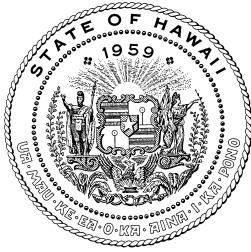


Small Business Regulatory Review Board Meeting

June 18, 2026

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 798-0737

AGENDA

Thursday, June 18, 2026 ★ 10:00 a.m.
250 South Hotel Street
No. 1 Capitol District Building
Room 436 Honolulu, HI 96813

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

A. By attending the in-person meeting at:
250 S. Hotel Street, Room 436, Honolulu HI; or

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

<https://us06web.zoom.us/j/88400776199?pwd=4wAvlu4jf7kz65ioBZWDXgpG4KIKJ8.1>

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

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

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, June 17, 2026, so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

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

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

Josh Green, M.D.
Governor

Sylvia Luke
Lt. Governor

James Kunane
Tokioka
DBEDT Director

Dane K. Wicker
DBEDT Deputy Director

Members

Jonathan Shick
Chairperson
O'ahu

Sanford Morioka
Vice Chairperson
O'ahu

Mary Albitz
2nd Vice Chairperson
Maui

James (Kimo) Lee
Hawai'i

Leelen Park
Hawai'i

Tessa Gomes
O'ahu

Cynthia Hobson
O'ahu

Nikki Ige
Kaua'i

Dr. Jennifer Salisbury
Maui

Denver Coon
Maui

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of May 21, 2026 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 58.1, **Solid Waste Management Control**, promulgated by Department of Health (DOH) – *Discussion Leader – Jonathan Shick*
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, and Chapter 55 **Appendices B, E, F, G, and K**, promulgated by DOH – *Discussion Leader – Jonathan Shick*

IV. New Business

- A. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 4 Chapter 61, **Food Hub Grant Program**, promulgated by Department of Agriculture – *Discussion Leader – Nicolle Ige*

V. Legislative Matters

- A. Discussion and Update on the following legislative matters:
 - 1. **House Bill 1618 HD1 SD1 CD1 – Relating to Cesspool Conversions** – Establishes a Cesspool Conversion Revolving Loan Fund, to be administered by the Hawai'i Green Infrastructure Authority, to provide financial assistance, including low-interest or forgivable loans, to eligible homeowners for the upgrade, conversion, or connection of cesspools. Appropriates funds for the establishment and hiring of a program management position and for the purposes of the Cesspool Conversion Revolving Loan Fund.
 - 2. **House Bill 1710 HD2 SD2 CD1 – Relating to Historic Preservation** – Authorizes SHPD to conduct a phased review of a proposed project on private property under certain circumstances. Amends the process and deadlines by which SHPD must provide written concurrence or non-concurrence for proposed projects on private property or certain projects that require state or county approval for entitlement for use, after which concurrence may be assumed and the project may move to the next step in the compliance process. Amends the conditions under which a proposed project on an existing privately owned single-family detached dwelling unit or townhouse that is over fifty years old shall be subject to section 6E-42, HRS.
 - 3. **House Bill 1721 HD2 SD2 CD1 – Relating to Housing** – Clarifies insurance, indemnification, and certain certificate of occupancy requirements for purposes of expedited permits. Requires state or county inspectors to inspect all projects with expedited permits. Repeals 6/30/2031.
 - 4. **House Bill 2104 HD2 SD1 CD1 – Relating to Island Burial Councils** – Extends the time to fill vacancies that occur during an Island Burial Council member's term. Provides per diem compensation in the form of a stipend for Island Burial Council members representing geographic regions. Adjusts the Island Burial Councils' quorum for business to be a majority of the appointed council members, but no fewer than three members.
 - 5. **Senate Bill 2543 SD2 HD2 CD1 – Relating to State Construction Projects** – Establishes a five-year Office of the State Construction Manager Pilot Program

to provide guidance and recommendations on the design review of certain state construction projects that are administered by the Department of Accounting and General Services or Department of Education and located in any county with a population of less than 500,000. Requires the Office to assign employees to the Department of Public Works of each applicable county to review and approve permit applications under the Pilot Program. Establishes the Design Review Special Fund. Appropriates funds for the Pilot Program and necessary positions.

6. **Senate Bill 2673 SD1 HD1 CD1 – Relating to Counties** – Requires a statewide permitting data standard developed collaboratively by the Office of Planning and Sustainable Development, county permitting agencies, and the Chief Data Officer. Requires each county to publish monthly updates of building and civil engineering permit data in accordance with that standard. Requires a report to the Legislature.

VI. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Revised Statutes (HRS)
 1. Review and Update Board’s Discussion Leader Assignments” for the State and County Agencies’ Hawaii Administrative Rules
 2. Review and Approval of the Board’s 2026 *Periodic Review; Evaluation Report*, In Compliance with Regulatory Flexibility Act, Section 201M-7, Hawaii Revised Statutes
 3. Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force’s most recent meeting pursuant to Act 133 to identify actions taken challenges encountered, and legislative measures necessary to facilitate, expediate, and coordinate state and intergovernmental permit processes; and appropriates funds
 4. Becker Communications Inc., regarding the Board’s Small Business Outreach
 5. Presentations to Industry Associations
 6. Staff’s Small Business Outreach

VII. Election of Board Officers

- A. Discussion and Action on the following:
 1. Vice Chair
 2. Second Vice Chair

VIII. Next Meeting: Thursday, July 16, 2026 at 10:00 a.m., held via Zoom and at 250 South Hotel Street – No. 1 Capitol District Building, Conference Rm 436, Honolulu, HI 96813

IX. Adjournment

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

II. Approval of May 21, 2026 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT**

May 21, 2026

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

MEMBERS PRESENT:

- Jonathan Shick, Chair
- Mary Albitz, Second Vice Chair
- Dr. Jennifer Salisbury
- James (Kimo) Lee
- David Sikkink
- Tessa Gomes
- Nicolle Ige
- Leelen Park
- Cynthia Hobson

ABSENT MEMBERS:

- Sanford Morioka, Vice Chair

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of APRIL 23, 2026, MINUTES**

Second Vice Chair Albitz motioned to approve the April 23, 2026 meeting minutes as amended. Mr. Park seconded the motion and the Board members unanimously agreed.

Chair Shick introduced and welcomed the Board's newest member, Mr. Denver Coon, who is from the Island of Maui. Mr. Coon went to Richardson School of Law and worked on Oahu as a public defender. The past 10 years, he has been working in his family's business, Trilogy Excursions out of Maui, which has been in existence over 54 years. During the legislative session, Mr. Coon concentrated on providing legislation for the Ocean Tourism Coalition. He is delighted to be a new member of this Board.

III. **NEW BUSINESS**

- A. Discussion and Action on the Pre-Public Hearing Small Business Impact Statement and Proposed Administrative Rule 2-13 Relating to Disposable Foodware and Service / Relating to Polystyrene Foam Food Container and Food Service Ware Reduction, promulgated by County of Hawaii – Department of Environmental Management

Discussion leader Mr. Lee presented a short history of the rule's ordinance explaining that their purpose is to have a single use ban on items. He introduced Mr. Alexander White,

Recycling Specialist at the County of Hawaii's Department of Environmental Management. Mr. White explained that the proposed rules are to prohibit certain disposable plastic food service items while attempting to use more biodegradable and compostable products. The measure was passed by County Council, and it was the department's responsibility to create the proposed rules which have an effective date of January 1, 2027.

Based on Ms. Ige's inquiry about penalties and fines, Mr. White responded that the fines are set in the ordinance and his department has no discretion in changing them. While there is no accurate way to estimate the amount of fees being received, the department's responsibility and intent is to educate and prepare businesses and the public before the January effective date. Regarding the appeal process, Mr. White explained that if the director of the department doesn't agree with the appeal request, it may go to the Environmental Management Commission.

To make this measure less restrictive, ultimately, it would be a County Council action to make any changes to the fees or requirements. Chair Shick noted that although these rules have a significant impact on small businesses, as a county agency there are huge limitations to changing the wording of the rules, which is unfortunate. Second Vice Chair Albitz added that the department needs to perform outreach to the business stakeholders.

Second Vice Chair Albitz motioned to send the proposed amendments to public hearing. Ms. Ige seconded the motion and the members unanimously agreed.

B. Discussion and Action on the Pre-Public Hearing Small Business Impact Statement and Proposed Hawaii Administrative Rules Title 13 Chapter 124, Rules for Indigenous Wildlife, Endangered and Threatened Wildlife, Injurious Wildlife, Introduced Wild Birds, and Introduced Wildlife, promulgated by Department of Land and Natural Resources (DLNR)

Chair Shick stated that these proposed rule changes will help Hawaii's very precious wildlife. Ms. Kathryn Stanaway, Program Specialist at DLNR's Forestry and Wildlife Division, explained that the purpose of these changes is to conserve, manage, protect, and enhance indigenous wildlife and to manage introduced birds statewide.

Changes to the rule package include adding a few different protections to wildlife that include increased habitat protection to safeguard against habitat modification or degradation and feeding of wildlife on DLNR lands. Another big change is to limit the transportation of wildlife within the state on plant material, equipment, and other goods. In addition, a few more indigenous wildlife were added to the list of threatened and/or endangered species. It was noted that written testimony in support of these rules was received by this Board.

Mr. Park motioned to send the proposed amendments to public hearing. Mr. Sikkink seconded the motion and the members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

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

Dr. Salisbury stated the next SPEED's taskforce meeting is Wednesday, May 27th at the Capitol; the taskforce will be paying for her travel so that she can attend the meeting in person.

There are six SPEED related measures that were passed during the legislative session, outlined below, and summarized by Dr. Salisbury. These bills have yet to be signed by the Governor and will be placed on next month's Agenda for updating.

- House Bill 1816 – Financing Wastewater Infrastructure
- House Bill 1710 – Streamlining SHPD Reviews
- House Bill 1721 – Providing Clarity for Expedited Permits
- House Bill 2104 – Reforming the Island Burial Councils
- House Bill 2543 – Streamlining Permitting for State Projects
- House Bill 2673 – Standardizes Permitting Data

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

The next meeting scheduled with DBEDT staff and Becker Communications is June 18, 2026, after the Board's monthly meeting.

Chair Shick asked if Becker Communications can help with creating a LinkedIn page for this Board; Ms. Ariola will run this by Becker.

3. Presentation to Industry Associations

Ms. Ige mentioned that a small business workshop will be held this coming Saturday by Kauai Federal Credit Union, which she will be attending.

