager of a limited liability company, partner in a partnership or its subdivision thereof, or otherwise in the establishment, maintenance, or operation in the business of any retail licensee, except as may be provided in section 281-97, HRS, or this section. No manufacturer or wholesaler, within or without the County or State, shall acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, any interest in the premises of a retailer.

(f) No employee of an industry member from within or without the State, shall be employed by a retailer in any managerial capacity or in a position where such employee, directly or indirectly, place orders for, orders, or purchase any liquor from any industry member, or representative or solicitor of an industry member.

(g) No industry member, within or without the County or State, shall:

- (1) Directly or indirectly pay or credit any retailer for using or distributing point of sale advertising materials or consumer advertising specialties.
- (2) Require a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages.
- (3) Sell, offer to sell, or contract to sell to any retailer or for any such retailer to purchase, offer to purchase, or contract to purchase any liquor product that have any back end discounts on liquor products sold. All discounts shall be given or credited directly to the licensee's account at the time of the initial purchase. Back end discount shall mean any discount given after the time of the initial purchase of the liquor product by the retailer or any discount offered or given contingent on the amount of liquor sold.
- (4) Sell, offer to sell, or contract to sell to any retailer, or for any such retailer to purchase, offer to purchase, or contract to purchase any liquor products on consignment; or under conditional sale; or with the privilege of return; or on any basis other than a bona fide sale, except as provided in this section.
- (5) Rearrange or reset of all or part of a retail dealers' licensee's store or department.
- (6) Block access in a retailer's premises to other manufacturer's or wholesaler's product.



- (7) Subsection (g) applies only to transactions between industry members and retailers. It does not apply to transaction between industry members, for example, manufacturer and a wholesaler.
  - (8) Furnish, give, rent, lend, or sell, directly or indirectly, equipment, fixtures, signs, supplies, money, services, or other things of value by an industry member to a third party, where the benefits resulting from such things of value flow to individual retailers, and such act(s) is considered furnishing of things of value within the meaning of the rules of the commission. Furnishing of a thing of value includes, but is not limited to, making payments or furnishing any thing of value for advertising to a retailer association, any media company, a display company, or any person where the resulting benefits flow to individual retailers, or the industry member's payment or furnishing any thing of value to a third party, where the thing of value benefits an individual retailer.
  - (9) Directly or indirectly, furnish or pay for any advertising for, or with respect to, any one or more retailer by means of radio, television, magazine, or any type of media advertising, or pay for any media announcements of any on-site product sales promotion.
  - (10) Deliver or ship to any licensee any liquor product that was not ordered by the licensee. Upon receiving notification by the licensee of receiving liquor product not ordered, the industry member shall, within five calendar days, retrieve the liquor products, return monies to, credit, or adjust the billing of the licensee for products delivered that were not ordered. Industry member shall not assess any cost for shipping, handling, restocking or its like to any licensee for any products delivered that were not ordered. Industry member shall be responsible for any cost, including, but not limited to, shipping, handling, transportation, labor or its like which the retailer may incur to return any product delivered that was not ordered. Any product that was delivered and not ordered by the licensee which has not been retrieved by the wholesale dealers' licensee or the manufacturers' licensee within five calendar days from the date of notification by the retailer, shall become the property of the retailer without cost.
- (h) Manufacturers' or wholesale dealers' licensee, may:
- (1) Furnish or give a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last twelve months. Industry member may give a sample of not more than three gallons of malt beverage, not more than three liters of any brand of wine, and not more than three liters of distilled spirits, which shall be invoiced and clearly marked "sample" on each container.
  - (2) Conduct tasting and sampling activities at a licensed premises authorized for on-premises consumption. Industry member must purchase the products used from the licensee, but may not



- purchase them from the licensee for more than the ordinary retail price. Industry members may, conduct tasting and sampling activities upon its licensed premises for the introduction of new products, upon obtaining a permit from the director.
- (3) Give or sponsor educational seminars for employees of retailers either at the wholesaler's or manufacturer's premises or at the retailer's premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of wholesaler's or manufacturer's premises. This section does not authorize the wholesaler or manufacturer to pay a retailer's or its employee's expense in conjunction with an educational seminar such as travel and lodging, nor does it allow the consumption of liquor by any on-duty employee. This does not preclude providing nominal hospitality during the event.
- (4) Give or sell point of sale advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertisement. These items include such things as posters, placard, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, backbar mats, thermometers, clocks, t-shirts, hats, and calendars. An industry member may add the name or name and address of the retailer to the advertising specialty.
- (A) The total value of all advertising specialties furnished by an industry member to a retailer may not exceed \$300 per brand in any one calendar year per licensed premises. The value of the advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded;
- (B) Industry members may not pool or combine their dollar limitation in order to provide a retailer with retail advertising specialties valued in excess of \$300 per brand;
- (C) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed; or
- (D) Industry members and retailers are required to keep and maintain records on the licensed premises for a three-year period of all items furnished to retailers.
- (5) Accept the return of any liquor product from a retailer for "ordinary and usual commercial reasons" after the product has been purchased, so long as the product meets the following conditions and limitations for such returns:



- (A) Defective products which are unmarketable due to product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps;
- (B) Error in products delivered where there is a discrepancy between products ordered and delivered may be corrected within a reasonable period of time of not more than five calendar days;
- (C) Products which may no longer be lawfully sold due to a change in law or regulation, a particular size or brand is no longer permitted to be sold; or there is a change in the formula, proof, label or container of the product, or where the industry member has discontinued the production or importation of a product; or
- (D) Termination of business where the licensee may return products on hand at the time the licensee terminates the operation of the business.

An industry member is under no obligation nor required to accept the return of products for the reasons listed.

- (6) Give or sell product displays to a retailer, subject to the following limitations:
  - (A) The total value of all product displays furnished by an industry member under this section may not exceed \$300 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it with transportation and installation costs excluded;
  - (B) Product display means any wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed on and sold;
  - (C) Industry member may not pool or combine their dollar limitations in order to provide a retailer a product display in excess of \$300 per brand;
  - (D) Product display shall bear conspicuous and substantial advertising matter; and
  - (E) Industry member may assist a retailer in setting a product display in a retail premises.
- (7) Give or sell outside signs to a retailer, providing:
  - (A) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;
  - (B) The retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs; and
  - (C) The cost of the signs may not exceed \$400.
- (8) Provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages.

(i) Manufacturers' or wholesale dealers' licensee, shall, at all liquor establishments, stock, rotate, and affix the prices to distilled spirits, wine, or malt beverages which they sell, and check for outdated or spoiled liquor products, at least once a month and at the time of delivery of any liquor product, unless the retailer requests in writing that this service not be provided or be discontinued. [Eff 7/1/00; am and comp 7/15/02; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

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

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

30. These amendments to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.



Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017, at Wailuku, Maui,  
Hawaii.

By \_\_\_\_\_  
ROBERT TANAKA  
Chairperson  
LIQUOR COMMISSION

Approved this \_\_\_\_ day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
ALAN M. ARAKAWA  
Mayor, County of Maui

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
GARY Y. MURAI  
Deputy Corporation Counsel  
County of Maui

Received this \_\_\_\_\_ day of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
Clerk, County of Maui

CERTIFICATION

I, ROBERT TANAKA, Chairperson of the Liquor Commission of the Department of Liquor Control, County of Maui, do hereby certify:

1. That the foregoing is a copy of the amendments to the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by affirmative vote of the proper majority following a public hearing on February 8, 2017, and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing amendments to the rules was published in The Maui News and The Honolulu Star-Advertiser on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

COUNTY OF MAUI

\_\_\_\_\_  
ROBERT TANAKA  
Chairperson  
LIQUOR COMMISSION

2016-1770  
2017-01-06 Admin Rules Chapter 101



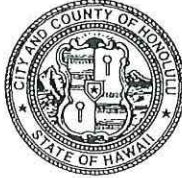
## **IV. New Business**

A. Discussion and Action on Proposed Amendments to Title 3, Rules of the Liquor Commission, City and County of Honolulu, State of Hawaii, as follows, promulgated by the City and County of Honolulu Liquor Commission:

1. Chapter 81, Liquor Commissions, Section 17.51, License Fees
2. Chapter 81, Section 17.58, Trade Name; Change; Fee
3. Chapter 82, Licenses and Permits, General Provisions, Section 33.11, Applications for Individual Permits to Receive Shipments of Liquor
4. Chapter 82, Section 33.6, Direct Shipment of Wine by Wineries
5. Chapter 83, Procedure for Obtaining License, Section 54.1, Filing Fees

LIQUOR COMMISSION  
CITY AND COUNTY OF HONOLULU

711 KAPIOLANI BOULEVARD, SUITE 600, HONOLULU, HAWAII 96813-5249  
PHONE (808) 768-7300 or (808) 768-7333 • FAX (808) 768-7311  
INTERNET ADDRESS: [www.honolulu.gov/liq](http://www.honolulu.gov/liq) • E-MAIL: [liquor@honolulu.gov](mailto:liquor@honolulu.gov)



KIRK CALDWELL  
MAYOR

JOSEPH V. O'DONNELL  
CHAIRMAN

NARSI A. GANABAN  
CO-VICE CHAIR

MALAMA MINN  
CO-VICE CHAIR

DARREN Y.T. LEE  
COMMISSIONER

DUANE R. MIYASHIRO  
COMMISSIONER

FRANKLIN DON PACARRO, JR.  
ADMINISTRATOR

ANNA C. HIRAI  
ASSISTANT ADMINISTRATOR

PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Department or Agency: *Liquor Commission, City and County of Honolulu ("HLC")*

Administrative Rule(s), Title(s) and Chapter(s):

*Rule §3-81-17.51 License Fees*

*Rule §3-81-17.58 Trade Name; Change; Fee*

*Rule §3-82-33.11 Applications for Individual Permits to Receive Shipments of  
Liquor*

*Rule §3-82-33.6 Direct Shipment of Wine by Wineries*

*Rule §3-83-54.1 Filing Fees*

Chapter Name(s):

*Chapter 81 Liquor Commissions*

*Chapter 82 Licenses and Permits, General Provisions*

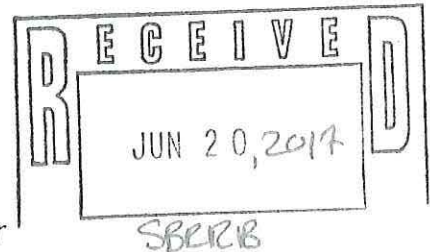
*Chapter 83 Procedure for Obtaining License*

Contact Person/Title: *Anna C. Hirai, Assistant Administrator*

Phone Number: *768-7302*

E-mail Address: [ahirai@honolulu.gov](mailto:ahirai@honolulu.gov)

Date Submitted: *June 20, 2017*



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

*Suggested meeting notice description: Discussion and Action on Proposed Amendments to Rules of the Liquor Commission of the City and County of Honolulu, Title 3, Subtitle 6, Chapters 81, 82, and 83, promulgated by the Liquor Commission, City and County of Honolulu, and pertaining to license, change, permit, and filing fees.*



B. Are the draft rules available for viewing in person and on the Lieutenant Governor’s Website pursuant to HRS §92-7?  Yes (If Yes, please provide webpage address and when and where rules may be viewed in person.) *The draft rules will be posted on the HLC website at <http://www.honolulu.gov/liq/newsannouncements.html> and will be available for viewing in person at the HLC offices Monday through Friday, between 7:45 a.m. and 4:30 p.m.*

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule(s) Description:  Amendment

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

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

\* “Small business” is defined as a “for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.” HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?  No

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))  No

\*\*\*\*\*

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

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

*As of June 19, 2017, HLC’s licensee base is comprised of 1,482 liquor-licensed businesses, broken down into ten (10) classes, seven (7) kinds, and four (4) categories. With the exception of Hotel and Condominium Hotel Class members and the largest members of the Retail Dealer Class, virtually all of HLC’s licensee base consists of “small business” entities within the meaning of HRS §201M-1 (each licensee is considered a single, separate business entity, even if part of a larger family of licensees).*

*This rule amendment effort exclusively addresses HLC’s license fee, change fee, permit fee, and filing fee amounts, and due to the proposed increase to basic license fees all*

licensees will be affected. A copy of the full text proposed rule amendments are attached as Exhibit A. The last time HLC amended its rules to increase these fees was in 2005.

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

*Although licensees will be directly impacted by the proposed increases in various fees, HLC does not anticipate that licensees will experience other direct or indirect costs associated with compliance with any of the proposed increases.*

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

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

*Other than fees for three (3) newly established liquor license classes,[1] the last increase for all fees was in 2005. The universal fee for all licensees is the basic license fee, which is paid annually. All basic license fees are set forth in the below table; also shown are proposed increases for FY18 and FY19.*

Class – Kind – Category	Current	FY18	FY19
Manufacturer – Beer	1,320	2,220	1,980
Manufacturer – Wine	600	1,020	900
Manufacturer – Local Wine	120	204	180
Manufacturer – Alcohol	360	600	540
Manufacturer – Other Liquors	1,320	2,220	1,980
Restaurant – General – Cat. 1	1,200	2,040	1,800
Restaurant – General – Cat. 2	1,320	2,220	1,980
Restaurant – Beer & Wine – Cat. 1	900	1,560	1,380
Restaurant – Beer & Wine – Cat. 2	960	1,620	1,440
Restaurant – Beer – Cat. 1	360	600	540
Restaurant – Beer – Cat. 2	420	720	660
Wholesale – General	2,640	4,500	3,960
Wholesale – Beer & Wine	840	1,440	1,260
Wholesale – Alcohol	120	204	180
Retail – General	1,200	2,040	1,800
Retail – Beer & Wine	900	1,560	1,380
Retail – Alcohol	60	108	96
Dispenser – General – Cat. 1	1,200	2,040	1,800
Dispenser – General – Cat. 2	1,440	2,460	2,160
Dispenser – General – Cat. 3	1,320	2,220	2,160
Dispenser – General – Cat. 4	1,440	2,460	2,160
Dispenser – General – Cat. 3 & 4	1,500	2,580	2,280
Dispenser – General – Cat. 2 & 3	1,620	2,760	2,460
Dispenser – General – 2 & 4	1,620	2,760	2,460
Dispenser – General – 2, 3 & 4	1,740	2,940	2,640
Dispenser – Beer & Wine – Cat. 1	900	1,560	1,380

1 Winery; Bring-Your-Own-Beverage; and Small Craft Producer Pub.



Class – Kind – Category	Current	FY18	FY19
Dispenser – Beer & Wine – Cat. 3	960	1,620	1,440
Dispenser – Beer & Wine – Combination	1,020	1,740	1,560
Dispenser – Beer – Cat. 1	360	600	540
Dispenser – Beer – Cat. 2	420	720	660
Dispenser – Beer – Combination	540	900	840
Club – Cat. 1	660	1,140	1,020
Club – Cat. 2	---	1,200	1,080
Transient Vessel – Day	60	100	90
Transient Vessel – Year	1,320	2,220	1,980
Tour/Cruise Vessel – Cat. 1	900	1,560	1,380
Tour/Cruise Vessel – Cat. 2	---	1,620	1,440
Special – General	60	100	90
Special – Beer & Wine	40	70	60
Special – Beer	30	50	45
Cabaret – General – Cat. 1	1,980	3,360	3,000
Cabaret – General – Cat. 2	2,400	4,080	3,600
Hotel – General	3,960	6,720	5,940
Caterer – General – Restaurant/Hotel/Condo Hotel Per Day	30	50	45
Caterer – General – Food Service – Cat. 1	600 + 30	1,200 + 50	900 + 45
Caterer – General – Food Service – Cat. 2	720 + 30	1,200 + 50	1,080 + 45
Brewpub – General – Cat. 1	1,680	2,880	2,520
Brewpub – General – Cat. 2	1,800	3,060	2,700
Condominium Hotel - General	3,000	5,100	4,500
Winery	1,200	2,040	1,800
BYOB – Cat. 1	360	600	540
BYOB – Cat. 2	420	720	660
Small Craft Producer Pub – Cat. 1	1,680	2,880	2,520
Small Craft Producer Pub – Cat. 2	1,800	3,060	2,700
Temporary – Initial & Renewal	275	470	420
Solicitor/Representative Permit – General	140	210	210
Solicitor/Representative Permit – Beer & Wine	85	130	130
Solicitor/Representative Permit – Alcohol	6	9	9
###	###	###	###
Trade Name Change	30	45	45
Individual Permits	12	18	18
Direct Wine Shipper Permit	120	180	180
Filing Fee	250	375	375

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

*The proposed FY18 and FY19 fees are shown in the above table. The FY18 amounts represent a 70% across-the-board increase in basic license fees (no increase to the maximum fee or fee “cap” is proposed[2]). The FY19 amounts represent a decrease to 50% of current basic license fee amounts.*

<sup>2</sup> In addition to the basic license fee, a licensee may be required to pay an additional license fee based upon its reported gross liquor sales for the year. HLC’s fee structure utilizes a fee “cap” for each license class, which limits the amount of additional license fee a licensee will have to pay, regardless of the amount of its reported gross liquor sales.

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

*HLC must increase the basic license fees in FY18 in order to sustain operations at its present levels but principally to fund construction of the new Liquor Commission Information System (LCIS). The basic license fees will be decreased in FY19, however, as LCIS will be completed in FY18.*

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

*By law, any increase in existing license fees must bear a direct and proportionate relationship to costs and expenses of the commission in its control, supervision, or regulation of the manufacture, importation, and sale of liquors, or otherwise directly relate to the actual costs and expenses of administration of the commission. Further, HLC cannot accumulate funds over several years to fund construction of LCIS; funds in excess of 20 percent of the HLC's current budget must be returned or credited annually to licensees. (HRS §281-17.5) This statutory restriction means that HLC is not permitted to accumulate and earmark funds over several fiscal years to address an extraordinary expenditure like LCIS. This statutory restriction also mandates the decrease in FY19 when the extraordinary expenditure is completed in FY18.*

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

*The increase in license fees will be used to fund the \$450,000 cost for the construction, data migration, and implementation of a custom-built, high functionality database system. The system will provide licensees with a comprehensive digital repository of licensee information and direct user interface ability with their information and processes. The increase in license fees will also help to offset the FY17 preparatory expense of \$100,000 which was used to develop online access capability and data/access security.*

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

*HLC conducted two (2) stakeholder meetings in May 2017 in order to provide license class representatives with the following information:*

- *The significance of HLC's special fund agency status;*
- *HLC's fiscal picture from 2005 to date (from the last license fee increase);*
- *Explanation of the "design" of the license fee increase (across-the-board increase to basic license fees, with no impact to maximum fees or fee "caps"), and the proposed change to HLC's revenue profile;*



- *Description of LCIS functionality and proposed completion schedule.*
- *The cost advantage of a custom-built system compared to modifications made to an off-the-shelf system.*

*PDF copies of the 20-slide PowerPoint presentation and informational brochure are attached as Exhibits B and C, respectively.*

*In addition to explaining the agency's need for the proposed fee increase, HLC was able to obtain valuable input from various license classes as to the types of functions and capabilities that would be most beneficial to the licensee users. Virtually all of these requested functions will be included in the initial construction phase of LCIS.*

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

*Because HLC is in the final month of the fiscal year, HLC is able to determine with precision what the FY17 ending fund balance will be. Because of the status of the FY17 ending fund balance, HLC is able to provide a degree of fee increase relief to its licensees, without impacting functionality of the new LCIS, without impacting the FY18 proposed completion date, and ending FY18 with an acceptable ending fund balance that would guarantee continued services and operations at its current levels.*

*Initially, HLC administration proposed effectiveness retroactive to 7/1/17, with licensees being billed for the entire 70% increase. Instead, HLC proposes to bill licensees for a pro rata portion of the increased basic license fee based upon how many months remain in FY18. By way of an example, below is the impact to a Restaurant General (Cat. 1 – Standard Bar) licensee:*

- *Currently, basic license fee is \$1200.*
- *The FY18 proposed amount would be a 70% increase, or \$2040.*
- *If effectiveness is retroactive to 7/1/17, the licensee would be billed the difference of \$840.*
- *Instead, whenever the rule amendment is effective, HLC will bill the licensee for a pro rata portion of the increased license fee based upon how many months remain in FY18.*
- *HLC does not expect to be effective earlier than 5-6 months into FY18. Under the pro rata billing scenario, the Restaurant General licensee would be billed either \$420 (six months remaining in FY18) or \$490 (seven months remaining in FY18). This pro rata billing ultimately results in a gradual step up to the FY19 levels, which are increased 50% over current levels.*

- *The Restaurant General example in table form:*

FY17 Rate	FY18 Rate	Retro to 7/1/17	6 Mos. Pro Rated	7 Mos. Pro Rated	FY19 Rate
1200	2040	2040 (1200 + 840)	1620 (1200 + 420)	1690 (1200 + 490)	1800

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

*Any further reduction of the proposed fee increase amount would require HLC to reduce functionality of LCIS and/or extend the proposed completion date. HLC believes that it has made the appropriate accommodation to licensees with respect to fiscal impact of the proposed fee increase without sacrificing the quality or timeliness of the finished product.*

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

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

*See response to Item 4 with respect to stakeholder meetings conducted on May 12, 2017 and May 26, 2017, and response to Item 5 with respect HLC's accommodation to mitigate fiscal impact to its licensees.*

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

*HLC's existing and proposed basic license fee amounts are significantly larger than those imposed by the neighbor island county liquor commissions. However, these larger levels are mitigated by an important difference between the HLC license fee structure compared to the neighbor island county liquor commissions: HLC imposes additional license fee "caps", while the neighbor island county liquor commissions do not. The fee "cap" essentially limits the amount of additional license fee a licensee will pay, regardless of how great its sales volume in any fiscal year. Because of this, predictability of fiscal impact for each licensee in any given year is assured, as no licensee will be assessed a license fee in excess of the fee "cap" established for the particular license class.*

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

**a. Description of the public purposes to be served by the proposed rule.**

*Although the benefits to be derived from the new LCIS primarily will be enjoyed by licensees and HLC staff, the public is expected to gain some benefit through greater transparency of HLC operations and its licensee base (e.g., online research capability and*



information resources).

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.**

*The license fee rules for Hawaii, Kauai, and Maui Counties are attached as Exhibit D.*

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.**

*The four county license fee structures have identical purpose (funding each county's liquor special fund) but different application and administration due to the use or non-use of fee "caps".*

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.**

*HLC does not believe its licensees would be in favor of eliminating fee "caps" in exchange for reduced basic license fee amounts. HLC believes the accommodation to licensees with respect to fiscal impact of the proposed fee increase will provide relief to licensees without sacrificing the quality or timeliness of the finished LCIS product.*

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.**

*Insofar as all county liquor commissions impose license fees on their respective licensees, the adverse effect would differ in degree based upon a licensee's expected gross liquor sales for any given year.*

\*\*\*\*\*

EXHIBIT A

Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2017)

Note: Material to be repealed is [bracketed].

New material is underscored.

**SUMMARY:** Amends rule to restore ending fund balance amount to statutorily permitted level; to establish increased basic license fee amounts for FY18 and FY19 for all classes; to establish basic and additional license fee amounts for certain class categories; and to establish increased fee amounts for solicitors' and representatives' permits.

**§3-81-17.51 License Fees.**

- (a) The fees for licenses shall be per annum except where specified. In addition to the basic license fee, an additional license fee will be assessed. This additional license fee will be assessed if the gross liquor sales achieves a certain threshold (hereinafter referred to as 'deductible'). The additional license fee assessment will be calculated on the net of the gross liquor sales less a deductible. The deductible will be prorated for licenses issued during the course of the fiscal year. For licenses that are cancelled or revoked during the course of a fiscal year but prior to the calculation of the deductible for that fiscal year, the prior year's deductible (prorated) will be used.

\*The deductible will be calculated through the following formula:

- 1) Calculation of Additional Fees required for the next fiscal year

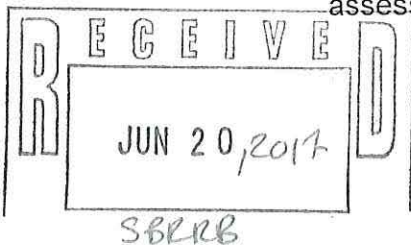
BFB = Estimated Beginning Fund Balance  
LRF = Estimated License Renewals Fees  
ALF = CALCULATED Additional License Fee  
MR = Estimated Miscellaneous Revenue  
BUD = Budget as submitted to Council for the next fiscal year  
EFB = Ending Fund Balance (~~[Ten]~~ Twenty percent of BUD)

Basic Formula:  $BFB + LRF + ALF + MR - BUD = EFB$

ALF =  $EFB + BUD - BFB - LRF - MR$

- 2) Calculation of the DEDUCTIBLE

The prior year's gross liquor sales of each licensee will be entered into a database. The gross liquor sales will be analyzed and based on the assessment rate of the respective class and additional license fees





required (ALF), the deductible for the fiscal year will be calculated. The calculated deductible will be rounded to the nearest thousands of dollars.

A maximum additional assessment fee has been established for each class. The fees for licenses based on different classes, kinds, and categories shall be as follows:

<u>CLASS</u>	<u>KIND</u>		<u>FY18 FEES</u>	<u>FY19 AND THEREAFTER</u>
1	Manufacturer			
	(a) Beer		<del>[\$1,320]</del> <u>\$2,220</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<u>\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</u>
	(b) Wine		<del>[\$600]</del> <u>\$1,020</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<u>\$900, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</u>
	Wine manufactured from fruits grown in the state		<del>[\$120]</del> <u>\$204</u>	<u>\$180</u>
	(c) Alcohol		<del>[\$360]</del> <u>\$600</u>	<u>\$540</u>
	(d) Other Liquors		<del>[\$1,320]</del> <u>\$2,220</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.	<u>\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.</u>
2	Restaurant			
	(a) General (includes all liquor, except alcohol)			
		(1) Category 1 - Standard	<del>[\$1,200]</del> <u>\$2,040</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 2 - Music/Dancing	<del>[\$1,320]</del> <u>\$2,220</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
	(b) Beer & Wine			
		(1) Category 1 - Standard	<del>[\$900]</del> <u>\$1,560</u> , and one-half of one percent (0.005) of the total gross liquor sales less a	<u>\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed</u>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			*deductible, not to exceed \$25,000.	<u>\$25,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$960]</del> <u>1,620</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
	(c) Beer			
		(1) Category 1 - Standard	<del>[\$360]</del> <u>\$600</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$420]</del> <u>\$720</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
3	Wholesale			
	(a) General (includes all liquor except alcohol)		<del>[\$2,640]</del> <u>\$4,500</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.	<u>\$3,960, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.</u>
	(b) Beer & Wine		<del>[\$840]</del> <u>\$1,440</u> , and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.	<u>\$1,260, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.</u>
	(c) Alcohol		<del>[\$120]</del> <u>\$204</u>	<u>\$180</u>
4	Retail			
	(a) General (includes all liquor except alcohol)		<del>[\$1,200]</del> <u>\$2,040</u> , and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<u>\$1,800, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
	Beer & Wine		<del>[\$900]</del> <u>\$1,560</u> , and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<u>\$1,380, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
	Alcohol		<del>[\$60]</del> <u>\$108</u>	<u>\$96</u>
5	Dispenser			
	(a) General (includes all liquor except alcohol)			
		(1) Category 1 - Standard	<del>[\$1,200]</del> <u>\$2,040</u> , and one-half of one percent	<u>\$1,800, and one-half of one percent (0.005) of the total</u>



CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			(0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 2 – Nudity	<del>[\$1,440]</del> <u>\$2,460</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(3) Category 3 – Music/Dancing	<del>[\$1,320]</del> <u>\$2,220</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(4) Category 4 – Hostess	<del>[\$1,440]</del> <u>\$2,460</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(5) Categories 3 & 4	<del>[\$1,500]</del> <u>\$2,580</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,280, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(6) Categories 2 & 3	<del>[\$1,620]</del> <u>\$2,760</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(7) Categories 2 & 4	<del>[\$1,620]</del> <u>\$2,760</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(8) Categories 2, 3 & 4	<del>[\$1,740]</del> <u>\$2,940</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$2,640, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
	(b) Beer & Wine			
		(1) Category 1 - Standard	<del>[\$900]</del> <u>\$1,560</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 3 –	<del>[\$960]</del> <u>\$1,620</u> , and one-	<u>\$1,440, and one-half of one</u>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
		Music/Dancing	half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(3) All other combinations	<del>[\$1,020]</del> <u>\$1,740</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,560, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
	(c) Beer			
		(1) Category 1 - Standard	<del>[\$360]</del> <u>\$600</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(2) Category 3 - Music/Dancing	<del>[\$420]</del> <u>\$720</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
		(3) All other combinations	<del>[\$540]</del> <u>\$900</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$840, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
6	Club	(1) Category 1 - Standard	<del>[\$660]</del> <u>\$1,140</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.	<u>\$1,020, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
		(2) Category 2 - Music/Dancing	<u>\$1,200, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>	<u>\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.</u>
8	Transient Vessel			
	(a) Per day		<del>[\$60]</del> <u>\$100</u>	<u>\$90</u>
	(b) Per year		<del>[\$1,320]</del> <u>\$2,220</u>	<u>\$1,980</u>
9	Tour/Cruise Vessel	(1) Category 1 - Standard	<del>[\$900]</del> <u>\$1,560</u> , and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.	<u>\$1,380, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.</u>
		(2) Category 2 - Music/Dancing	<u>\$1,620, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a</u>	<u>\$1,440, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed</u>



CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			<u>*deductible, not to exceed \$10,000.</u>	<u>\$10,000.</u>
10	Special, per day			
	(a) General (includes all liquor, except alcohol)		<del>[\$60]</del> <u>\$100</u>	<u>\$90</u>
	(b) Beer & Wine		<del>[\$40]</del> <u>\$70</u>	<u>\$60</u>
	(c) Beer		<del>[\$30]</del> <u>\$50</u>	<u>\$45</u>
11	Cabaret, General			
		(1) Category 1 - Standard	<del>[\$1,980]</del> <u>\$3,360</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.	<u>\$3,000, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>
		(2) Category 2 - Nudity	<del>[\$2,400]</del> <u>\$4,080</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.	<u>\$3,600, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.</u>
12	Hotel, General		<del>[\$3,960]</del> <u>\$6,720</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.	<u>\$5,940, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.</u>
13	(a) Caterer, General (Class 2, Class 12, Class 15 only)		<del>[\$30 per day]</del> <u>\$50 per day</u>	<u>\$45 per day</u>
	(b) Caterer, General (Food Service Business Type)			
		(1) Category 1 – Standard	<del>[\$600]</del> <u>\$1,020</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus <del>[\$30]</del> <u>\$50</u> per day.	<u>\$900, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.</u>
		(2) Category 2 – Music/Dancing	<del>[\$720]</del> <u>\$1,200</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus <del>[\$30]</del> <u>\$50</u> per day.	<u>\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.</u>
14	Brewpub			
		(1) Category 1 –	<del>[\$1,680]</del> <u>\$2,880</u> , and	<u>\$2,520, and three-fourths of</u>

CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
		Standard	three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$1,800]</del> <u>\$3,060</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
15	Condominium Hotel, General		<del>[\$3,000]</del> <u>\$5,100</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.	<u>\$4,500, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.</u>
16	Winery		<del>[\$1,200]</del> <u>\$2,040</u> , and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.	<u>\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.</u>
17	BYOB			
		(1) Category 1 – Music only	<del>[\$360]</del> <u>\$600</u>	<u>\$540</u>
		(2) Category 2 – Music/Dancing	<del>[\$420]</del> <u>\$720</u>	<u>\$660</u>
18	Small Craft Producer Pub			
		(1) Category 1 - Standard	<del>[\$1,680]</del> <u>\$2,880</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
		(2) Category 2 – Music/Dancing	<del>[\$1,800]</del> <u>\$3,060</u> , and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.	<u>\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.</u>
n/a	Temporary		<del>[\$275]</del> <u>\$470</u> for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.  The fee for renewal of	<u>\$420 for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</u>  <u>The fee for renewal of such license shall be \$420 for</u>



CLASS	KIND		FY18 FEES	FY19 AND THEREAFTER
			such license shall be <del>[\$275]</del> \$470 for the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.	<u>the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</u>

(b) Solicitors' and Representatives' Permits. The fees for solicitors' and representatives' permits shall be for each license year (commencing on July 1 and ending on the succeeding June 30) and shall be in the following amounts: General, ~~[\$140]~~ \$210; Beer and Wine, ~~[\$85]~~ \$130; Alcohol, ~~[\$6]~~ \$9.