4. Staff's Small Business Outreach

Ms. Ariola and Second Vice Chair Albitz attended a business function in Maui for the annual Small Business Administration awards and a Hawaii Economic Update.

In the next few weeks, Ms. Ariola will be attending a Hawaii Business Leadership Conference and the Hawaii Made conference that DBEDT will be hosting.

Chair Shick will send Ms. Ariola information from the Hawaii Chamber of Commerce for the “Chamber Impact Gala” scheduled for June 26, which celebrates Hawaii’s top legislative and business leaders.

5. Review and Update Board’s “Discussion Leader Assignments” for the State County Agencies’ Hawaii Administrative Rules

Chair Shick announced that this is Second Vice Chair Albitz’s last meeting. She will be tremendously missed. Because she is discussion leader for some of the Agencies, the Discussion Leader Assignments list will be sent to the board members for review. At the next board meeting, the members will discuss what assignments they would like to handle.

6. Review and Approval of the Board’s Draft 2026 *Periodic Review; Evaluation Report*, In Compliance with Regulatory Flexibility Act, Section 201M-7 Hawaii Revised Statutes

The Board reviewed the draft 2026 *Periodic Review; Evaluation Report* noting that Department of Taxation (DoTax) is the only department that did not submit the information requested for the Report despite three or four attempts by DBEDT staff. Ms. Ige plans to speak with her contacts at DoTax to find out the reason for the delay; as such, approval of this Report is deferred until next month.

V. LEGISLATIVE MATTERS

A. Update, Discussion and Action on the following legislative matters:

1. House Bill 2606 HD2 Relating to Off-Site Construction – Establishes a working group within the State Building Code Council to develop proposals for an off-site construction program. Appropriates funds.

This bill did not pass during the legislative session.

VI. Election of Board Officers

A. Discussion and Action on the following:

1. Chairperson, pursuant to Section 201M-5(c), HRS – Ms. Ige motioned to reinstate/nominate Mr. Jonathan Shick as the Board’s Chair for the 2026-2027 session. Mr. Park seconded the motion, and the Board members unanimously agreed.
2. Vice Chair – Deferred until the June meeting.
3. Second Vice Chair – Deferred until the June meeting.

VII. NEXT MEETING – Thursday, June 18, 2026, at 10:00 a.m., via Zoom and in person at 250 South Hotel Street, No. 1 Capitol District Building, Room 436, Honolulu, HI 96813.

VIII. ADJOURNMENT – Ms. Ige motioned to adjourn the meeting, and Second Vice Chair Albitz seconded the motion; the meeting adjourned at 10:55 a.m.

DRAFT

III. Old Business

A. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 58.1, Solid Waste Management Control, promulgated by Department of Health (DOH) - *Exhibit 1*

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

Department or Agency: Department of Health

Administrative Rule Title and Chapter: Title 11 Chapter 58.1

Chapter Name: Solid Waste Management Control

Contact Person/Title: Lauren Cruz

Phone Number: (808) 586-4244

E-mail Address: lauren.cruz@doh.hawaii.gov **Date:** 5/29/2026

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

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

☒ Yes ☐ No

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

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

II. Will the proposed rule s affect small business?

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

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

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

Please see attached.

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

Please see attached.

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

1. A description of how opinions or comments from affected small businesses were solicited.

Please see attached.

2. A summary of the public's and small businesses' comments.

Please see Attachment A.

3. A summary of the agency's response to those comments.

Please see Attachment A.

4. The number of persons who:

i) Attended the public hearing: 3

ii) Testified at the hearing: 0

iii) Submitted written comments: 4

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

i If "Yes," was the change adopted? ☐ Yes ☐ No

(ii If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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

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

June 2026 Chapter 11-58.1, Solid Waste Management Control, Small Business Impact Statement After Public Hearing

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

During rule drafting, the department reached out to some of the small businesses regulated by chapter 11-58.1, HAR, to better understand any concerns or potential challenges that may arise due to the proposed changes. A recommendation was made by a small business to allow the business a period of time to come into compliance for the entire facility, and this suggestion was incorporated into the proposed rule.

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

Yes, two recommendations identified by small businesses were incorporated into the final version of the rules. Both comments identified errors in the draft where the specific language proposed would have produced unintended outcomes. These errors have been corrected. Details are in the Department's response to comments #1 and #3 in Attachment A.

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

1. A description of how opinions or comments from affected small businesses were solicited.

In addition to the required notice of public hearing and comment period published in newspaper statewide on April 9 and 13, 2026, the Department sent a direct email notice to regulated businesses that manage solid waste and other interested parties on April 13, 2026, and published a notice in The Environmental Notice on April 23, 2026. Copies of the notice, proposed rules, and a detailed list of the proposed amendments were posted on the Solid Waste Program's website throughout the comment period. The Department held a public informational webinar on May 4, 2026 and a PDF copy of the webinar slides was posted on the Program's website on May 6, 2026.

Small businesses had an opportunity to comment orally at the public hearing on May 14, 2026 and in writing during the public comment period ending May 19, 2026.

Attachment A

Department of Health response to comments

- **For the proposed amendment of Hawaii Administrative Rules chapter 11-58.1, Solid Waste Management Control**
- **Public notice April 9 and 13, 2026**

Notes: Comments have been summarized. All written comments received and the transcript of the public hearing held on May 14, 2026 are available by request.

All section and subchapter numbers refer to the proposed chapter 11-58.1, Hawaii Administrative Rules (HAR), unless otherwise noted.

Commenter: Rob Luco, Inclusion Consulting LLC

Comment #1: It is stated [in §123(e)] that all facilities must collect leachate and treat it by a method approved by the department. This does not allow the option to collect and dispose of the leachate at a DOH permitted disposal facility. We suggest that the DOH revise this requirement to allow for the management of leachate in ways other than on-site treatment.

Response: Thank you for this comment. The Department intended to allow the option of off-site treatment or disposal of leachate. To help clarify this, we are finalizing subsection §123(e) to read, “All leachate shall be collected and managed by a method approved by the department,” rather than “...treated by a method approved by the department.”

Commenter: Bruce Iverson, Renolds Recycling, Inc.

Comment #2: Will the Office of Solid Waste Management application for certified redemption centers accept the notification under §124(b) instead of a solid waste permit? After submitting the notification would we be able to operate immediately, and be able to apply for HI-5 Certification for that location at the same time?

Response: Yes, the Office of Solid Waste Management application for certified redemption centers will accept the notification under §124(b) for facilities exempted from solid waste permitting under §102(c). After submitting the notification, the facility can complete its application to be a certified redemption center immediately. However, it can only operate after it both receives certification as a certified redemption center and thirty days have passed after the notification under §124(b) is submitted.

Comment #3: Our certified redemption center locations also purchase scrap aluminum, brass, stainless steel, and copper. Since copper is not proposed to be included in the new permitting exemption for recycling drop off facilities [in §102(c)(3)] and the current “permit by rule” status for these facilities is proposed to end, does that mean that all our locations

would be required to get a solid waste permit? The amount of work involved in getting the regular solid waste permit is significantly more complicated than the current permit by rule.

Response: Thank you for this comment. The Department intended to include copper in the list of source-separated materials recycling drop-off facilities exempted from the permitting requirement in §102(c)(3) may accept. We are finalizing this paragraph to read, “Recycling drop-off facilities accepting only the following source-separated materials: cardboard, newspaper, office paper and other paper recyclables, glass containers, aluminum containers, food and beverage containers (glass, plastic, bi-metals, steel, and aluminum), scrap aluminum, stainless steel, brass, bronze, and copper[.]”

Comment #4: §123(l) operating requirements for recycling drop-off says, “no processing (e.g., sorting, baling, crushing) of accepted material shall occur at the site.”

If we are to buy all HI-5 containers (aluminum, glass, plastic, steel, and bi-metal) those items need to be separated. If the customer doesn’t do a complete job of sorting at home, then we end up sorting at the certified redemption center location to enable us to redeem these items.

Reverse Vending Machines compact/crush items to fit inside their hoppers. I believe these machines would be out of compliance, which could negatively impact future recycling technology.

Response: Recycling drop-off facility operators may not sort accepted materials—sorting would make the facility a recycling processing facility (see definitions in §103). Recycling drop-off facilities exempted from the permitting requirement in §102(c)(3) may accept only *source-separated* materials; however, customers may be allowed to separate or sort their own HI-5 containers on-site before the recycling drop-off facility accepts them.

Reverse vending machines falls under “new or innovative technologies” and an operator proposing to use such a machine would need to submit a permit application including the information required in §122(b)(5) for consideration. The Department will consider applications for the use of new or innovative technologies for handling solid waste and will require any information it deems necessary in a permit application so that it can determine whether issuance of the permit is in the public interest (§342H-4, Hawaii Revised Statutes [HRS]).

Comment #5: §123(m)(2)(A) states that all recyclable material needs to be in a “closed container or under cover.” We currently have a glass bunker outside with a sprinkler system for dust at our permitted Sand Island site. As glass is generally considered to be inert, a cover was not required. The surface is concrete so ground contamination should not be an issue. Does this mean that a cover will be required? If the glass bunker will need to be covered what would be the time frame to make that improvement?

Response: The requirements in §123(m) apply only to recycling drop-off facilities and recycling processing facilities that are exempted from permitting under §102(c). A recycling processing facility that processes more than one source-separated material, such as your Sand Island site, is not exempted from permitting and §123(m) does not apply. The operating conditions for this site remain as stated in the permit.

Commenter: Joyce W.Y. Tam-Sugiyama, Watanable Ing LLP, on behalf of Radius Recycling Hawaii

Comment #6: The proposed language in §104(c)(2) is ambiguous as to what level of site access and sampling data will be required beyond what is currently required in the permitting process.

Response: This language is not ambiguous, rather it is based upon the Department's broad statutory authority to require any information it deems necessary to ascertain whether a particular site is appropriate for the proposed solid waste operations and whether issuance of the permit is in the public interest (§§342H-4 and 342H-6, HRS). The need for additional information necessarily varies depending on the facility type, proposed location, and planned operations.

Comment #7: The proposed language in §122(b)(1) is ambiguous as to what level of analysis is required as part of the site analysis.

Response: This language is not ambiguous, rather it is based upon the Department's broad statutory authority to require any information it deems necessary to ascertain whether a particular site is appropriate for the proposed solid waste operations and whether issuance of the permit is in the public interest (§§342H-4 and 342H-6, HRS). The language in this section is broad because this section applies all storage, processing, reclamation, and treatment facilities that manage solid waste which will inevitably vary greatly from site to site. The level of detail required in the permit application will necessarily differ depending on the facility type, proposed location, and planned operations.

Comment #8: For the operations plan required by §122(b)(3), equipment can change rapidly and requiring update for all equipment may be onerous.

Response: The application requires "[a] functional description of all equipment to be used to handle solid waste and a description of any technical training required by personnel to operate it" that is consistent with the plan of operations at the time of submission but does not require the brand name or exact specifications of each and every piece of equipment incidental to those operations. The Department believes the commenter may be referring to rapid or frequent changes in specific equipment that has the same functional description and technical training requirements; such changes typically would not require an update to a solid waste permit. However, major changes to the type of equipment or

process used to handle solid waste are not allowed during the term of a permit, in accordance with the requirement that facilities “be operated in accordance with the design requirements and operation plan submitted and approved as part of the permit application” [§123(a)]. Major changes would require an application for a permit modification, so that the Department may evaluate whether modification of the permit is in the public interest [§342H-4, HRS]. Also note, equipment changes that do not trigger the requirement to update a solid waste permit may trigger other requirements, such as updates to a Clean Air Act permit.

Comment #9: For the market evaluation required by §122(b)(7), markets fluctuate and change rapidly. How should applicants deal with changing market conditions?

Response: The market evaluation submitted as part of the permit application will capture a snapshot of market conditions at the time of application. If permit applicants are aware of recent changes or anticipating upcoming changes in market conditions, it is appropriate to discuss those changes in the market evaluation as well.

Comment #10: For the annual report required by §124(a), how should the operator deal with products sold to a global market without an ultimate destination in mind when the market is subject to change?

Response: In this case, the operator should report the known destination and disposition of each material leaving the facility (i.e., who the permittee sold it to and whatever information is available about that facility’s plans for the material), and note if a known destination or disposition is not expected to be the ultimate destination or disposition of the material.

Commenter: Renee Palmer, Solid Waste Division, County of Kauai

Comment #11: With regard to the incident notification requirement in §107(a), please define “incident” with explicit thresholds (e.g., fire of any size? equipment malfunction? odor complaints?).

Response: This language codifies the Department’s existing standard permit condition regarding notification. Due to the wide range of solid waste operations and surrounding land uses, the Department is unable to provide explicit thresholds to determine if an incident could threaten human health or the environment. If the facility operator is unsure whether an incident requires notification, it is recommended that the facility operator contact the Department.

Comment #12: Please clarify what constitutes an acceptable demonstration of engineering measures for municipal solid waste landfill (MSWLF) units located in an unstable area [§153(f)].

Response: Due to the wide range of site conditions and proposed landfill unit designs, the Department is unable to provide detailed specifications for what constitutes an acceptable demonstration of engineering measures. No significant changes to the language in this subsection were proposed.

Comment #13: Please clarify what level of engineering analysis and documentation will be required to demonstrate that a new lateral expansion can safely be constructed in a possible tsunami inundation area [§153(g)]. Will DOH provide a minimum set of required analyses (e.g., inundation depth, run-up velocity, erosion/scour potential, structural loading) to ensure consistency across landfill applicants?

Response: Due to the wide range of site conditions and proposed landfill unit designs, the Department is unable to provide a minimum set of required analyses to demonstrate that the design of a proposed landfill unit can safely be constructed in a possible tsunami inundation area.

Comment #14: Halehaka Landfill closed prior to July 6, 2006 [when chapter 508C, HRS was adopted], so no environmental covenant was recorded for the landfill at that time. Does proposed §157(a)(10)(A)(i) or chapter 508C, HRS, require us to create and record a new environmental covenant as part of our post-closure plan, or does the existing closure mechanism remain sufficient?

Response: Per §151(c), subchapter 4 does not apply to MSWLF units that did not receive waste after October 9, 1991. Halehaka Landfill stopped receiving waste prior to October 9, 1991, so §157 does not apply to this site.

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Clean Water Act, and a majority of current and proposed rules are consistent with the EPA's own industrial storm water permit.

In some cases, when a small business is the permittee, they will bear costs related to pollution prevention and compliance. Overall, however, DOH does not expect the proposed revisions to have an adverse impact on small business.

Mr. Lee moved to send the proposed rules to public hearing. Second Vice Chair Albitz seconded the motion, and the members unanimously agreed.

C. Discussion and Action on the Small Business Impact Statement to and proposed Amendments to HAR Title 11 Chapter 58.1 Solid Waste Management Control, promulgated by DOH

Ms. Lauren Cruz, Environmental Health Specialist from DOH's Solid and Hazardous Waste Branch, explained that the subject rules have not been updated in over 30 years. As a result, substantive changes are being proposed to be aligned with State Statutes and Federal regulations.

Many of the changes consist of adopting certain EPA rules that had not been adopted since 1984, adding new requirements and clarifying existing requirements for construction demolition landfills, clarifying closure requirements for other types of solid waste facilities, and clarifying and adding some post-closure environmental corrective actions for special wasteland fills.

Some changes that may impact small businesses include changes to the permit program as permit operation fees will be increased from \$25 to \$125. Because the fees have not been increased in 30 years, the increase is justifiable due to inflationary costs and because the fees will be better aligned with other state permit fees.

DOH is required to propose that salvaging activities be conducted on services such as concrete; this will affect one existing small business. As a result, the language in the rule was revised to allow one impacted business sufficient time to become compliant with the new ruling. This is so the cost to the business will be spread out over time instead of incurring one large expense. In addition, a few permit exemptions are being removed, and a few are being added.

In response to Second Vice Chair Albitz's question about the duration of increased permit fees, Ms. Cruz responded that DOH is expecting to increase fees every five years. It was appreciated that DOH representatives reached out to the stakeholders for feedback.

Mr. Lee moved to send the proposed rules to public hearing. Ms. Ige seconded, and the members unanimously agreed.

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-58.1
Hawaii Administrative Rules

ADOPTION DATE

1. Chapter 11-58.1, Hawaii Administrative Rules,
entitled "Solid Waste Management Control", is amended
and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 58.1

SOLID WASTE MANAGEMENT CONTROL

Subchapter 1 General Provisions

§11-58.1-101	Purpose
§11-58.1-102	Applicability
§11-58.1-103	Definitions
§11-58.1-104	Permit system
§11-58.1-105	Variances
§11-58.1-106	Solid waste management
§11-58.1-107	Incident notification
§11-58.1-108	Severability clause
§§11-58.1-109	to 11-58.1-120 (Reserved)

Subchapter 2 Solid Waste Storage, Processing,
Treatment, and Reclamation
Facilities

§11-58.1-121	Applicability

- §11-58.1-122 Permit application
- §11-58.1-123 Operating requirements
- §11-58.1-124 Reporting and notification
- §11-58.1-125 Closure, closure assessment, and site remediation
- §§11-58.1-126 to 11-58.1-130 (Reserved)

Subchapter 3 Special Waste Landfills

- §11-58.1-131 Special waste landfills - applicability
- §11-58.1-132 Special waste landfills - permit application
- §11-58.1-133 Special waste landfills - siting restrictions
- §11-58.1-134 Special waste landfills - annual report
- §11-58.1-135 Special waste landfills - operating criteria
- §11-58.1-136 Special waste landfills - environmental monitoring and corrective action
- §11-58.1-137 Special waste landfills - closure and post-closure care
- §11-58.1-138 Special waste landfills - financial assurance
- §11-58.1-139 (Reserved)
- §11-58.1-140 Special waste landfills - local government financial test specifications
- §11-58.1-141 (Reserved)
- §11-58.1-142 Special waste landfills - local government guarantee specifications
- §§11-58.1-143 to 11-58.1-150 (Reserved)

Subchapter 4 Municipal Solid Waste Landfills

- §11-58.1-151 Municipal solid waste landfills - purpose, scope, and applicability
- §11-58.1-152 Municipal solid waste landfills - permit requirements
- §11-58.1-153 Municipal solid waste landfills - site analysis and siting restrictions
- §11-58.1-154 Municipal solid waste landfills -

	design criteria
§11-58.1-155	Municipal solid waste landfills – operating criteria
§11-58.1-156	Municipal solid waste landfills – groundwater protection
§11-58.1-157	Municipal solid waste landfills – closure and post-closure care
§11-58.1-158	Municipal solid waste landfills – financial assurance
§11-58.1-159	(Reserved)
§11-58.1-160	Municipal solid waste landfills – local government financial test specifications
§11-58.1-161	(Reserved)
§11-58.1-162	Municipal solid waste landfills – local government guarantee specifications
§§11-58.1-163 to 11-58.1-170	(Reserved)

Subchapter 5 Construction and Demolition
Landfills

§11-58.1-171	Construction and demolition landfills – applicability
§11-58.1-172	Construction and demolition landfills – permit requirements
§11-58.1-173	Construction and demolition landfills – site analysis and siting restrictions
§11-58.1-174	Construction and demolition landfills – design criteria
§11-58.1-175	Construction and demolition landfills – operating criteria
§11-58.1-176	Construction and demolition landfills – groundwater protection
§11-58.1-177	Construction and demolition landfills – closure and post-closure care
§11-58.1-178	Construction and demolition landfills – financial assurance
§11-58.1-179	(Reserved)
§11-58.1-180	Construction and demolition landfills – local government financial test

specifications
§11-58.1-181 (Reserved)
§11-58.1-182 Construction and demolition landfills –
local government guarantee
specifications
§11-58.1-183 Existing construction and demolition
landfills
§§11-58.1-184 to 11-58.1-190 (Reserved)
§11-58.1-20 Repealed
§§11-58.1-31 to 11-58.1-33 Repealed
§§11-58.1-41 to 11-58.1-42 Repealed
§§11-58.1-51 to 11-58.1-55 Repealed
§§11-58.1-61 to 11-58.1-65 Repealed

Subchapter 6 Enforcement

§11-58.1-191 Inspections
§11-58.1-192 Penalties and remedies

Historical Note: Chapter 11-58.1, Hawaii
Administrative Rules, is based substantially on
Chapter 11-58, Hawaii Administrative Rules. [Eff
11/27/81; R 1/13/94]

Historical Note: The chapter was reorganized and
all sections not repealed were renumbered in the
amendment and compilation. [Am and comp]

SUBCHAPTER 1

GENERAL PROVISIONS

~~§11-58.1-01~~ **§11-58.1-101 Purpose.** The purpose
of this chapter is to establish minimum standards
governing the design, construction, installation,
operation, ~~and~~ maintenance, closure, and post-
closure care of facilities that manage solid waste,

including the storage, treatment, disposal, recycling, reclamation, and transfer [systems.] of solid waste. Such standards are intended to:

- (1) Prevent pollution of the drinking water supply or waters of the State;
- (2) Prevent air pollution;
- (3) Prevent the spread of disease and the creation of nuisances;
- (4) Protect the public health and safety;
- (5) Conserve natural resources; and
- (6) Preserve and enhance the beauty and quality of the environment. [Eff 1/13/94; §11-58.1-01; am, ren §11-58.1-101, and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-2, 342H-3, 342H-4, 342H-6, 342H-7, 342H-13, 342H-31, 342H-32, 342H-53, 342H-54, 342H-55, 342H-56, 342J-4, 342J-6, 342J-31, 342J-52, 342J-55) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342H-53, 342J-30)

[§11-58.1-02] §11-58.1-102 Applicability. (a)

These rules are applicable to all persons [as defined in this chapter] who [propose,] own, operate, propose to operate, close, or maintain a facility that manages solid waste, including the storage, recycling, reclamation, salvage, transfer, treatment, or disposal [facility; and are applicable to medical waste treatment, foreign waste treatment, used oil transport and recycling, hazardous waste, infectious waste, and radioactive waste.] of solid waste, except as excluded in subsections (b) and (c).