\*\*\*\*\*

**SUMMARY:** Amends rule to establish increased processing fee for change of trade name.

**§3-81-17.58. Trade Name; Change; Fee.**

A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of ~~[\$30.00]~~ \$45.00 shall be assessed by the Commission for any change of existing trade name to include a license transfer.

\*\*\*\*\*

**SUMMARY:** Amends rule to establish increased permit fee for shipments of liquor.

**§3-82-33.11. Applications for Individual Permits to Receive Shipments of Liquor.**

- (a) Any person twenty-one (21) years of age or older may apply to the Commission, on the form prescribed by the Commission and upon payment of a permit fee of ~~[\$12.00]~~ \$18.00, for a permit to receive a shipment of liquor from outside the State, within the limits allowed by Chapter 281, Hawaii Revised Statutes.
- (b) The application form shall include the following information:
  - (1) A description of the liquor as to type, brand or trade name, domestic or imported and quantity.
  - (2) Whether the liquor is an unsolicited gift unavailable in the State, or part of the applicant's household goods.

\*\*\*\*\*

**SUMMARY:** Amends rule to establish increased annual permit fee for direct wine shipments.

**§3-82-33.6. Direct Shipment of Wine by Wineries.**

- (a) Any manufacturer of wine who desires to ship wines to residents of the County of Honolulu shall obtain a Direct Wine Shipper Permit from the Liquor Commission, City and County of Honolulu. The permit may be granted by the Administrator to any person holding:
1. A general excise tax license from the State of Hawaii Department of Taxation; and
  2. Either:
    - A. A Class 1 license to manufacture wine under Section 281-31, HRS; or
    - B. A license to manufacture wine issued by another state.
- (b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:
1. An application form;
  2. Copy of the State of Hawaii Department of Taxation general excise tax license;
  3. Copy of the Class 1 license to manufacture wine under Section 281-31, HRS, or the license to manufacture wine issued by another state; and
  4. Payment of an annual permit fee of ~~[\$120.00]~~ \$180.00; provided, that the annual permit fee for a manufacturer of wine licensed under Section 281-31, HRS, shall be inclusive and part of its annual license fee. For purposes of this rule, permit fees shall be prorated.
- No permit shall be issued unless the applicant has met the foregoing requirements.
- (c) The holder of a Direct Wine Shipper Permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:
1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to:  
 "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
  2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;
  3. Report no later than January 31 of each year to the Liquor Commission the total amount of wine shipped to persons in this county during the preceding calendar year;



- 4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a Direct Wine Shipper Permit shall be deemed to be wine sold in the state; and
- 5. Be subject to audit by the Liquor Commission.
- (d) The holder of a license to manufacture wine issued by another state shall annually renew a Direct Wine Shipper Permit by providing the Liquor Commission with a renewal application, a copy of the current license to manufacture wine, and payment of the annual fee.
- (e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid Direct Wine Shipper Permit is prohibited. Knowingly violating this law is a misdemeanor.

\*\*\*\*\*

**SUMMARY:** Amends rule to establish increased filing fee for new and transfer license applications.

**§3-83-54.1. Filing Fees.**

A filing fee of [~~\$250~~] \$375.00 shall be paid with an application for a new license or the transfer of an existing license, as required by Section 281-54, Hawaii Revised Statutes. The filing fee shall be applied to the payment of the license fee required by §3-81-17.52 where the license is granted and shall become a realization of the City where the license is denied or the application is withdrawn.

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EXHIBIT D

**RULES AND REGULATIONS OF THE LIQUOR COMMISSION  
OF THE DEPARTMENT OF LIQUOR CONTROL OF THE  
COUNTY OF HAWAI'I, STATE OF HAWAI'I**

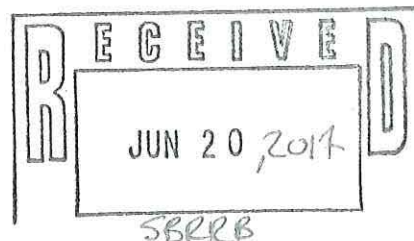
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PART II. COMMISSION, BOARD, DIRECTOR

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allowed to consume liquor; and (4) tasting shall be conducted only on the licensee's premises. Tastings shall be in a designated area only and the permit shall be conspicuously posted for public view. All tasting shall be conducted at the expense of the licensee.

Industry members may assist a retail licensee who conducts a product tasting provided that in no case shall they assume duties normally conducted by an employee of the retail licensee.

As authorized by the Commission or Director, a retailer may charge for product tasting to help offset costs.

**12. TEEN EVENT.** A permit is required to allow a licensee licensed for consumption thereon to host teen events. An application for a teen event permit is required for each event and shall be submitted to the Director on a form prescribed by the Department of, at least 7 days prior to the event. Teen events shall be defined as events for minors from the age of 13-20 that are sponsored by the licensees or are events open to the public. The issuance of the permit shall be conditional upon the following:

- A. The sale, service and consumption of liquors shall be prohibited and all intoxicating liquors shall be removed from service areas or locked in storage.
- B. The hours of operation shall not exceed 12:00 o'clock midnight, except that the Director shall be authorized to extend such hours for school-related events.
- C. The licensee shall be responsible for complying with all liquor and curfew laws.

A permit may be denied or revoked upon the past or existing noncompliance by the licensee of any of the conditions listed above or for violation of the liquor laws. In the event of a denial or revocation of a permit or any provisions of the permit by the Director, the licensee may appeal the decision to the Commission.

A licensee may apply for a teen event permit which will occupy only a portion of the premises, provided that said area shall have its own separate entrance whereby ingress or egress by minors shall not be through the liquor consumption area of the premises and there will be no commingling of minors and adults.

**RULE 3-3 LICENSE FEES, PERMIT FEES, SCHEDULE.** All licensees shall pay an annual fee which shall be the basic fee as defined in Rule 3-3-A, plus the percentage fee as defined in Rule 3-3-B.

**A. BASIC FEE.** The basic fee for the licenses of each of the several classes and kinds shall be as set forth herein and shall be due as provided in Rule 3-4.

	<u>CLASS</u>	<u>KIND</u>	<u>FEE</u>
1.	Manufacturers (including rectifiers)	(a) Beer.....	\$400.00
		(b) Wine.....	400.00
		(c) Alcohol.....	200.00
		(d) Other liquors.....	640.00
2.	Restaurant	(a) General.....	600.00
		(b) Beer and Wine.....	300.00
		(c) Beer.....	150.00
3.	Wholesale	(a) General.....	1,200.00
		(b) Beer and Wine.....	420.00
		(c) Alcohol.....	32.00
4.	Retail	(a) General.....	560.00
		(b) Beer and Wine.....	260.00
		(c) Alcohol.....	16.00
5.	Dispenser	(a) General.....	600.00
		(b) Beer and Wine.....	300.00
		(c) Beer.....	150.00
6.	Club.....		320.00
7.	Reserved		
8.	Transient vessel licenses per day per port.....		25.00
9.	Tour or Cruise vessel.....		210.00
10.	Special licenses	(a) Beer.....	15.00
		(b) Beer and Wine.....	20.00
		(c) General.....	35.00
11.	Cabaret.....		750.00
12.	Hotel.....		1,200.00
13.	Caterer.....		600.00
14.	Brewpub.....		1,000.00
15.	Condominium hotel.....		1,200.00
16.	Winery.....		1,000.00
17.	Reserved		



18.	Small craft producer pub.....	1,000.00
19.	Solicitors and representative permits:	
	(a) Alcohol.....	5.00
	(b) Beer and Wine.....	120.00
	(c) General.....	180.00
20.	Temporary.....	50.00
21.	Importation permit.....	0.00
22.	Trade show permit.....	25.00
23.	Trade name change.....	25.00
24.	Duplicate license, permit, ID cards.....	2.00
25.	Direct Wine Shipper's Permit.....	48.00 annual 96.00 biennial

**B. PERCENTAGE FEE.** Licensees holding Classes 2, 4, 5, 6, 9, 11, 12, 13, 14, 15, 16, and 18 liquor licenses shall be subject to the basic fee plus a percentage fee on retail sales which shall not exceed 1%. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Not to Exceed 1\%}$$

EE = Estimated Expenditures (current fiscal year)  
BF = Basic Fee (current fiscal year)  
C = Carryover (excess fees from prior fiscal year)  
TFGS = Total Final Gross Sales (prior license year)

**C. COMPUTATION.** Licensees in the above-mentioned classes shall file with the Director on a form prescribed by the Commission a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be provided to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

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

**EFFECTIVE: September 8, 2016**



commission's rules within the previous twelve-month period.

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

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

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

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

**Rule 3.15. A person below the age of eighteen years working or entertaining in licensed premises.** The licensee shall comply with all of the requirements of the Child Labor Laws of the State of Hawaii.

**Rule 3.16. Legal age to sell liquor.** The legal age for an employee to begin selling liquor is 18 years old.

Rule 3.17 Licensees shall comply with all applicable federal, state, and county requirements whether in existence at the time or as adopted or changed from time to time.

#### **RULE 4** **LICENSE FEES, GROSS SALES REPORTS**

**Rule 4.1. License fees.** The fees for licenses of the several classes and kinds as described in Section 281-31, Hawaii Revised Statutes, as amended, shall be as follows, the same being per annum except where otherwise specified:

<u>Class</u>	<u>Kind</u>	<u>Basic Fees</u>
1. Manufacturer (including rectifiers)	(a) Beer	\$ 408
	(b) Wine	\$ 408
	(c) Wine manufactured from agricultural products grown in the State	\$ 120
	(d) Alcohol	\$ 204
	(e) Other Liquors	\$ 648
	(f) Distilled spirits manufactured from agricultural products grown in the State	\$ 180
2. Restaurant	(a) General	\$ 480
	(b) Beer & Wine	\$ 180
	(c) Beer	\$ 120
3. Wholesale Dealer	(a) General	\$ 1,200
	(b) Beer & Wine	\$ 324
	(c) Alcohol	\$ 18

4. Retail Dealer	(a) General	\$	480
	(b) Beer & Wine	\$	180
	(c) Alcohol	\$	18
5. Dispenser	(a) General	\$	480
	(b) Beer & Wine	\$	180
	(c) Beer	\$	120
6. Club		\$	240
7. Transient Vessel, per day		\$	33
Transient Vessel, per year		\$	900
8. Tour or Cruise Vessel		\$	240
9. Special, per day	(a) General	\$	33
	(b) Beer & Wine	\$	24
	(c) Beer	\$	16
10. Cabaret		\$	600
11. Hotel		\$	900
12. Caterer		\$	120
13. Brewpub		\$	900
14. Condominium Hotel		\$	900
15. Winery		\$	900
16. Small Craft Producer Pub		\$	900

The fee for a temporary license of any class and kind shall be sixty dollars (\$60.00) for an initial period of one hundred twenty days or any fraction thereof, and an additional sixty dollars (\$60.00) for a renewal of not more than sixty days of the license.

**Rule 4.2. Fees for solicitors' and representatives' permits.** The fees for solicitors' and representatives' permits shall be for twelve calendar months, including the month the permits are issued, and shall be in the following amounts: General-\$180.00; Beer & Wine-\$90.00; and Alcohol-\$5.00.

**Rule 4.3. Special license sales report.** Persons issued special licenses shall report their gross sales and any other information required by the commission within three days after the expiration of the license.

**Rule 4.4. Percentage Fee.** Licensees in Classes 2, 4, 5, 6, 8, 10, 11, 13, 14, and 16, and Classes 1, 3, and 15 for retail liquor sales to any person for private use and consumption, shall be subject to the basic fee plus a percentage fee. Licensees shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report. The Final Gross Liquor Sales of each licensee multiplied by the percentage shall constitute the percentage fee. The percentage to be applied to



the Final Gross Liquor Sales of each licensee for each current fiscal year shall be based upon the following formula:

$$\frac{EE - (BF + C)}{TFGS} = \text{Percentage Fee}$$

- EE = Estimated Expenditures (current fiscal year)
- BF = Basic Fees (current fiscal year)
- C = Carryover (excess fees from prior fiscal year)
- TFGS = Total Final Gross Sales (prior license year)

(a) Licensees in the above-mentioned classes shall file with the Director, on a form prescribed by the Commission, a report showing gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the Director and shall be completed and filed no later than July 31 after the date of expiration of such licenses, and at such other times or intervals as the Director may require. After a tally of the total gross sales of all licensees, the percentage fee due and payable shall be assessed each licensee. Notice of Percentage Fee Due shall be mailed to each licensee and shall be paid within 30 days from the date of such notice or as otherwise provided by the Director.

**Rule 4.5. License Fees; When Due; How Received.** (a) Fees Due, When. The basic fee as prescribed by Rule 4.1 for any license or permit issued hereunder shall be due and payable in advance of or on June 30 of each year. The fee for a license or permit issued July 1 shall be for a full year.

Full payment of a prorated license fee is due and payable at the time the license is issued and the fee paid shall be reckoned proportionally from the first day of the month on which the license or permit is issued to the expiration date.

Transient vessel, per day, special and temporary license fees shall be paid in full at the time of filing the application.

(b) Change to higher kind or different class. A holder of a license who applies for a higher kind of license within the class of the existing liquor license or a higher class of license on the same premises shall be credited with the unused portion of the current basic license fee in computing the fee for the new license.

(c) Change to lower class or kind. A licensee who desires to lower the class or kind of license, pursuant to Section 281-31 and 281-52 of the Hawaii Revised Statutes, as amended, or terminate a category of license shall file written notice to the Commission for its approval and state the effective date of the change.

(d) Forfeiture of fees; when. Upon termination of business by a licensee and upon revocation, cancellation, or change to lower class or kind of license, all fees paid for the remaining unexpired term shall be forfeited.

**Rule 4.6. Payment of fees upon transfer of license.** (a) Final report and percentage fee by transferor. Prior to the transfer of a license, the transferor shall file a final report of its gross liquor sales and

TITLE MC-08  
DEPARTMENT OF LIQUOR CONTROL  
SUBTITLE 01  
LIQUOR COMMISSION  
CHAPTER 101

RULES GOVERNING THE MANUFACTURE  
AND SALE OF INTOXICATING LIQUOR  
OF THE COUNTY OF MAUI

Subchapter 1 General Provisions

\$08-101-1	Title	101-8
\$08-101-2	Authority	101-8
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\$08-101-4	Construction	101-8
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\$\$08-101-6 to 9	(Reserved)	

Subchapter 2 Liquor Commission, Liquor Control  
Adjudication Board, Counsel

\$08-101-10	Liquor commission; authority	101-19
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\$08-101-12	Emergency rules	101-23
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March, 2017

101-1



SUBCHAPTER 5

FEEES

- §08-101-50 Fees for liquor license, temporary license, duplicate license; solicitors' and representatives' permits; certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof; and others and terms
- §08-101-51 Solicitors' and representatives' permits and terms
- §08-101-52 Guaranty
- §08-101-53 Concession agreement
- §§08-101-54 to 59 (Reserved)

§08-101-50 Fees for liquor license, temporary license, duplicate license; solicitors' and representatives' permits; certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof; and others and terms:

(a) All licensees shall pay an annual license fee, which shall be the basic fee as defined in subsection (b) of this section plus the percentage fee as defined in subsection (d) of this section.

(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

<u>Class</u>	<u>Kind</u>	<u>Basic Fee</u>
March, 2017	101-104	

(1) Manufacturers (including rectifiers)	(A) Beer	\$ 600
	(B) Wine	600
	(C) Wine manufactured from fruits grown in the State	300
	(D) Alcohol	200
	(E) Other liquors	640
(2) Restaurant	(A) General	600
	(B) Beer and Wine	300
	(C) Beer	150
(3) Wholesale	(A) General	2,400
	(B) Beer and Wine	1,800
	(C) Alcohol	200
(4) Retail	(A) General	560
	(B) Beer and Wine	260
	(C) Alcohol	200
(5) Dispenser	(A) General	600
	(B) Beer and Wine	300
	(C) Beer	150
(6) Club		320
(8) Transient Vessel, per day		25
Monthly		100
Yearly		1,200
(9) Tour or Cruise Vessel		300
(10) Special, per day	(A) General	25
	(B) Beer and Wine	15
	(C) Beer	10
(11) Cabaret		1,200
(12) Hotel		1,200



(13) Caterer	600
(14) Brewpub	1,000
(15) Condominium Hotel	1,200
(16) Winery	1,000
(18) Small craft producer pub	1,000

(c) Temporary, solicitors', representatives', duplicate license, certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof, alcohol, and other fees.

(1) Temporary license. The fee for a temporary license of any class and kind shall be \$200 for an initial period of one hundred twenty (120) days, or any part of such initial period, and an additional \$200 for one additional one hundred twenty (120) day renewal or any part of such renewal period of such license.

(2) The fees for solicitors' and representatives' permits shall be for each license year commencing July 1 and ending on the succeeding June 30 or fraction thereof and shall be in the following amounts:

- (A) General \$1,800
- (B) Beer and Wine \$1,200
- (C) Alcohol \$ 200

Every individual solicitor and or representative is required to obtain an individual permit in his or her name.

- (3) The annual fee for a permit to purchase alcohol for non-beverage purposes shall be \$50 for each fiscal year, commencing July 1 and ending the succeeding June 30, or a fraction thereof. The director may waive the fee for a permit to purchase alcohol for non-beverage purposes for any County or State governmental agencies.
  - (4) The fee for issuance of a duplicate liquor license in place of one alleged to have been lost or destroyed shall be \$10 plus any cost incurred for postage and handling.
  - (5) The fee for the certification examination, a certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof shall be \$10 plus any cost incurred for postage and handling.
  - (6) The fee for a permit to import liquor shall be \$5.
- (d) Percentage fee.
- (1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, 14, 15, 16, 18, and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection



(b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1 manufacturers' licensee, class 3 wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.

- (2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS} = \text{Percentage}$$

EE = Estimated Expenditures (current fiscal year)  
BF = Basic Fees (current fiscal year)  
C = Carryover (prior fiscal year)  
(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)  
EGS= Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of

July falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the filing of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.

The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.

- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.
- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or



canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.

- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.
- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales

records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.

- (12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.
- (13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class.

(e) Filing fees with application. A filing fee of \$50 shall be paid with any application for an initial issuance of a license or for a transfer of a license in accordance with and in the manner prescribed by law.

(f) Forfeiture of fee paid. If any license or



application is canceled or withdrawn by the licensee or applicant or the license is revoked or canceled by the commission or the board, the fee paid for the application or license shall be forfeited to the department as respect to the application or unexpired portion of the fee paid for the license.

(g) Any licensee who fails to pay any penalty ordered by the board for the violation of the liquor laws of the State or of the rules of the commission by the due date shall be assessed a late charge of five per cent per month on the balance due until such fees are paid in full. The five per cent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.

(h) Any licensee who fails to pay any monetary assessment due on or before the due date or whose check or the like that is utilized for payment of such assessment is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said assessment and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.

§08-101-51 Solicitors' and representatives' permits and terms.

(a) Every solicitor's and representative's permit, whenever issued, shall expire with the close of June 30, next succeeding its issuance and shall be renewable each July 1.

(b) No solicitor or representative shall be permitted to have, own, possess, or control any liquor.

(c) Solicitors or representatives shall keep separate and distinct records of account wherein shall

## **IV. New Business**

C. Discussion and Action on HAR Title 18, Chapter 231, Administration of Taxes, as follows;  
promulgated by Department of Taxation

1. Amendments to Section 3-14.17, Revocation of Licenses because of Abandonment
2. Proposed New Section 3-14.26, Registration of Representatives
3. Amendments to Section 9.9-03, Taxpayers Subject to EFT Program



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

(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** June 19, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

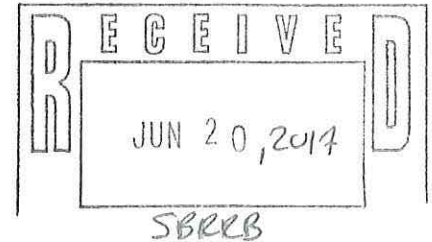
**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules, by amending section 18-231-3-14.17, subsections (d) and (e), to allow the Department to revoke certain business tax licenses for abandonment by publishing notice of intent to revoke the licenses on the Department's website for a period of 45 days prior to the revocation.

Taxpayers may secure General Excise, Transient Accommodations, or Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Tax licenses under chapters 237, 237D, and 251, HRS, respectively. Taxpayers must secure these licenses to engage in business and to file and pay their appropriate taxes. If a taxpayer ceases doing one of these types of business, it may cancel its license. However, some taxpayers cease doing business and never file to cancel their business tax license, resulting in an abandoned tax license.

Under current rules, the Department may only revoke an abandoned license by either mailing a notice of intent to revoke the license to the taxpayer, or by publishing the intent to revoke the license in the newspaper for two consecutive weeks.

The Department has hundreds of thousands of abandoned licenses and mailing notices or publishing notices in the newspaper is expensive and time consuming. These proposed rules



would allow the Department to revoke abandoned business tax licenses in a timely and cost-effective manner.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

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

All businesses, small and large, will be required to comply with the proposed rules.

The rules should not adversely affect any small business. The rules will allow the Department to remove hundreds of thousands of abandoned licenses from its computer system and will not affect any business with an active license.

In the event that a business believes its license is not abandoned and does not want the license to be revoked, the business will be able to contact the Department during the 45-day window during which the Department publishes intent to revoke licenses on its website and the Department will not revoke the license.

Even if the business does not contact the Department within the 45-day window, and the business wants to dispute its license revocation after the revocation has occurred, the Department will be able to reinstate the license.

No adverse effect to any business should result from these rules.

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

The proposed rules do not impose any new or increased fees or fines, or other costs.

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



The proposed rules will not result in any monetary cost to the Department or any other agency. The proposed rules will allow the Department to avoid mailing and publishing costs to remove the hundreds of thousands of abandoned licenses. There are no additional fees or changes to the ways moneys will be used.

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

The proposed rules should not affect any active small business. Any business that has filed taxes recently and has an active license will not be affected by these rules.

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

The proposed rules do not increase or decrease the restrictiveness of the law on small businesses. The rules only provide the Department a cost-effective way to revoke business tax licenses that have been abandoned but never canceled.

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

The proposed rules should not be any more or less burdensome.

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

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.

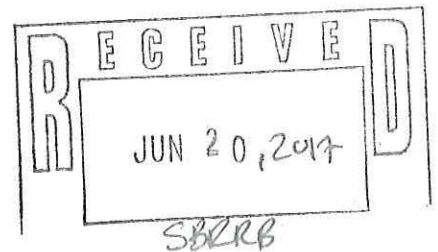
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §18-231-3-14.17 is amended.





**§18-231-3-14.17 Revocation of licenses because of abandonment. \*\*\***

(d) Before the director may revoke a license because of abandonment, the director shall give notice of intention to revoke the license by publishing the notice for a period of at least forty-five days on the department of taxation's website.

(e) If a person whose license is revoked:

(1) Disputes that the license has been abandoned, or

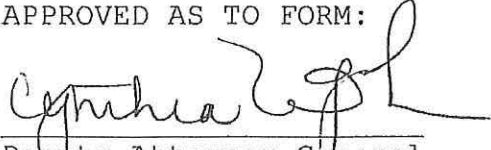
(2) Claims that the department may not revoke the license because of a reason stated in section 237-9(c), 237D-4(g), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than ninety days after the publication of the notice described in subsection (d).

\*\*\*\*

[Eff 6/18/94; am ] (Auth: HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 9, 2017

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DEPARTMENT OF TAXATION; Standard format amendment to §18-231-3-14.17 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.



DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Section 18-231-3-14.17, Hawaii Administrative Rules, is amended by amending subsections (d) and (e) to read as follows:

"(d) Before the director may revoke a license because of abandonment, the director shall[+]

~~(1) Mail a notice of intention to revoke the license to the licensee at its last known address appearing in the records of the department (unless the department has been notified by the U.S. Postal Service that the address is invalid and there is no forwarding address for the taxpayer), and then~~

~~(2) Give notice of intention to revoke the license by publishing the notice once in each of two successive weeks (two publications) in a newspaper of general circulation published in the State.] give notice of intention to revoke the license by publishing the notice for a period of at least forty-five days on the department of taxation's website.~~

(e) If a person whose license is revoked:

(1) Disputes that the license has been abandoned, or

(2) Claims that the department may not revoke the license because of a reason stated in section 237-9(c), ~~[237D-4(e),]~~ 237D-4(g), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than ninety days after the ~~[second]~~

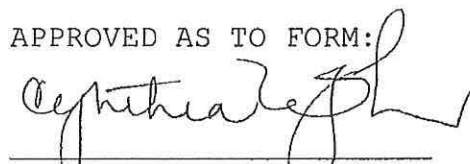
publication of the notice described in subsection  
[~~(d)~~(2)] (d)." [Eff 6/18/94; am ] (Auth:  
HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp:  
HRS §§231-3(14), 237-9, 237D-4, 251-3)

2. Material to be repealed is bracketed and  
stricken. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and  
filed with the Office of the Lieutenant Governor.

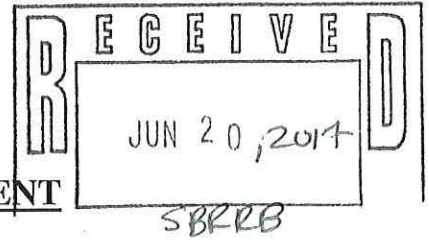
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General





**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)



**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** June 19, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by adding a new section 18-231-3-14.26, HAR. The new rule allows the Department to require any person who represents a taxpayer in front of the Department to register with the Department.

**Rule Description:**  New  Repeal  Amendment  Compilation

**Information Required Under Section 201M-2, HRS**

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

Any small business that represents taxpayers before the Department will be required to comply with the proposed rules by registering with the Department.

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



The proposed rules will not result in any increased costs to comply.

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

The proposed rules will not result in any monetary cost or benefit. However, the rules will allow the Department to create a registry of taxpayer representatives, which should benefit the public.

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

The Department did not consider any alternative methods. The proposed rules merely allow the Department to require registration. The actual method of registration will be specified in a later announcement after the rules are promulgated.

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

The proposed rules do not add any additional restriction. They only require registration with the Department and do not restrict who may register.

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

The Department did not consider alternative methods of compliance for small businesses. Registration with the Department should not be particularly burdensome.

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

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



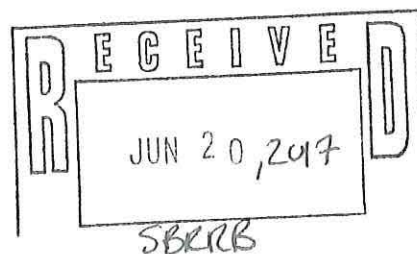
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

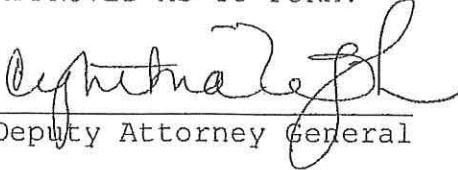
1. New §18-231-3-14.26 is added.







APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 6, 2017

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DEPARTMENT OF TAXATION; Standard format addition of new §18-231-3-14.26 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

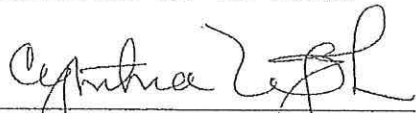
"§18-231-3-14.26 Registration of representatives.  
The department may require all persons who represent a taxpayer in any capacity before the department to register in the manner prescribed by the department."  
[Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9)) (Imp: HRS §§231-3(14))

2. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and filed with the Office of the Lieutenant Governor.

APPROVED AS TO FORM:

  
Deputy Attorney General





**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-231

**Chapter Name:** Administration of Taxes

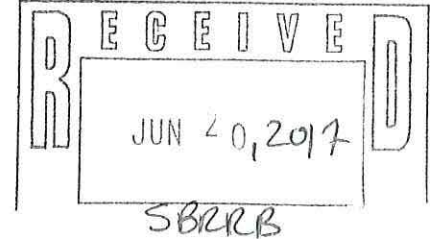
**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** June 19, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)



**General Description of Proposed Rules:**

The proposed rules amend chapter 231, Hawaii Administrative Rules (HAR), by amending section 18-231-9.9-03, HAR, to require a participant in the EFT program to make all payments, including those based on an annual return, for a given tax type electronically.

Under section 231-9.9, Hawaii Revised Statutes (HRS), the Department is authorized to require any taxpayer whose tax liability for the year exceeds \$100,000 or whose withholding tax obligation for the year exceeds \$40,000 to electronically file and pay its taxes. The Department notifies taxpayers that they are required to participate in this program to electronically pay (the "EFT Program") and thereafter taxpayers are required to pay electronically. Failure by an EFT Program participant to pay electronically results in a penalty of 2% of the amount of tax owed.

Under existing rules, EFT Program participants are required to submit payments due on their periodic tax returns electronically, but any payments made as part of an annual reconciliation return are not required to be made electronically. The proposed rules would require that payments made as part of annual reconciliation return also be made electronically.

**Rule Description:**     New     Repeal     Amendment     Compilation



**Information Required Under Section 201M-2, HRS**

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

Any small business enrolled in the EFT Program will be required to comply with the proposed rules.

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

The proposed rules require a small business taxpayer enrolled in the EFT Program to make a payment as part of an annual reconciliation tax return electronically or be subject to the same penalty such a taxpayer is already subject to with respect to periodic tax return payments.

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

The proposed rules will result in additional electronic filing by EFT Program participants, which is easier for the Department to process and administer. The Department anticipates additionally imposed penalties on EFT Program participants who fail to submit payments on their annual reconciliation returns electronically. However, the amount of such additional penalties is indeterminate and the Department hopes it will be low or even nonexistent as taxpayers comply with the proposed rules.

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

The Department did not consider any alternative methods. While the EFT Program may affect small businesses, it only affects relatively larger small businesses that have

\$100,000 in annual tax liability or \$40,000 in annual withholding tax obligations that have been notified of their enrollment in the program.

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

The current rules are less restrictive insofar as they allow EFT Program participants to submit payments on their annual reconciliation returns in whatever manner they choose. However, the Department considers it impractical to enroll taxpayers in the EFT Program, designed to require electronic payment by relatively larger taxpayers, and yet allow some of the tax liability to be paid non-electronically. The Department believes the proposed rules will make the law more practical and sensible by requiring EFT Program participants to pay on all types of returns electronically, rather than just their periodic returns.

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

The Department did not consider alternative methods of compliance for small businesses. However, as noted above, only relatively larger-sized small business will be required to be enrolled in the EFT Program. The Department believes they will be able to bear any filing burden created by these proposed rules.

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

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



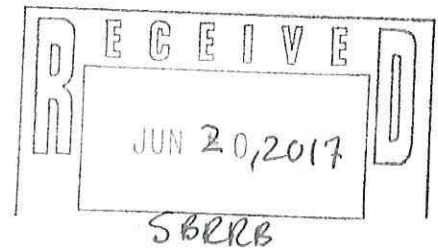
DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §18-231-9.9-03 is amended.



§18-231-9.9-03 Taxpayers subject to EFT program.

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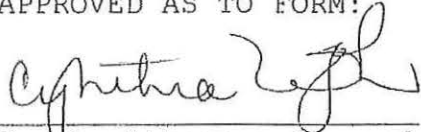
(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all payments for that tax type by EFT.

\*\*\*

[Eff 12/16/95; am ] (Auth: HRS  
§231-3(9)) (Imp: HRS §231-9.9)



APPROVED AS TO FORM:



Deputy Attorney General

DATE: June 7, 2017

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DEPARTMENT OF TAXATION; Standard format amendment to §18-231-9.9-03 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Section 18-231-9.9-03, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

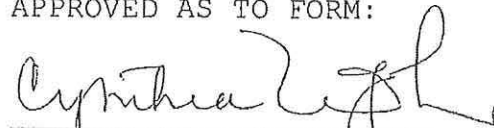
"(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all [~~periodic~~] payments for that tax type by EFT. [~~Annual reconciliation returns for that tax type shall be filed, and any required remittance shall be made, in the same manner as if the taxpayer were not in the EFT program.~~]" [Eff 12/16/95; am ]  
(Auth: HRS §231-3(9)) (Imp: HRS §§231-9.9)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-231, 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 October 9, 1981, and filed with the Office of the Lieutenant Governor.