(b) This chapter does not apply to:

- (1) Remediation facilities developed for a one-time operation and managed under chapter 11-264.1, 11-280.1, or 11-451;
- (2) Facilities that only handle hazardous waste or used oil and are regulated under chapters 11-260.1 to 11-279.1;

- (3) Manufacturers that use clean, source-separated paper products, glass, and plastic as feedstock for their manufacturing process and, which as a result of this process, produce an end-product for resale;
- (4) Facilities only treating infectious waste generated on-site in treatment units located on-site;
- (5) A solid waste disposal or composting facility upon or in which only agricultural solid waste from an agricultural operation or an agricultural products processing facility is composted or disposed. Agricultural solid waste means wastes resulting from the production of agricultural products including but not limited to manure and animal carcasses;
- (6) Salvage facilities that store at any one time:
 - (A) Twenty-five or fewer waste vehicles; or
 - (B) Twenty-five or fewer waste white goods;and
- (7) Inert fill material.
- (c) The permit requirements in sections 11-58.1-104 and 11-58.1-122 do not apply to:
 - (1) A facility composting only green waste or vegetative food waste generated on its premises and using the compost only on its premises;
 - (2) A composting facility that handles no more than 3,000 tons per year of green waste only;
 - (3) Recycling drop-off facilities accepting only the following source-separated materials: cardboard, newspaper, office paper and other paper recyclables, glass containers, aluminum containers, food and beverage containers (glass, plastic, bi-metals, steel, and aluminum), scrap aluminum, stainless steel, brass, bronze, and copper;
 - (4) Recycling processing facilities accepting and processing only a single source-

separated material of one of the following types: polystyrene, bi-metal beverage containers, aluminum cans, or plastic containers; and

- (5) Minor sources as determined by the director.
[Eff 1/13/94; §11-58.1-02; am, ren
§11-58.1-102, and comp]
(Auth: HRS §§321-11, 321-21, 342G-13,
342H-2, 342H-3, 342H-4, 342H-6, 342H-7,
342H-13, 342H-31, 342H-32, 342H-53, 342H-54,
342H-55, 342H-56, 342J-4, 342J-6, 342J-31,
342J-52, 342J-55) (Imp: HRS §§342G-2,
342G-13, 342G-14, 342G-30, 342H-3, 342H-4,
342H-30, 342H-36, 342H-52, 342H-53, 342J-30)

~~§11-58.1-03~~ §11-58.1-103 Definitions. When used in this chapter, the following terms have the meanings given below:

“Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with section ~~[11-58.1-17(a).]~~ 11-58.1-137(a), 11-58.1-157(a), or 11-58.1-177(a).

“Active portion” means that part of a facility or unit that has received or is receiving ~~[wastes]~~ waste and that has not been closed in accordance with section ~~[11-58.1-17(a).]~~ 11-58.1-137(a), 11-58.1-157(a), or 11-58.1-177(a).

~~“Agricultural waste” means wastes resulting from the production of agricultural products including but not limited to manures, and carcasses of dead animals.]~~

“Airport” means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

“Appendix I” means Appendix I ~~[as it appears]~~ in title 40 ~~[CFR-258.]~~ Code of Federal Regulations part 258, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Appendix II" means Appendix II ~~[as it appears]~~ in title 40 [CFR 258.] Code of Federal Regulations part 258, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Aquifer" means a geological formation, group of formations, or part of a formation capable of yielding a significant quantity of ~~[ground water]~~ groundwater to wells or springs.

~~["Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or artificial events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.~~

~~"Ashes"]~~ "Ash" means the residue including any air pollution flue dusts or bottom ash from combustion or incineration of material including solid wastes.

"Best practicable technology" means current state of the art methods ~~[and/or]~~ or procedures which consider the economic capabilities of the owner ~~[and/or]~~ or operator.

~~["Bird hazard" means an increase in the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.~~

~~"Bioconversion" means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or generate products including, but not limited to, fertilizers, feeds, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a municipal waste landfill.~~

~~"Buffer zone" means that part of a facility that lies between the active area and the property~~

~~boundary.~~

~~"Bulky waste" means large items of refuse, such as appliances, furniture, and other oversize wastes which would typically not fit into reusable or disposable containers.~~

~~"CFR" means Code of Federal Regulations.]~~

~~"Clean Air Act" means the federal Clean Air Act, 42 [U.S.C. sections] United States Code section 7401 [to 7671q.] et seq.~~

~~"Clean Water Act" means the federal Clean Water Act, 33 [U.S.C. sections] United States Code section 1251 [to 1387.] et seq.~~

~~"Clear and grub material" means material consisting of any rock, coral, sand, gravel, and soil in conjunction with a maximum of twenty per cent vegetation which includes trees, timber shrubbery, and plants dislodged or uprooted from the ground.~~

~~"Closure" means those actions taken by the owner or operator of a solid waste site or facility to cease disposal operations and to ensure that all such facilities are closed in conformance with applicable rules at the time of such closures and to prepare the site for the post-closure period.~~

~~"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding [residential] household and industrial wastes.~~

~~["Common water pollutants" means those industrial discharges that are point sources subject to permits under 33 U.S.C. section 1342.~~

~~"Compliance schedule" means a written schedule of required measures in a permit including an enforceable sequence leading to compliance with these rules.]~~

~~"Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), green or yard waste materials, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like mulch or soil amendment. This term includes the processing of organic and non-treated wood waste materials for the generation of wood chips~~

or other materials that can be used as soil amendment, planting mixes, mulches for horticultural and agricultural applications, landfill cover, and land reclamation. The process of composting under methods approved by the department is a recycling activity. Land application of uncomposted organic solid waste shall not be considered an approved solid waste management activity, except as a portion of [the] a United States Department of ~~[Agriculture-Soil Conservation Service]~~ Agriculture Natural Resources Conservation Service approved ~~[Land Improvement, Soil Stabilization or Reclamation]~~ Comprehensive Nutrient Management Plan.

"Construction and demolition landfill unit" means a discrete area of land or an excavation that receives construction and demolition waste and does not receive regulated hazardous waste or industrial solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in title 40 Code of Federal Regulations section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024. A construction and demolition landfill unit that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

"Construction and demolition waste" means solid waste~~[, largely inert waste,]~~ resulting from the construction, repair, demolition, or razing of buildings, ~~[of]~~ roads, or other structures~~[, such as]~~. Construction and demolition waste typically consists of concrete, ~~[rock,]~~ brick, bituminous concrete, hollow tile, asphaltic pavement, wood, ~~[and]~~ glass, masonry, composition roofing and roofing paper, steel, plaster, and minor amounts of other metals, such as copper. Construction and demolition waste includes clear and grub material and does not include cleanup materials contaminated with hazardous substances, friable asbestos, waste paints, solvents, sealers, adhesives, or similar materials.

"Container" means a device used for the collection, storage, or transportation of solid waste,

including but not limited to, reusable containers, disposable containers, detachable containers, and tanks, whether fixed or detachable.

"Contaminate" means to allow to discharge a substance into [~~ground water~~] groundwater that would cause the concentration of that substance in the [~~ground water~~] groundwater to exceed the maximum contaminant level.

"Convenience center" means [~~waste handling facilities~~] a facility performing limited transfer station [~~operation~~] operations located at convenient areas receiving less than forty tons per day of only household [~~or residential~~] solid waste.

"Cover material" means soil or other suitable material that has been approved by the department as cover for wastes.

"Department" means the state department of health.

"Director" means the director of health or the director's authorized representative.

"Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste onto any land or water so that such solid waste, or any constituent thereof, may enter the environment, be emitted into the air, or be discharged into any water, including [~~ground waters.~~] groundwaters.

"Disposal facility" means a [~~solid waste management~~] facility [~~or part of one~~] at which solid waste is intentionally placed into or on any land or water, and at which solid waste will remain after closure.

[~~"Disposal site" means the location where any final treatment, utilization, processing, or deposition of solid waste occurs.~~]

"Energy recovery" means the recovery of energy in a useable form from [~~mass~~] burning [~~or refuse derived~~]

~~fuel], incineration, pyrolysis, gasification, or any other means of [using the heat of combustion or solid waste that involves high temperature (over twelve hundred degrees Fahrenheit)] processing[.] solid waste.~~

~~["Existing facility" means a facility which is owned or leased, and in operation, or for which construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state, and local statutes, regulations, rules, and ordinances. This term does not include existing MSWLF units.]~~

"Existing construction and demolition landfill unit" means any construction and demolition landfill unit that received construction and demolition waste before the effective date of these rules.

~~"Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of October 9, 1993. [Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.]~~

~~"Facility" means all contiguous land [including buffer zones] and structures, other appurtenances, and improvements on the land [used for the handling of solid waste].~~

~~"Facility structures" means, but is not limited to, buildings, sheds, utility lines, and drainage pipes on the facility.~~

~~"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.~~

~~"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the one hundred-year flood.~~

"Foreign waste" means garbage generated by carriers which left foreign ports, including any territory or possession of the U.S., and their first port of entry to the U.S. is Hawaii. This includes unconsumed food, food scraps, table refuse, galley refuse, food wrappers or packaging materials, and

other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, and any other areas on the means of conveyance.

~~["Free liquids" means liquids from any solid waste which produces measurable liquids as defined by the Paint Filter Liquids Test, Method 9095 of EPA Publication Number SW-846.~~

~~"Garbage" means, but is not limited to, putrescible solid waste including animal and vegetable wastes resulting from the handling, storage, sale, preparation, cooking, or serving of food. Garbage originates primarily in home kitchens, stores, markets, restaurants, and other places where food is stored, prepared, or served.]~~

"Gas condensate" means the liquid generated as a result of gas recovery processes at ~~[the]~~ a MSWLF unit.

"Green waste" means solid waste that includes leaves, grass clippings, garden and yard wastes, tree trunks, holiday trees, tree trimmings, ~~[and/or]~~ or prunings.

~~["Ground water" or "ground-water"]~~ "Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means ~~[regulated]~~ a solid waste that is a hazardous waste as defined in [40 CFR 261 or the State of Hawaii's rules or statutes, whichever is more stringent.] title 40 Code of Federal Regulations section 261.3, as incorporated and amended in chapter 11-261.1.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household waste" means any solid waste, including ~~[garbage and]~~ food waste, trash, infectious waste, and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

"Incineration" means the destruction of solid waste by burning in a furnace designed for that

purpose where solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste [~~regulated under subtitle C of RCRA~~]. The waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Inert fill material" means earth, soil, rocks, rock-like material such as cured asphalt, brick, and clean concrete less than eight inches in diameter except as specified by a licensed soils engineer, not containing exposed steel reinforcing rod, vegetation, organic material, or other solid waste.

~~["Inert wastes" means wastes which are limited to earth and earth-like products, concrete, cured asphalt, rock, bricks, and material which will not cause a leachate of environmental concern.]~~

"Infectious waste" means any waste which may contain pathogens capable of causing an infectious disease and shall include, but not be limited to, wastes categorized in section [~~11-104-4 of the Hawaii Administrative Rules.~~] 11-104.1-4.

~~["Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, are developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.]~~

"Landfill" means a disposal facility or part of a

~~facility [at which solid waste is permanently placed in or on land and which is not a landspreading facility.]~~ that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in title 40 Code of Federal Regulations section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024.

~~["Landspreading facility" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface at greater than vegetative utilization and soil conditioner [and/or] or immobilization rates.]~~

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

"Leachate" means water or other liquid that has percolated or passed through or emerged from solid waste and contains dissolved, soluble, suspended, or miscible materials removed from the waste or due to contact with solid waste or gases therefrom.

~~["Lift" means a compacted layer of solid waste and its overlying earth cover in a landfill.]~~

~~"Limited purpose landfill" means a landfill that receives solid waste of limited types, known and consistent composition, other than woodwastes, garbage, inert waste, and demolition waste.]~~

"Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method ~~[9095]~~ 9095B (Paint Filter Liquids Test), ~~[as described]~~ included in "Test Methods for Evaluating Solid [Wastes,] Waste, Physical/Chemical Methods" (EPA ~~[Pub. No.]~~ Publication SW-846).

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include artificial materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Lower explosive limit" means the lowest per cent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees centigrade and atmospheric pressure.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety per cent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

~~["Medical waste" means all the infectious and injurious waste originating from a medical, veterinary, or intermediate care facility.~~

~~"Monofill" means a landfill which accepts only one type of solid waste.]~~

"Municipal solid waste landfill unit" or "MSWLF unit" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined ~~[under]~~ in title 40 [CFR] Code of Federal Regulations section 257.2[-], published by the Office of the Federal Register, as amended as of July 1, 2024. A MSWLF unit also may receive other types of [RCRA subtitle D wastes,] waste regulated under subtitle D of RCRA, such as commercial solid waste, nonhazardous sludge, [conditionally exempt] hazardous waste generated by a very small quantity generator [waste], as defined in title 40 Code of Federal Regulations section 260.10, as incorporated and amended in chapter 11-260.1, and industrial solid waste. The landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill unit that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

"New construction and demolition landfill unit" means any construction and demolition landfill unit that has not received waste before the effective date of these rules.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste before October 9, 1993.

"Nuisance" consists of an act or an omission of an act which annoys, injures, or endangers the comfort, health, or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any public park, square, street, or highway; or in any way renders other persons insecure in life, or in the use of property.

"One hundred-year flood" means a flood that has a one per cent or greater chance of recurring in any given year or a flood ~~[occurring]~~ of a magnitude ~~[equalled]~~ equaled or exceeded once in one hundred years on the average over a significantly long period.

~~["Open burning" means the combustion of solid waste without:~~

- ~~(1) Control of combustion air to maintain adequate temperature for efficient combustion;~~
- ~~(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~
- ~~(3) Control of the emission of the combustion products.]~~

"Open dump" means a location where solid waste is disposed in nonconformance with applicable standards, relevant permit conditions, this chapter, or chapter 342H, Hawaii Revised Statutes.

"Operator" means the ~~[person(s)]~~ person responsible for the overall operation of a facility or part of a facility.

"Owner" means the ~~[person(s)]~~ person who has legal title to a facility or part of a facility.

"PCB" or "PCBs" shall have the same meaning as defined in title 40 Code of Federal Regulations section 761.3, published by the Office of the Federal Register, as amended as of July 1, 2024.

"PCB bulk product waste" shall have the same meaning as defined in title 40 Code of Federal Regulations section 761.3, published by the Office of

the Federal Register, as amended as of July 1, 2024.

~~["Performance standard" means the criteria for the performance of solid waste handling facilities.]~~

"Permeability" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

"Permit" means written authorization from the director to construct, modify, and operate any solid waste ~~[disposal]~~ management system or any component of any solid waste ~~[disposal]~~ management system. A permit authorizes the grantee to construct, modify, and operate any solid waste ~~[disposal]~~ management system in a manner or amount, not forbidden by chapter 342H, Hawaii Revised Statutes, or this chapter~~[, or by rules adopted pursuant to HRS 342]~~ but requiring review by the department.

~~["Permit by rule" means an abbreviated procedure by which "limited impact" solid waste facilities may begin operations in accordance with section 11-58.1-04(i).]~~

"Person" means an individual, firm, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

"Petroleum" means ~~[a regulated substance which includes]~~ any petroleum, including crude oil or any fraction thereof ~~[which]~~, that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute[-+]).

"Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

~~["Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life and during closure and post-closure.]~~

~~"Poor foundation conditions" means those areas where features exist which indicate that a natural or artificial event may result in inadequate foundation~~

~~support for the structural components of an MSWLF unit.]~~

"Post-closure" means the requirements placed upon ~~[landfill disposal sites]~~ landfills after closure to ensure their environmental safety ~~[for a thirty-year period]~~.

~~["Premises" means a tract or parcel of land with or without habitable buildings.]~~

"Processing" means an operation to convert solid waste into a useful product or to prepare it for disposal~~[-]~~ or recycling.

~~["Putrescible waste" means solid waste which contains material capable of being decomposed by micro-organisms.]~~

"Pyrolysis" means the process in which solid waste is heated in an enclosed device in the absence of oxygen to vaporize, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

"Qualified environmental professional" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and who has sufficient training and experience in environmental science and related fields, as may be demonstrated by state registration, professional certifications, or completion of accredited university programs, to enable them to make sound professional judgments regarding environmental site assessments, evaluating risks, and forming conclusions regarding conditions indicative of releases or threatened releases at a property.

"Qualified ~~[ground-water]~~ groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and who has sufficient training and experience in ~~[ground-water]~~ groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ~~[ground-water]~~ groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the federal Resource Conservation and Recovery Act, 42 [~~U.S.C.~~] United States Code sections 6901 [~~to 6992k.~~] et seq.

"Reclamation facility" means a location used for the [~~handling,~~] processing[~~,~~] or storage of recoverable material, including but not limited to composting and remediation facilities.

"Recoverable material" means material that can be diverted from disposal for recycling [~~or bioconversion~~]. This term does not include those materials that are generated and normally used on-site for manufacturing purposes.

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Recycling drop-off facility" means a structure or site designated for collection [~~and small scale (low technology) segregation~~] of recyclable materials. The [~~manned or unmanned~~] staffed or unstaffed site will receive and temporarily store [~~recyclables~~ "~~dropped off~~" and no payment is made to the participants depositing recyclables.] dropped off recyclable materials.

"Recycling processing [~~or materials recovery~~] facility" means a facility which [~~collects and~~] bales, shreds, cuts, crushes, melts, sorts, [~~or~~] otherwise treats, or temporarily stores[~~,~~] and brokers[~~,~~ ~~or transports~~] recyclable materials for reuse or re-manufacture.

[~~"Refuse" means anything putrescible or non-putrescible that is discarded or rejected.~~]

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in title 40 [CFR] Code of Federal Regulations section 261.3, as incorporated and amended in chapter 11-261.1, that [~~is not excluded from regulation as a hazardous waste under 40 CFR section 261.4(b) or~~] was not generated by a [~~conditionally exempt~~] very small quantity generator, as defined in [40 CFR section 261.5.] title

40 Code of Federal Regulations section 260.10, as incorporated and amended in chapter 11-260.1.

"Remediation" means a process utilizing physical, chemical, or biological conversion to mitigate or eliminate undesirable or unsafe constituents within the waste material.

~~["Reserved" means a section having no requirements and which is set aside for future possible rulemaking as a note to the regulated community.]~~

"Residential lead-based paint waste" means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Salvage" means the incidental removal of solid waste for reuse or recycling under the control of the facility owner or operator.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the removal of materials at a ~~[disposal site, or interim]~~ facility that manages solid waste ~~[handling site]~~ without the approval of the owner or operator and the department ~~[of health]~~.

"Secondary ~~[Resources]~~ resources" means postconsumer material collected and processed for feedstock in a manufacturing process.

"Seismic impact zone" means an area with a ten per cent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a ~~[per cent]~~ percentage of the earth's gravitational ~~[pull (g),]~~ pull (g), will exceed 0.10g in two hundred fifty years.

"Sludge" means any solid, semi-solid, or liquid

waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, industrial process, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~["Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to section 1424e of the Safe Drinking Water Act (P.L. 93-523).]~~

"Solid waste" ~~[or "waste"]~~ means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial ~~[waste water]~~ wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants, or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended ~~[(68 Stat. 923).]~~ (42 United States Code section 2011 et seq.).

~~["Solid waste disposal facility" means any facility which receives solid waste for ultimate disposal through landfilling or incineration. This term does not include facilities utilized for transfer, storage, processing, or remanufacturing for recycling or reuse, or bioconversion.]~~

~~"Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes, or the conversion of the energy in such wastes to more useful forms or combinations thereof.]~~

"Solid waste management" means the systematic administration of activities which provide for the

collection, source separation, storage, ~~[transportation]~~ transfer, processing, treatment, ~~[and]~~ or disposal of solid waste.