APPROVED AS TO FORM:

  
Deputy Attorney General



#### **IV. New Business**

**D.** Discussion and Action on HAR Title 18, Chapter 237, General Excise Tax Law, as follows; promulgated by Department of Taxation:

1. Amendments to Section 8. 6, County Surcharge
2. Proposed New Section 29.53, Exported Services

**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-237

**Chapter Name:** General Excise Tax Law

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** June 19, 2017

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

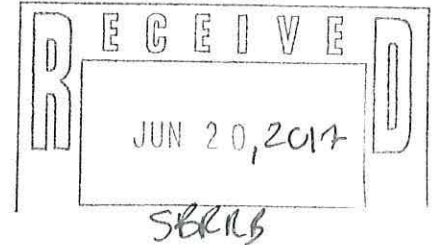
The proposed rules amend sections 18-237-8.6-01 through 18-237-8.6-10, Hawaii Administrative Rules (HAR), relating to the county surcharge to the general excise tax (GET).

Generally, each county is authorized to impose a county surcharge on gross income and gross proceeds subject to GET. The current rules provide the method of allocating gross income and gross proceeds to each county. The proposed rules simplify the allocation method by eliminating the “nexus” analysis. Additionally, the proposed rules refer to section 18-237-29.53, HAR, which are simultaneously proposed for enactment, to determine allocation of gross income and gross proceeds from services.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

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



All businesses, small and large, will be required to comply with the proposed rules.

The rules should not adversely affect any small business. By contrast, the proposed rules should benefit all taxpayers, including small business taxpayers, by simplifying the method of allocating the county surcharge.

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

The proposed rules do not impose any new or increased fees or fines. All taxpayers are currently required to report the taxation district(s) to which their gross income and gross proceeds are assigned. The proposed rules simplify the analysis, which may potentially reduce indirect accounting costs associated with compliance.

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

The proposed rules will not result in any monetary cost or benefit to the Department or any other agency. There are no additional fees that are imposed by the proposed rules.

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

The proposed rules should result in reduced impact on small businesses, as well as all other taxpayers, by simplifying the determination of how to allocate gross income and gross proceeds.

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

The proposed rules do not increase or decrease the restrictiveness of the law on small



businesses. The statute requires the Department to adopt rules regarding allocation of the county surcharge. The proposed rules simplify how to allocate gross income and gross proceeds; the proposed rules do not change the existing tax burden or filing requirements under existing law.

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

The proposed rules should make it easier for small businesses, as well as all other taxpayers, to comply with the GET law because of the simplified method of allocating gross income and gross proceeds. The Department did not consider additional methods of compliance for small businesses specifically.

All businesses subject to GET will benefit directly from the proposed rules.

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

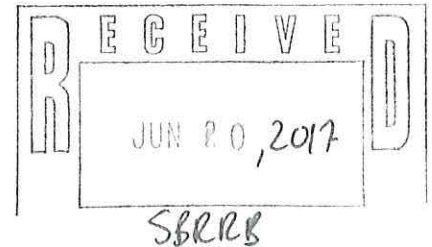
The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,  
Hawaii Administrative Rules



\_\_\_\_\_, 2017

1. Section 18-237-8.6-01, Hawaii Administrative Rules, is amended to read as follows:

§18-237-8.6-01 Definitions. [Where] As used in sections 18-237-8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

~~"Amusements" means operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public.~~

~~"Business" means the same as the term is defined in chapter 237, HRS.~~

~~"Contracting" means the same as the term is defined in chapter 237, HRS.~~

~~"Contractor" means the same as the term is defined in chapter 237, HRS.]~~

"Control" means to exercise restraining or directing influence over.

~~["Documented" means recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which is admissible as an evidence in a court of law.~~

~~"Gross income" means the same as the term is defined in chapter 237, HRS.~~

~~"Gross proceeds of sale" means the same as the term is defined in chapter 237, HRS.]~~

"Hawaii district" means the taxation district for the county of Hawaii.

~~["Home office" means the principal place of business in this State from which the trade or business of the taxpayer is directed or managed.]~~

"Intangible property" means, but is not limited to, franchises, patent, copyright, formula, process,

design, pattern, know how, format, or other similar items.

~~["Job site" means the place where a structure or group of structures was, is, or is to be located. It is a location of a property or a plot of land prepared for or underlying a structure or development.]~~

"Kauai district" means the taxation district for the county of Kauai.

"Maui district" means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

~~["Nexus" means, but is not limited to, physical presence in the State or the taxation district as the context may require.]~~

"Oahu district" means the taxation district for the city and county of Honolulu.

~~["Physical presence" means the presence of one or more employees, representatives, property, or closely related subsidiaries.]~~

~~"Place of business" means a physical location in this State at which the trade or business of the taxpayer is conducted. This term does not include a transient or insubstantial location or facilities, such as hotel rooms, dropboxes, telephone number listings, or telephone answering services.]~~

~~"Profit centers" are measurement tools used by many different industries. They are a means by which management of a company can analyze revenues and related expenses generated by a profit unit. A profit unit can be a product, a line of business or a person.]~~

~~"Real property" means the same as the term is defined in chapter 231-1, HRS.]~~

~~"Reasonable allocation method" is a method used to distribute or apportion gross income or gross proceeds in a clear, fair and proper manner and properly reflects the gross income to each taxation district, such as based on the amount of time spent.]~~

~~"Service business" means the same as the term is defined in chapter 237, HRS.]~~

"Tangible personal property" is generally property[, which] that may be touched or felt.



"Taxation district" means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section.

~~["Taxpayer" means any person liable for tax under chapter 237, HRS.] [Eff 12/7/06; am ]~~  
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

2. Section 18-237-8.6-02, Hawaii Administrative Rules, is amended to read as follows:

**18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property.** Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer's sale of tangible personal property~~[7]~~ shall be allocated to the taxation district ~~[to which]~~ where the property is delivered, regardless of where the title to the property passes. ~~[The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for sales of tangible personal property shipped or delivered to the Oahu district provided the taxpayer has substantial nexus with the Oahu district. Substantial nexus is created by, but is not limited to physical presence, such as the presence of one or more employees, representatives, or property, in the Oahu district for purposes of the county surcharge under section 237-8.6, HRS.]~~

**Example 1:**

Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the Maui district. Taxpayer shall allocate the gross income from ~~[these sales]~~ the sale to the Maui district, where the products were delivered. ~~[Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income from~~

~~products delivered in the Oahu district and the destination of the shipment is outside of the Oahu district.~~

~~Example 2:~~

~~Taxpayer, a retailer located in the Maui district with an office or store in the Oahu district, delivers products to Purchaser in the Oahu district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Taxpayer shall be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its office or store in the Oahu district.]~~

~~Example [3+] 2:~~

~~Taxpayer, a retailer located in the Maui district, sells products to Purchaser located in the Oahu district. Pursuant to Purchaser's instructions, Taxpayer directs Taxpayer's product manufacturer, who is located in the Kauai district, to deliver the products to Purchaser's office [~~or project~~] in the Maui district. Taxpayer shall allocate the gross income [~~or gross proceeds~~] from [~~these sales~~] the sale to the Maui district, where the products were delivered. [~~Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income arising from the sale of tangible personal property delivered in the Oahu district.]~~~~

~~[Example 4:~~

~~Company XYZ, located in the Maui district, does not have an office, store, or~~

~~other representation in the Oahu district, delivers products to Customer ABC, who maintains a central warehouse in the Oahu district. Subsequently, Customer ABC delivers the products to its branch stores located in other taxation districts. Company XYZ shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Company XYZ shall not be subject to the 0.5 per cent county surcharge because Company XYZ does not have an office, store, or other representation in the Oahu district, thus substantial nexus with the Oahu district is not established.]~~

**Example [5+] 3:**

~~Retailer, located [out of state] out of state, [has a sales agent in the Oahu district,] sells and delivers products to Purchaser in the Oahu district. [Retailer shall be subject to the general excise tax for the sales in the Oahu district because substantial nexus with the State is established through its sales agent in the Oahu district. Retailer shall also be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its sales agent in the Oahu district.] Retailer shall allocate the gross income from the sale to the Oahu district, where the products were delivered.~~

**[Example 6:]**

~~Same facts as in example 5, except that Retailer does not have an office, employees or other representation, including any sales person, in the Oahu district. Retailer shall not be subject to the general excise tax for~~



~~the sales in the Oahu district because  
Retailer does not have an office, store, or  
other representation in the Oahu district,  
thus there is no substantial nexus with the  
State. Retailer shall not be subject to the  
0.5 per cent county surcharge either because  
Retailer does not have an office, store, or  
other representation in the Oahu district,  
thus substantial nexus with the Oahu  
district is not established.] [Eff 12/7/06;  
am ] (Auth: HRS §§231-3(9),  
237-8) (Imp: HRS §237-8.6)~~

3. Section 18-237-8.6-03, Hawaii Administrative Rules, is amended to read as follows:

§18-237-8.6-03 Allocation of gross income  
[received by service businesses.] from contracting and  
services. (a) Gross income [received] from  
contracting or services performed by a taxpayer  
engaged in a service business or calling shall be  
allocated to the taxation district [in which] where  
the services are [intended to be] used or consumed[-  
Alternatively, the taxpayer may allocate the gross  
income by using any reasonable allocation method that  
clearly, fairly, and properly reflects the gross  
income to the appropriate taxation district; provided  
that the allocation method is documented. The county  
surcharge pursuant to section 237-8.6, HRS, shall be  
imposed on gross income and gross proceeds for  
services intended to be used or consumed in the Oahu  
district provided the taxpayer has substantial nexus  
with the Oahu district.] , as provided in sections 18-  
237-29.53-03 to 18-237-29.53-13.

(b) If services are used or consumed in more  
than one taxation district, gross income shall be  
allocated using any reasonable method; provided that  
the method is consistently used by the taxpayer and  
supported by verifiable data that reasonably  
quantifies the proportionate benefit received by each  
taxation district.

~~[Example 1:~~

~~Taxpayer, an attorney whose office is in the Oahu district, is retained by a client in the Maui district to prepare a lease for land in the Kauai district. Taxpayer shall allocate the income to the Kauai district, where the services are intended to be consumed. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the services are intended to be consumed outside the Oahu district.~~

~~Example 2:~~

~~Taxpayer is an accounting firm. Taxpayer has a home office in the Oahu district, which constitutes substantial nexus with the Oahu district. Taxpayer's employees travel to other taxation districts to conduct audits of clients. Taxpayer shall allocate income to the taxation districts, where the services are intended to be consumed by the clients. Taxpayer shall be subject to the 0.5 per cent county surcharge for services intended to be consumed in the Oahu district.~~

~~Example 3:~~

~~Taxpayer provides dentistry services from places of business in all of the taxation districts. Taxpayer has a home office in the Maui district. Taxpayer travels to the Oahu district to provide dentistry services. Taxpayer shall allocate the gross income to the taxation districts where the services are intended to be used or consumed. In this case, substantial nexus is established by Taxpayer's physical presence in the Oahu district. Taxpayer~~

~~shall be subject to the 0.5 per cent county surcharge for services intended to be used or consumed in the Oahu district but shall not be subject to the 0.5 per cent county surcharge for services intended to be consumed in taxation districts other than the Oahu district.~~

**Example 4:**

~~Taxpayer is a law firm comprised of sixty five attorneys. Sixty attorneys work in Taxpayer's home office in the Oahu district and five work in Taxpayer's place of business located in the Hawaii district. Taxpayer is retained by a client in the Hawaii district for a court case in the Hawaii district. Taxpayer shall allocate gross income from services performed by the attorneys to the Hawaii district where Taxpayer's services are intended to be used or consumed, notwithstanding incidental travel, meetings, or court appearances, outside of the taxation district, or receipt of support services from the place of business located outside of the taxation district. Taxpayer shall not be subject to the 0.5 per cent county surcharge regardless of the substantial nexus with the Oahu district because the legal services are intended to be used or consumed in the Hawaii district.] [Eff 12/7/06; am  
] (Auth: HRS §§231-3(9),  
237-8) (Imp: HRS §237-8.6)~~

4. Section 18-237-8.6-04, Hawaii Administrative Rules, is repealed.

~~[§18-237-8.6-04 Allocation of gross income from commissions. Commission income received by a taxpayer shall be allocated to the taxation district in which~~



~~the services are rendered by the taxpayer except for commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions when the services are rendered by the taxpayer in the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. In the case of commissions earned from real estate sales or from financing transactions secured by real estate, commission income received by a taxpayer shall be allocated to the taxation district in which the real property is located. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate where the real property is located in the Oahu district.~~

**Example 1:**

~~Taxpayer has an office located in the Oahu district, which sells a travel package for Disney World, Florida under section 237-18(f) to Purchaser located in the Oahu district. Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.~~

**Example 2:**

~~Same facts as in example 1, except that Purchaser is located in the Maui district.~~

~~Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.~~

~~Example 3:~~

~~Same facts as in example 1, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.~~

~~Example 4:~~

~~Same facts as in example 1, except that Taxpayer is located in the Maui district and Purchaser is located in the Hawaii district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.~~

~~Example 5:~~

~~Taxpayer is a securities broker that has an office in the Oahu district, sells securities to Purchaser who is located in the Maui district. Taxpayer shall allocate the commission income to the Oahu district~~

~~where the services of selling securities are rendered. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.~~

~~Example 6:~~

~~Taxpayer is a real estate company licensed as a real estate broker under chapter 467, HRS. Taxpayer ABC has places of business in the Oahu district, Kauai district, Maui district, and Hawaii district. Each of Taxpayer's brokers and salespersons is based in one of the places of business. The brokers and salespersons travel to other taxation districts to meet with clients, manage clients' properties, show properties, negotiate, review and close transactions. Brokers and Salespersons sell a property in the Oahu district. Taxpayer shall allocate the commission income received to the taxation districts where the real property is located. The gross income derived from the sale or leasing of real property in the Oahu district shall be allocated to the Oahu district where the real property is located. All of the gross income paid to Taxpayer and Taxpayer's brokers and salespersons shall be subject to the 0.5 per cent county surcharge in this case because the real property is located in the Oahu district. Taxpayer and each of Taxpayer's brokers and salespersons shall allocate the income that Taxpayer, Brokers or Salespersons receives under section 237-18(e), HRS, to the taxation district where the real property is located, regardless of the location of the place of business of Taxpayer, Brokers or Salespersons. Brokers or Salespersons shall also be subject to the 0.5 per cent county surcharge for real~~



~~property sold in the Oahu district.] [Eff  
12/7/06; R ]~~

5. Section 18-237-8.6-05, Hawaii Administrative Rules, is amended to read as follows:

~~§18-237-8.6-05 Allocation of gross income from the rental, ~~[or] lease, or license~~ of tangible and intangible personal property. (a) Except as provided in this section, gross income from the rental, ~~[or] lease, or license~~ of tangible and intangible personal property~~[,]~~ shall be allocated to the taxation district ~~[in which]~~ where the property is used. ~~[If the property is used in more than one taxation district, the taxpayer shall allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to each taxation district; provided that the allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for renting or leasing of personal property to the extent that the property is used in the Oahu district.]~~~~

**Example 1:**

Taxpayer is engaged in the business of renting motor vehicles ~~[from a place of business]~~ in each of the four taxation districts. Taxpayer rents a vehicle to a customer in the Maui district. Taxpayer shall allocate the gross income received from the rental to the ~~[taxation district in which the motor vehicle is used.]~~ Maui district, where the vehicle is used. ~~[Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross income from motor vehicles used in the Oahu district because the personal property is being used in the Oahu district.]~~

**Example 2:**

Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district, where the property is used. ~~[Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.]~~

**Example 3:**

Taxpayer, located in the Oahu district, ~~[has written]~~ wrote and copyrighted a song. A musician pays Taxpayer a royalty to perform that song for profit in a hotel in the Maui district. Taxpayer shall allocate the gross income from the license of the copyright to the Maui district where the property is used. ~~[Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.]~~

**Example 4:**

~~Same facts as in example 3, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the gross income from the license or royalty of his intangible personal property to the Maui district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.]~~

~~Example 5:~~

~~Same facts as in example 3, except that Taxpayer is located in the Maui district and the licensee is in the Oahu district. Taxpayer shall allocate the gross income from the license of his copyright to the Oahu district where the property is used. Taxpayer shall be subject to the 0.5 per cent county surcharge because the property is used in the Oahu district.]~~

(b) Where a taxpayer rents or leases tangible personal property~~[7]~~ or licenses or receives a royalty from intangible personal property~~[7, which]~~ that is used in more than one taxation district, ~~[the]~~ gross income shall be allocated ~~[to the taxation districts by]~~ using any reasonable ~~[allocation]~~ method ~~[that clearly, fairly, and properly reflects the gross income to each taxation district]~~; provided that the ~~[allocation]~~ method is ~~[documented.]~~ consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received by each taxation district. This rule also applies to property~~[7, which]~~ that is constantly in transit between taxation districts, such as barges, containers, and aircrafts without home ports or bases. ~~[Taxpayer shall be subject to the 0.5 per cent county surcharge to the extent that the gross income from the rental or lease of the personal property is allocated to the Oahu district pursuant to a reasonable allocation method.]~~

Example 1:

Taxpayer ~~[is engaged in the business of renting]~~ rents equipment to XYZ to be used in the Maui district and the Oahu district. The equipment will be used in the Maui district for six months and in the Oahu district for six months. Taxpayer shall allocate fifty per cent of the gross income



from the rental of the equipment to the Maui district and fifty per cent to the Oahu district. ~~[Taxpayer shall be subject to the 0.5 per cent county surcharge on fifty per cent of the gross income because using a reasonable allocation method based on time used, the equipment is used fifty per cent of the time in the Oahu district.]~~

~~Example 2:~~

~~Taxpayer is engaged in the business of leasing containers to XYZ. These containers are constantly in transit between taxation districts. Taxpayer shall allocate the gross income by using a reasonable allocation method among the taxation districts that clearly, fairly, and properly reflects gross income in each taxation district and document that allocation method. Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross proceeds allocable to the Oahu district as determined under a reasonable allocation method.] [Eff 12/7/06; am ]~~  
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

6. Section 18-237-8.6-06, Hawaii Administrative Rules, is amended to read as follows:

§18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in ~~[this]~~ the State shall be allocated to the taxation district where the real property is located. ~~[Lessors are subject to the 0.5 per cent county surcharge for rental or lease of real property located in the Oahu district. Lessors in taxation districts other than the Oahu district are subject to the county surcharge if~~

~~they rent or lease real property located in the Oahu district.]~~

**Example [+:] 1:**

Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the gross income from the rental of each unit to the taxation district [in which] where the condominium unit is located. ~~[Taxpayer shall be subject to the 0.5 per cent county surcharge on gross income from the condominium units rented in the Oahu district because the real property is located in the Oahu district.]~~ [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

7. Section 18-237-8.6-07, Hawaii Administrative Rules, is repealed.

~~[\$18-237-8.6-07 Allocation of gross income from contracting. Gross income from contracting shall be allocated to the taxation district where the job site is located. Contractors, with a home office in taxation districts other than the Oahu district are subject to the 0.5 per cent county surcharge if the job site is located in the Oahu district. Gross income from contracting in the Oahu district shall be allocated to the Oahu district because the job site is located in the Oahu district.]~~

**Example 1:**

~~Taxpayer with an office located in the Oahu district contracts for a construction project in the Maui district. Taxpayer shall allocate the gross income from this project to the Maui district. Taxpayer shall not be subject to the 0.5 per cent~~

~~county surcharge because the job site is located outside of the Oahu district.~~

~~Example 2:~~

~~Assume the same facts in Example 1, except that Taxpayer is the prime contractor for the project and Taxpayer subcontracts various aspects of the job to architect W and engineer X, located in the Oahu district. Taxpayer shall allocate the gross income from this project to the Maui district. W and X shall allocate the gross income they receive from Taxpayer to the Maui district. Taxpayer, W, and X shall not be subject to the 0.5 per cent county surcharge because the job site is located outside of the Oahu district.] [Eff 12/7/06; R ]~~

8. Section 18-237-8.6-08, Hawaii Administrative Rules, is amended to read as follows:

§18-237-8.6-08 Allocation of gross income from interest. (a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where ~~[the control of]~~ the investment is ~~[located unless the taxpayer can show that a different location should control.]~~ controlled. Alternatively, the taxpayer may allocate the gross income by using any reasonable ~~[allocation]~~ method ~~[that clearly, fairly and properly reflects the gross income to the taxation district]~~; provided that the ~~[allocation]~~ method is ~~[documented.]~~ consistently used by the taxpayer and is supported by verifiable data that reasonably reflects the benefit received by the taxation district. ~~[Taxpayer shall be subject to the 0.5 per cent county surcharge if the business's control of the investment is in the Oahu district.]~~



**Example 1:**

Taxpayer has retail locations in all taxation districts and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located in the Oahu district that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer shall allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located in the Oahu district. ~~[Therefore, the interest shall be subject to the 0.5 per cent county surcharge.]~~

**Example 2:**

Assume [The] the same facts as in example 1, except that a separate bank account is created for the Maui district retail locations. The money deposited into that bank account is used for improvements to the Maui district stores and controlled by the Maui district retail locations. Interest on this bank account ~~[shall not be subject to the 0.5 per cent county surcharge because the account is being controlled outside of the Oahu district.] shall be allocated to the Maui district.~~

(b) ~~[The gross income from a taxpayer's deferred payment interest]~~ When interest is earned from the sale of tangible personal property on a deferred or installment payment plan, the interest shall be allocated to the taxation district [in which] where the [sale that generated the interest is assigned under section 18-237-8.6-02 or 18-237-8.6-06.] tangible personal property is delivered. [Taxpayer shall be subject to the 0.5 per cent county surcharge on the interest if the sale that generated the

~~interest is allocated to the Oahu district.]~~  
Alternatively, the taxpayer may allocate the gross income by using any reasonable [allocation] method ~~[that clearly, fairly, and properly reflects the gross income to the appropriate taxation district];~~ provided that the [allocation] method is ~~[documented.]~~ consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district.

**Example 1:**

~~[Taxpayer has retail locations in all of the taxation districts. Taxpayer sells goods on an installment basis or deferred payment basis. Taxpayer shall allocate the interest received on the sales by credit or on the installment basis to the taxation district in which the sales that generated the interest is assigned under section 18-237-8.6-02. The interest income generated from sales that are allocated to the Oahu district are likewise allocated to the Oahu district and subject to the 0.5 per cent county surcharge.]~~ Taxpayer, located in the Hawaii district, sells equipment to Purchaser, located in the Kauai district, on an installment payment plan. Taxpayer delivers the equipment to Purchaser in the Kauai district. Every month for twelve months, Taxpayer receives a payment from Purchaser, which includes principal and interest. Taxpayer shall allocate the interest received from each payment to the Kauai district.

(c) When interest is earned from the sale of real property on a deferred payment plan, the gross income from the interest shall be allocated to the taxation district where the real property is located.

Example [2+] 1:

Taxpayer~~[-, who does not have an office in the State,]~~ sells ~~[business or rental]~~ real estate located in the Oahu district pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer shall ~~[be subject to the 0.5 per cent county surcharge on the interest income from the agreement of sale because]~~ allocate the interest received to the Oahu district because the real estate that is the subject of the agreement of sale is located in the Oahu district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

9. Section 18-237-8.6-09, Hawaii Administrative Rules, is amended to read as follows:

§18-237-8.6-09 Allocation of gross income of theaters, amusements, etc. The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place ~~[at which]~~ where amusements are offered to the public shall be allocated to the taxation district ~~[in which]~~ where the event takes place. ~~[Taxpayers shall be subject to the 0.5 per cent county surcharge on gross income generated from events in the Oahu district.]~~ Alternatively, the taxpayer may allocate the gross income by using any reasonable ~~[allocation]~~ method ~~[that clearly, fairly, and properly reflects the gross income to the appropriate taxation district];~~ provided that the ~~[allocation]~~ method is ~~[documented.]~~ consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)



10. Section 18-237-8.6-10, Hawaii Administrative Rules, is amended to read as follows:

**§18-237-8.6-10 All others.** ~~[The gross income or gross proceeds received by a taxpayer who reports business activity on Form G-45 or Form G-49 under the classification "all others"]~~ If sections 18-237-8.6-02 to 18-237-8.6-09 do not apply, gross income shall be allocated to a taxation district based upon the rules for allocating gross income [for the business activity] which [is] are the most [similar] relevant to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable [allocation] method [that clearly, fairly and properly reflects the gross income to the appropriate taxation district]; provided that the [allocation] method is [documented.] consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

11. Material to be repealed is bracketed and stricken. New material is underscored.

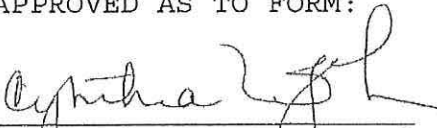
12. These amendments to Chapter 18-237, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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 October 9, 1981, and filed with the Office of the Lieutenant Governor.

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Director  
Department of Taxation

APPROVED AS TO FORM:

  
Deputy Attorney General

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

SUMMARY

1. §§18-237-8.6-01 to 18-237-8.6-03 are amended.
2. §18-237-8.6-04 is repealed.
3. §§18-237-8.6-05 to 18-237-8.6-06 are amended.
4. §18-237-8.6-07 is repealed.
5. §§18-237-8.6-08 to 18-237-8.6-10 are amended.



§18-237-8.6-01 **Definitions.** As used in sections 18-237-8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

"Control" means to exercise restraining or directing influence over.

"Hawaii district" means the taxation district for the county of Hawaii.

"Intangible property" means, but is not limited to, franchises, patent, copyright, formula, process, design, pattern, know how, format, or other similar items.

"Kauai district" means the taxation district for the county of Kauai.

"Maui district" means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

"Oahu district" means the taxation district for the city and county of Honolulu.

"Tangible personal property" is generally property that may be touched or felt.

"Taxation district" means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

**18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property.** Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer's sale of tangible personal property shall be allocated to the taxation district where the property is delivered, regardless of where the title to the property passes.

**Example 1:**

Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the

Maui district. Taxpayer shall allocate the gross income from the sale to the Maui district, where the products were delivered.

**Example 2:**

Taxpayer, a retailer located in the Maui district, sells products to Purchaser located in the Oahu district. Pursuant to Purchaser's instructions, Taxpayer directs Taxpayer's product manufacturer, who is located in the Kauai district, to deliver the products to Purchaser's office in the Maui district. Taxpayer shall allocate the gross income from the sale to the Maui district, where the products were delivered.

**Example 3:**

Retailer, located out of state, sells and delivers products to Purchaser in the Oahu district. Retailer shall allocate the gross income from the sale to the Oahu district, where the products were delivered.  
[Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

**§18-237-8.6-03 Allocation of gross income from contracting and services.** (a) Gross income from contracting or services performed by a taxpayer engaged in a service business or calling shall be allocated to the taxation district where the services are used or consumed, as provided in sections 18-237-29.53-03 to 18-237-29.53-13.

(b) If services are used or consumed in more than one taxation district, gross income shall be allocated using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received by each

taxation district. [Eff 12/7/06; am ]  
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-04 Repealed. [R ]

§18-237-8.6-05 Allocation of gross income from the rental, lease, or license of tangible and intangible personal property. (a) Except as provided in this section, gross income from the rental, lease, or license of tangible and intangible personal property shall be allocated to the taxation district where the property is used.

**Example 1:**

Taxpayer is engaged in the business of renting motor vehicles in each of the four taxation districts. Taxpayer rents a vehicle to a customer in the Maui district. Taxpayer shall allocate the gross income received from the rental to the Maui district, where the vehicle is used.

**Example 2:**

Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district, where the property is used.

**Example 3:**

Taxpayer, located in the Oahu district, wrote and copyrighted a song. A musician pays Taxpayer a royalty to perform that song for profit in a hotel in the Maui district. Taxpayer shall allocate the gross income



from the license of the copyright to the Maui district where the property is used.

(b) Where a taxpayer rents or leases tangible personal property or licenses or receives a royalty from intangible personal property that is used in more than one taxation district, gross income shall be allocated using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received by each taxation district. This rule also applies to property that is constantly in transit between taxation districts, such as barges, containers, and aircrafts without home ports or bases.

**Example 1:**

Taxpayer rents equipment to XYZ to be used in the Maui district and the Oahu district. The equipment will be used in the Maui district for six months and in the Oahu district for six months. Taxpayer shall allocate fifty per cent of the gross income from the rental of the equipment to the Maui district and fifty per cent to the Oahu district. [Eff 12/7/06; am ]  
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in the State shall be allocated to the taxation district where the real property is located.

**Example 1:**

Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the

gross income from the rental of each unit to the taxation district where the condominium unit is located. [Eff 12/7/06; am  
] (Auth: HRS §§231-3(9),  
237-8) (Imp: HRS §237-8.6)

§18-237-8.6-07 Repealed. [R ]

§18-237-8.6-08 Allocation of gross income from interest. (a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where the investment is controlled. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and is supported by verifiable data that reasonably reflects the benefit received by the taxation district.

**Example 1:**

Taxpayer has retail locations in all taxation districts and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located in the Oahu district that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer shall allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located in the Oahu district.

**Example 2:**

Assume the same facts as in example 1, except that a separate bank account is created for the Maui district retail locations. The money deposited into that bank account is used for improvements to the

Maui district stores and controlled by the Maui district retail locations. Interest on this bank account shall be allocated to the Maui district.

(b) When interest is earned from the sale of tangible personal property on a deferred or installment payment plan, the interest shall be allocated to the taxation district where the tangible personal property is delivered. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district.

**Example 1:**

Taxpayer, located in the Hawaii district, sells equipment to Purchaser, located in the Kauai district, on an installment payment plan. Taxpayer delivers the equipment to Purchaser in the Kauai district. Every month for twelve months, Taxpayer receives a payment from Purchaser, which includes principal and interest. Taxpayer shall allocate the interest received from each payment to the Kauai district.

(c) When interest is earned from the sale of real property on a deferred payment plan, the gross income from the interest shall be allocated to the taxation district where the real property is located.

**Example 1:**

Taxpayer sells real estate located in the Oahu district pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer shall allocate the



interest received to the Oahu district because the real estate that is the subject of the agreement of sale is located in the Oahu district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

**§18-237-8.6-09 Allocation of gross income of theaters, amusements, etc.** The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place where amusements are offered to the public shall be allocated to the taxation district where the event takes place. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

**§18-237-8.6-10 All others.** If sections 18-237-8.6-02 to 18-237-8.6-09 do not apply, gross income shall be allocated to a taxation district based upon the rules for allocating gross income which are the most relevant to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

APPROVED AS TO FORM:

  
Deputy Attorney General

DATE: June 19, 2017

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DEPARTMENT OF TAXATION; Amendments to Chapter 18-237, Hawaii Administrative Rules; Standard format amendments to §§18-237-8.6-01, 18-237-8.6-02, 18-237-8.6-03, 18-237-8.6-05, 18-237-8.6-06, 18-237-8.6-08, 18-237-8.6-09, and 18-237-8.6-10 and repeal of §§18-237-8.6-04 and 18-237-8.6-07 for pre-hearing approval pursuant to Hawaii Administrative Directive 09-01.





**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-237

**Chapter Name:** General Excise Tax Law

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**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 237, Hawaii Administrative Rules (HAR), by adding thirteen new sections which clarify how to determine whether gross income derived from services or contracting is exempt from the General Excise Tax as exported services or contracting.

Generally, under section 237-29.53, Hawaii Revised Statutes, all gross income derived from contracting or services performed by a person in the State for use outside the State is exempt from General Excise Tax. Specifically, these proposed rules clarify this exemption by adding definitions and creating rules for particular contracting or service transaction types. For example, the proposed rules create new rules dealing with services related to real property, services related to tangible personal property, services provided by travel agencies and tour packagers, legal services, and more.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

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

All businesses, small and large, will be required to comply with the proposed rules.