"Source separation" means dividing solid waste into some or all of its component parts at the point of generation.

"Special ~~[wastes]~~ waste" means any solid waste which, because of its source or physical, chemical, or biological characteristics, ~~[require]~~ requires special consideration for its proper processing or disposal, or both. This term includes, but is not limited to, foreign waste, asbestos, ~~[used oil, lead acid batteries]~~ municipal waste combustion ash, sewage sludge that is non-hazardous, ~~[medical]~~ infectious wastes, tires, white goods, and derelict vehicles.

"Special waste landfill" means a disposal facility that receives special waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in title 40 Code of Federal Regulations section 257.2, published by the Office of the Federal Register, as amended as of July 1, 2024.

"Storage" means the holding of solid waste materials for a temporary period.

~~["Stream" means the point at which any confined freshwater body of surface water reaches a mean annual flow rate of twenty cubic feet per second.]~~

"Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of ~~[the MSWLF]~~ a landfill that is necessary for protection of human health and the environment.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen material (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Surface water" means all lakes, rivers, ponds,

streams, inland waters, salt waters, and all other water and water courses within the jurisdiction of the State of Hawaii.

~~["Table 1" means Table 1 as it appears in 40 CFR 258.]~~

"Transfer station" means a ~~[permanent, fixed, supplemental collection and transportation]~~ facility~~[-]~~ used ~~[by persons and route collection vehicles]~~ to ~~[deposit collected]~~ consolidate, sort, transfer, or temporarily store solid waste collected from off-site [into a larger transfer vehicle] for transport to [a solid waste handling] another facility[-] that manages solid waste. Transfer stations may also include recycling activities.

"Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for energy or material resource recovery, or reduced in volume.

"Twenty-five year storm" means a storm of a particular duration and of such intensity that it has a four per cent probability of being ~~[equalled]~~ equaled or exceeded in any year.

"Twenty-four hour, twenty-five year storm" means a twenty-five year storm of twenty-four hours duration.

"Unstable area" means a location that is susceptible to natural or artificial events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes. As used in this definition:

- (1) "Poor foundation conditions" means areas where features exist which indicate that a natural or artificial event may result in inadequate foundation support for the structural components of a landfill unit.
- (2) "Areas susceptible to mass movement" means areas of influence (i.e., areas characterized as having an active or

substantial possibility of mass movement)
where the movement of earth material at,
beneath, or adjacent to the landfill unit,
because of natural or artificial events,
results in the downslope transport of soil
and rock material by means of gravitational
influence. Areas of mass movement include,
but are not limited to, landslides,
avalanches, debris slides and flows, soil
fluction, block sliding, and rock fall.

- (3) "Karst terranes" means areas where karst
topography, with its characteristic surface
and subterranean features, are developed as
the result of dissolution of limestone,
dolomite, or other soluble rock.
Characteristic physiographic features
present in karst terranes include, but are
not limited to, sinkholes, sinking streams,
caves, large springs, and blind valleys.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~["Used oil transporter" means a person who transports more than five hundred gallons of used oil annually, except a person who transports used oil obtained solely from sources owned and operated by the person to a storage facility owned and operated by the same person.]~~

"Washout" means the carrying away of solid waste by waters of the base flood.

"Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

~~["Waste recycling" means reusing waste materials and extracting materials from a waste stream.~~

~~"Waste reduction" means reducing the amount or type of waste generated.]~~

"Water quality standard" means a standard set for maximum allowable contamination in surface waters.

"Wetlands" means those areas [~~that are defined in 40 CFR section 232.2(r). It includes those areas~~] that are inundated or saturated by surface or [~~ground water~~] groundwater at a frequency and duration sufficient to support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, estuaries, and similar areas.

"White goods" means electrical and mechanical appliances made primarily of metal parts such as refrigerators, clothes washers, and dryers. Appliances of less than three cubic feet in volume before crushing shall not be included in this definition. [Eff 1/13/94; §11-58.1-03; am, ren §11-58.1-103, and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-2, 342H-3, 342H-31, 342H-55, 342H-56, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-30, 342H-36, 342J-30)

[§11-58.1-04] §11-58.1-104 Permit [systems.] system. (a) Requirement. It shall be unlawful for any person to establish, modify, or operate any facility that manages solid waste [~~management facility~~] or a part thereof or any extension or addition thereto without a permit issued in accordance with this chapter, [~~Hawaii Revised Statutes,~~] chapter 342H, Hawaii Revised Statutes, and the integrated solid waste management plan for the State of Hawaii[-], except as provided in subsection (b).

(b) [~~Exemptions. The following are exempted from the requirements of subsection (a). But these exemptions do not apply to facilities regulated by 40 CFR 258.~~]

- ~~(1) A single family or duplex residential property reusing by composting only green or vegetative solid wastes generated on its premises.~~
- ~~(2) A solid waste disposal facility on which the agricultural solid waste from the operation~~

~~or from its products processing facility is disposed. This exemption does not include equipment and materials such as pesticides and fertilizers used in the operation of the farm. It also excludes land not used for agricultural purposes.~~

- ~~(3) A landfill site which is used only by the owner or person in control of the premises to landfill less than one hundred fifty tons per year of soil, rock, concrete, or other nondecomposable and/or uncontaminated inert materials generated on the site.~~
- ~~(4) Incinerator facilities having a total rated capacity of less than one ton per hour.~~
- ~~(5) Minor sources as determined by the director.]~~

This section does not apply to facilities exempted from the permitting requirement under section 11-58.1-102(c).

(c) ~~[Application for permit.]~~ Permit application and application review.

- ~~(1) Application for a permit shall be completed on forms furnished by the [director and shall be accompanied by the following for approval:~~
 - ~~(A) Detailed plans and specifications for the facility.~~
 - ~~(B) Certification of compliance with local ordinances and zoning requirements including the recording of its disposal facility with the bureau of conveyances.~~
 - ~~(C) An operations report detailing the proposed method of operation, population, and area to be served, the characteristics, quantity, and source of material to be processed, the use and distribution of processed materials, method of processed residue disposal, emergency operating procedures, and the type and amount of equipment to be provided and the~~

- ~~proposed ultimate use of the land.~~
~~(D) Other specific requirements as stated for each facility.~~
- (2)] department and shall include an application fee in accordance with subsection (i). Each application shall contain the original signature of the owner and ~~[applicant]~~ operator and shall constitute an acknowledgement that the ~~[applicant]~~ operator will assume responsibility for the construction or modification and operation of the facility in accordance with these rules and regulations. If the ~~[applicant]~~ owner or operator is a partnership or group other than a corporation or a county, the application shall be made by one individual who is a member of the group. If the ~~[applicant]~~ owner or operator is a corporation or a county, the application shall be made by an officer of the corporation, general manager of the facility, or an authorized representative of the county.
- ~~[(3) The failure of the director to act on a complete application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs and federally approved programs, shall be deemed a grant of such application; provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof and shall notify the department a minimum of fifteen days before the start up of operation.]~~
- (2) The director shall determine whether the permit application is complete. If the application is not complete, the director shall request more information. The director

- may require the applicant to provide site access and sampling data necessary to determine the degree of pollution from the facility. An application determined to be incomplete will not be evaluated.
- ~~[(4)]~~ (3) The director shall evaluate the [applicant's] complete application, including the response to the department's request for more information, if applicable, and shall notify the applicant in writing of the director's final approval or intent to deny the application. No complete application for a permit shall be denied unless the applicant has had an opportunity for a hearing by the director in accordance with chapter 91, Hawaii Revised Statutes.
- ~~[(5)]~~ (d) Permit issuance and conditions.
- (1) The director shall approve [an] a complete application for a permit if the [application and the supporting information clearly show] director determines that the issuance thereof is in the public interest and that the [solid waste] facility is designed, built, and equipped in accordance with the best practicable technology so as to operate without causing a violation of applicable rules and regulations.
- ~~[(6)]~~ (2) Permit conditions.
- (A) The director [issues a] may specify permit [conditioned upon compliance with established requirements.] conditions for a specific facility in addition to the applicable requirements of this chapter.
- ~~[(A)]~~ (B) Commencement of work [under such an authority by the applicant] under a permit shall be deemed as acceptance of all conditions so specified.
- ~~[(B)]~~ The director may require the applicant to provide such facilities as are necessary for sampling and testing to determine the degree of pollution from

~~the solid waste facility.~~

~~(d)~~ (e) Modification, suspension, or revocation. The director may~~[, on the director's own motion or the application of any person,]~~ modify, suspend, or revoke a permit if, after affording the permittee a hearing in accordance with chapter 91, Hawaii Revised Statutes, the director determines that any condition of the ~~[permit has been violated or]~~ permit, any rule of the ~~[department has been violated]~~ department, or any provision of chapter 342H, Hawaii Revised Statutes, has been violated or that such is in the public interest. Modification, suspension, or revocation of a permit shall ~~[become final ten days after service of notice of the final decision to modify, suspend, or revoke, on the holder of the permit.]~~ be accomplished in the following manner:

- (1) The director may serve upon the permittee a written notice of permit modification, suspension, or revocation stating the reasons for the action taken and declaring the director's intent to either modify, suspend, or revoke the permit.
- (2) Any person may petition the director to modify, suspend, or revoke any permit.
- (3) The modification, suspension, or revocation shall become effective twenty (20) days after the permittee's receipt of the notice and order, unless before the expiration of the twenty (20) day period of time to request a hearing, the director receives a written request for a contested case hearing.
- (4) In the event that a timely written request for a contested case hearing is received, the permit shall be modified, suspended, or revoked only upon the request being withdrawn or a final decision being rendered at hearing. The modification, suspension, or revocation shall become effective immediately upon the withdrawal or the issuance of a final decision.

~~(e)~~ (f) Duration, transfer, and termination.