The rules should not adversely affect any small business. By contrast, the proposed rules should benefit all taxpayers, including small business taxpayers, by clarifying the law around the exported services exemption. These proposed rules explain in detail how to determine whether a transaction is subject to the exported services exemption, which will allow taxpayers to more easily file an accurate General Excise Tax return.

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

The proposed rules do not impose any new or increased fees or fines. The proposed rules may potentially reduce the indirect accounting costs associated with General Excise Tax reporting by providing additional clarity and guidance where none existed in the law previously.

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

The proposed rules will not result in any monetary cost or benefit to the Department or any other agency. There are no additional fees or changes to the ways moneys will be used. The rules provide additional guidance relating to existing tax law obligations.

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

The proposed rules should result in reduced impact on small businesses, as well as all other taxpayers, by providing clarity under the law that should make filing General Excise Tax returns easier.

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

The proposed rules do not increase or decrease the restrictiveness of the law on small businesses. The rules only provide clarity for determining whether income is subject to the exported services exemption, and do not change the existing tax burden or filing requirements under existing law.

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

The proposed rules should make it easier for small businesses, as well as all other taxpayers, to comply with the General Excise Tax law because of the additional clarity they provide. The Department did not consider additional methods of compliance for small businesses specifically.

Businesses that receive gross income in exchange for contracting or services sold to persons consuming that contracting or services out-of-state will benefit most directly from the proposed rules.

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

The Department did not directly involve small businesses.

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

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,  
Hawaii Administrative Rules

\_\_\_\_\_, 2017

1. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-01 Definitions. As used in sections 18-237-29.53-01 to 18-237-29.53-13:

"Collection actions" means all actions taken to enforce a money judgment or collect a debt.

"Commissioned agent" means an agent that provides services on behalf of a principal, with the principal's assent, for a predetermined fee. The total price charged to the customer is controlled by the principal; the total price cannot be unilaterally determined by the agent.

"Customer" means the person personally receiving the service.

"Noncommissioned negotiated contract rates" means the rates specified in a negotiated contract between a travel agent or tour packager and operator of a transient accommodation or a travel-related booking that the operator of a transient accommodation or a travel-related booking will receive for a transaction booked by the travel agent or tour packager. When transient accommodations are furnished or travel-related bookings are made through arrangements made by a travel agent or tour packager at noncommissioned negotiated contract rates, the travel agent or tour packager may unilaterally determine the mark-up of the noncommissioned negotiated contract rate and the total price charged to the customer; the operator of the transient accommodation or the travel-related booking has no control over the mark-up or the total price.

"Transient accommodation" means the same as the term is defined in section 237D-1, HRS.

"Travel-related booking" includes tours, excursions, transportation, rental vehicles, shows, dining, spa services, and any other reservation or booking made by a travel agent or tour packager.

**Example 1:**

World Travel Inc. enters into a contract with Gold Hotel whereby World Travel Inc. may sell the right to occupy rooms in Gold Hotel at \$100 per room per night. The contract further provides that World Travel Inc. will receive a fee of ten per cent for each sale. World Travel Inc. is a commissioned agent of Gold Hotel.

**Example 2:**

Assume the same facts as in Example 1, except that the contract between World Travel Inc. and Gold Hotel provides that World Travel Inc. will receive a fee of eight per cent if total sales for the month is less than \$10,000 or ten per cent if total sales for the month is \$10,000 or more. World Travel Inc. is a commissioned agent of Gold Hotel.

**Example 3:**

Island Planner Co. enters into a contract with Silver Hotel whereby Island Planner Co. may sell the right to occupy rooms in Silver Hotel. For each booking made by Island Planner Co., Silver Hotel will receive \$100 per room per night. Island Planner Co. may unilaterally determine the mark-up and set the total price charged to the customer. Island Planner Co. is arranging transient accommodations at noncommissioned negotiated contract rates.

Example 4:

Assume the same facts as in Example 3, except that, for each booking made by Island Planner Co., Silver Hotel will receive ninety per cent of the net rate, the best available rate offered by Silver Hotel to the public at the time of the transaction. Island Planner Co. may unilaterally determine the mark-up of the net rate and set the total price charged to the customer. Island Planner Co. is arranging transient accommodations at noncommissioned negotiated contract rates."

Example 5:

Hawaii's Best Inc., a travel agent, enters into a contract with Oceanside Spa to sell massage and facial treatments. For each massage or facial sold by Hawaii's Best Inc., Oceanside Spa will receive \$80. Hawaii's Best Inc. may unilaterally determine the mark-up and set the total price charged to the customer. Hawaii's Best Inc. is making travel-related bookings at noncommissioned negotiated contract rates." [Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

2. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-02 Exemption for contracting and services exported out of state, in general. (a) Absent bad faith, all of the value or gross income derived from contracting or services performed by a person engaged in a service business or calling are exempt from general excise tax if the contracting or services are used or consumed outside of the State;



provided that services performed for a purchaser who resells the services are exempt from general excise tax only if the purchaser resells all of the services for use or consumption outside the State.

(b) If contracting or services are used or consumed both in and outside of the State, all of the value or gross income will be subject to general excise tax in proportion to the benefit received in the State. Any reasonable method of apportioning all of the value or gross income may be used; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received in the State." [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

3. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-03 Contracting. Contracting is used or consumed where the real property to which the contracting activity takes place is located.

Example 1:

General LLC, a general contractor based in Hawaii, is hired by Developer LLC, a Hawaii developer, for a construction project located in Guam. Employees of General LLC and Developer LLC meet in Hawaii on a weekly basis throughout the duration of the construction project to discuss plans, progress, and other matters related to the project. All of the value or gross income that General LLC receives for the construction project is exempt under section 237-29.53, HRS, because the contracting is used or consumed in Guam, where the real property is located.

**Example 2:**

Second Hawaiian Bank, a bank with its headquarters in Hawaii, hires General LLC, a general contractor based in Hawaii, to build two new branches, one in Guam and one in Hawaii. All of the value or gross income that General LLC receives for the Guam branch is exempt under section 237-29.53, HRS, because the contracting is used or consumed in Guam, where the real property is located. All of the value or gross income that General LLC receives for the Hawaii branch is not exempt under section 237-29.53, HRS, because the contracting is used or consumed in Hawaii, where the real property is located." [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

4. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237-29.53-04 Services related to real property.** Services related to real property are used or consumed where the real property is located. Services related to real property include, but are not limited to, property management, real estate sales, real estate inspections, and real estate appraisals.

**Example 1:**

RPM Co., a Hawaii real property management company, is hired by RE Investor Inc., a Hawaii corporation, to manage a California property. All of the value or gross income that RPM Co. receives from RE Investor Inc. to manage the California property is exempt under section 237-29.53, HRS, because the property management

services are used or consumed in California, where the real property is located.

**Example 2:**

CPM LLC, a California real property management company, is hired by Irene Investor, a California resident who owns real property in Hawaii, to manage her property. All of the value or gross income that CPM LLC receives to manage the Hawaii property is not exempt under section 237-29.53, HRS, because the property management services are used or consumed in Hawaii, where the real property is located.

**Example 3:**

The Hawaii office of Legal Services LLP, a law firm with offices throughout the United States, is hired by Lisa Landlord, a Hawaii resident, to draft lease agreements for her rental properties in Hawaii, Arizona, and Nevada. Legal Services LLP charges Lisa Landlord \$200 each for the Hawaii lease, Arizona lease, and Nevada lease, for a total fee of \$600. Legal Services LLP shall report \$600 in gross income on its general excise tax return and may claim two-thirds, or \$400, as exempt under section 237-29.53, HRS, because two-thirds of the services relate to real property located outside Hawaii and are therefore used or consumed outside Hawaii."  
[Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)



5. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-05 Services related to tangible personal property. Services related to tangible personal property are used or consumed where the tangible personal property is delivered after the services are performed. Services that relate to tangible personal property include, but are not limited to, inspection, appraisal, testing, and repair of tangible personal property.

Example 1:

Tom Tourist, a resident of Montana vacationing in Hawaii, takes his broken mobile phone to Fixer LLC, an electronic repair shop in Hawaii. After Fixer LLC repairs the mobile phone, Tom Tourist picks it up from Fixer LLC's shop in Hawaii. All of the value or gross income that Fixer LLC receives is not exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Hawaii, where the property was delivered after the service was performed.

Example 2:

Assume the same facts as in Example 1, except that Fixer LLC, upon Tom Tourist's request, ships the mobile phone to Tom Tourist's home in Montana after completing the repair. All of the value or gross income that Fixer LLC receives is exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Montana, where the property was delivered after the service was performed.

**Example 3:**

Assume the same facts as in Example 1, except that Fixer LLC is unable to repair Tom Tourist's mobile phone at its shop in Hawaii. Fixer LLC sends the phone to its warehouse in Arizona, where the repair is completed. The mobile phone is shipped back to Fixer LLC's shop in Hawaii, where Tom Tourist picks it up. All of the value or gross income that Fixer LLC receives is not exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Hawaii, where the property was delivered after the service was performed. [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

6. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**§18-237-29.53-06 Services provided by a travel agency or tour packager at noncommissioned negotiated contract rates.** (a) When transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates, the travel agency's or tour packager's service is used or consumed where the transient accommodation is located.

(b) When travel-related bookings other than transient accommodations are made or sold by a travel agency or tour packager at noncommissioned negotiated contract rates, the travel agency's or tour packager's service is used or consumed where the travel-related booking is located.

**Example 1:**

Travel Services Corporation ("TSC"), an online travel company with headquarters in New York, sells a five-night stay at Luau

Loft, a hotel in Hawaii to Tammy Traveler, a resident of New Jersey. TSC arranges the transient accommodation at noncommissioned negotiated contract rates. The contract between TSC and Luau Loft provides that Luau Loft will receive ninety per cent of the net rate, the best available rate offered by Luau Loft to the public at the time of the transaction, and that TSC may unilaterally determine the mark-up of the net rate and set the total price charged to the customer. TSC charges Tammy Traveler \$600 for the booking. The net rate at the time of TSC's sale to Tammy Traveler is \$100 per night, or \$500 for five nights. TSC unilaterally sets the mark-up for the booking and the final price of \$600. All of the value or gross income that TSC receives is not exempt under section 237-29.53, HRS. TSC's service is used or consumed in Hawaii, where the transient accommodation is located. The transient accommodation was furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates.

**Example 2:**

Assume the same facts as in Example 1, except that TSC books a five-day rental of a vehicle in Hawaii for Tammy Traveler. TSC arranges the travel-related booking at noncommissioned negotiated contract rates. The contract between TSC and the rental vehicle company provides that the rental vehicle company will receive \$50 per day for each vehicle rented and that TSC may unilaterally determine the mark-up and set the total price charged to the customer. TSC charges Tammy Traveler \$300 for the booking. All of the value or gross income that TSC receives is not exempt under



section 237-29.53, HRS. TSC's service is used or consumed in Hawaii, where the travel-related booking is located. The travel-related booking was made by a travel agency at noncommissioned negotiated contract rates.

**Example 3:**

Maui Travel Agency ("MTA"), a travel agency located in Hawaii, sells a seven-night stay at Glacier Hotel, a hotel in Alaska to Alex Adventurer, a resident of Hawaii. MTA arranges the transient accommodation at noncommissioned negotiated contract rates. The contract between MTA and Glacier Hotel provides that Glacier Hotel will receive \$100 per room per night and that MTA may independently determine the mark-up and set the total price charged to the customer. MTA charges Alex Adventurer \$1,000 for the booking, unilaterally determining to charge a mark-up of \$300. All of the value or gross income that MTA receives is exempt under section 237-29.53, HRS. MTA's service is used or consumed in Alaska, where the transient accommodation is located. The transient accommodation was furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates.

**Example 4:**

Assume the same facts as in Example 3, except that the contract between MTA and Glacier Hotel provides that MTA may book rooms at Glacier Hotel for \$125 per room per night and that, for each booking, MTA will receive ten per cent of the sale. MTA does not have the authority to mark up or unilaterally change the total price charged

to the customer. Section 18-237-29.53-06 does not apply because transient accommodations are not being furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates. Instead, MTA is a commissioned agent and section 18-237-29.53-10 applies. Under that rule, all of the value or gross income that MTA receives is not exempt because MTA is in Hawaii and the booking occurred in Hawaii. [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

7. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237-29.53-07 Legal services in an action or proceeding.** Legal services provided to a party in a judicial action or proceeding, administrative proceeding, arbitration, mediation, or other method of dispute resolution are used or consumed where the case or matter is filed. For purposes of this section, "party" means a party in an action or proceeding, including but not limited to, a plaintiff, defendant, petitioner, respondent, appellant, appellee, or real party in interest.

**Example 1:**

Annie Attorney, an attorney based in Hawaii, is hired by Aaron Appellant, a Hawaii resident, to represent him in an appeal pending in the Court of Appeals in California. Annie Attorney drafts the briefs in her office in Hawaii and attends the hearing in California. All of the value or gross income that Annie Attorney receives from Aaron Appellant is exempt under section 237-29.53, HRS, because Annie Attorney's services are used or consumed in California, where the case was filed.

**Example 2:**

Annie Attorney, an attorney based in Hawaii, is hired by Daniel Defendant, an Oregon resident, to represent him in a lawsuit filed against him in Hawaii. All of the value or gross income that Annie Attorney receives from Daniel Defendant is not exempt under section 237-29.53, HRS, because Annie Attorney's services are used or consumed in Hawaii, where the case was filed.

**Example 3:**

XYZ, a multistate business, hires Legal Services LLP, a law firm with offices throughout the United States, including California and Hawaii, to represent it in a lawsuit filed in the United States District Court in Hawaii. The California office of Legal Services LLP performed eighty hours of work on the case and the Hawaii office of Legal Services LLP performed twenty hours of work on the case. All of the value or gross income that Legal Services LLP receives for its work performed in the California and Hawaii offices is not exempt under section 237-29.53, HRS, because Legal Services LLP's services are used or consumed in Hawaii, where the case was filed.

**Example 4:**

Chris Client, a Hawaii resident, hires Legal Services LLP, a law firm with offices throughout the United States, to represent him in a personal injury case in California. Legal Services LLP drafts a complaint to be filed in California. Before the complaint is filed, however, Legal Services LLP



settles the dispute. Because the complaint was not filed, section 18-237-29.53-07 does not apply. Instead, section 18-237-29.53-11 will apply." [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

8. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237-29.53-08 Debt collection services.**  
Debt collection services are used or consumed where the collection actions take place. This section does not apply to businesses that engage in collection actions to recover their own debts.

**Example 1:**

Irene Investor, a California resident, hires Repo LLC to enforce a civil judgment against David Debtor, a Hawaii resident. Repo LLC performs the work necessary to levy David Debtor's bank accounts and garnish David Debtor's wages in Hawaii. All of the value or gross income that Repo LLC receives is not exempt under section 237-29.53, HRS, because Repo LLC's services are used or consumed in Hawaii, where the collection actions took place.

**Example 2:**

Sam Spender, a California resident, has an outstanding debt owed to Credit Card Company. Cash Collectors Inc., a corporation located in Hawaii, purchases David Debtor's debt from Credit Card Company and takes actions to recover the debt from Sam Spender. Section 237-29.53, HRS, does not apply because Cash Collectors Inc., in attempting to recover its own debt, is not engaging in a service business or calling."

[Eff ] (Auth: HRS §§231-3(9),  
237-8) (Imp: HRS §237-29.53)

9. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-09 Services requiring customer to be physically present. Except as provided in sections 18-237-29.53-03 to 18-237-29.53-08, services that require the customer to be physically present at the time the service is performed are used or consumed where the service is performed.

Example 1:

Fiona Facial, an esthetician in Hawaii, sells a spa package consisting of a facial and manicure to Carol Colorado, a Colorado resident. Carol Colorado purchases the spa package online as a gift for her mother for an upcoming vacation to Hawaii. Carol Colorado's mother travels to Hawaii, where she receives the facial and manicure from Fiona Facial. All of the value or gross income that Fiona Facial receives is not exempt under section 237-29.53, HRS, because Fiona Facial's services are used or consumed in Hawaii. Carol Colorado's mother, the customer, must be physically present in Hawaii at the time the service is performed.

Example 2:

ABC Company, an Arizona corporation, holds a corporate retreat in Hawaii. ABC Company hires Sue Speaker, a motivational speaker who resides in New Mexico, to fly to Hawaii and speak to ABC Company and its employees at the corporate retreat. All of the value or gross income that Sue Speaker receives from ABC Company is not exempt

under section 237-29.53, HRS, because ABC Company must be physically present (through the presence of its employees) in Hawaii at the time the service is performed.

**Example 3:**

Assume the same facts as in Example 2 except that some employees of ABC Company are unable to attend the corporate retreat in Hawaii. Sue Speaker's presentation is live-streamed to ABC Company's office in Arizona for the employees in Arizona to view. All of the value or gross income that Sue Speaker receives from ABC Company is not exempt under section 237-29.53, HRS, because ABC Company must be physically present (through the presence of its employees) in Hawaii at the time the service is performed, notwithstanding the fact that some of its employees are not required to be physically present.

**Example 4:**

ABC Company, an Arizona corporation, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The live-stream is accessed solely from ABC Company's office in Arizona. Paul Presenter's service does not require ABC Company to be physically present where the service is performed. Accordingly, section 18-237-29.53-09 does not apply. Instead, section 18-237-29.53-11 will apply." [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)



10. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-10 Services performed by commissioned agents. (a) Notwithstanding sections 18-237-29.53-05 to 18-237-29.53-09, services performed by a commissioned agent are used or consumed where the agent is located at the time the agent's services are provided.

Example 1:

Maui Travel Agency ("MTA"), a travel agency located in Hawaii, sells a seven-night stay at Glacier Hotel, a hotel in Alaska to Alex Adventurer, a resident of Hawaii. The contract between MTA and Glacier Hotel provides that MTA may book rooms at Glacier Hotel for \$125 per room per night and that, for each booking, MTA will receive ten per cent of the sale. MTA does not have the authority to mark up or unilaterally change the total price charged to the customer. All of the value or gross income that MTA receives is not exempt under section 237-29.53, HRS, because MTA is a commissioned agent and its services are used or consumed in Hawaii, where MTA is located." [Eff \_\_\_\_\_] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

11. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-11 Other services. (a) Except as provided in sections 18-237-29.53-03 to 18-237-29.53-10:

- (1) If the customer is a business and the service relates to the customer's business activities, the service is used or consumed where the related business activities occur;

- (2) If the customer is a business and the service is unrelated to the customer's business activities, the service is used or consumed where the customer's principal place of business is located;
- (3) If the customer is an individual, the service is used or consumed where the individual resides; or
- (4) If the customer is the military or federal, state, or local government, the service is used or consumed where the benefit of the service is received.

(b) For purposes of this section, "business activities" means the transactions and activities engaged in the regular course of trade or business for the ultimate purpose of obtaining gains or profits, or if the business is a tax-exempt organization, also includes the transactions and activities that further the exempt purpose of the organization.

**Example 1:**

Chris Client, a Hawaii resident, hires Legal Services LLP, a law firm with offices throughout the United States, including Hawaii, to represent him in a personal injury case in California. Legal Services LLP drafts a complaint to be filed in California. Before the complaint is filed, however, Legal Services LLP settles the dispute. All of the value or gross income that Legal Services LLP receives is not exempt under section 237-29.53, HRS, because Legal Services LLP's services are used or consumed in Hawaii, where Chris Client resides, pursuant to section 18-237-29.53-11(a)(3).

**Example 2:**

ABC Company, an Arizona corporation with its principal place of business in

Arizona, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The motivational speech is a personal benefit that ABC Company provides to its employees and is not related to its business activities. The live-stream is accessed solely from ABC Company's office in Arizona. All of the value or gross income that Paul Presenter receives is exempt under section 237-29.53, HRS, because Paul Presenter's service is used or consumed in Arizona, where ABC Company's principal place of business is located, pursuant to section 18-237-29.53-11(a)(2).

**Example 3:**

Annie Attorney, a Hawaii attorney, is hired by Wendy Wyoming, a Wyoming resident who owns stock and partnership interests in various enterprises, as well as Hawaii real property, to prepare her estate plan. All of the value or gross income that Annie Attorney receives to prepare Wendy Wyoming's estate plan is exempt under section 237-29.53, HRS, because Annie Attorney's services are used or consumed in Wyoming, where Wendy Wyoming resides, pursuant to section 18-237-29.53-11(a)(3).

**Example 4:**

XYZ, a multistate business, hires Legal Services LLP, a law firm with offices throughout the United States, including Hawaii, to represent it in a contract dispute relating to business activities in Hawaii. Legal Services LLP settles the case before a lawsuit is filed and charges XYZ \$30,000 in legal fees. Attorneys from Legal



Services LLP's Hawaii office performed twenty per cent of the work and attorneys from Legal Services LLP's California office performed the remaining eighty per cent of work. All of the value or gross income that Legal Services LLP receives is not exempt under section 237-29.53, HRS, because the legal services are used or consumed in Hawaii, where the business activities relating to the legal services occurred, pursuant to section 18-237-29.53-11(a)(1).

**Example 5:**

Arnold Accountant, an accountant located in Hawaii, is hired by Mary Mover, a California resident, to prepare her federal and state tax returns. Mary Mover must file state tax returns in California, where she resided for the first half of the year, and Hawaii, where she currently resides. All of the value or gross income that Arnold Accountant receives from Mary Mover is not exempt under section 237-29.53, HRS, because Arnold Accountant's services are used or consumed in Hawaii, where Mary Mover resides, pursuant to section 18-237-29.53-11(a)(3).

**Example 6:**

XYZ, a multistate business, hires Accounting Services LLP, a Hawaii accounting firm, to perform accounting services related to XYZ's business activities in Hawaii. All of the value or gross income that Accounting Services LLP receives from XYZ is not exempt under section 237-29.53, HRS, because Accounting Services LLP's services are used or consumed in Hawaii, where XYZ's business activities related to the accounting

services occur, pursuant to section 18-237-29.53-11(a)(1).

**Example 7:**

SP LLC, a software programmer located in Hawaii, is hired by MedServ, Inc., a medical service provider doing business in several states, including Hawaii, to create a customized and integrated patient file and billing program for use at all of its medical offices for a fee of \$70,000. MedServ, Inc. has two of its seven medical offices in Hawaii. SP LLC's services are used or consumed where MedServ, Inc.'s business activities relating to SP LLC's services occurred, pursuant to section 18-237-29.53-11(a)(1). Because SP LLC's service is used or consumed both in and outside of the State, SP LLC shall apportion its income pursuant to section 18-237-29.53-02(b). In this case, it is reasonable for SP LLC to apportion two-sevenths of its gross income to Hawaii. SP LLC shall report \$70,000 in gross income on its general excise tax return and may claim \$50,000 as exempt under section 237-29.53, HRS.

**Example 8:**

Honolulu Hut, a Hawaii retailer, hires GD Company, a graphic design company in California, to design a company logo that will be used on Honolulu Hut's merchandise sold in Hawaii and in marketing materials distributed in Hawaii. GD Company contracts with Ashley Artist, a Hawaii resident, to create a digital image, which GD Company will incorporate into the logo it designs for Honolulu Hut. All of the value or gross income that GD Company receives from Honolulu Hut is not exempt under section

237-29.53, HRS, because GD Company's services are used or consumed in Hawaii, where Honolulu Hut's business activities related to the design services occur, pursuant to section 18-237-29.53-11(a)(1). All of the value or gross income that Ashley Artist receives is also not exempt under section 237-29.53, HRS, because Ashley Artist's services are resold by GD Company for use or consumption in Hawaii. Pursuant to section 18-237-29.53-02, services performed for a purchaser who resells the services are exempt from general excise tax only if the purchaser resells all of the services for use or consumption outside the State.

**Example 9:**

California Surf Co., a retail store in California, hires Hawaii Designs LLC, a Hawaii graphic design company, to design a logo that will be used on California Surf Co.'s merchandise sold in California and in marketing materials distributed in California. Hawaii Designs LLC hires Ashley Artist, a Hawaii resident, to design a digital image, which Hawaii Designs LLC incorporates into the logo it designs for California Surf Co. All of the value or gross income that Hawaii Designs LLC receives is exempt under section 237-29.53, HRS, because Hawaii Designs LLC's services are used or consumed in California, where California Surf Co.'s business activities related to the design services occur, pursuant to section 18-237-29.53-11(a)(1). All of the value or gross income that Ashley Artist receives is also exempt under section 237-29.53, HRS, because Ashley Artist's services are resold for use or consumption in California. Pursuant to section 18-237-



29.53-02, services performed for a purchaser who resells the services are exempt from general excise tax if the purchaser resells all of the services for use or consumption outside the State.

**Example 10:**

Data Inc., a company located in Hawaii, is paid \$10,000 by the United States Navy to analyze data and prepare reports that will be used by Naval Base Guam. Naval Base Guam is the only naval base that will benefit from Data Inc.'s services. All of the value or gross income that Data Inc. receives is exempt under section 237-29.53, HRS, because the services are used or consumed by the military in Guam, where the benefit of the service is received, pursuant to section 18-237-29.53-11(a)(4).

**Example 11:**

Data Inc., a company located in Hawaii, is paid \$10,000 by the United States Navy to analyze data and prepare reports that will be used by the United States Pacific Fleet. Data Inc.'s reports will be used by and benefit the United States Pacific Fleet in Hawaii, where its headquarters is located, as well as in other locations in the United States and abroad. Because Data Inc.'s service is used or consumed both in and outside of the State, Data Inc. shall apportion its income pursuant to section 18-237-29.53-02(b). Data Inc. shall report \$10,000 in gross income on its general excise tax return and may claim an exemption under section 237-29.53, HRS, for the portion of income attributable to services used or consumed outside of the State.

**Example 12:**

Remodelers Hawaii LLC, a general contractor, is hired by the United States Army to renovate a building at Schofield Barracks in Hawaii. Section 18-237-29.53-11 does not apply because Remodelers Hawaii LLC is performing contracting work, which is governed by section 18-237-29.53-03. Under that rule, all of the value or gross income that Remodelers Hawaii LLC receives is not exempt because the contracting is used or consumed in Hawaii, where the real property is located." [Eff ] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

12. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-237-29.53-12 Cancellation and forfeiture charges.** Section 237-29.53, HRS, shall not apply where all of the value or gross income is derived from cancellation fees, forfeited deposits, or other charges resulting from the cancellation or nonperformance of services.

**Example 1:**

ABC Company, an Arizona corporation with its principal place of business in Arizona, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The live-stream will be accessed solely from ABC Company's office in Arizona. Two days before the live-stream event, ABC Company cancels the event. Paul Presenter charges ABC Company a cancellation fee pursuant to their contract. The gross income that Paul Presenter receives for the cancellation fee

is not exempt under section 237-29.53, HRS.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§231-3(9),  
237-8) (Imp: HRS §237-29.53)

13. Chapter 18-237, Hawaii Administrative Rules,  
is amended by adding a new section to read as follows:

"§18-237-29.53-13 Telecommunication services.  
Sections 18-237-29.53-01 to 18-237-29.53-12 shall not  
apply to interstate or foreign common carrier  
telecommunication services." [Eff \_\_\_\_\_ ]  
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

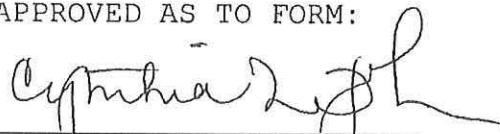
14. New material is underscored.

15. These amendments to Chapter 18-237, 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 October 9, 1981, and  
filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Director  
Department of Taxation

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General



## **V. Administrative Matters**

### **A. Discussion and Action on this Board's**

Nominations of Proposed New Board Members for Submission to the Governor; including Lawrence Anderson, Reg Baker, Pamela Tumpap, David S. Chang

## **V. Administrative Matters**

B. Discussion with an eGovernment Services & customer Services Representative regarding the Development and Implementation of a New Website for the Board

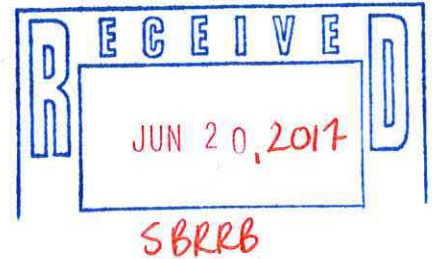
*No Attachments*

## **V. Administrative Matters**

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

*No Attachments*





Department of Health

Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

\$11-55-01	Definitions
\$11-55-02	General policy of water pollution control
\$11-55-03	General prohibition
\$11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
\$11-55-05	Receipt of federal information
\$11-55-06	Transmission of information to regional administrator
\$11-55-07	Identity of signatories to NPDES forms
\$11-55-08	Formulation of tentative determinations and draft permit
\$11-55-09	Public notice of applications
\$11-55-10	Fact sheet
\$11-55-11	Notice to other government agencies
\$11-55-12	Public access to information
\$11-55-13	Public hearings
\$11-55-14	Public notice of public hearings
\$11-55-15	Issuance of NPDES permits
\$11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-17 Termination of permits and denial of  
renewal  
 §11-55-18 Reporting discontinuance or dismantlement  
 §11-55-19 Application of effluent standards and  
limitations, water quality standards,  
and other requirements  
 §11-55-20 Effluent limitations in issued NPDES  
permits  
 §11-55-21 Schedule of compliance in issued NPDES  
permits  
 §11-55-22 Compliance schedule reports  
 §11-55-23 Other terms and conditions of issued  
NPDES permits  
 §11-55-24 National pretreatment standards and users  
of publicly owned treatment works  
 §11-55-25 Transmission to regional administrator of  
proposed NPDES permits  
 §11-55-26 Transmission to regional administrator of  
issued NPDES permits  
 §11-55-27 Renewal of NPDES permits  
 §11-55-28 Monitoring  
 §11-55-29 Recording of monitoring activities and  
results  
 §11-55-30 Reporting of monitoring results  
 §11-55-31 Sampling and testing methods  
 §11-55-32 Malfunction, maintenance, and repair of  
equipment  
 §11-55-33 Agency board membership  
 §11-55-34 General permit definitions  
 §11-55-34.01 General permit policy  
 §11-55-34.02 General permit authority and adoption  
 §11-55-34.03 General permit terms  
 §11-55-34.04 General permit conditions  
 §11-55-34.05 Requiring an individual permit  
 §11-55-34.06 Reserved  
 §11-55-34.07 Degree of waste treatment  
 §11-55-34.08 Notice of intent  
 §11-55-34.09 Notice of intent review, notice of  
general permit coverage, additional  
conditions, terms, renewals, effective  
dates, and automatic coverage  
 §11-55-34.10 Review of coverage issues and notice of  
intent and notice of general permit  
coverage decisions

§11-55-34.11	Notice of general permit coverage revocation and termination
§11-55-34.12	General permit compliance
§11-55-35	Penalties and remedies
§11-55-36	Hearings and appeals
§11-55-37	Severability clause
§11-55-38	Repealed
§11-55-39	Public interest
§11-55-40	Field Citations; non-compliance with NPDES requirements
Appendix A	Department of Health Standard General Permit Conditions
Appendix B	NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities
Appendix C	NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity
Appendix D	NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems



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- Appendix K NPDES General Permit Authorizing  
Discharges of Storm Water from Small  
Municipal Separate Storm Sewer Systems
- Appendix L NPDES General Permit Authorizing  
Discharges of Circulation Water from  
Decorative Ponds or Tanks
- Appendix M NPDES General Permit Authorizing  
Point Source Discharges from the  
Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based  
substantially on Public Health  
Regulations, Chapter 37, Water  
Pollution Control, Department of  
Health, State of Hawaii. [Eff  
5/25/74, am 1/20/75, 8/19/75, 1/31/81;  
R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations,  
Title 13, Business Credit and Assistance, revised as of  
January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations,  
Title 40, Protection of Environment, revised as of  
July 1, [~~2012~~]2016 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred  
to as the Federal Water Pollution Control Act or  
Federal Water Pollution Control Act Amendments of 1972)  
Public Law 92-500, as amended by Public Law 95-217,  
Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251  
et. seq.