- (1) Duration of permit. The director may grant a permit for any term, not exceeding five years, and upon application may renew a permit from time to time for a term not exceeding five years if such is in the public interest.
 - (2) Transfer of permit. A permit shall not be transferrable without the written approval of the director.
 - (3) Reporting termination. ~~[Within]~~ No less than ninety days ~~[of]~~ before the permanent termination of the operation of a ~~[solid waste]~~ facility, the ~~[facility's]~~ permittee shall notify the director in writing of the facility's planned termination of operation.
- ~~[(f)]~~ (g) Posting. A permittee shall at all times post its permit in a conspicuous place at or near the ~~[solid waste disposal]~~ facility for which the permit was issued.
- ~~[(g)]~~ (h) Falsifying or altering permit. A person shall not ~~[willfully]~~ wilfully deface, alter, forge, counterfeit, or falsify a permit.
- ~~[(h)]~~ (i) ~~[Filing]~~ Application fees ~~[÷]~~.
- (1) Every applicant for a permit shall pay ~~[a filing]~~ an application fee in accordance with the following fee schedule~~[÷]~~. A facility with more than one solid waste management activity shall pay an application fee that is the sum of the separate fees for each distinct activity type that will be covered by the permit.
- | | |
|---|----------------|
| ~~[(1)]~~ (A) ~~Solid waste disposal facilities~~ | |
| ~~(i) Landfills~~ | |
| ~~Greater than twenty tons/day.~~ | |
| ~~.....~~ | |
| ~~\$1,000~~ | |
| ~~Less than twenty tons/day.....~~ | ~~250~~ |
| ~~(ii) Incinerators~~ | |
| ~~Greater than twenty tons/day.~~ | |
| ~~.....~~ | |
| ~~1,000~~ | |
| ~~Less than twenty tons/day.....~~ | ~~250~~ |

~~(B) Solid waste storage, handling and processing facilities~~	
~~(i) Transfer stations~~	
~~Less than one hundred tons/day..~~	~~100~~
~~Over one hundred tons/day.....~~	~~250~~
~~(ii) Recycling and materials recovery facilities.....~~	
	~~50~~
~~(iii) Salvage facilities.....~~	
	~~50~~
~~(C) Solid waste reclamation facilities~~	
~~(i) Composting.....~~	
~~_____~~	~~50~~
~~(ii) Remediation.....~~	
	~~250~~
~~(D) Special wastes~~	
~~(i) Special wastes.....~~	
	~~500~~
~~(ii) Medical wastes.....~~	
	~~100~~
~~(iii) Foreign wastes.....~~	
	~~100~~
~~(iv) Other non-specific technology..~~	
	~~300~~
~~(E) Others~~	
~~(i) Permit by rule.....~~	
	~~25~~
	~~(To be submitted with the letter of notification)]~~

<u>Facility or activity type</u>	<u>Fee</u>
<u>Landfill, less than twenty tons/day</u>	<u>\$1,250</u>
<u>Landfill, greater than twenty tons/day</u>	<u>\$5,000</u>
<u>Incinerator or energy recovery facility, less than twenty tons/day</u>	<u>\$1,250</u>
<u>Incinerator or energy recovery facility, greater than twenty tons/day</u>	<u>\$5,000</u>
<u>Transfer station, less than one hundred tons/day</u>	<u>\$500</u>
<u>Transfer station, greater than one hundred tons/day</u>	<u>\$1,250</u>
<u>Recycling processing facility</u>	<u>\$250</u>
<u>Salvage facility (includes vehicle storage)</u>	<u>\$250</u>
<u>Storage facility</u>	<u>\$250</u>
<u>Composting facility</u>	<u>\$250</u>
<u>Remediation facility</u>	<u>\$1,250</u>
<u>Infectious waste management facility</u>	<u>\$500</u>
<u>Foreign waste management facility</u>	<u>\$500</u>
<u>Facilities proposing the use of new or innovative technologies to handle solid waste</u>	<u>\$1,500</u>

- (2) ~~[This filing]~~ The application fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application following final action of ~~[cancellation]~~ cancelation or denial of an application.
- ~~[(2)]~~ (3) Fees shall be made payable to the State of Hawaii.
- ~~[(3)]~~ (4) A request for a duplicate permit shall be

made in writing to the director within ten days after the destruction, loss, or defacement of a permit. A fee of \$50 shall be charged and submitted with the request.

~~[(i) Permit by rule for certain solid waste handling and disposal facilities of limited impact.~~

~~(1) Permit by rule: Notwithstanding any other provision of these rules, the convenience centers, composting facilities handling not more than three thousand tons per year of green wastes, clearing and grubbing landfills, certain agricultural landfills, and recycling drop-off facilities shall be deemed to have a solid waste handling and disposal permit if the following conditions are met:~~

~~(A) Notification. At least thirty days prior to commencing solid waste handling activities which are covered under a permit by rule, written notification of such activity must be made to the director. Written notification shall be made on such forms as are provided by the director. Persons failing to notify the director of such activities shall be deemed to be operating without a permit.~~

~~(B) General conditions of every facility.~~

~~(i) No regulated hazardous waste in accordance with 40 CFR Part 261 may be collected, transported, or disposed at any of the facilities.~~

~~(ii) Nuisance control. Suitable means shall be employed to prevent solid wastes from scattering; control of litter, odors, and vectors such as rodents and insects.~~

~~(iii) Suitable means shall be provided to prevent and control fires, including an emergency response plan when appropriate.~~

~~(iv) It is the responsibility of the owner and/or operator to comply with all the local rules,~~

- ~~regulations, and ordinances, and the director may add additional conditions deemed appropriate.~~
- ~~(v) Each facility shall be supervised, secured, and have a permanent sign identifying the facility, hours and days of operation, materials accepted or not accepted, the owner and/or operator, a person to contact, and other pertinent information.~~
- ~~(iv) An annual report shall be prepared and submitted to the director.~~
- ~~(C) Convenience centers.~~
 - ~~(i) Only household and/or residential solid waste will be accepted.~~
 - ~~(ii) Car batteries and waste oil may be collected at the convenience centers but must be collected and stored in a safe and orderly manner.~~
- ~~(D) Green wastes (landscape waste) composting facilities.~~
 - ~~(i) Composting facilities accepting only green waste, less than three thousand tons per year, are permitted by rule unless exempted.~~
 - ~~(ii) The finished compost must be sufficiently stable that it can be stored or applied on land without producing a nuisance.~~
 - ~~(iii) An annual report shall be prepared and submitted to the department, reporting the tonnage of green waste accepted, the composted tonnage produced, and residual disposed.~~
 - ~~(iv) The department reserves the right to add additional requirements.~~
- ~~(E) Land clearing, grubbing, and certain agricultural landfills and inert waste landfills.~~

- ~~(i) All persons exempted under section 11-58.1-4(b)(3) and landfilling more than one hundred and fifty tons per year shall be permitted by rule.~~
- ~~(ii) Only waste that will not or is not likely to produce leachate of environmental concerns shall be disposed of in the landfill. Acceptable materials for disposal in the land clearing, grubbing, and certain agricultural landfill are earth and earth-like products, and land clearing debris such as stumps, limbs and leaves. Acceptable materials for disposal in the inert waste landfill are earth and earth-like products, concrete, cured asphalt, rocks, and bricks.~~
- ~~(iii) Materials placed in the landfill shall be generated on site and spread in layers and compacted to the smallest practicable volume.~~
- ~~(iv) Public access to the landfills shall be limited to authorized entrances which shall be closed when the site is not in operation.~~
- ~~(v) The final cover shall consist of eighteen inches of earthen material to minimize infiltration and six inches of earthen material to minimize erosion or as approved by the director. A vegetative cover shall be placed over the final lift, not later than one month following final placement of waste within that lift. The vegetative cover must be maintained a minimum of a year after the closure of the landfill.~~
- ~~(vi) A written notice of final closure~~

~~must be provided to the director within one hundred eighty days of receiving the final load of material. Any site not receiving waste for in excess of one hundred eighty days shall be deemed abandoned and in violation of these rules unless properly closed. Notice of closure must include the date of final material receipt and an accurate legal description of the boundaries of the landfill.~~

~~(vii) A permanent notation of the landfill location shall be added at the bureau of conveyances to the facility property and on any other instrument that would normally be examined during the title search and note any land use restrictions from the closure plans. The notation shall notify any potential purchaser of the property that the area has been used for land clearing and grubbing and agricultural solid waste landfills.~~

~~(viii) All other applicable federal, state, and local laws, rules, and ordinances, including erosion and sediment control, and any applicable federal wetlands permits, must be fully complied with prior to commencement of landfilling operations.~~

~~(F) Recycling drop-off and processing facilities.~~

~~(i) An annual report shall be prepared and submitted to the department, reporting the amounts and types of recyclable materials or scrap metals received and distributed by~~

~~weight. The report is due on July 31 of each year for the preceding fiscal year.~~

- ~~(ii) Scavenging at the facility by the general public is prohibited.~~
- ~~(iii) Recycling processing facilities utilizing single source separated material for reuse. The single source separated items are, but not limited to: cardboard, newspaper print, office paper, glass, aluminum containers, plastics, tires, and non-ferrous scrap metals.] [Eff 1/13/94; §11-58.1-04; am, ren §11-58.1-104, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-7, 342H-13, 342H-31, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342J-30)~~

§11-58.1-06 §11-58.1-105 Variances.

~~[Variance]~~ Variances and variance applications shall comply with ~~[Hawaii Revised Statutes,]~~ section 342H-5~~[-]~~, Hawaii Revised Statutes. [Eff 1/13/94; §11-58.1-06; am, ren §11-58.1-105, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-5, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-5, 342H-30, 342H-36)

§11-58.1-106 Solid waste management. (a)

Storage of solid waste. The aesthetic, non-hazardous, and sanitary storage of solid waste is the responsibility of the owner, operator, and occupant of the property where the solid waste is accumulated.

(b) Removal of solid waste.

- (1) The owner, operator, and occupant of a property have the responsibility of removing accumulated solid waste to a permitted facility; contractual or other arrangements for the removal shall not relieve a person of this primary responsibility.
- (2) Solid waste shall be removed to a permitted facility prior to creating a nuisance condition or health or safety hazard.
- (c) Disposal of animal carcasses.
- (1) The disposal of animal carcasses is the responsibility of the owner, operator, and occupant upon whose property the animal carcass is found.
- (2) On-site disposal of the carcass shall be by immediate burial, covered by at least two feet of compacted earth, or by other methods approved by the director. [Eff and comp

§11-58.1-107 Incident notification. (a) The operator of a facility that manages solid waste shall notify the department whenever there is an incident that could threaten human health or the environment (i.e., air, soil, or surface waters), such as fire, explosion, or release of regulated waste.