"Action threshold" means the point at which pest  
populations or environmental conditions necessitate  
that pest control action be taken based on economic,  
human health, aesthetic, or other effects. An action  
threshold may be based on current and/or past  
environmental factors that are or have been  
demonstrated to be conducive to pest emergence and/or  
growth, as well as past and/or current pest presence.  
Action thresholds are those conditions that indicate

both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse



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effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each



treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles \* two banks \* four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or

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leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.



"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR [~~§125.91(a)(4)~~]§125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under



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Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4([e]f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse,

any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

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

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.



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"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of



pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter

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promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means ~~[an authorization issued to the owner or operator by the department to comply with the NPDES general permit.]~~ a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure"



certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e)(2).



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"Pest" means the same thing as defined in section 11-54-4([e]f)(1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.

"Pesticide" means the same thing as defined in section 11-54-4([e]f)(1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

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

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage,

industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality



standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether

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treated or not, which may pollute or tend to pollute State waters.

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

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

- (1) To conserve State waters;
- (2) To protect, maintain, and improve the quality of State waters:
  - (A) For drinking water supply, and food processing;
  - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
  - (C) For oceanographic research;
  - (D) For the conservation of coral reefs and wilderness areas; and
  - (E) For domestic, agricultural, industrial, and other legitimate uses;

- (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
- (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
- (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a).  
[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33



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U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least one hundred eighty days before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any

applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The

department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b) (14) (x) or small construction activity as defined in 40 CFR §122.26(b) (15) (i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit



conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee

which shall be submitted with the NPDES permit application;

- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g) (1) through 122.26(g) (4), except 40 CFR §122.26(g) (1) (iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b) (14) (x) and 40 CFR §122.26(b) (15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ]



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(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so requests, not issue the

individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;

- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar

- policy- or decision-making functions for the corporation, or
- (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
  - (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
    - (A) The chief executive officer of the agency, or
    - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
  - (4) For a trust. By a trustee; or
  - (5) For a limited liability company (LLC). By a manager or a member authorized to make



management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370)

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(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
  - (2) If the determination is to issue the individual permit, the following additional tentative determinations:
    - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
    - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
    - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
    - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.
- (b) If a tentative determination is to issue an individual permit, the director shall organize the

tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)

The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
  - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
  - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
  - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.



- (2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by

40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;

- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

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§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
  - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
  - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
  - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;



- (3) The tentative determinations required under section 11-55-08;
- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
- (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
  - (A) The thirty-day comment period required by section 11-55-09(b);
  - (B) Procedures for requesting a public hearing and the nature thereof; and
  - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

- (a) The director shall notify other appropriate

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government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and
- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C.

§1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator



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or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4,

342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09;

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comp 10/21/12; comp 12/6/13; comp 11/15/14;  
comp ] (Auth: HRS §§342D-4, 342D-5,  
342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS  
§§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C.  
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;  
124, Subparts A and D; 125; §§123.25(a), 124.10,  
124.11, 124.12)

§11-55-14 Public notice of public hearings. (a)

Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit



- application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;
  - (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
  - (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
  - (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
    - (A) Obtain further information;
    - (B) Request a copy of each draft permit prepared under section 11-55-08 (b);
    - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
    - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251,

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1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

(1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:

(A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and

(B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;

(2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;

(3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;

- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
  - (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
  - (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
  - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
  - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
  - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can,



conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

- (1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid

by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.

- (2) Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an

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NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;



- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;

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124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.  
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
  - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
  - (B) Necessary to meet any other federal law or regulations including, but not limited to:

- (i) Toxic pollutant effluent standards in 40 CFR Part 129;
  - (ii) Secondary treatment regulation in 40 CFR Part 133;
  - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
  - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
  - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
  - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and



- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5,

342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to

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take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
  - (A) Applicable effluent standards and limitations;
  - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
  - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123;



124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction

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delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);

- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
  - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
  - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
  - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
  - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part



403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
- (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
  - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
  - (C) The quality and quantity of effluent to be introduced into a treatment works; and
  - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user

subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp

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10/29/92; am and comp 09/22/97; comp  
01/06/01; am and comp 11/07/02; am and comp  
08/01/05; am and comp 10/22/07; comp 6/15/09;  
comp 10/21/12; comp 12/6/13; comp 11/15/14;  
comp ] (Auth: HRS §§342D-4,  
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6,  
342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251,  
1284, 1311, 1316, 1317, 1318, 1342, 1370,  
1251-1387; 40 CFR Parts 122; 123; 124,  
Subparts A and D; 125; 403; §§122.41, 122.42,  
122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
- (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
- (3) Sample any discharge of pollutants or effluent.



(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

- (1) Establish and maintain records;
- (2) Make reports;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent and State waters;
- (5) Provide access to and copying of any records which are maintained; and
- (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the

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- proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
  - (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
  - (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5,

342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and
- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this



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chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period;

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(1), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

- (b) Any discharge authorized by an NPDES permit which:
- (1) Is not a minor discharge;
  - (2) The regional administrator requests, in writing, be monitored; or
  - (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).
- (c) Monitored items:
- (1) Flow (in gallons per day or cubic feet per second); and
  - (2) All of the following pollutants:
    - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
    - (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
    - (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
    - (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.
- (d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01;

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am and comp 11/07/02; comp 08/01/05; comp 10/22/07;  
comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp  
11/15/14; comp ] (Auth: HRS §§342D-4,  
342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS  
§§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C.  
§§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122;  
123; 124, Subparts A and D; 125; §§122.41, 122.43,  
122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
  - (A) The date, exact place, and time of sampling or measurements;
  - (B) The individual(s) who performed the sampling or measurements;
  - (C) The date(s) the analyses were performed;
  - (D) The individual(s) who performed the analyses;
  - (E) The analytical techniques or methods used; and
  - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and



comp 11/07/02; comp 08/01/05; comp 10/22/07;  
 comp 6/15/09; comp 10/21/12; comp 12/6/13;  
 comp 11/15/14; comp ] (Auth:  
 HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342,  
 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
 342D-6, 342D-55; 33 U.S.C. §§1251, 1342,  
 1370, 1251-1387; 40 CFR Parts 122; 123; 124,  
 Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(1)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction

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of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;

- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp 11/15/14; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit



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applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:

- (A) Involve the same or substantially similar types of operations;
- (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
- (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
- (D) Require the same or similar monitoring; and
- (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply,

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at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated December 6, 2013;
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated December 6, 2013;



- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
- (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities;
- (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated December 6, 2013;
- (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and

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Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated December 6, 2013;

- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks, dated December 6, 2013; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides[~~," dated August 2012.~~]" [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; am and comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions.

(a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable



to the point source or treatment works treating domestic sewage;

- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
  - (A) The location of the discharge with respect to State waters;
  - (B) The size of the discharge;
  - (C) The quantity and nature of the pollutants discharged to the State waters; and
  - (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual

permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

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§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
  - (A) To meet any existing federal laws or regulations; or
  - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))



§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).

(h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

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(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:

- (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;
- (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be

- submitted no later than 30 calendar days after the start of construction activities;
- (3) The expiration date of the existing general permit; or
  - (4) The expiration date of the existing notice of general permit coverage.
  - (k) (Reserved).
  - (l) (Reserved).
  - (m) A notice of intent shall be submitted to the director for:
    - (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
    - (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent



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shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.



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(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system,



etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e)(2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp

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6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14;  
comp ] (Auth: HRS §§342D-4, 342D-5; 33  
U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp:  
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.  
§§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;  
124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage  
revocation and/or termination. A notice of general  
permit coverage and automatic coverage under section  
11-55-34.09(e)(2) may be revoked and/or terminated in  
accordance with section 11-55-34.05 or as determined by  
the director. [Eff and comp 10/29/92; am and comp  
09/22/97; comp 01/06/01; am and comp 11/07/02; comp  
08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12;  
am and comp 12/6/13; comp 11/15/14;  
comp ] (Auth: HRS §§342D-4, 342D-5; 33  
U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp:  
HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C.  
§§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;  
124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any  
person who discharges under a general permit shall  
comply with section 11-55-34.04, all general permit  
standard conditions, all applicable special conditions,  
and all applicable additional notice of general permit  
coverage conditions. [Eff and comp 10/29/92; am and  
comp 09/22/97; comp 01/06/01; comp 11/07/02; comp  
08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12;  
comp 12/6/13; comp 11/15/14; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370,  
1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4,  
342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-  
1387; 40 CFR Parts 122; 123; 124; 125; §122.28,  
123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5; 33



§11-55-36

U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for

compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp 11/15/14; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

(i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;

- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
- (v) Any person who fails to retain on-site or at a nearby office or field office:
  - a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,
  - b) storm water pollution control plan, best management practices plan or all other [plan]plans required in the NPDES permit and NGPC and all subsequent revisions, [or]
  - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion[+],  
or
  - d) discharge monitoring reports;
- (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole



or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.

(B) A field citation shall indicate the following amounts:

- (i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;

- (ii) \$100 for any person who violates paragraph (1)(A)(v) [~~shall be fined \$100~~] for the first violation, and \$200 for a subsequent violation;
  - (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.
- (A) A person issued a field citation may accept the citation by:
- (i) Signing the field citation;
  - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
  - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91 or

- 342D, HRS, or otherwise challenge the field citation;
- (ii) Pay the amount indicated; and
  - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp 11/15/14; am and comp \_\_\_\_\_] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)
2. Material, except source notes, to be repealed is bracketed. New material is underscored.
  3. Additions to update source notes to reflect these amendments and compilation are not underscored.
  4. These amendments to and compilation of chapter 11-54, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.



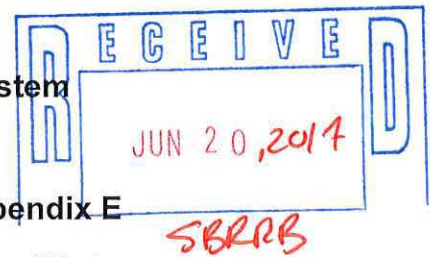
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
VIRGINIA PRESSLER, M.D.  
Director of Health

APPROVED AS TO FORM:

\_\_\_\_\_  
Edward G. Bohlen  
Deputy Attorney General

**National Pollutant Discharge Elimination System**  
**General Permit Fact Sheet for**  
**Hawaii Administrative Rules Chapter 11-55, Appendix E**  
**Authorizing Discharges of Once Through Cooling Water**  
**Less Than One (1) Million Gallons Per Day**



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

*This general permit covers facilities in the State of Hawaii that discharge once through cooling water of a total flow of less than one million gallons per day.*

*"Once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.*

*This general permit is not intended for use by facilities which discharge once through cooling water of a total flow of one million gallons per day or greater nor for facilities which recirculate and reuse cooling water in excess of the definition of "once through cooling water."*

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

*The allowed discharge is of cooling water of a total flow of less than one million gallons per day which is not commingled with other process water.*

*The most notable pollutant in the discharge is heat, however, additional pollutants may be present in the discharge dependent upon the source of the cooling water.*

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

*Not applicable.*

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

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

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]

7. Corrective Actions
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Renewal [New]
14. Forms [New]

Table 34.3 Effluent Limitation and Monitoring Requirements for Discharge of  
Once Through Cooling Water Less Than One (1) Million Gallons  
Per Day

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.3 detail the effluent limitations and monitoring requirements for once through cooling water discharges.

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

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for once-through, non-contact cooling water discharges of flow less than one (1) million gallons per day. Accordingly, the bases for the proposed effluent limitations are the Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards.

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

Temperature: The temperature effluent limitation is based on HAR 11-54. Temperature criteria for all waterbody classification types require that the temperature not vary more than one degree Celsius from ambient conditions. This water temperature limitation as a discharge effluent limitation protects aquatic communities from thermal impacts.

Total Residual Oxidants: The permits established an effluent limitation for chlorine expressed as TRO. The source for the cooling water associated with these types of facilities are generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Also, the application of chlorine may be performed for the operation and maintenance of the piping system in regards to biofouling. Therefore, the general permit includes TRO limitations based on HAR 11-54-4, freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges.

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



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

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

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

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

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

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

*For discharges to Class 1 and Class AA waters, the treatment system plan will be submitted with the NOI to allow for review of the plan.*

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

#### **Main**

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**Original:** *This General Permit is effective on [date] and expires three years from this date, unless amended earlier.*

**Revised:** *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

**Rationale:**

*Following revision of these general permits, the term will be four years after the effective date of the rules change, which is below the maximum allowable term for NPDES permits for NPDES permits per 40 CFR §122.46(a).*

#### **Section 1(b)**

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**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except as specified in section 11-54-5.2(a).*

**Rationale:**

*Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools.*

**Section 3(a)**

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.*

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

**Rationale:**

*Reference to section 11-55-34.02(b)(4) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.*

**Section 3(b)(1)**

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**Original:** *Three years after the effective date of this general permit;*

**Revised:** *Four years after the effective date of this general permit;*

**Rationale:**

*Following revision of these general permits, the term will be four years after the effective date of the rules change, which is below the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*



**Section 4(b)(5)**

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**Original:** Quantitative data of the pollutant or parameter as specified in 40 CFR §122.21(h)(4)(i);

**Revised:** Quantitative data of the pollutant(s) or parameter(s) as specified in 40 CFR §122.21(h)(4)(i);

**Rationale:**

Pluralized pollutant and parameter as more than one may be disclosed on the notice of intent by the applicant.

**Section 4(b)(8)**

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**Original:** A brief description of any treatment system used or to be used. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

**Revised:** A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, the treatment system plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the treatment system plan may be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

**Rationale:**

In order to ensure adequate protection to Class AA and Class 1 waters the treatment plan will be required to be submitted with the NOI and will be reviewed prior to issuance of the Notice of General Permit Coverage (NGPC).

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

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**Original:** The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

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



**Rationale:**

*Incorporates federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.*

**Section 6(b)(2)**

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**Original:**

*(b) Basic Water Quality Criteria and Inspections*

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:**

*(b) Basic Water Quality Criteria and Inspections*

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day, to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

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

**Rationale:**

*Clarifies the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarifies inspection of effluent prior to commingling in lieu of inspecting receiving waters.*

**Section 8(a)(5)**

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**Original:** (NEW)

**Revised:** Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:** *Fulfills requirements of the NPDES eReporting rule in 40 CFR Part 127.*

**Section 8(b)**

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**Original:** *Additional Monitoring by the Permittee*

*If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.*

**Revised:** Monitoring Report

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

**Rationale:** *Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is a requirement of the general permit and not discretionary for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR is included.*

### Section 9(b)

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**Original:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

**Revised:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**Rationale:** Clarifies that violations may include both a fine and imprisonment.

### Section 13

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**Original:** (NEW)

**Revised:**

Renewal

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

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit.

### Section 14

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**Original:** (NEW)

**Revised:**

Forms

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

**Rationale:** Clarify the location of electronic forms.



**Table 34.3**

**Original:**

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Temperature (°C)	30	Once/Quarter {11}	Grab

**Revised:**

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Temperature (°C)	$\pm 1$ <u>from ambient</u>	Once/Quarter {11}	Grab

(Also footnote {11} is added to all cells under the heading “Minimum Monitoring Frequency” in the table.)

**Rationale:** Specific criteria for all waterbodies in HAR Chapter 11-54 allows only a plus or minus 1 degree Celsius variation in temperature from ambient conditions.

**Original:** (NEW NOTE)

**Revised:** {11} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

**Rationale:** Clarify reporting of monitoring results when sampling is performed more frequently than once in a quarter.

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

*Not applicable.*

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

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

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

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

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

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

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

*For this permit, the limits are based on Best Professional Judgement (BPJ) decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

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

*Not applicable.*



CHAPTER 11-55 APPENDIX E

NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF ONCE THROUGH COOLING WATER  
LESS THAN ONE (1) MILLION GALLONS PER DAY

This General Permit is effective on

and expires ~~three~~ four years from this date,  
unless amended earlier.

1. Coverage under this General Permit
  - (a) This general permit covers only once through cooling water discharges of a total flow of less than one million gallons per day (mgd) to state waters. "Once through cooling water" means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.
  - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards." as specified in section 11-54-5.2(a).
2. Limitations on Coverage under this General Permit
  - (a) This general permit does not cover the following:
    - (1) Discharges of once through cooling water into a sanitary sewer system and



CHAPTER 11-55 APPENDIX E

(2) Discharges of once through cooling water which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective [when section 11-55-34.02(b)(4) becomes effective] ten days after filing with the office of the lieutenant governor. [~~This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.~~]

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

(1) [~~Three~~] Four years after the effective date of this general permit;

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

(3) When amendments to section 11-55-34.02(b)(4) are adopted, whichever is

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
  - (3) The average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. The owner or its duly authorized representative shall provide the best estimate for new discharges;

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- (4) Source(s) of the once-through cooling water;
  - (5) Quantitative data of the pollutant(s) or parameter(s) as specified in 40 CFR §122.21(h)(4)(i);
  - (6) The name of the cooling water additives, if any used;
  - (7) The best estimate of the date on which the facility will begin to discharge; and
  - (8) A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, the treatment system plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:



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

5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.3. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

Samples taken in compliance with the monitoring requirements shall be taken at the following point(s):

- (A) The permittee shall collect influent samples downstream from any additions to the source water and prior to the cooling system.

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(B) The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

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

(3) Type of Sample

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

(4) Test Procedures

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

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

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

(5) Recording of Results

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

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall [~~timely~~] inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day, to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-



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4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

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

- (c) The date, duration (in hours), starting and ending times, and volume of each discharge shall be collected for intermittent discharges.
- (d) There shall be no visible oil sheen in the effluent.
- (e) There shall be no discharge of waste from the physical cleaning of the cooling system.
- (f) There should be no discharge of compounds used in closed-loop systems.

7. Corrective Action

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

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8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.3 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; influent and effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements.

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Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

- (b) [Additional Monitoring by the Permittee]  
Monitoring Report

[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the] The permittee shall include the [results of this] monitoring results in the calculation and reporting of the values required in the discharge monitoring report form. [—The permittee shall also indicate the increased frequency.]

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

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
- (A) Violation of an effluent limitation specified in Table 34.3 or a basic water quality criteria specified in section 6(b) of this general permit;
  - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or



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- (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
  - (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
  - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
  - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
  - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the

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oral report has been received within twenty-four hours.

(d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

(e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in once through cooling water treatment and which are discharged.

(f) Schedule of Maintenance

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

9. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of

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monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

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

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

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

- (c) The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file



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number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

10. Additional Conditions

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

11. Record Retention

The permittee shall retain all records and information resulting from the monitoring activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation shall be retained for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

12. Falsifying Report

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

13. Renewal

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

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14. Forms

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

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TABLE 34.3

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS  
FOR DISCHARGE OF ONCE THROUGH COOLING WATER  
LESS THAN ONE (1) MILLION GALLONS PER DAY

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (MGD)	{2}	Continuous	Recorder/ Totalizer
Temperature (°C)	[30] ±1 from ambient	Once/Quarter {11}	Grab
Total Residual Oxidants (mg/l) {3}	0.013{4} 0.019{5}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	5 {6}	Once/Quarter {11}	Grab {7}
Oil and Grease (mg/l)	15	Once/Quarter {11}	Grab {8}
pH (standard units)	{9}	Once/Quarter {11}	Grab {10}

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.



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- {2} Report. The permittee shall monitor and report the analytical result.
- {3} Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.
- {4} Applicable to discharges that enter saline waters as per chapter 11-54.
- {5} Applicable to discharges that enter fresh waters as per chapter 11-54.
- {6} The total suspended solids limits are net increase restrictions of the effluent above that of the influent.
- {7} Both the influent and effluent shall be monitored concurrently.
- {8} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {9} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {10} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {11} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

National Pollutant Discharge Elimination System  
General Permit Fact Sheet for  
Hawaii Administrative Rules Chapter 11-55, Appendix F  
Authorizing Discharges of Hydrotesting Water



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

*This general permit covers facilities or activities in the State of Hawaii that release or discharge hydrotesting waters to state waters.*

*"Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.*

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

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

*If potable water is used as the source water, the most notable pollutant in the discharge is residual chlorine used during the disinfection process. However, additional pollutants may be present in the discharge dependent upon a source water other than potable water.*

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

*Not applicable.*

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

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

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing [Revised]
7. Corrective Actions
8. Reporting Requirements [Revised]



9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [New]*
14. *Forms [New]*

*Table 34.4 Effluent Limitation and Monitoring Requirements for Hydrotesting Water Discharges [Revised]*

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.4 detail the effluent limitations and monitoring requirements for hydrotesting water discharges.

**Basis for Discharge Limitations and Monitoring Requirements**

*There are no effluent guidelines promulgated for discharges resulting from hydrotesting. The general permit requirements are based on the Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards and the determination that discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.*

*Water used for hydrotesting may either be from potable or non-potable sources. The general permit requires the hydrotesting water be monitored prior to discharge. The analytical results shall be submitted to the Director of Health for review and approval. The information provided in the Notice of Intent will be used for evaluating compliance with applicable water quality standards. If any constituents submitted in the Notice of Intent exceed the applicable water quality standards, the Director of Health may require the operator to apply for an individual permit or provide treatment as needed.*

*The effluent parameters in Table 34.4 are based on the pollutants of concern for the discharge of hydrotesting water. The source for the hydrotesting water are generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Also, the application of chlorine may be performed for the operation and maintenance of the piping system in regards to biofouling. Therefore, the general permit includes total residual chlorine limitations per Hawaii Administrative Rules (HAR) Section 11-54-04(c)(3), and freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges. Additional parameters that may require monitoring are based on the pollutants that may be present when non-potable water is used and/or when the vessel or lines being tested are not of new construction and residual substances may be present.*

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



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

*For discharges to Class 1 and Class AA waters, the hydrotesting plan will be submitted with the NOI to allow for review of the plan.*

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

**Main**

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**Original:** *This General Permit is effective on [date] and expires three years from this date, unless amended earlier.*

**Revised:** *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

**Rationale:**

*Following revision of these general permits, the term will be four years after the effective date of the rules change, which is below the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

**Section 1(b)**

---

**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except as specified in section 11 54 5.2(a).*

**Rationale:**

*Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools*

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

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(5) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(5) are adopted, whichever is earlier.*

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

**Rationale:**

*Reference to section 11-55-34.02(b)(5) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(5) becomes effective ten days after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.*

### **Section 3(b)(1)**

---

**Original:** *Three years after the effective date of this general permit;*

**Revised:** *Four years after the effective date of this general permit;*

**Rationale:**

*Following revision of these general permits, the term will be four years after the effective date of the rules change, which is below the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

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

---

**Original:** *The hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.*

**Revised:** *For discharges to Class AA or Class 1 waters, the hydrotesting best management practices plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.*

**Rationale:**

*In order to afford more protection to Class AA and Class 1 waters the treatment plan will be required to be submitted with the NOI and will be reviewed prior to issuance of the Notice of General Permit Coverage (NGPC).*



### Section 6(a)

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**Original:** *If a water quality analysis of the hydrotesting water was not provided with the notice of intent, then the water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

**Revised:** *The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

**Rationale:**

*Clarify that limitations and monitoring of hydrotesting effluent are required as specified in Table 34.4, whether or not a water quality analysis of the hydrotesting water was provided with the NOI.*

### Section 6(a)(4)(C)

---

**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*Incorporate federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.*

### Section 6(b)

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**Original:**

(b) *Basic Water Quality Criteria and Inspections*

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



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

**Revised:**

*(b) Basic Water Quality Criteria and Inspections*

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

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

**Rationale:**

*Clarify the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarify inspection of effluent prior to commingling in lieu of inspecting receiving waters.*

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

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**Original:** (NEW)

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

**Rationale:**

Monitoring results are entered into the U.S. Environmental Protection Agency's (EPA) Integrated Compliance Information System (ICIS) and have a minimum duration of monthly reporting. For hydrotesting activities, discharges may occur more frequently throughout a month, therefore, to meet the requirements of ICIS inputs, operators must determine and/or calculate the necessary values.

**Section 8(a)(6)**

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**Original:** (NEW)

**Revised:** Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:** Fulfills requirements of the NPDES eReporting rule in 40 CFR Part 127.

**Section 8(b)**

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**Original:** Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

**Revised:** Monitoring Report

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

**Rationale:**

Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is a requirement of the general permit and not discretionary for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR [and required in section 8(a)(3)] is included.



### Section 9(b)

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**Original:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

**Revised:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**Rationale:** Clarifies that violations may include both a fine and imprisonment.

### Section 13

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**Original:** (NEW)

**Revised:**

Renewal

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

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit..

### Section 14

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**Original:** (NEW)

**Revised:**

Forms

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

**Rationale:** Clarify the location of electronic forms.

### Table 34.4

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**Original:** (NEW FOOTNOTE)

**Revised:** {12} If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.

**Rationale:** Clarify reporting of monitoring results when sampling is performed more frequently than once in a month.



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

*Not applicable.*

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

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

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

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

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

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

*For this permit, the limits are based on BPJ decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

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

*Not applicable.*

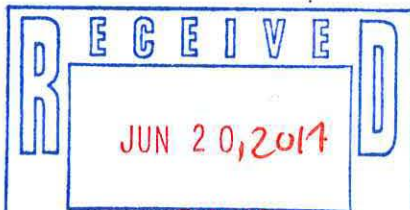
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NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF HYDROTESTING WATERS

This General Permit is effective on

and expires [~~three~~] four years from this date,  
unless amended earlier.

1. Coverage under this General Permit
  - (a) This general permit covers facilities or activities which involve a release or discharge of hydrotesting waters to state waters. "Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.
  - (b) This general permit covers all areas of the State except [~~for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."~~] as specified in section 11-54-5.2(a).
2. Limitations on Coverage under this General Permit
  - (a) This general permit does not cover the following:
    - (1) Discharges of hydrotesting waters into a sanitary sewer system and



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(2) Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective [~~when section 11-55-34.02(b)(4) becomes effective~~]ten days after filing with the office of the lieutenant governor. [~~This general permit expires three years after the effective date[ or when amendments to section 11-55-34.02(b)(5) are adopted, whichever is earlier.]~~]

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

(1) [~~Three-~~]Four years after the effective date of this general permit;

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

(3) When amendments to section 11-55-34.02(b)(5) are adopted,



## CHAPTER 11-55 APPENDIX F

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

### 4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Brief description of the project including an overview of the hydrotesting activities; an estimated timetable for major construction activities; dates on which the hydrotesting activities are projected to occur; estimated average and maximum daily flow rates; and a list of pollutants that may be present in the hydrotesting water and an explanation of its origins;
  - (3) Water quality analysis of the hydrotesting water including any toxic pollutants believed to be present in the hydrotesting water. For the hydrotesting of transmission lines, the water quality analysis for the source

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water may be substituted for the water quality analysis of the hydrotesting water; and

- (4) Hydrotesting best management practices plan, including good housekeeping and mitigative measures to prevent pollutants that may be present in the hydrotesting water from entering state waters, to ensure that the hydrotesting water discharge will meet the conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. [The]For discharges to Class AA or Class 1 waters, the hydrotesting best management practices plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the hydrotesting best management practices plan may be submitted with the notice of intent or thirty days before the start of hydrotesting activities.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

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5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing

- (a) [~~If a water quality analysis of the hydrotesting water was not provided with the notice of intent, then the~~]The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Point

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

(2) Collection of Samples

The permittee shall take samples and measurements for the purposes of monitoring which are representative of



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the volume and nature of the total discharge.

(3) Types of Samples

- (A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.
- (B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part

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136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

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

(5) Recording of Results

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

(6) Quantity of Flow

The permittee shall estimate or calculate the quantity of hydrotesting water discharged and submit the calculations.

(b) Basic Water Quality Criteria and Inspections

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- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall [~~timely~~]inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

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

7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, hydrotesting, or implement new or revised best management practices as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.



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8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.4 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.
- (~~3~~)4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

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(~~4~~)5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

(b) ~~[Additional Monitoring by the Permittee]~~  
Monitoring Report

~~[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the]The permittee shall include the [results of this]monitoring results in the calculation and reporting of the values required in the discharge monitoring report form. [The permittee shall also indicate the increased frequency.]~~

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

(1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:

(A) Violation of an effluent limitation specified in Table 34.4 or a basic

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water quality criteria specified in section 6(b) of this general permit;

- (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; and
  - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
  - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
  - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and



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(D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.

(4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

(d) The permittee shall notify the director of the start of the hydrotesting activities in writing within one week before the start of the hydrotesting activities.

9. Submittal Requirements

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

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

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

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

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

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

10. Additional Conditions

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

11. Record Retention

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

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

12. Falsifying Report

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

13. Renewal

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

14. Forms

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



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TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR HYDROTESTING WATER DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	Once/Discharge {12}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	Once/Discharge {12}	Grab {3}
Turbidity (NTU)	{2}	Once/Discharge {12}	Grab {3}
pH (standard units)	{4}	Once/Discharge {12}	Grab {3}, {5}
Total Residual Chlorine (µg/l) {6}	19{7} 13{8}	Once/Discharge {12}	Grab {3}
Toxic Pollutants {9}	{10}	Once/Discharge {12}	{3}, {11}

mg/l = milligrams per liter  
 µg/l = micrograms per liter  
 NTU = nephelometric turbidity units

NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

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- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then only monitoring and reporting is required.
- {3} The Permittee shall sample the discharge after dechlorination and/or filtration within the first five minutes of discharge.
- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.
- {7} This limitation applies when hydrotesting water is discharged into fresh waters.
- {8} This limitation applies when hydrotesting water is discharged into saline waters.
- {9} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.
- {10} Effluent limitations are the acute water quality standards established in section 11-54-4, for

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either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

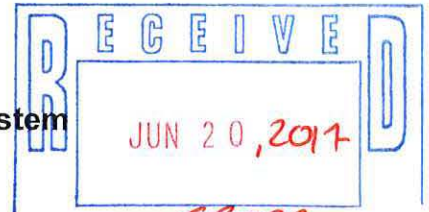
{11} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.

{12} If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.



National Pollutant Discharge Elimination System  
General Permit Fact Sheet for

Hawaii Administrative Rules Chapter 11-55, Appendix G



**Authorizing Discharges Associated with Construction Activity Dewatering**

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

*This general permit covers facilities or activities in the State of Hawaii that discharge waters from the construction dewatering process to state waters.*

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

*The allowed discharge is of waters from construction dewatering activities which is not commingled with other process water or stormwater.*

*This general permit is not intended for return flow or overflow from dredged material dewatering or discharges of construction dewatering effluent from leaking underground storage tank remediation activities.*

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

*Not applicable.*

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

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

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

14. Forms [New]

Table 34.5 Effluent Limitation and Monitoring Requirements for Construction  
Dewatering Discharges [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.5 detail the effluent limitations and monitoring requirements for construction dewatering discharges.

**Basis for Discharge Limitations and Monitoring Requirements**

There are no effluent guidelines promulgated for discharges resulting from construction dewatering activities. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that discharges are one-time or intermittent, of short duration, of relatively small volume (<5,000 gallons), and result in de minimis impacts.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected;
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met; and
- 3) Discharge to restricted "no discharge" areas is prohibited.

The effluent parameters in Table 34.5 are based on the pollutants of concern for the discharges from construction dewatering activities. Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent.

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

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

For discharges to Class 1 and Class AA waters, the dewatering plan will be submitted with the NOI to allow for review of the plan.

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

**Main**

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**Original:** This General Permit is effective on [date] and expires three years from this date, unless amended earlier.

**Revised:** This General Permit is effective on [date] and expires four years from this date, unless amended earlier.



**Rationale:**

*Following revision of these general permits, the term will be four years after the effective date of the rules change, which is below the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

**Section 1(b)**

---

**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except as specified in section 11 54 5.2(a).*

**Rationale:**

*Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools*

**Section 3(a)**

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(6) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(6) are adopted, whichever is earlier.*

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

**Rationale:**

*Reference to section 11-55-34.02(b)(6) could potentially result in two effective dates – one effective date specified in this general permit, and the other effective date when section 11-55-34.02(b)(6) becomes effective ten days*



after filing with the office of the lieutenant governor. The revision is necessary to prevent conflicting effective dates.

### **Section 3(b)(1)**

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**Original:** Three years after the effective date of this general permit;

**Revised:** Five years after the effective date of this general permit;

**Rationale:**

Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

### **Section 4(b)(6)**

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**Original:** Dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. The site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Revised:** Site-specific dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. For discharges to Class AA or Class 1 waters, the site-specific dewatering plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Rationale:**

In order to afford more protection to Class AA and Class 1 waters the site-specific dewatering plan will be required to be submitted with the NOI and reviewed.

### **Section 4(b)(7)**

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**Original:** [End of the section] The site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan,

and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Revised:** For discharges to Class AA or Class 1 waters, the site-specific dewatering system maintenance plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Rationale:** In order to afford more protection to Class AA and Class 1 waters the site-specific dewatering system maintenance plan will be required to be submitted with the NOI and reviewed.

#### **Section 4(b)(8)**

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**Original:** [End of the section] The site-specific construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Revised:** For discharges to Class AA or Class 1 waters, the site-specific dewatering system maintenance plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

**Rationale:** In order to afford more protection to Class AA and Class 1 waters the site-specific construction pollution prevention plan will be required to be submitted with the NOI and reviewed.

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

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**Original:** The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

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



that the test result is "less than #," where the # is the lowest detection limit of the test method used.

**Rationale:**

Incorporate federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.

**Section 6(b)(2)**

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**Original:**

(b) *Basic Water Quality Criteria and Inspections*

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:**

(b) *Basic Water Quality Criteria and Inspections*

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

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



**Rationale:**

Clarify the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarify inspection of effluent prior to commingling in lieu of inspecting receiving waters.

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

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**Original:** (NEW)

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

**Rationale:**

Monitoring results are entered into the U.S. Environmental Protection Agency's (EPA) Integrated Compliance Information System (ICIS) and have a minimum duration of monthly reporting. For construction dewatering activities, discharges may occur more frequently throughout a month, therefore, to meet the requirements of ICIS inputs, operators must determine and/or calculate the necessary values.

**Section 8(a)(6)**

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**Original:** (NEW)

**Revised:** Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:** Fulfills requirements of the NPDES eReporting rule in 40 CFR Part 127.

**Section 8(b)**

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**Original:** Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

**Revised:** Monitoring Report

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

**Rationale:** Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is a requirement of the general permit and not discretionary for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR [and required in section 8(a)(3)] is included.

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

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**Original:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

**Revised:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**Rationale:** Clarifies that violations may include both a fine and imprisonment.

### **Section 13**

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**Original:** (NEW)

**Revised:**

Renewal

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

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit..

### **Section 14**

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**Original:** (NEW)

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

**Rationale:** Clarify the location of electronic forms.

### **Table 34.5**

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**Original:** (NEW FOOTNOTE)

**Revised:** {11} If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly



minimum, and monthly average values on the discharge monitoring report.  
For pH, only report monthly minimum and monthly maximum.

**Rationale:** Clarify reporting of monitoring results when sampling is performed more frequently than once in a month.

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

*Not applicable.*

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

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

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

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

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

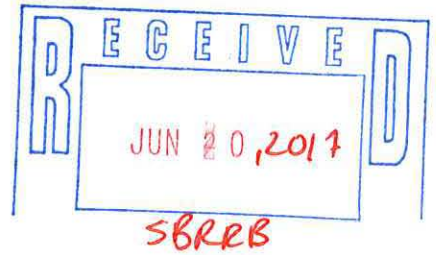
*The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are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

*For this permit, the limits are based on BPJ decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

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

*Not applicable.*





CHAPTER 11-55 APPENDIX G

NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES ASSOCIATED WITH  
CONSTRUCTION ACTIVITY DEWATERING

This General Permit is effective on

and expires ~~three~~ four years from this date,  
unless amended earlier.

1. Coverage under this General Permit
  - (a) This general permit covers discharges from the dewatering process of construction activities of any size, including treated storm water discharges, upon compliance with the applicable general permit requirements.
  - (b) This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards." as specified in section 11-54-5.2(a).
2. Limitations on Coverage under this General Permit
  - (a) This general permit does not cover the following:
    - (1) Discharges of construction dewatering effluent into a sanitary sewer system;
    - (2) Storm water discharges associated with construction activities for which the director has issued a notice of general

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permit coverage under another general permit;

- (3) Return flow or overflow from dredged material dewatering process that are regulated by the U.S. Army Corps of Engineers under Section 404 of the Act;
  - (4) Discharges of construction dewatering effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;
  - (5) Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and
  - (6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective when section 11-55-34.02 (b) (4) becomes

CHAPTER 11-55 APPENDIX G

~~effective] ten days after filing with the office of the lieutenant governor. [—This general permit expires three years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.]~~

- (b) A notice of general permit coverage under this general permit expires:
- (1) ~~[Three]~~ Four years after the effective date of this general permit;
  - (2) When the notice of general permit coverage specifies; or
  - (3) When amendments to section 11-55-34.02(b)(6) are adopted,

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;



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- (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;
- (3) Site characterization report including the history of the land use at the proposed construction site and surrounding area, the potential pollution source(s) at the proposed construction site and surrounding area, the potential pollutant(s) present at the proposed construction site and surrounding area, any proposed corrective measures, and pollutants that may be in the discharge;
- (4) Brief description of the project including the total disturbance area of the project; the portion of the project involving construction dewatering; an estimated timetable for major activities (including the date when the contractor will begin site disturbance); the date when the contractor will begin the construction dewatering process; estimates of the quantity, rate, and frequency of the proposed discharges; and the time frame of the proposed discharges;
- (5) An analysis of the source water quality as specified by the director. The source water quality data may be collected from sites allowed by the director. The analysis shall:

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- (A) Include an explanation addressing the selection of the toxic pollutants provided and an evaluation of the source water quality data collected with respect to the applicable numeric criteria and numeric standards for the toxic pollutants specified under section 11-54-4,
  - (B) Be based on the history of the land use as reported in paragraph 4(b)(3) or as believed to be present in the discharge,
  - (C) Use test methods as specified in section 6(a)(4)(B), and
  - (D) Be submitted to the director with the notice of intent;
- (6) ~~[Dewatering]~~ Site-specific dewatering plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include the pumping devices to be used, their pumping capacity, and the number of devices to be used; treatment design; design concerns; calculations used in the treatment design; and proposed mitigative measures. ~~[The]~~ For discharges to Class AA or Class 1 waters, the site-specific dewatering plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific dewatering plan shall be submitted to the director with the notice of intent or thirty days before the start of

**CHAPTER 11-55 APPENDIX G**

construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

- (7) Dewatering system maintenance plan to ensure that the dewatering effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The dewatering system maintenance plan shall include:
  - (A) Schedule of activities,
  - (B) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:
    - (i) Responsible field person of the system, by title or name;
    - (ii) Operations plan;
    - (iii) Maintenance scheduling or action criteria;
    - (iv) Maintenance program;
    - (v) Sediment handling and disposal plan;
    - (vi) Monitoring and visual inspection program;
    - (vii) Cessation of discharge plan; and



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(viii) Effluent control plan, and

(C) Treatment requirements.

[The] For discharges to Class AA or Class 1 waters, the site-specific dewatering system maintenance plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific dewatering system maintenance plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office;

- (8) Construction pollution prevention plan to prevent or reduce the pollution of state waters due to other discharges. The construction pollution prevention plan shall include:
- (A) Prohibited practices,
  - (B) Other management practices to prevent or reduce the pollution of state waters, and
  - (C) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

[The] For discharges to Class AA or Class 1 waters, the site-specific

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construction pollution prevention plan shall be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the site-specific construction pollution prevention plan shall be submitted to the director with the notice of intent or thirty days before the start of construction dewatering activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

- (9) For construction projects which are one acre or more, submit a county approved site-specific erosion control plan with the notice of intent or thirty days before the start of construction dewatering activities, as applicable.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

The permittee shall comply with the standard conditions as specified in appendix A of chapter

## CHAPTER 11-55 APPENDIX G

11-55. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

### 6. Effluent Limitations and Monitoring Requirements

(a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

#### (1) Sampling Point

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

#### (2) Collection of Samples

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

#### (3) Types of Samples

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



**CHAPTER 11-55 APPENDIX G**

(B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical

## CHAPTER 11-55 APPENDIX G

limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

### 5) Recording of Results

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

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

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall [~~timely~~] inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day, to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and

## CHAPTER 11-55 APPENDIX G

grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

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

### 7. Corrective Action

The permittee shall immediately stop, reduce, or modify construction, or implement a new or revised dewatering system maintenance plan as needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

### 8. Reporting Requirements

#### (a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.5 and other requirements of this general permit.



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- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.
- (~~3~~4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- (~~4~~5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.
- (b) [Additional Monitoring by the Permittee] Monitoring Report

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~~[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the] The permittee shall include the [results of this] monitoring results in the calculation and reporting of the values required in the discharge monitoring report form. [The permittee shall also indicate the increased frequency.]~~

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
    - (A) Violation of an effluent limitation specified in Table 34.5 or a basic water quality criteria specified in section 6(b) of this general permit;
    - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
    - (C) Unanticipated bypass or upset.
  - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday

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(excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

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



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9. Submittal Requirements

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

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

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

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

## CHAPTER 11-55 APPENDIX G

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

### 10. Additional Conditions

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

### 11. Record Retention

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

### 12. Falsifying Report

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

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### 13. Renewal

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

### 14. Forms

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



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TABLE 34.5

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR CONSTRUCTION DEWATERING DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (GPD or gpm)	{2}	{3} {11}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	{4} {11}	Grab
Turbidity (NTU)	{2}	{4} {11}	Grab
Oil and Grease (mg/l)	15	{4} {11}	Grab {5}
pH (standard units)	{6}	{4} {11}	Grab {7}
Toxic Pollutants {8}	{9}	{4} {11}	{10}

GPD = gallons per day  
 gpm = gallons per minute  
 mg/l = milligrams per liter  
 NTU = nephelometric turbidity units

NOTES:

{1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

## CHAPTER 11-55 APPENDIX G

- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.
- {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.
- {4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.
- {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {6} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {7} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored.

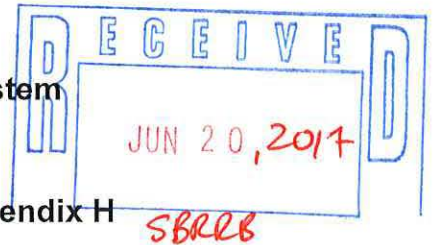
## CHAPTER 11-55 APPENDIX G

The permittee shall measure for the total recoverable portion of all metals.

- {9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
  
- {10} The permittee shall measure for cyanide, temperature, bacterial counts, and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.
  
- {11} If there is more than one discharge per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.



National Pollutant Discharge Elimination System  
General Permit Fact Sheet for  
Hawaii Administrative Rules Chapter 11-55, Appendix H



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

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

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

*This general is not intended for facilities that discharge treated or untreated process wastewater associated with petroleum bulk stations and terminals into a sanitary sewer system.*

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

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

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

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

*Not applicable.*

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

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

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

4. *Notice of Intent Requirements*
5. *Standard Conditions*
6. *Effluent Limitations and Monitoring Requirements [Revised]*
7. *Corrective Actions*
8. *Reporting Requirements [Revised]*
9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [New]*
14. *Forms [New]*

Table 34.6 *Effluent Limitation and Monitoring Requirements for Discharge of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals [Revised]*

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.6 detail the effluent limitations and monitoring requirements for once through cooling water discharges.

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

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for petroleum bulk stations and terminals. Accordingly, the bases for the proposed effluent limitations are the Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards.

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

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

Total Recoverable Lead, Petroleum Hydrocarbons, and Ammonia Nitrogen: Pollutants in the process wastewater or stormwater that indicate presence of petroleum or byproducts or waste products generated from petroleum product manufacture. Therefore, the general permit includes effluent limitations per Hawaii Administrative Rules (HAR) Section 11-54-04(c)(3) for freshwater and saltwater acute toxicity criteria for total recoverable lead, benzene, toluene xylenes, and ethyl benzene. Effluent limitations for ammonia nitrogen are the specific criteria established in HAR Sections 11-54-5 and 11-54-6 for the classification of the receiving waters.



*Turbidity: The limitation for turbidity is to ensure that the operation and maintenance of the cooling water system does not result in excessive discharge of particulate material. In addition, the general permit includes a narrative prohibition that there shall be no discharge of wastes from the physical cleaning of the cooling systems.*

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

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

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

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

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

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

#### **Main**

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**Original:** *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

**Revised:** *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

**Rationale:**

*Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

#### **Section 1(b)**

---

**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except as specified in section 11 54 5.2(a).*



**Rationale:**

Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.

Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools

**Section 3(a)**

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**Original:** This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.

**Revised:** This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.

**Rationale:**

Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

**Section 3(b)(1)**

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**Original:** Four years after the effective date of this general permit;

**Revised:** Five years after the effective date of this general permit;

**Rationale:**

Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

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

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**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*Incorporates federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.*

**Section 6(b)(2)**

---

**Original:**

*(b) Basic Water Quality Criteria and Inspections*

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:**

*(b) Basic Water Quality Criteria and Inspections*

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is*



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

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

**Rationale:**

Clarify the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarify inspection of effluent prior to commingling in lieu of inspecting receiving waters

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

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**Original:** (NEW)

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

**Rationale:**

Monitoring results are entered into the U.S. Environmental Protection Agency's (EPA) Integrated Compliance Information System (ICIS) and have a minimum duration of monthly reporting. For construction dewatering activities, discharges may occur more frequently throughout a month, therefore, to meet the requirements of ICIS inputs, operators must determine and/or calculate the necessary values.

**Section 8(b)**

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**Original:** Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

**Revised:** Monitoring Report



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

**Rationale:**

Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is requirement of the general permit and not discretionary for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR [and required in section 8(a)(3)] is included. **Section 8(a)(5)**

**Original:** (New)

**Revised:** Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:**

Provides for transition from paper reporting to federally-mandated electronic reporting requirements.

**Section 9(b)**

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**Original:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

**Revised:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**Rationale:** Clarifies that violations may include both a fine and imprisonment.

**Section 13**

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**Original:** (NEW)

**Revised:**

Renewal

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

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit..

**Section 14**

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**Original:** (NEW)

**Revised:**

Forms

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

**Rationale:** Clarify the location of electronic forms.

**Table 34.6**

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**Original:** (NEW NOTE)

**Revised:** {10} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

**Rationale:** Clarify reporting of monitoring results for multiple sample analyses in a quarter.

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

*Not applicable.*

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

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

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

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health*

Ph. (808) 586-4309

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

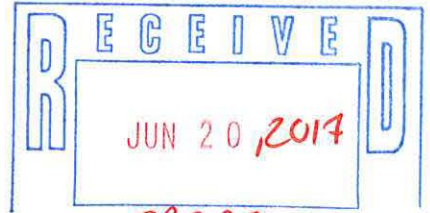
*The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are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

*For this permit, the limits are based on HAR Chapter 11-54, except where there are no water quality standards, Best Professional Judgement (BPJ) decision-making was utilized because no effluent limitation guidelines (ELG) apply.*

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

*Not applicable.*





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

This General Permit is effective on

and expires [~~four~~]five years from this date,  
unless amended earlier.

1. Coverage under this General Permit
  - (a) This general permit covers only discharges of treated process wastewater effluent from petroleum bulk stations and terminals upon compliance with the applicable general permit requirements. Treated process wastewater effluent covered by this general permit includes tank water draws; product displacement process wastewater; wash down and fire hydrant system test waters; service station tank draws; recovered groundwater; and contaminated storm water runoff from the product storage and handling areas.
  - (b) This general permit covers all areas of the State except [~~for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."~~]as specified in section 11-54-5.2(a).
2. Limitations on Coverage under this General Permit

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- (a) This general permit does not cover the following:
- (1) Discharges of treated effluent into a sanitary sewer system and
  - (2) Discharges of treated effluent which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective [when section 11-55-34.02(b)(7) becomes effective] ten days after filing with the office of the lieutenant governor. [~~This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(7) are adopted, whichever is earlier.~~]
- (b) A notice of general permit coverage under this general permit expires:
- (1) [~~Four~~ ]Five years after the effective date of this general permit;

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- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(7) are adopted,

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
  - (3) Brief description of the nature of business conducted at the facility;
  - (4) Description of the following for each outfall:



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

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for sampling and analysis of the effluent. The treatment system operations plan shall be modified by the permittee as requested by the director. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements

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

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and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

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

(2) Collection of samples

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

(3) Type of Sample

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

(4) Test Procedures

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

(B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with



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methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.

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

(5) Recording of Results

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

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall [~~timely~~] inspect the receiving state waters, effluent, and control measures and best

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

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

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

### 7. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent

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a violation of the basic water quality criteria as specified in section 11-54-4.

8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.6 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month and the results shall be postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.
- (~~3~~4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be



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implemented based on monitoring results.

([4]5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

(b) [Additional Monitoring by the Permittee]  
Monitoring Report

[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the] The permittee shall include the [results of this] monitoring results in the calculation and reporting of the values required in the discharge monitoring report form. [The permittee shall also indicate the increased frequency.]

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

(1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:

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- (A) Violation of an effluent limitation specified in Table 34.6 or a basic water quality criteria specified in section 6(b) of this general permit;
  - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
  - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
  - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;

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- (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
  - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

- (e) Schedule of Maintenance

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



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9. Submittal Requirements

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

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

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

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

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

10. Additional Conditions

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

11. Record Retention

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

12. Falsifying Report

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

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### 13. Renewal

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

### 14. Forms

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



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TABLE 34.6

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

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements {2}	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{3}	{3}	Once/Batch Discharge {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	Once/Batch Discharge {10}	Grab {4}
Total Recoverable Lead (mg/l) {5}	0.14	0.029	Once/Batch Discharge {10}	Grab
Benzene (mg/l) {6}	1.7	1.8	Once/Batch Discharge {10}	Grab
Toluene (mg/l) {6}	2.1	5.8	Once/Batch Discharge {10}	Grab
Xylenes (mg/l) {6}	{3}	{3}	Once/Batch Discharge {10}	Grab
Ethyl benzene (mg/l) {6}	0.14	11	Once/Batch Discharge {10}	Grab
Turbidity (NTU)	{7}	{7}	Once/Batch Discharge {10}	Grab

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

mg/l = milligrams per liter  
 NTU = nephelometric turbidity units

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} No monitoring of storm water discharge is required if the associated storm event occurs less than seventy-two hours from a previous storm event or provided that the preceding storm event generates storm water which is discharged and monitored for all effluent characteristics specified in accordance with Table 34.6 or both.
- {3} Report. The permittee shall monitor and report the analytical result.

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- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA method 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {7} Effluent limitations are the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {8} The permittee may determine compliance for pH by either monitoring the effluent or the receiving state water. Receiving state water monitoring shall be performed at a minimum of two stations. One sample station shall be monitored at the point where the discharge initially mixes with the receiving state water. One control station shall be monitored at a point where impacts from the discharge would not be expected. The monitoring specification shall be set forth in a monitoring program as approved by the director.
- {9} The pH shall be measured within fifteen minutes of obtaining the grab sample.



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

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules Chapter 11-55, Appendix I



SBRPB

**Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities**

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

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

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

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

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

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

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

*Not applicable.*

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

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

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

4. *Notice of Intent Requirements*
5. *Standard Conditions*
6. *Effluent Limitations and Monitoring Requirements [Revised]*
7. *Corrective Actions*
8. *Reporting Requirements [Revised]*
9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [New]*
14. *Forms [New]*

Table 34.7 *Effluent Limitation and Monitoring Requirements for Discharge of Treated Process Wastewater Associated with Well Drilling Activities [Revised]*

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.7 detail the effluent limitations and monitoring requirements for once through cooling water discharges.

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

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for well drilling activities. Accordingly, the bases for the proposed effluent limitations are the Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards.

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

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

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

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

##### **Main**

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**Original:** This General Permit is effective on [date] and expires four years from this date, unless amended earlier.

**Revised:** This General Permit is effective on [date] and expires five years from this date, unless amended earlier.



**Rationale:**

*Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

**Section 1(b)**

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**Original:** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

**Revised:** *This general permit covers all areas of the State except as specified in section 11 54 5.2(a).*

**Rationale:**

*Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 "Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.*

*Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools*

**Section 3(a)**

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**Original:** *This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.*

**Revised:** *This general permit becomes effective when section 11-55-34.02(b)(4) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(4) are adopted, whichever is earlier.*

**Rationale:**

*Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

**Section 3(b)(1)**

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**Original:** *Four years after the effective date of this general permit;*

**Revised:** *Five years after the effective date of this general permit;*

**Rationale:**

*Following revision of these general permits, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits per 40 CFR §122.46(a).*

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

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**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

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

**Rationale:**

*Incorporates federal requirements for sufficiently sensitive methods (SSM) for monitoring and analysis in NPDES permits.*

**Section 6(b)(2)**

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**Original:**

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

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters*



*for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:**

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

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day, to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

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

**Rationale:**

*Clarify the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarify inspection of effluent prior to commingling in lieu of inspecting receiving waters*

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

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**Original:** (NEW)

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

**Rationale:**

*Monitoring results are entered into the U.S. Environmental Protection Agency's (EPA) Integrated Compliance Information System (ICIS) and have a minimum duration of monthly reporting. For construction dewatering activities, discharges may occur more frequently throughout a month,*



therefore, to meet the requirements of ICIS inputs, operators must determine and/or calculate the necessary values.

### **Section 8(b)**

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**Original:** *Additional Monitoring by the Permittee*

*If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.*

**Revised:** *Monitoring Report*

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

**Rationale:**

*Due to requirements of ICIS reporting, the general permit may require the permittee to monitor more frequently than the minimum duration allowed on a Discharge Monitoring Report (DMR) form. Since the more frequent reporting is requirement of the general permit and not discretionary for the permittee, the language for more frequent monitoring is removed and language for the permittee to submit the analytical monitoring results used to determine the values for the DMR [and required in section 8(a)(3)] is included. **Section 8(a)(5)***

**Original:** *(New)*

*Revised: Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.*

**Rationale:**

*Provides for transition from paper reporting to federally-mandated electronic reporting requirements.*

### Section 9(b)

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**Original:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations."

**Revised:** "... I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**Rationale:** Clarifies that violations may include both a fine and imprisonment.

### Section 13

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**Original:** (NEW)

**Revised:**

Renewal

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

**Rationale:** Provide for sufficient time for the agency to review and renew permit coverage before commencement of the new general permit..

### Section 14

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**Original:** (NEW)

**Revised:**

Forms

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

**Rationale:** Clarify the location of electronic forms.

### Table 34.7

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**Original:** (NEW NOTE)

**Revised:** {10} If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.

**Rationale:** Clarify reporting of monitoring results for multiple sample analyses in a quarter.

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

*Not applicable.*

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

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix H within HAR Chapter 11-55, Water Pollution Control.*

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

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

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

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

*For this permit, the limits are based on HAR Chapter 11-54, except where there are no water quality standards, Best Professional Judgement (BPJ) decision-making was utilized because no effluent limitation guidelines (ELG) apply.*

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

*Not applicable.*





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NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF TREATED  
PROCESS WASTEWATER ASSOCIATED WITH  
WELL DRILLING ACTIVITIES

This General Permit is effective on

and expires [~~four~~]five years from this date,  
unless amended earlier.

1. Coverage under this General Permit

(a) This general permit covers only discharges of treated process wastewater associated with well drilling activities upon compliance with the applicable general permit requirements. Treated process wastewater covered by this general permit includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters.

(b) This general permit covers all areas of the State except [~~for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."~~]as specified in section 11-54-5.2(a).

2. Limitations on Coverage under this General Permit

(a) This general permit does not cover the following:

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- (1) Discharges of treated process wastewater into a sanitary sewer system;
- (2) Discharges of treated process wastewater which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system; and
- (3) Discharges of well pump testing wastewaters which are not associated with well drilling activities.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

- (a) This general permit becomes effective ~~[when section 11-55-34.02(b)(8) becomes effective]~~ ten days after filing with the office of the lieutenant governor. ~~[—This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(8) are adopted, whichever is earlier.]~~
- (b) A notice of general permit coverage under this general permit expires:

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- (1) [~~Four~~ ]Five years after the effective date of this general permit;
- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(8) are adopted,

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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the well drilling process wastewater treatment facility(ies);
  - (3) Site characterization report which includes:



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- (A) The history of the land use at the proposed drilling site,
  - (B) The potential pollution source(s) at the proposed drilling site,
  - (C) The potential pollutant(s) present at the proposed drilling site,
  - (D) Any proposed corrective measures, and
  - (E) Pollutants that may be in the effluent;
- (4) Brief description of the project, including:
- (A) An estimated timetable of the drilling activities, including the date when the contractor will begin the well drilling process;
  - (B) Details of the proposed wastewater(s) discharge(s):
    - (i) Estimates of the quantity and frequency of the proposed discharge(s) and
    - (ii) The name(s) of the chemical(s) or material(s) listed by both chemical and trade names that is(are) present in the proposed wastewater(s) discharge(s). Also, provide the material safety data sheet (MSDS) for

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the chemical(s) or  
materials; and

- (C) The time frame of the proposed discharges;
- (5) Quantitative data on pollutants that the owner or operator of the activity knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the receiving state waters are specified in section 11-54-4;
- (6) Name, street address, and phone and fax numbers of each contract laboratory or consulting firm that performed any of the analyses in accordance with section 4(b)(5), as applicable. This information shall be submitted with the notice of intent or thirty days before the start of well drilling activities;
- (7) Well drilling plan designed to comply with the basic water quality criteria specified under chapter 11-54. The plan shall include:
  - (A) The well drilling equipment to be used,
  - (B) Process wastewater treatment design,
  - (C) Design concerns,
  - (D) Calculations used in the treatment design, and

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(E) Proposed mitigative measures.

The site-specific detailed well drilling plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office; and

(8) Well drilling best management practices plan to ensure that the well drilling effluent discharge will meet conditions of this general permit, basic water quality criteria, and applicable specific water quality parameters. The well drilling best management practices plan shall include:

(A) A schedule of activities;

(B) Prohibited practices;

(C) Operation and maintenance procedures to prevent or reduce the pollution of state waters, including:

(i) Responsible field person of the system, by title or name;

(ii) Operations plan;

(iii) Maintenance scheduling or action criteria, and program;



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- (iv) Effluent monitoring program (e.g. visual inspection);
  - (v) Cessation of discharge plan; and
  - (vi) Effluent control plan;
- (D) Other management practices to prevent or reduce the pollution of state waters;
- (E) Treatment requirements; and
- (F) Practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage or stockpiling area(s).

The site-specific detailed well drilling best management practices plan shall be submitted to the director with the notice of intent or thirty days before the start of well drilling activities. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.

- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

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

5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements

- (a) The discharges shall be limited and monitored by the permittee as specified in this section and in Table 34.7 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

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

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(2) Collection of Samples

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

(3) Types of Samples

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

(B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

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



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- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

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

(b) Basic Water Quality Criteria and Inspections

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

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

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

- (c) There shall be no discharge of floating solids or visible foam.
- (d) There shall be no visible oil sheen in the effluent.
- (e) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any

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other material generated by any treatment process shall be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

### 7. Corrective Action

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

### 8. Reporting Requirements

#### (a) Reporting of Monitoring Results

(1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.7 and other requirements of this general permit.

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



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- (3) If there is more than one discharge in a single month, report the monthly maximum, monthly minimum, and monthly average values for each parameter on the discharge monitoring report.
- ([3]4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.
- ([4]5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.
- (6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.
- (b) ~~[Additional Monitoring by the Permittee]~~  
~~Monitoring Report~~
- ~~[If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the]~~ The permittee shall include the ~~[results of this]~~ monitoring results in the calculation and reporting of the values required in the discharge

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monitoring report form. [~~The permittee shall also indicate the increased frequency.~~]

- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
    - (A) Violation of an effluent limitation specified in Table 34.7 or a basic water quality criteria specified in section 6(b) of this general permit;
    - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
    - (C) Unanticipated bypass or upset.
  - (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
  - (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the

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circumstances. The written report shall include the following:

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

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

- (e) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities



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which might result in exceedance of effluent limitations. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

9. Submittal Requirements

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

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

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

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

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

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

10. Additional Conditions

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

11. Record Retention

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

12. Falsifying Report

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

### 13. Renewal

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

### 14. Forms

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



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TABLE 34.7

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR DISCHARGE OF TREATED EFFLUENT  
FROM WELL DRILLING ACTIVITIES

Effluent Parameters	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	{2}	Daily {10}	Calculated or Estimated
Oil and Grease (mg/l)	15	15	{3} {10}	Grab {4}
Benzene (mg/l) {5}	1.7	1.8	{3} {10}	Grab
Total Suspended Solids (mg/l)	{6}	{6}	{3} {10}	Grab
Turbidity (NTU)	{6}	{6}	{3} {10}	Grab
Ammonia Nitrogen (NH <sub>4</sub> -N/l) {7}	{6}	{6}	{3} {10}	Grab
pH (standard units)	{6}	{6}	{3} {10}	Grab {8}
Toxic Pollutants {7}	{6}	{6}	{3} {10}	{9}

mg/l = milligrams per liter  
NTU = nephelometric turbidity units

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### NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.
- {2} Report. The permittee shall monitor and report the analytical result.
- {3} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge a sample shall be taken at least once per week.
- {4} Oil and Grease shall be measured by EPA Method 1664, Revision A.
- {5} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, or 1624 for the measurement of benzene.
- {6} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.

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- {7} The permittee shall measure for toxic pollutants, as identified in appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.
- {10} If there is more than one sample analysis per month in a single monitoring location, report for each parameter the monthly maximum, monthly minimum, and monthly average values on the discharge monitoring report. For pH, only report monthly minimum and monthly maximum.

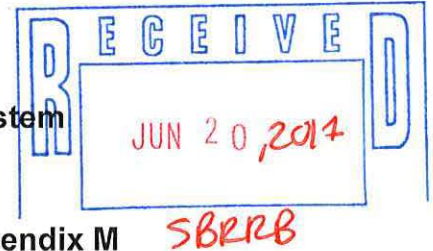


National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules Chapter 11-55, Appendix M

Authorizing Discharges from the Application of Pesticides



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

*This general permit covers point source discharges from the application of pesticides (including insecticides, herbicides, fungicides, rodenticides, and various other substances to control pests) to State waters.*

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

*This general permit covers the discharge of pesticides (biological pesticides and chemical pesticides which leave a residue) to State Waters resulting from the following use patterns: (1) Mosquito and Other Flying Insect Pest Control; (2) Weed and Algae Control; (3) Animal Pest Control; and (4) Forest Canopy Pest Control.*

*The PGP excludes pesticide applications that result in discharges of any pesticide to (1) waters impaired for that pesticide or a degradate of such an active ingredient, except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director or (2) any "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director; or to protect public health or the environment that either do not degrade water quality or only degrade water quality on a short-term basis.*

*This permit requires Operators to control discharges as necessary to meet applicable water quality standards. When the Operator, the State or EPA determines a discharge will cause or contribute to an excursion above any WQS, including failure to protect and maintain existing designated uses of receiving waters, the Operator must take corrective action to ensure that the situation is eliminated and will not be repeated in the future. (See Section 6). If additional Pest Management Measures are required, the State and EPA expects the Operator to vigilantly and in good-faith follow and document, as applicable, the process for Pest Management Measure selection, installation, implementation and*

*maintenance, and cooperate to eliminate the identified problem within the timeframe stipulated in Section 6 of the permit.*

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

*Not applicable.*

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

The Hawaii Department of Health, Clean Water Branch administers the NPDES Permit Program through Title 11 of the Hawaii Administrative Rules, Chapter 55 (HAR Chapter 11-55) – Water Pollution Control. Under 40 CFR 122.28, general permits may be written to cover categories of point sources having comment elements, such as this Pesticide General Permit.

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

1. *Coverage under this General Permit [Revised]*
2. *Effluent Limitations [Revised]*
3. *Water QualityBased Effluent Limitations*
4. *Site Monitoring*
5. *Pesticide Discharge Management Plan (PDMP)*
6. *Corrective Action*
7. *Recordkeeping and Annual Reporting*
8. *Notice of Intent Requirements [Revised]*

*Sections 1 through 8 are basic requirements necessary to the General Permit.*

**Basis for Discharge Limitations and Monitoring Requirements**

*There are no effluent guidelines promulgated for discharges resulting from point source discharges from the application of pesticides. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that most discharges are one-time or intermittent, of short duration, of relatively small volume, and result in deminimis impacts.*

*The Director of Health determined that:*

- 1) *The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected; and*



- 2) *Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met.*

*Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent (NOI). Effluent limitations for these parameters are based on applicable water quality criteria in HAR Section 11-54-4.*

*The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-54, Appendix A.*

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

*Revisions of this appendix include:*

- *Section 1: Corrected numbering*
- *Section 1: Removed “timely”*
- *Section 2: Corrected numbering*
- *Section 8: Provides for transition to electronic NOI submittal*

#### **Section 1(c)(2), p. 55-M-8**

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**Original:** *Labeling of 1.(c)(2)(C), 1.(c)(2)(D), and 1.(c)(2)(E).*

**Revised:** *changed to 1.(c)(2)(A), 1.(c)(2)(B), and 1.(c)(2)(C).*

**Rationale:** *Corrects numbering.*

#### **Section 1(d), p. 55-M-9**

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**Original:** *To obtain authorization under this permit for all other eligible dischargers, a Decision-maker must submit a timely, complete, and accurate NOI...*

**Revised:** *To obtain authorization under this permit for all other eligible dischargers, a Decision-maker must submit a complete and accurate NOI...*

**Rationale:** *Removes ineffective and unenforceable “timely” verbiage.*



**Section 2(b), p. 55-M-24**

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**Original:** *In second paragraph after "...to control the target pest."*

frequency of pesticide application necessary to control the target pest. For Any Decision-maker Who is or Will be Required to Submit an NOI

**Revised:**

frequency of pesticide application necessary to control the target pest.

For Any Decision-maker Who is or Will be Required to Submit an NOI

**Rationale:** *Inserted carriage return (extra line) to separate subheader for clarity.*

**Section 2(b)(3)(A)(v), p. 55-M-33**

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**Original:** *...use the other available data as appropriate to meet the permit conditions in section 2(B)(3)(A).*

**Revised:** *...use the other available date as appropriate to meet the permit conditions in section 2(b)(3)(A).*

**Rationale:** *Corrects reference.*

**Section 2(b)(4)(A)(iv), p. 55-M-36**

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**Original:** *...use other available data as appropriate to meet the permit conditions in section 2(B)(4)(A).*

**Revised:** *...use other available data as appropriate to meet the permit conditions in section 2(b)(4)(A).*

**Rationale:** *Corrects reference.*

**Section 4(b), p. 55-M-40**

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**Original:** *Carriage return after surveillance.*

During any Operator post-application surveillance  
of any pesticide application with discharges

authorized under this permit, all Operators...

**Revised:** *Removed carriage return after surveillance.*

During any Operator post-application  
Surveillance of any pesticide application with discharges  
authorized under this permit, all Operators...

**Rationale:** *Removed carriage return to move text up. Formatting.*

**Section 5(a)(1)(A), p. 55-M-41**

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**Original:** *Needs punctuation*

(A) Person(s) responsible for managing  
pests in relation to the pest  
management area

**Revised:** *Added semi-colon.*

(A) Person(s) responsible for managing  
pests in relation to the pest  
management area;

**Rationale:** *Formatting.*

**Section 6(a), p. 55-M-46**

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**Original:**

(a) Situations Requiring Revision of Pest  
Management Measures.  
Operators must review and, as necessary,...

**Revised:** *Added carriage return.*

(a) Situations Requiring Revision of Pest  
Management Measures.  
  
Operators must review and, as necessary,...

**Rationale:** *Inserted carriage return (extra line) to separate subheader for clarity.*

**Section 6(d)(1)(A)(ii), p. 55-M-49**

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**Original:**

- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;

**Revised:** *Added carriage return.*

- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;

**Rationale:** *Inserted carriage return (extra line) to separate (ii) and (iii). Formatting.*

**Section 8(c), p. 55-M-73**

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**Original:** *(New)*

**Revised:** *The owner or duly authorized representative shall submit Notice of Intent Forms on Forms specified by the CWB.*

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

**Rationale:** *Incorporates EPA, electronic reporting rule.*

- o see Attachment A (2012 Appendix M Fact Sheet) for a more detailed explanation of the permit requirements.*

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

*Not applicable.*



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

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

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

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

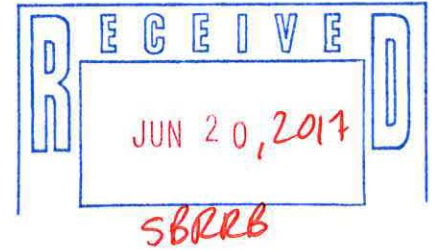
- (7) For NPDES permits, provisions satisfying the requirements of § 124.56.

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

*For this permit, the limits are based on best professional judgement (BPJ) decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

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

*Not applicable.*



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NPDES GENERAL PERMIT  
AUTHORIZING POINT SOURCE DISCHARGES FROM THE  
APPLICATION OF PESTICIDES

[August 2012]

This General Permit is effective on

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

1. Coverage under this General Permit.

This permit covers any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides that meets the eligibility requirements identified in section 1(a) of this pesticide general permit (PGP) and if so required, submits a Notice of Intent (NOI) in accordance with section 1(e) of this general permit. For the purpose of this permit, an Operator is defined in section 11-55-01 to mean any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers.

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As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

For purposes of this permit, all Operators are defined as either an Applicator or a Decision-Maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

### (a) Activities Covered.

This permit is available to Operators who discharge to state waters from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for at least one of the following pesticide use patterns:

- (1) Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- (2) Weed and Algae Pest Control - to control weeds, algae, and pathogens



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that are pests in water and at water's edge, including ditches and/or canals.

- (3) Animal Pest Control -to control animal pests in water and at water's edge. Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.
  - (4) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (b) Limitations on Coverage under this General Permit
- (1) Discharges to Water Quality Impaired Waters.

Except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director, Operators are not eligible for coverage under this permit for any discharges from a pesticide application to state waters if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this general permit, impaired waters are

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those that have been identified by the State pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters, for the purposes of this general permit consist of both waters with EPA-approved Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved a TMDL. Coverage under this general permit is allowed for discharges to impaired waters listed generically for "pesticides" where the specific pesticide for which the waterbody is impaired has not been identified and without additional information suggesting that the waterbody is impaired for a specific active ingredient or degradate of the active ingredient.

- (2) Discharges to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Operators are not eligible for coverage under this permit for discharges from a pesticide application to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

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Except for discharges from the following pesticide applications:

- (A) made in response to a declared pest emergency situation or as determined by the director;
  - (B) to protect the public health or the environment that either do not degrade water quality or only degrade water quality on a short term basis; or
  - (C) to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.
- (3) Discharges to surface drinking water sources (for domestic use) and their tributaries up-stream are not eligible for coverage under this permit. Such discharges will require coverage under an individual NPDES permit.

Except in the following conditions:

- (A) made in response to a declared pest emergency situation or as determined by the director; or
- (B) the following:



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- (i) the NOI indicates whether the proposed application may discharge to surface drinking water sources; and
- (ii) the application to surface drinking water sources is consistent with the FIFRA label, including but not limited to, following any distance restriction and intended use; and
- (iii) the Decision-maker provides the owner (e.g., municipality, private) of the surface drinking water source the following information, including but not limited to: the pesticide(s) to be applied, general location, and approximate frequency and the department receives written consent from the owner of the surface drinking water source for such discharges; and
- (iv) the Operator adheres to the Safe Drinking Water Act and safe drinking water regulations; and
- (v) the Operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-

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treated water from entering the drinking water intake and distribution system (e.g., the valve to the drinking water source is shut, or by diversion).

- (4) Discharges Currently or Previously Covered by another Permit.

Discharges are not eligible for coverage under this permit if any of the following circumstances apply:

- (A) The discharge is covered by another NPDES permit, or
- (B) The discharge was included in a permit that in the past five (5) years has been or is in the process of being denied, terminated, or revoked by the State or EPA (this does not apply to the routine reissuance of permits every five (5) years).

- (5) Individual Permit

The Director may require any Operator authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

- (c) Term of General Permit

- (1) This general permit becomes effective ~~[when section 11-55-34.02(b)(12)]~~

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~~becomes effective]~~ ten days after filing with the office of the lieutenant governor. ~~[— Hereinafter, the date when section 11-55-34.02(b) (12) becomes effective (i.e., ten days after filing with the office of the lieutenant governor) shall be referred to as "the effective date of the permit." This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b) (12) are adopted, whichever is earlier.]~~

- (2) A notice of general permit coverage under this general permit expires:

~~[(C)]~~ (A) Five years after the effective date of this general permit;

~~[(D)]~~ (B) When the notice of general permit coverage specifies; or

~~[(E)]~~ (C) When amendments to section 11-55-34.02(b) (12) are adopted,

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

- (d) How to Obtain Authorization.

The following discharges, consistent with the activities covered in section 1(a) and limitations on coverage under this general permit in section 1(b), are automatically



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authorized by this permit beginning when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor:

- (1) Eligible discharges made prior to the Notice of Intent submission deadline. See Table 2;
- (2) Eligible discharges for which submission of an NOI is not required. See sections 1(e) and 1(f).

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a [timely,] complete, and accurate NOI consistent with the requirements of sections 1(e) and 1(f), be issued a Notice of General Permit Coverage (NGPC) and meet all conditions of the NGPC, unless the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f); and this general permit to the satisfaction of the department.

- (e) Decision-makers Required to Submit an NOI.

Any "Decision-maker Who is or Will be Required to submit an NOI" is identified in Table 1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for, "annual treatment area threshold" in section 11-55-01.

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An NOI provides notice to the State that a Decision-maker intends to discharge to state waters from pesticide application activities eligible for coverage under this permit. Information required to be provided is on the NOI form. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to state waters to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 1(f), Table 2. The Decision-maker must submit an updated NOI if the criteria in section 1(f), Table 3 are met. Late NOIs may be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of this general permit for Decision-makers who file an NOI and are issued an NGPC and who meet all conditions of the NGPC and this general permit to the satisfaction of the department or for those rightfully (refer to the risks in section 11-55-34.09(f)) claiming coverage in writing under the automatic provision of section 11-55-34.09(e)(2), including the Decision-makers' employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to appendix A of chapter 11-55. If a submitted NOI is not timely, accurate, or complete, and an NGPC is not issued or any condition not met, any employee, contractor,

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subcontractor or other entity that discharges is not covered by this permit.

Applicators who are not also Decision-makers do not need to submit an NOI, however they are still required to comply with other requirements, as applicable in this general permit.

(f) Discharge Authorization Date

Except for discharges identified in Tables 1 through 3, any Operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Decision-makers with eligible discharges identified in Tables 1 through 3 are authorized under this permit consistent with the requirements in those tables.

On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in section 1(b)(5).

All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60 calendar day timeframe



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provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs when a pesticide use pattern is not already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

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Table 1. Decision-makers Required to Submit NOIs

PGP Section/ Pesticide Use	Which Decision- makers Must Submit NOIs?	For Which Pesticide Application Activities?
All four use patterns identified in section 1(a)	Any Decision-maker with an eligible discharge to water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream consistent with sections 1(b) (1), 1(b) (2), or 1(b) (3).	Activities resulting in a discharge to water quality impaired waters, class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy, or to surface drinking waters and their tributaries up-stream.
1(a)(1) - Mosquito and Other Flying Insect Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All mosquito and other flying insect pest control activities resulting in a discharge to state waters.
	Mosquito control districts, or similar pest control districts.	All mosquito and other flying insect pest control activities

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		resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Adulticide treatment if more than 6,400 acres during a calendar year. {1}
1(a)(2) - Weed and Algae Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All weed and algae pest control activities resulting in a discharge to state waters.
	Irrigation and weed control districts, or similar pest control districts.	All weed and algae pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(3) - Animal Pest Control	Any Federal or State government entities for which pest management for land resource	All animal pest control activities resulting in a discharge to state waters.



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	stewardship is an integral part of the organization's operations.	
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(4) - Forest Canopy Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment if more than 6,400 acres during a calendar year. {1}

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Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

<p>After the adjustment period, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If the Director receives an NOI at least 30 calendar days before the end of the adjustment period, uninterrupted coverage may continue {3}. NOI due dates for any discharges occurring on or after the adjustment period are as follows:</p>		
Operator Type	NOI Submission Deadline	Discharge Authorization Date {3}
<p>Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Section 1(e).</p>	<p>At least 30 calendar days after beginning discharge.</p>	<p>Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation {4}.</p>
<p>Any Decision-maker that exceeds any annual treatment area threshold.</p>	<p>At least 30 calendar days before exceeding an annual treatment area threshold.</p>	<p>Upon NGPC issuance {5} or if the operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e) (2) and assumes the risks in section 11-55-34.09(f).</p>

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<p>Any Decision-maker otherwise required to submit an NOI as identified in Table 1.</p>	<p>At least 30 calendar days before any discharge for which an NOI is required.</p>	<p>Upon NGPC issuance {5} or if the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).</p>
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Table 3. Change of Information, resulting in a Major Modification {6} of the NGPC, Submittal Deadlines and Discharge Authorization Dates

Operator Type	NOI Submission Deadline	Discharge Authorization Date
Any Decision-makers discharging to an class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy not specifically identified by name on a previously submitted NOI for this permit.	At least 30 calendar days before beginning to discharge in that newly identified class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.
Any Decision-maker with any discharge to state waters requiring permit coverage for a newly identified pest management	At least 30 calendar days before beginning to discharge in that newly identified pest management area or new pesticide	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest

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<p>area or new pesticide use pattern not identified on a previously submitted NOI for this permit. This includes changes in any treatment area, pesticide product, method or rate of application, or approximate dates of applications.</p>	<p>use pattern not identified on a previously submitted NOI for this permit unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.</p>	<p>emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.</p>
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Notes:

{1} Treatment during a calendar year if more than 6,400 acres, as discussed for the categories "Mosquito and Other Flying Insect Pest Control" and "Forest Canopy Pest Control," refers to the total area to which pesticide applications (e.g. aerial spraying) are made, when any part of those areas is a state water and shall be treated as separate treatment areas to be additive in a calendar year. If the additive total areas in a calendar year to which pesticides application are made exceeds 6,400 acres, when any part of these areas is a state water, submittal of an NOI is required for those Decision-makers required to submit an NOI as identified in Table 1. For example, applying pesticides three times a year to the same three thousand acre site (i.e., total area to which pesticide applications are made, when any part of those areas is a state water)

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should be counted as nine thousand acres of treatment area.

- {2} For the categories "Weed and Algae Pest Control" and "Animal Pest Control", "20 linear miles" means 20 linear miles of river, stream, riverbank, or other linear water feature subject to coverage under this permit, counting each bank of the water feature separately if pesticides are applied to both banks. This means that applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles \* two banks \* for applications per year = twenty four miles to which pesticides are applied in a calendar year) and require submission of an NOI. For applications made to the water of a linear water feature, the length of the reach or surface area may be used to determine if the annual treatment area threshold is exceeded. Treatment during a calendar year if more than "80 acres of water (i.e., surface area)" means application of pesticides to a waterbody surface area of greater than 80 acres.
- {3} On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 1, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Section 1(b)(5).
- {4} To remain authorized, an NOI must be submitted no later than 30 calendar days after beginning discharge and result in issuance of an NGPC. At



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no time, during the processing the NOI, shall the time between the department's request for more information, and its receipt from the Decision-maker be longer than 30 calendar days. If longer than 30 calendar days, coverage under this general permit may be terminated automatically.

- {5} All requirements in the NGPC must be complied with and in the timeframe as specified, including this general permit and any additional requirements as determined by the State to the satisfaction of the department.
- {6} The department may require submittal of a new NOI if it is determined that the modification of the information is significant or more than one (1) change to the information used in the issuance of its NGPC is required.

(g) Standard Conditions

The Decision-maker shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding biocides as identified in section 1.a.(4) of appendix A. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding biocides as identified in section 1.a.(4) of appendix A, the more stringent conditions shall apply.

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### (h) Other Federal and State Laws.

Operators must comply with all other applicable federal and state laws and regulations that pertain to pesticides. The pesticide must be registered by the EPA, licensed by the State Department of Agriculture or other lead state agency regulating pesticides, and used in a manner consistent with the labeling of the pesticide under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). This permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

### 2. Technology-Based Effluent Limitations

This Section includes technology-based effluent limitations applicable to all Operators, as defined in section 11-55-01, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in section 11-55-01, or both. Applicators must perform the tasks identified in section 2(a) - Applicators' Responsibilities. Decision-makers must perform

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the tasks identified in section 2(b) - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

As stated in section 1(h), this general permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

### (a) Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement section 2(a) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

- (1) To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.
- (2) Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.
- (3) Assess weather conditions (e.g. temperature, precipitation and wind



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speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

### (b) Decision-makers' Responsibilities

#### For All Decision-makers

To meet the effluent limitations in section 2(b), all Decision-makers must minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

#### For Any Decision-maker Who is or Will be Required to Submit an NOI

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker who is or will be required to submit an NOI as required in section 1(e) must also implement sections 2(b)(1) - 2(b)(4) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

#### (1) Mosquito and Other Flying Insect Pest Control

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This section applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in section 1(a)(1) of this general permit.

### (A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral

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considerations for each pest;

- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(1)(A) of this general permit.

### (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective



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means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to a state water, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area(s) prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
- (ii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control

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when the adult action  
threshold(s) has been met.

(2) Weed and Algae Pest Control

This section applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in section 1(a)(2) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
- (ii) Identify target pest(s);



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- (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
- (iv) Establish any pest- and site-specific action threshold, as defined in HAR, Chapter 11-55-01, for implementing section 2(b)(2)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(2)(A) of this general permit.

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides

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to pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest

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management area and to determine when the action threshold(s) is met; and

- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

(3) Animal Pest Control

This section applies to discharges from the application of pesticides for control of animal pests as defined in section 1(a)(3) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example,



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water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);

- (ii) Identify target pest(s);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
- (iv) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(3)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2([B]b)(3)(A).

(B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, any Decision-maker who is or

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will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Biological control agents
  - (v) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
- (ii) Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.

### (4) Forest Canopy Pest Control

This section applies to discharges from the application of pesticides for forest canopy pest control as defined in section 1(a)(4) of this general permit.

#### (A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, any Decision-maker who is or will be required to submit an NOI must do the



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following for each pest management area, as defined in section 11-55-01:

- (i) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(4)(B);
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- (iii) Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
- (iv) In the event there are no data for pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2([B]b)(4)(A).

### (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a

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discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Cultural methods
- (v) Biological control agents
- (vi) Pesticides

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### (C) Pesticide Use.

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
- (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
- (iii) Evaluate using pesticides against the most susceptible developmental stage.



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### 3. Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, as required in chapter 11-54, for discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or EPA), or the Director determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in section 6 and section 7 of appendix A, chapter 11-55, up to and including the ceasing of the discharge, if necessary.

### 4. Monitoring

#### (a) Visual Monitoring Requirements for Pesticide Applicators.

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

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- (b) Visual Monitoring Requirements for all Operators.

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

### 5. Pesticide Discharge Management Plan

Any Decision-maker who is or will be required to submit an NOI, as required in section 1(e), and is a large entity, as defined in section 11-55-01, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is submitted to the department, except (for which a PDMP is not required to be developed) any applications made in response to a Declared Pest Emergency Situation, as defined in section 11-55-01.

The PDMP does not contain effluent limitations; the effluent limitations are specified in sections 2 and 3 of this general permit. The PDMP documents how Decision-makers will implement the effluent limitations in sections 2 and 3 of this general permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans

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in other documents that meet the requirements of this general permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this general permit, such as a pre-existing pest management plan, the Decision-makers must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- (a) Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- (1) Pesticide Discharge Management Team

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- (A) Person(s) responsible for managing pests in relation to the pest management area;
- (B) Person(s) responsible for developing and revising the PDMP; and
- (C) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.



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(2) Problem Identification

(A) Pest problem description.

Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in sections 2(b)(1), 2(b)(2), 2(b)(3), and 2(b)(4).

(B) Action Threshold(s).

Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.

(C) General location map.

In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the state water and

(D) Water quality standards.

Document any water(s) identified as impaired by a substance which either is an active ingredient or

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a degradate of such an active ingredient.

### (3) Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

### (4) Response Procedures.

Decision-makers must document the following procedures in the PDMP:

#### (A) Spill Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to state waters.

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Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

- (ii) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

### (B) Adverse Incident Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for responding to any adverse incident resulting from pesticide applications;
- (ii) Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external.

Contact information for state/federal permitting agency, nearest emergency



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medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(5) Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with section 15 of appendix A, chapter 11-55.

(b) Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in section 6(a) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 calendar days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with section 15 of appendix A, chapter 11-55.

(c) Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at each address provided in the NOI. The PDMP and all supporting

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documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the state, EPA, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). The Director may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Director, if requested, and may not be withheld from those staff within EPA, FWS, and NMFS cleared for CBI review.

### 6. Corrective Action

All Operators must comply with the provisions of section 6 for any discharges authorized under this general permit, with compliance required upon beginning such discharge.

#### (a) Situations Requiring Revision of Pest Management Measures.

Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with section 2(a) and 2(b) for the following situations:

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- (1) An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.
  - (2) Operators become aware, or the Director concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
  - (3) Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in section 2.
  - (4) An inspection or evaluation of activities by the Director, an EPA official, local, or state entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this general permit.
  - (5) Any Operator observes or is otherwise made aware of an adverse incident as defined in section 11-55-01.
- (b) Corrective Action Deadlines.

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in section 6(a), such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.



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(c) Effect of Corrective Action.

The occurrence of a situation identified in section 6(a) of this general permit may constitute a violation of the permit. Correcting the situation according to section 6(a) of this general permit does not absolve the Operator of liability for any original violation. However, failure to comply with Section 6(a) of this general permit constitutes an additional permit violation. The Director will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Director, EPA or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Section 6(a) of this general permit if such requirements conflict.

(d) Adverse Incident Documentation and Reporting

(1) Twenty-Four (24) Hour Adverse Incident Notification

(A) Adverse Incident Notification Required

Except as provided for in section 6(d)(4), if an Operator observes or is otherwise made aware of an

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adverse incident, as defined in section 11-55-01, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Director. This notification must be made by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours, within 24 hours of the Operator becoming aware of the adverse incident; and State Department of Agriculture or other state lead agency for pesticide regulation and must include at least the following information:

- (i) The caller's name and telephone number;
- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;
- (iv) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

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- (v) How and when the Operator became aware of the adverse incident;
- (vi) Description of the location of the adverse incident;
- (vii) Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- (viii) Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- (ix) If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Clean Water Branch within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.



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The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

(B) Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- (i) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (ii) An Operator has been notified by the Director, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- (iii) An Operator receives information of an adverse incident, but that information is clearly erroneous; or

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- (iv) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.
- (2) Thirty (30) Calendar Day Adverse Incident Written Report.

Except as provided for in section 6(d)(4), within 30 calendar days of a reportable adverse incident pursuant to section 6(d)(1), Operators must provide a written report of the adverse incident to the Clean Water Branch and to the State Department of Agriculture or other state lead agency for pesticide regulation. The adverse incident report must include at least the following information:

- (A) Information required to be provided in Section 6(d)(1);
- (B) Date and time the Operator notified the Clean Water Branch and the State Department of Agriculture of the adverse incident and who the Operator spoke with and any instructions you received;
- (C) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

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- (D) A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- (E) Magnitude and scope of the affected area (e.g. aquatic square area or total stream distance affected);
- (F) Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- (G) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (H) If laboratory tests were performed, an indications or which test(s) were performed, and when; additionally, a summary of the test results must be provided within five (5) calendar days after they become available if not available at the time of submission of the 30-day report;
- (I) Description of actions to be taken to prevent recurrence of adverse incidents; and



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- (J) Signature, date, and certification in accordance with section 15 of appendix A, chapter 11-55.
- (3) Adverse Incident to Threatened or Endangered Species or Critical Habitat

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, which may have resulted from a discharge from the Operator's pesticide application, the Operator must immediately notify the NMFS in the case of an anadromous or marine species, or the FWS in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon the Operator becoming aware of the adverse incident and must include at least the following information:

- (A) The caller's name and telephone number;
- (B) Operator name and mailing address;
- (C) The name of the affected species;
- (D) How and when the Operator became aware of the adverse incident;

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- (E) Description of the location of the adverse incident;
- (F) Description of the adverse incident and the pesticide product, including the EPA pesticide registration number for each product applied in the area of the adverse incident; and
- (G) Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species.

### (4) Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in section 6(d)(2) is also provided to all of the other authorized Operators within 30 calendar days of the reportable adverse incident.

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### (e) Reportable Spills and Leaks

#### (1) Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into state waters containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, an Operator must notify the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours and the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.



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(2) Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in section 6(e)(1) and results in an adverse incident, then the Operator must report the incident per the guidelines in section 6(d)(1) and 6(d)(2). If the spill, leak, or other unpermitted discharge triggers the notification in section 6(e)(1), but does not result in an adverse incident, then the Operator must document and retain the following information within 30 calendar days of becoming aware of the situation:

- (A) Information required to be provided in section 6(e)(1);
- (B) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (C) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

## CHAPTER 11-55 APPENDIX M

(f) Other Corrective Action Documentation.

For situations identified in section 6(a), other than for adverse incidents (addressed in section 6(d)), or reportable spills or leaks (addressed in section 6(e)), Operators must document the situation triggering corrective action and planned corrective action within 30 calendar days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- (1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- (2) Brief description of the situation;
- (3) Date the problem was identified;
- (4) Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- (5) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

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7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 4 references applicable requirements for the range of Operators covered under this permit.

Table 4: Applicable Recordkeeping and Annual Reporting Requirements for Different Types of Operators.

PGP Section	Applicable Type of Operator
7(a)	Recordkeeping: All Operators
7(b)	Recordkeeping: All Operators who are Applicators, as defined in section 11-55-01
7(c)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a small entity{1}
7(d)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a large entity{2}
7(e)	Retention of Records: All Operators
7(f)	Annual Reporting: Any Decision-maker required to submit an NOI and who is a large entity{2}

{1} Small Entity - As defined in section 11-55-01, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.



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{2} Large Entity - As defined in section 11-55-01, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

Operators must keep written records as required in this permit for all discharges covered under this general permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this general permit. Operator's may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this general permit are satisfied.

The Director recommends that all Decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold, is exceeded during any calendar year.

(a) Recordkeeping For All Operators.

All Operators must keep the following records:

- (1) A copy of any Adverse Incident Reports (See section 6(d)(2));

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- (2) Rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Section 6(d)(1)(B);
  - (3) A copy of any corrective action documentation (See section 6(f)); and
  - (4) A copy of any spill and leak or other unpermitted discharge documentation (See section 6(e)(2)).
- (b) Recordkeeping for All Operators who are Applicators.

After the adjustment period, any Operator who is an Applicator, as defined in section 11-55-01, must retain the following records:

- (1) Documentation of equipment calibration; and
- (2) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects,

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weed and algae, animal pest, or forest canopy);

- (C) Target pest(s);
  - (D) Documentation of any assessment of weather conditions in the treatment area prior to and during application to ensure application is consistent with all applicable federal requirements;
  - (E) Name of each pesticide product used including the EPA registration number;
  - (F) Quantity of each pesticide product applied to each treatment area;
  - (G) Pesticide application date(s); and
  - (H) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (c) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Small Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a small entity, must retain the



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following records at the address provided on the NOI.

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the Director specific to coverage under this permit, and a copy of the NGPC;
- (2) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (3) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticides are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
  - (C) Target pest(s) and explanation of need for pest control;
  - (D) Description of pest management measure(s) implemented prior to the first pesticide application;

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- (E) Company name and contact information for pesticide applicator;
  - (F) Name of each pesticide product used including the EPA registration number;
  - (G) Quantity of each pesticide product applied to each treatment area;
  - (H) Pesticide Application Start Date;
  - (I) Pesticide Application End Date; and
  - (J) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (d) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the Operator's business address provided on the NOI:

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the

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Director specific to coverage under this permit, and a copy of the NGPC;

- (2) A copy of your PDMP, including any modifications made to the PDMP during the term of this general permit.
- (3) Copy of annual reports submitted to the Director;
- (4) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (5) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticide(s) are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
  - (C) Target pest(s) and explanation of need for pest control;
  - (D) Action Thresholds;



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- (E) Method and/or data used to determine that action threshold(s) has been met;
  - (F) Description of pest management measure(s) implemented prior to the first pesticide application;
  - (G) Company name and contact information for pesticide applicator;
  - (H) Name of each pesticide product used including the EPA registration number;
  - (I) Quantity of each pesticide product applied to each treatment area;
  - (J) Pesticide application date(s); and
  - (K) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (e) Retention of Records for All Operators.

All required records must be documented as soon as possible but no later than 14 calendar days following completion of each pesticide application. Operators must retain any records required under this permit for at least five (5) years after the

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Operator's coverage under this permit expires or is terminated. Operators must make available to the State, including EPA or an authorized representative of EPA, all records kept under this permit upon request and provide copies of such records, upon request.

- (f) Annual Reporting for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

Any Decision-makers required to submit an NOI and are defined as a large entity in section 11-55-01, must submit an annual report to the Director. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The Decision-maker must submit the annual report to the Director no later than February 15, in pdf format (minimum of 300 dpi) on CD/DVD, of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring after the adjustment period.

Any Decision-maker required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required

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to include activities for the portion of the calendar year after the point at which the Decision-maker exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first annual report submitted also including information from the first partial year.

When Decision-makers terminate permit coverage, as specified in appendix A of chapter 11-55, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information:

- (1) Decision-maker's name and contact information;
- (2) NPDES file number
- (3) Contact person name, title, e-mail address (if any), and phone number; and
- (4) For each treatment area, report the following information:
  - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state



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waters, either by name or by location, to which pesticide(s) are discharged;

- (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
- (C) Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
- (D) Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
- (E) Whether this pest control activity was addressed in the PDMP prior to pesticide application;
- (F) The approximate date(s) of any discharge;
- (G) If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Section 6(d)(1) of this general permit; and
- (H) If applicable, description of any corrective action(s), including

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spill responses, resulting from pesticide application activities and the rationale for such action(s).

(g) Submittal Requirements

- (1) All submittals shall be addressed to the Director at the following address or as otherwise specified:

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

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

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

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I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (3) The operator or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number on future correspondence or submittals may be a basis for delay of the processing of the document(s).

### 8. Notice of Intent Requirements

- (a) The owner or duly authorized representative shall submit a complete NOI in accordance with the deadline in Section 1(f), Table 2 or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Pesticide use activities that trigger the PGP requirements;
  - (3) If the operator is a Large entity that triggers developing a PDMP and submittal of an annual report;



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- (4) Pest Management Area name and map of the location of the area or description of the Pest Management Area in detail; and
- (5) Name of the water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream for which permit coverage is being requested and demonstration of eligibility for such discharges.

(c) The owner or duly authorized representative shall submit Notice of Intent Forms on Forms specified by the CWB.

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

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

Section	Current	Proposed	Rationale
11-55-01	"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2012 unless otherwise specified.	"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, <u>2016</u> unless otherwise specified.	Updated to reference the most recent version of 40 CFR.
11-55-01	"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).	"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR <u>§125.81(c)</u> .	Revised the section number to reflect the updated reference from 40 CFR.
11-55-01	"Declared pest emergency situation" means the same thing as defined in section 11-54-4(e)(1).	"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).	Correction to referenced section.
11-55-01	"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit..	"Notice of general permit coverage" or "NGPC" means <u>a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.</u>	Clarifies that an NGPC is a notice authorizing discharge of pollutants into receiving water and requiring compliance.
11-55-01	"Pest" means the same thing as defined in section 11-54-4(e)(1).	"Pest" means the same thing as defined in section 11-54-4(f)(1).	Correction to referenced section.
11-55-01	"Pesticide" means the same thing as defined in section 11-54-4(e)(1).	"Pesticide" means the same thing as defined in section 11-54-4(f)(1).	Correction to referenced section.

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

Section	Current	Proposed	Rationale
11-55-04(a)(1)	At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;	At least one hundred eighty days before the discharge or construction begins or, <u>for renewals, at least one hundred eighty days</u> before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;	For National Pollutant Discharge Elimination System (NPDES) Individual Permits, which regulate the discharge of wastewater or storm water from a specific facility into a State surface water, this revision clarifies that renewal applications must be submitted at least 180 days before the expiration of the current permit. This time is in order to allow permitting staff to review the renewal application with sufficient time to incorporate updated regulatory requirements, address any concerns in the previous permit, allow for public participation and respond to public comments before issuing the new permit.
11-55-15(h)	(new)	<u>Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.</u>	Clarifies time limit and procedures for appeal of the issued permit.  30 days provides sufficient time for a party to file an appeal.  It is appropriate to limit appeals to issues raised in the permitting process, which requires a public notice and public participation prior to issuance of the permit. Any interested parties thus have the opportunity to comment on any questions or concerns with the draft permit. It is, therefore, understood that after a party has commented on the draft permit, that party has accepted the remainder of the permit as written, once it has been issued. Consequently, the appeal must be based on comments the party provided during the public notice period.



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

Section	Current	Proposed	Rationale
11-55-15(h)(1)	(new)	<u>All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.</u>	If any public notice is required during the appeals process, the appellant is responsible for all costs.
11-55-15(h)(2)	(new)	<u>Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16.</u>	Revisions made to the permit during appeal must be performed via modification of the permit and must comply with HAR 11-55-16 (Modification or revocation and reissuance of NPDES permits). All requirements for modifications to permits apply to revisions to permits during the appeals process.
11-55-16(f)	(new)	<u>Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification.</u>	Provides that changes to electronic reporting requirements by U.S. EPA may be incorporated via minor modifications.

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

Section	Current	Proposed	Rationale
11-55-34.02(b) <u>(1), (2), (9), (10), and (11)</u>	(new)	<u>Added existing expiration dates to HAR 11-55-34.02(b)(1), (2), (9), (10), and (11)</u>	These rules refer to HAR 11-55, Appendices B, C, J, K, and L. All of these general permits are not being revised as part of this package. Section 3 (Term of General Permit) in each of these general permits states that the general permit becomes effective when HAR 11-55-34.02 becomes effective ten days after filing with the office of the lieutenant governor. The proposed revision is needed to ensure that these general permits that are not being revised do not get a new effective date when this rule package goes into effect.
11-55-34.02(b)(12)	Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated August 2012.	<u>Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides."</u>	HAR 11-55, Appendix M, Section 1(c) indicates that this general permit becomes effective when HAR 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. The proposed revision is needed to ensure that there is no conflict in the effective date of this general permit as HAR 11-55, Appendix M will already specify an effective date.
11-55-40(1)(A)(v)	Any person who fails to retain on-site or at a nearby office or field office: <ul style="list-style-type: none"> <li>a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,</li> <li>b) storm water pollution control plan, best management practices plan or other plan and all subsequent revisions, or</li> <li>c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion;</li> </ul>	Any person who fails to retain on-site or at a nearby office or field office: <ul style="list-style-type: none"> <li>a) a copy of the NPDES permit application or notice of intent or "no exposure" certification,</li> <li>b) storm water pollution control plan, best management practices plan or <u>all other plans required in the NPDES permit or NGPC and all subsequent revisions,</u></li> <li>c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion, <u>or</u></li> <li>d) discharge monitoring reports;</li> </ul>	Clarifies that a field citation applies to failure to retain accessible all plans required in a permit or NGPC and Discharge Monitoring Reports (DMRs) for inspection or review or inspection.

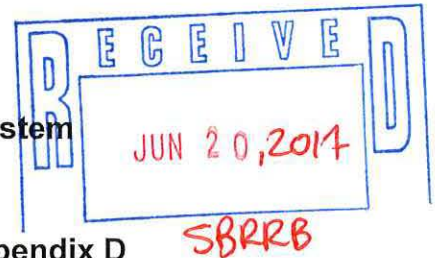
# Rationale, Hawaii Administrative Rules (HAR) Chapter 11-55 Water Pollution Control

Section	Current	Proposed	Rationale
11-55, Appendix D Appendix E, Appendix F, Appendix G, Appendix H, Appendix I, Appendix M	See fact sheets of each Appendix (General Permit) for rationales.		





National Pollutant Discharge Elimination System  
General Permit Fact Sheet for  
Hawaii Administrative Rules Chapter 11-55, Appendix D



**Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities**

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

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

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

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

*This general permit is not intended for return flow or overflow from dredged material dewatering or discharges of construction dewatering effluent activities.*

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

*Not applicable.*

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

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

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

13. *Falsifying Report*
14. *Renewal [New]*
15. *Forms [New]*

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

Sections 1 through 5 and 8 through 15 are basic requirements necessary to the General Permit. Section 6 and Table 34.2 detail the effluent limitations and monitoring requirements for leaking underground storage tank remedial activities. Section 7 contains Whole Effluent Toxicity testing.

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

*There are no effluent guidelines promulgated for discharges resulting from leaking underground storage tank remedial activities. The general permit requirements are based on Hawaii Administrative Rules (HAR), Chapter 11-54, Water Quality Standards, and the determination that most discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.*

*The Director of Health determined that:*

- 1) *The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected;*
- 2) *Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met; and*
- 3) *Discharge to natural freshwater lakes, saline lakes, or anchialine pools is prohibited.*

*The effluent parameters in Table 34.2 are based on the pollutants of concern for the discharges from leaking underground storage tank remediation activities.*

*The limitations of benzene, toluene, ethylbenzene, and lead are based on the HAR, Section 11-54-04, water quality standards for toxic pollutants applicable to all waters.*

*In order to protect the beneficial uses of receiving waters from potential toxic effects of pollutants in combinations, the proposed permit incorporates whole effluent toxicity testing requirements which is based on HAR, Section 11-55-04(a) in accordance with 40 CFR Part 122.44(d).*

*Additional parameters that may require monitoring are based on the pollutants that may be present and disclosed on the Notice of Intent (NOI). Effluent limitations for*



*these parameters are based on applicable water quality criteria in HAR Section 11-54-4.*

*The discharges covered by the general permit shall comply with the Standard Permit Conditions of HAR Chapter 11-54, Appendix A.*

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

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

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

*Revisions of this appendix include:*

- *Establishing the term of the renewed/revised Appendix D permit to 5 years;*
- *Allowing general permit coverage for Class AA and Class 1 waters;*
- *Section 1: Updates coverage of the type of discharge and discharge points;*
- *Section 2: Clarifies the limitations on the types of discharges covered;*
- *Section 3: Establishes the term of the General Permit;*
- *Section 4: Corrects punctuation;*
- *Section 6: Clarifies requirements for test method and discharges of the effluent;*
- *Section 7: Updates Whole Effluent Toxicity test method to include TST;*
- *Section 9: Provides for transition from paper reporting to federally-mandated electronic reporting requirements;*
- *Section 10: Corrects certification statement;*
- *Section 14: Establishes renewal time frame; and*
- *Section 15: Establishes where application forms may be obtained.*

**Section 1(b)**

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***Original:*** *This general permit covers all areas of the State except for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."*

***Revised:*** *Removed class AA/1 waters and replaced No Discharge policy with reference.*

*This general permit covers all areas of the State except as specified in section 11-54-5.2(a).*



**Rationale:**

The conditions and provisions of the general permit are protective of the uses and these classes of waters. Surface waters in the State of Hawaii are subject to Hawaii's water quality standards as provided in HAR Chapter 11-54 Water Quality Standards. HAR Chapter 11-54 classifies water body types (inland stream, inland estuary, marine embayment, marine open coastal, etc.). HAR Chapter 11-54 also classifies water bodies based on uses; inland water bodies are Class 1 or Class 2 and marine water bodies are Class AA or Class A. Protections for water quality are based on the basic criteria (HAR Section 11-54-4) and specific criteria (HAR Sections 11-54-5, 6, and 7). These criteria are exclusive of Classes of water bodies and is equally protective of Class AA and Class A or Class 1 and Class 2 waters.

Additionally, the reference to 11-54-5.2(a) clarifies that the restricted areas are specified in Chapter 11-54. These areas currently include freshwater lakes, saline lakes, and anchialine pools.

**Section 2(a)(1)**

---

**Original:** Discharges of treated ground water into a sanitary sewer system and

**Revised:** Add “;”.

Discharges of treated ground water into a sanitary sewer system; and

**Rationale:** Punctuation to separate items 2(a)(1) and 2(a)(2).

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

---

**Original:** ...except if the permittee is the owner of the drainage system;

**Revised:** Remove “;” and add “.”

...except if the permittee is the owner of the drainage system.

**Rationale:** Section 2(a) ends.

**Section 3(a)**

---

**Original:** This general permit becomes effective when section 11-55-34.02(b)(3) becomes effective ten days after filing with the office of the lieutenant governor. This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(3) are adopted, whichever is earlier.

**Revised:** Removed “when section 11-55-34.02(b)(3) becomes effective” and “This general permit expires four years after the effective date or when amendments to section 11-55-43.02(b)(3) are adopted, whichever is earlier.”

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

**Rationale:** Following revision of this GP, the term will be five years after the effective date of the rules change, the maximum allowable term for NPDES permits under 40 CFR 122.46(a). Updates the expiration date of the GP from 4 to 5 years.

### **Section 3(b)(1)**

---

**Original:** (1) **Four** years after the effective date of this general permit;

**Revised:** Removed “Four” and replaced with “Five”.

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

**Rationale:** Updates the expiration date of the GP from 4 to 5 years.

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

---

**Original:** The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office.

**Revised:** Removed “.” and replaced with a semicolon (“;”).

The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office;

**Rationale:** Punctuation change to separate list items 4(b)(4) and 4(b)(5).

### **Section 4(b)(6)**

---

**Original:** (6) The average and maximum daily flow rates of effluent discharge;

**Revised:** Added “and” after semicolon.

(6) The average and maximum daily flow rates of effluent discharge; **and**

**Rationale:** Punctuation change to end list after 4(b)(7).

### Section 6(a)(4)(C)

---

**Original:** *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54. If the test result is not detectable, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

**Revised:** *Added sufficiently sensitive method (SSM) language.*

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

**Rationale:** *Incorporate federal requirements for SSM for monitoring and analysis in NPDES permits.*

### Section 6(b)(2)

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**Original:**

(b) *Basic Water Quality Criteria and Inspections*

- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall timely inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:** *Removed "timely", added monitoring frequency and commingling language.*

(b) *Basic Water Quality Criteria and Inspections*



- (1) *The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.*
- (2) *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day, to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

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

**Rationale:**

*Clarifies the frequency of visual inspections of receiving state waters, effluent, control measures and BMPs. Also, clarifies inspection of effluent prior to commingling in lieu of inspecting receiving waters.*

**Section 7(a)(4)**

---

**Original:** (4) *Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form. Results shall be reported as percent survival with respect to controls.*

**Revised:** *Removed percent survival language and added pass or fail language as specified in the Test of Significant Toxicity approach.*

(4) *Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form. Results shall be reported as pass or fail from a single-effluent concentration toxicity test at the applicable instream waste concentration (IWC) using the Test of Significant Toxicity (TST) approach.*

**Rationale:** *Incorporates EPA, TST approach.*

**Section 7(a)(5)**

---

**Original:** *If necessary, the permittee may adjust the salinity of a discharge using salts to allow testing with marine species.*

**Revised:** Replaced language.

Effluent dilution water and control water shall be receiving water or lab water, as described in the test methods manual Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms (EPA/600/R-95/136, 1995). If the dilution water is different from test organism culture water, then a second control using culture water shall also be used.

**Rationale:** Updated language since artificial salinity was found to be toxic to marine species.

### Section 7(a)(6)

---

**Original:** New

**Revised:** Added (6).

(6) If either the reference toxicant or effluent toxicity tests do not meet all test acceptability criteria in the test methods manual, then the Permittee shall re-sample and re-test within 14 calendar days.

**Rationale:** Added time sensitive language.

### Section 7(c)

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**Original:** New

**Revised:** Added Chronic WET Permit Limit in 7.(c) and moved 7.(c) to 7.(d).

(c) Chronic WET Permit Limit

All State waters shall be free from chronic toxicity as measured using the toxicity tests listed in HAR, Section 11-54-10, or other methods specified by the Director. For this discharge, the determination of "Pass" or "Fail" from a single-effluent concentration chronic toxicity test at the applicable instream waste concentration (IWC) using the Test of Significant Toxicity (TST) approach described in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, 2010). For any one chronic toxicity test, the chronic WET permit limit that must be met is rejection of the null hypothesis (H<sub>0</sub>):

IWC (100 percent effluent) mean response  $\leq 0.75 \times$  Control mean response.

An IWC of 100% shall be used.

A test result that rejects this null hypothesis is reported as "Pass" on the DMR form. A test result that does not reject this null hypothesis is reported as



"Fail" on the DMR form. To calculate either "Pass" or "Fail", the permittee shall follow the instructions in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, Appendix A. If a test result is reported as "Fail", then the permittee shall follow 7.(e) Additional Toxicity Testing, of this permit.

**Rationale:** Added current WET test language which replaces no observed effect concentration (NOEC) with TST approach.

#### **Section 7(d)**

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**Original:** Old Section 7(c) Preparation of Initial Investigation Toxicity Reduction Evaluation Workplan

**Revised:** Renumbered to 7(d).

**Rationale:** 7(c) was added so existing 7(c) renumbered to 7(d).

#### **Section 7(e)**

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**Original:** Old Section 7(d) Additional Toxicity Testing

**Revised:** Renumbered to 7(e)

**Rationale:** 7(c) was added so existing 7(d) renumbered to 7(e).

#### **Section 7(e)(2)**

---

**Original:** If toxicity is detected in this first test, then section 7(e) of this general permit shall apply.

**Revised:** Renumbered 7(e) to 7(f).

If toxicity is detected in this first test, then section 7(f) of this general permit shall apply.

**Rationale:** 7(c) was added so reference changed from 7(e) to 7(f).

#### **Section 7(f)**

---

**Original:** Old Section 7(e) Toxicity Reduction Evaluation/Toxicity Identification Evaluation

**Revised:** Renumbered to 7(f).



**Rationale:** 7(c) was added so existing 7(e) renumbered to 7(f).

### **Section 7(f)(3)**

---

**Original:** ...completion of the accelerated testing schedule required by section 7(d) of this general permit, then the accelerated...

**Revised:** Renumbered 7(d) to 7(e).

completion of the accelerated testing schedule required by section 7(e) of this general permit, then the accelerated...

**Rationale:** 7(c) was added so reference changed from 7(d) to 7(e).

### **Section 7(g)**

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**Original:** Old Section 7(f) Reporting

**Revised:** Renumbered to 7(g).

**Rationale:** 7(c) was added so existing 7(f) renumbered to 7(g).

### **Section 7(g)(1)**

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**Original:** ...toxicity testing required by sections 7(d) and 7(e) of this general permit, with the discharge monitoring...

**Revised:** Renumbered from 7(d) to 7(e) and from 7(e) to 7(f).

...toxicity testing required by sections 7(e) and 7(f) of this general permit, with the discharge monitoring...

**Rationale:** 7(c) was added so reference changed from 7(d) to 7(e) and from 7(e) to 7(f).

### **Section 9(a)(5)**

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**Original:** New

**Revised:** Added 9(a)(5).

(5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from

traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Rationale:** Addition of eReporting rule requirement.

### **Section 10(b)**

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**Original:** ...information, including the possibility of fine or imprisonment for knowing violations.

**Revised:** Replaced "or" with "**and**".

"...information, including the possibility of fine **and** imprisonment for knowing violations."

**Rationale:** Corrects certification statement as specified in HAR.

### **Section 14**

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**Original:** New

**Revised:** Added Section "14. Renewal" and associated text.

#### 14. Renewal

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

**Rationale:** Provide sufficient time for the agency to review and renew permit coverage before commencement of the new GP.

### **Section 15**

---

**Original:** New

**Revised:** Added Section "15. Forms" and associated text.

#### 15. Forms

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

**Rationale:** Specifies the location of electronic forms that are to be used.

**Table 34.2**

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**Original:** In Effluent Limitation Column, Whole Effluent Toxicity row,  
80% survival in 100% effluent

**Revised:** Removed Effluent limitation and replaced with "pass"

Removed "80% survival in 100% effluent" and replaced with "**pass**" for the effluent limitations.

**Rationale:** EPA approved WET test with TST approach creates a sounder effluent limitation.

**Table 34.2, NOTES {1}**

---

**Original:** {1} ...required in section (9(c) of this general permit.

**Revised:** Delete parenthesis before the 9.

{1} ...required in section 9(c) of this general permit.

**Rationale:** Corrects a typo.

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

*Not applicable.*

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

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

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

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



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

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

*For this permit, the limits are based on BPJ decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

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

*Not applicable.*

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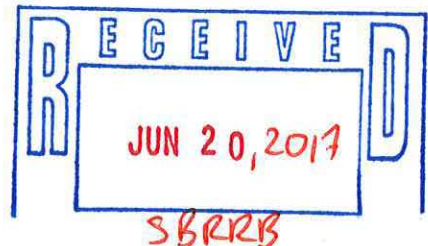
NPDES GENERAL PERMIT  
AUTHORIZING DISCHARGES OF TREATED EFFLUENT FROM  
LEAKING UNDERGROUND STORAGE TANK REMEDIAL ACTIVITIES

This General Permit is effective on

and expires [~~four~~] five years from this date,  
unless amended earlier.

1. Coverage under this General Permit
  - (a) This general permit covers only facilities where petroleum hydrocarbons have been released from underground storage tanks and the cleanup (or remedial action) involves a release or discharge of treated ground water to state waters.
  - (b) This general permit covers all areas of the State except [~~for discharges in or to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 titled "Water Quality Standards."~~] as specified in section 11-54-5.2(a).
2. Limitations on Coverage under this General Permit
  - (a) This general permit does not cover the following:
    - (1) Discharges of treated ground water into a sanitary sewer system; and

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(2) Discharges of treated ground water which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system [7].

(b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

3. Term of General Permit

(a) This general permit becomes effective [when section 11-55-34.02(b)(3) becomes effective] ten days after filing with the office of the lieutenant governor. [—This general permit expires four years after the effective date or when amendments to section 11-55-34.02(b)(3) are adopted, whichever is earlier.]

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

(1) [Four] Five years after the effective date of this general permit;

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

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



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

4. Notice of Intent Requirements

- (a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
  - (3) Quantitative data on pollutants that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which pollutants numerical criteria for the existing or proposed receiving state waters are specified in section 11-54-4;
  - (4) Treatment system operations plan which specifies the treatment system to be used and describes its operation in detail.

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If any treatment technology is being considered other than the Granular-Activated Carbon Process or the Air-Stripping Process, then additional technical information on the technology which is consistent with this permit shall be submitted to the director for review as soon as the decision for its use has been made. The treatment system operations plan shall include a contingency plan to be activated in the event of an emergency; provisions for system shut-down and any other measures for the protection of health and safety of employees and the public; a sampling plan; and a detailed schedule for sampling and analysis of the treated groundwater. The treatment system operations plan shall be modified as required by the director. The permittee shall retain the plan, and all subsequent revisions, on-site or at a nearby office [-];

- (5) Certification report certifying the adequacy of each component of the proposed treatment facility along with the associated treatment system operations plan. The certification report shall describe accepted engineering practice of how the process and physical design of the treatment facilities will ensure compliance with this general permit. The signature and professional engineering license number of the design engineer shall be placed on

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the report. Each report shall also certify that:

- (A) All of the startup and operation instruction manuals for the treatment facility are adequate and available to operating personnel;
  - (B) All treatment facility maintenance and testing schedules are included in the treatment facility treatment system operations plan; and
  - (C) Effluent sampling locations and ports are located in areas where samples representative of the waste stream to be monitored can be obtained.
- (6) The average and maximum daily flow rates of effluent discharge; and
- (7) The best estimate of the date(s) on which the facility will begin and terminate the discharge.
- (c) The director may require additional information to be submitted.
- (d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:



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

5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements

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

(1) Sampling Point

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

(2) Collection of Samples

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

### (3) Types of Samples

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

(B) "Composite sample" means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a twenty-four-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically unless otherwise stated.

### (4) Test Procedures

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

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- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.

(5) Recording of Results

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

(b) Basic Water Quality Criteria and Inspections

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



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

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

- (c) There shall be no visible oil sheen in the effluent.
- (d) The permittee shall take all reasonable steps to minimize or prevent any discharge, use, or disposal of sludge or sediments in violation of this general permit or applicable law. Sludge, sediments, or any other material generated by any treatment process must be disposed of in a manner which prevents its

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entrance into or pollution of any state waters. Additionally, the disposal of such sludge or other material shall be in compliance with 40 CFR Parts 501 and 503.

7. Whole Effluent Toxicity Limitations And Monitoring Requirements

(a) Monitoring Requirements

- (1) The permittee shall conduct, or have a contract laboratory conduct, monthly static or flow-through bioassays on composite effluent samples in accordance with the methods described in "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (EPA 821/R-02-013, October 2002), and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (EPA 821/R-02-014, October 2002).
- (2) Tests shall be conducted in one hundred per cent effluent for a period of ninety-six hours unless the methods specify a shorter period for a definitive test for a particular species (e.g. forty-eight hours for *ceriodaphnia dubia*).
- (3) If the permittee uses static tests, the daily renewal solutions shall be fresh twenty-four-hour composite samples. The permittee may conduct tests using locally available species at ambient temperature.

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- (4) Test results for each species used shall be reported on the permittee's monthly discharge monitoring report form. Results shall be reported as [per cent survival with respect to controls] pass or fail from a single-effluent concentration toxicity test at the applicable instream waste concentration (IWC) using the Test of Significant Toxicity (TST) approach.
- (5) [If necessary, the permittee may adjust the salinity of a discharge using salts to allow testing with marine species] Effluent dilution water and control water shall be receiving water or lab water, as described in the test methods manual Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms (EPA/600/R-95/136, 1995). If the dilution water is different from test organism culture water, then a second control using culture water shall also be used.
- (6) If either the reference toxicant or effluent toxicity tests do not meet all test acceptability criteria in the test methods manual, then the Permittee shall re-sample and re-test within 14 calendar days.

(b) Species Selection

- (1) The permittee shall select three species for monitoring from the EPA manual



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identified in section 7(a)(1). The Permittee may use *ceriodaphnia dubia* (life stage - twenty-four hours) in freshwater only. The permittee shall submit the selection to the director for approval within thirty days after receiving written approval from the director to perform chronic toxicity tests.

- (2) The permittee shall obtain written approval from the director before changing any of the three selected species after the initial notification.
- (3) The permittee shall conduct monitoring, at a minimum, on one of the three selected species each month. The permittee shall rotate the three selected species on a monthly basis.

### (c) Chronic WET Permit Limit

All State waters shall be free from chronic toxicity as measured using the toxicity tests listed in HAR, Section 11-54-10, or other methods specified by the Director. For this discharge, the determination of "Pass" or "Fail" from a single-effluent concentration chronic toxicity test at the applicable instream waste concentration (IWC) using the Test of Significant Toxicity (TST) approach described in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, 2010). For any one chronic toxicity test, the chronic WET permit limit that must

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be met is rejection of the null hypothesis  
( $H_0$ ):

IWC (100 percent effluent) mean response  
 $\leq 0.75 \times$  Control mean response.

An IWC of 100% shall be used.

A test result that rejects this null hypothesis is reported as "Pass" on the DMR form. A test result that does not reject this null hypothesis is reported as "Fail" on the DMR form. To calculate either "Pass" or "Fail", the permittee shall follow the instructions in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, Appendix A. If a test result is reported as "Fail", then the permittee shall follow 7.(e) Additional Toxicity Testing, of this permit.

([e]d) Preparation of Initial Investigation  
Toxicity Reduction Evaluation Workplan

The Permittee shall submit to the director an initial investigation toxicity reduction evaluation workplan (approximately one to two pages) within one hundred twenty days after the issuance date of the notice of general permit coverage, the date the permittee claimed automatic coverage as specified in section 11-55-34.09(e)(2), or the date the facility begins operations. This workplan shall describe steps which the permittee intends to follow in the event that toxicity is detected, and should include at a minimum the following information:

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- (1) Description of the investigation and evaluation techniques that would be used to identify potential causes or sources or both of toxicity, effluent variability, treatment system efficiency;
  - (2) Description of the facility's method of maximizing in-house treatment efficiency, good housekeeping practices, and a list of all chemicals used in operation of the facility; and
  - (3) If a toxicity identification evaluation is necessary, who (e.g., contract laboratory, etc.) will conduct the toxicity identification evaluation.
- ([d]e) Additional Toxicity Testing
- (1) If toxicity is detected, then the permittee shall conduct six additional weekly tests. Effluent sampling for the first test of the six additional tests shall begin within approximately twenty-four hours of receipt of the test results exceeding a toxicity discharge limitation;
  - (2) However, if implementation of the initial investigation toxicity reduction evaluation workplan indicates the source of toxicity (e.g., a temporary plant upset, etc.), then the permittee shall conduct only the first test of the six additional tests required above. If toxicity is not detected in this first test, the permittee may return to the



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normal sampling frequency as specified in Table 34.2. If toxicity is detected in this first test, then section 7 ~~(e)~~ (f) of this general permit shall apply.

- (3) If toxicity is not detected in any of the six additional tests required above, then the permittee may return to the normal sampling frequency as specified in Table 34.2.

~~(e)~~ (f) Toxicity Reduction Evaluation/Toxicity Identification Evaluation

- (1) If toxicity is detected in any of the six additional tests, then, based on an evaluation of the test results and additional available information, the director may determine that the permittee shall initiate a toxicity reduction evaluation, in accordance with the permittee's initial investigation toxicity reduction evaluation workplan and "Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants" (EPA 833-B-99-002, 1999). Moreover, the permittee shall develop a detailed toxicity reduction evaluation workplan which includes:
  - (A) Further actions to investigate and identify the cause(s) of toxicity;
  - (B) Actions the permittee has taken or will take to mitigate the impact of the discharge, to correct the

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noncompliance, and to prevent the recurrence of toxicity;

- (C) A schedule under which these actions will be implemented;

and shall submit this workplan to the director for approval.

- (2) As part of this toxicity reduction evaluation process, the permittee may initiate a toxicity identification evaluation using the test methods manuals, EPA/600/6-91/005F (Phase I), EPA/600/R-92/080 (Phase II), and EPA/600/R-92/081 (Phase III), to identify the cause(s) of toxicity.
- (3) If a toxicity reduction evaluation/toxicity identification evaluation is initiated prior to completion of the accelerated testing schedule required by section 7 ~~(d)~~ (e) of this general permit, then the accelerated testing schedule may be terminated, or used as necessary in performing the toxicity reduction evaluation/toxicity identification evaluation.

~~(f)~~ (g) Reporting

- (1) The permittee shall submit a full report of toxicity test results, including any toxicity testing required by sections 7 ~~(d)~~ (e) and 7 ~~(e)~~ (f) of this general permit, with the discharge monitoring report for the month in which the

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toxicity tests are conducted. A full report shall consist of: toxicity test results; dates of sample collection and initiation of each toxicity test; and toxicity discharge limitation. Toxicity test results shall be reported according to the test methods manual chapter on report preparation.

If the initial investigation toxicity reduction evaluation workplan is used to determine that additional toxicity testing is unnecessary, these results shall be submitted with the discharge monitoring report for the month in which investigations conducted under the toxicity reduction evaluation workplan occurred.

- (2) Within fourteen days of receipt of test results exceeding a toxicity discharge limitation, the permittee shall provide to the director written notification of:
  - (1) Findings of the toxicity reduction evaluation or other investigation to identify the cause(s) of toxicity;
  - (2) Actions the permittee has taken or will take, to mitigate the impact of the discharge and to prevent the recurrence of toxicity;
  - (3) When corrective actions, including a toxicity reduction evaluation, have not been completed, a schedule under



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which corrective actions will be implemented; or

- (4) The reason for not taking corrective action, if no action has been taken.

8. Corrective Action

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

9. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.2 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.
- (3) The permittee shall also submit the monitoring results with laboratory reports, including quality

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assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

- (4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

- (b) Additional Monitoring by the Permittee

If the permittee monitors any pollutant at location(s) designated herein more frequently than required by this general permit, using approved analytical methods as specified in section 6(a)(4)(B) of this general permit, the permittee shall include the results of this monitoring in the calculation and reporting of the values required in the discharge monitoring report form. The permittee shall also indicate the increased frequency.

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

- (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its

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duly authorized representative becomes aware of the circumstances:

- (A) Violation of an effluent limitation specified in Table 34.2 or a basic water quality criteria specified in section 6(b) of this general permit;
  - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment;  
or
  - (C) Unanticipated bypass or upset.
- (2) The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
- (3) The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:
- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;



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- (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
  - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
  - (D) Steps taken or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Planned Changes

The permittee shall report any planned physical alterations or additions to the permitted facility, not covered by 40 CFR §122.41(1)(1)(i), (ii), and (iii) to the director on a quarterly basis.

- (e) Reporting of Chemical Uses

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities of all chemicals (including the material safety data sheet), listed by both chemical and trade names, which are used in ground water treatment and which are discharged.

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(f) Schedule of Maintenance

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

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10. Submittal Requirements

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

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

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

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



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

11. Additional Conditions

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

12. Record Retention

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

13. Falsifying Report

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

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14. Renewal

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

15. Forms

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

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TABLE 34.2

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

Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
Flow (GPD)	{2}	{2}	Continuous	Calculated or Estimated
Total Petroleum Hydrocarbons as Gasoline (mg/l) {3}	{2}	{2}	Weekly	Grab
Total Petroleum Hydrocarbons as Diesel (mg/l) {3}	{2}	{2}	Weekly	Grab
Benzene (mg/l) {4}	1.7	1.8	Weekly	Grab
Toluene (mg/l) {4}	2.1	5.8	Weekly	Grab
Xylenes (mg/l) {4}	{2}	{2}	Weekly	Grab
Ethylbenzene (mg/l) {4}	0.14	11	Weekly	Grab
Lead (mg/l) {5}	0.14	0.029	Weekly	Grab
Organic Lead (mg/l) {6}	{2}	{2}	Weekly	Grab



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Effluent Parameter	Effluent Limitations {1}		Monitoring Requirements	
	For Saline Water	For Fresh Water	Minimum Frequency	Type of Sample
pH (standard units)	{7}		Weekly	Grab {8}
Whole Effluent Toxicity	[80% survival in 100% effluent] pass {9}		Monthly	Composite
Toxic Pollutants mg/l {10}	{11}		Annually	{12}

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

NOTES:

- {1} Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section [4]9(c) of this general permit.
- {2} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result. The department may include discharge limitations specified in section 11-55-19.
- {3} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004) method 5030/8015 for the measurement

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

- {4} The permittee shall use "Test Methods for Evaluating Solid Wastes" (EPA-SW-846-03-03B, November 2004), or "Standard Methods for the Examination of Water and Wastewater" (ISBN 0-87553-047-8, 2005;), or EPA methods 5030/8015, or 5030/8021B, or 5030/8260B, or 602, or 624, for the measurement of benzene, ethylbenzene, and toluene. EPA method 8260B, or an equivalent method, shall be used for the measurement of xylenes.
- {5} The permittee shall measure for the total recoverable portion of all metals.
- {6} The method for measuring for organic lead shall be the one referenced in the State of Hawaii's Technical Guidance Manual for Underground Storage Tank Closure and Release Response (March 2000).
- {7} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {8} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {9} Whole Effluent Toxicity measuring shall be performed in accordance with the provisions of section 7 of this general permit.
- {10} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4, only if they are identified as potential pollutants requiring monitoring in the

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notice of intent or as identified by the director. If monitoring results indicate that the discharge limitation was equaled or exceeded, the treatment system operations plan shall be amended to include additional best management practices targeted to reduce the parameter which was in excess of the discharge limitation.

- {11} Storm water discharge limitations are the chronic water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants which do not have established chronic water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.
- {12} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.