(b) The operator shall provide initial notification within 24 hours of the incident and, whenever possible, within eight hours of the incident. Initial notification shall be made to:

- (1) The Solid and Hazardous Waste Branch during regular business hours (7:45am to 4:30pm), by phone at (808) 586-4226; or
- (2) The on-scene coordinator from the Hazard Evaluation and Emergency Response Office at (808) 236-8200 after business hours (weekends, state holidays, and outside business hours).
- (c) The operator shall submit a written

notification within seven (7) calendar days that shall include:

- (1) Name, address, and telephone number of the owner and operator;
- (2) Name, address, and telephone number of the facility where the incident occurred;
- (3) Date, time, and type of incident (i.e. fire, explosion, release, etc.);
- (4) Name and quantity of materials involved;
- (5) Extent of injuries, if any;
- (6) An assessment of actual or potential hazards to human health or the environment, where applicable;
- (7) Estimated quantity and disposition of recovered and unrecovered material that resulted from the incident;
- (8) Evaluation of the circumstances that led to the incident;
- (9) Steps being taken to reduce, eliminate, and prevent recurrence, including an implementation schedule; and
- (10) Other information or monitoring as required by the department. [Eff and comp
] (Auth: HRS §§321-11,
342G-13, 342H-3, 342H-31, 342H-32) (Imp:
HRS §§342G-14, 342H-3)

[~~§11-58.1-72~~] §11-58.1-108 Severability clause.

If any provision of this chapter or the application of any provision of this chapter to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. [Eff 1/13/94; ~~§11-58.1-72~~; ren §11-58.1-108 and comp
] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342H-52, 342J-30)

§§11-58.1-109 to 11-58.1-120 (Reserved).

SUBCHAPTER 2

SOLID WASTE STORAGE, PROCESSING, TREATMENT, AND
RECLAMATION FACILITIES

§11-58.1-121 Applicability. (a) This subchapter applies to all solid waste storage, processing, reclamation, and treatment facilities, including transfer stations, recycling processing facilities, solid waste salvage facilities, solid waste storage facilities, compost facilities, remediation facilities, solid waste incinerators and energy recovery facilities, and infectious waste and foreign waste treatment facilities. Solid waste salvage facilities include, but are not limited to, automobile dismantlers, scrap metal and white goods processors, and junkyards.

(b) The following subsections apply only to the specific types of facilities enumerated below:

- (1) Transfer stations: section 11-58.1-122(c) permit application requirements;
- (2) Composting facilities:
 - (A) Section 11-58.1-122(d) permit application requirements;
 - (B) Section 11-58.1-123(i) operating requirements; and
 - (C) For composting facilities exempted from permitting under section 11-58.1-102(c) (1) and (2): section 11-58.1-124(b) notification requirements;
- (3) Incinerators and energy recovery facilities:
 - (A) Section 11-58.1-122(e) permit application requirements; and
 - (B) Section 11-58.1-123(k) operating

- requirements;
- (4) Salvage facilities: section 11-58.1-123(h) operating requirements;
- (5) Remediation facilities: section 11-58.1-123(j) operating requirements;
- (6) Recycling drop-off facilities:
 - (A) Section 11-58.1-123(l) operating requirements; and
 - (B) For recycling drop-off facilities exempted from permitting under section 11-58.1-102(c) (3):
 - (i) Section 11-58.1-123(m) operating requirements; and
 - (ii) Section 11-58.1-124(b) notification requirements;
- (7) Recycling processing facilities exempted from permitting under section 11-58.1-102(c) (4):
 - (A) Section 11-58.1-123(m) operating requirements; and
 - (B) Section 11-58.1-124(b) notification requirements; and
- (8) Minor sources exempted from permitting under section 11-58.1-102(c) (5): section 11-58.1-124(b) notification requirements.
- (c) Section 11-58.1-125(b) applies to open dumps. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342H-36, 342J-30, 342J-31)

11-58.1-122 Permit application. (a) This section does not apply to facilities exempted from the permitting requirement under section 11-58.1-102(c).

(b) The permit application shall include the following:

- (1) Site analysis. The site analysis shall include:
 - (A) A site plan;

- (B) A description of siting of equipment and machinery, public access, and turnaround areas;
 - (C) An analysis of the potential impacts of the operations on the environment;
 - (D) Surrounding land uses; and
 - (E) Mitigative measures that will be taken to reduce the impact of the facility upon the environment and neighboring properties;
- (2) Design requirements. A description of how the facility design meets the requirements of this paragraph. The site shall be designed:
 - (A) With adequate drainage to prevent standing water and to control run-on and run-off of rainwater;
 - (B) To control spills and releases, including methods to control, collect, and manage leachate, if applicable;
 - (C) To control litter, insects, odors, and vectors;
 - (D) To prevent and minimize fire hazards;
 - (E) To minimize impact of waste storage and operations on the environment;
 - (F) With adequate space for traffic flow, turnaround, and emergency vehicle access;
 - (G) To maintain a neat and orderly appearance; and
 - (H) With screening or buffering to minimize nuisances to neighboring properties;
- (3) Operation plan. A description of the overall operation plan of the site, detailing the following:
 - (A) A functional description of all equipment to be used to handle solid waste and a description of any technical training required by personnel to operate it;
 - (B) The type, characteristics, source, and quantity of solid waste to be

- collected, stored, treated, or processed at the facility;
- (C) By-products and end products produced, if applicable;
- (D) A means of weighing or measuring all solid waste accepted at the facility and all material leaving the facility, including residue, byproducts, and recovered material;
- (E) Ultimate destination and disposition for solid waste accepted at the facility;
- (F) Ultimate destination and disposition for residue and by-products created during processing, if applicable;
- (G) How the facility design and operations will allow the operator to meet the applicable operational requirements in section 11-58.1-123; and
- (H) Emergency operating procedures;
- (4) Fire plan to prevent and minimize fire hazards;
- (5) For facilities proposing the use of new or innovative technologies to handle solid waste, an extensive justification for the use of the proposed technology, including:
 - (A) A general description of the technology, including relevant design concepts, construction drawings, and engineering specifications. Explain how the technology and associated equipment will process the waste. Discuss the need for other types of materials in the process, the residue or by-products produced, and the quality of any finished product created;
 - (B) Maintenance requirements. Describe the maintenance requirements for the system. Discuss the frequency of maintenance, ease of maintaining the equipment, and the availability of replacement parts;

- (C) Experiences where the technology was used. Describe when and where this technology has been used before, the types of waste treated, and successes and failures in the use of this technology. Provide supporting analytical data. Include contact names of the facilities where this technology is being used or has been used and the types of environmental permits these facilities obtained. If this technology has not been previously used or has been used for different waste streams, explain why this technology is currently proposed;
 - (D) Identification and qualifications of the person who developed the technology; and
 - (E) The type of technical support that will be provided to the facility and who will be providing it;
- (6) Closure plan. A plan for closure and site assessment that meets the requirements of section 11-58.1-125(a)(1);
- (7) Market evaluation. A description of the ultimate use for the proposed end product, demonstration that the finished product is protective of human health and the environment, and an evaluation of available markets, if applicable. Include a plan for disposal of end products that cannot be sold;
- (8) Certification of compliance with local zoning requirements; and
- (9) Any other information required by the director.
- (c) Transfer stations. For transfer stations, the application shall also include a plan for the transfer of the solid waste including route, frequency, haulers, and alternative transfer routes.
- (d) Composting facilities. For composting facilities, the application shall also include:

- (1) A description of the type and size of the facility, detention times for storing and processing the material, a process flow diagram of the entire process, and all the major equipment required;
 - (2) A detailed description of the source, quality and quantity of the solid waste to be composted, including the source, quality, and expected quantity of any bulking agent to be used;
 - (3) Engineering plans and specifications for the entire composting facility, including manufacturer's performance data for the selected equipment;
 - (4) If sewage sludge, clear and grub material, or other potentially contaminated material is to be composted, analytical data on potential contaminants in the material; and
 - (5) If required by the director:
 - (A) An evaluation showing that incoming feedstock and resulting finished compost will not pose a risk to human health and the environment; and
 - (B) A sampling and analysis plan to ensure finished compost is protective of human health and the environment.
- (e) Incinerators and energy recovery facilities.
For incinerators and energy recovery facilities, the application shall also include:
- (1) An engineering report that includes a general description of the overall process, design criteria, anticipated performance, and a process flow diagram;
 - (2) A plan for sampling and testing the ash;
 - (3) A description of the ash management system, ash removal procedures, and the landfill or landfills that will receive the ash;
 - (4) A description of how the facility is designed to comply with state air pollution control authority emission and operating requirements in chapter 11-60.1; and
 - (5) In the operation plan, alternative storage

or disposal plans in the event of a
breakdown that would result in overfilling
of the facility's storage capacity. [Eff
and comp] (Auth: HRS
§§321-11, 321-21, 342G-13, 342H-3, 342H-4,
342H-31, 342H-32) (Imp: HRS §§342G-2,
342G-13, 342G-14, 342H-3, 342H-4, 342H-30,
342H-36)

§11-58.1-123 Operating requirements. (a)

Facilities shall be operated in accordance with the
design requirements and operation plan submitted and
approved as part of the permit application.

(b) Facility sign. A sign shall be posted at the
front entrance of the facility that displays:

- (1) The name of the owner or operator of the
facility;
- (2) The facility's hours of operation;
- (3) A contact phone number in case of emergency;
and
- (4) A list of which wastes are or are not
accepted by the facility.

(c) Acceptance of waste. No industrial waste,
infectious waste, construction and demolition waste,
regulated hazardous waste, or PCB waste shall be
accepted unless specifically approved by the director.

(d) Ultimate disposition of waste. All solid
waste received by the facility or generated by the
facility shall be collected, treated, recycled, or
disposed of at a department-permitted facility or an
out-of-state facility that is authorized by the
appropriate regulatory authority.

(e) All leachate shall be collected and managed
by a method approved by the department.

(f) The operator shall make a hazardous waste
determination for all waste generated by the facility,
in accordance with chapter 11-262.1. Hazardous waste,
as defined in chapter 11-261.1, shall be disposed in
accordance with chapters 11-260.1 to 11-273.1.

(g) Operational records. Operational records shall be maintained and shall include:

- (1) A daily log of the volume or weight of:
 - (A) Each type of solid waste accepted at the facility; and
 - (B) Each material leaving the facility, including residue, byproducts, and recovered material;
- (2) Source of solid waste accepted at the facility;
- (3) Ultimate destination and disposition of each material leaving the facility, including residue, byproducts, and recovered material; and
- (4) Major deviations from the operations plan, including incidents such as fires and explosions.

(h) Salvage facilities.

- (1) For new salvage facilities not holding a permit on the effective date of these rules, processing and salvaging activities, including baling, crushing, shredding, shearing, cutting, flattening, fluid removal, and removal and dismantling of fluid-containing parts, shall be conducted on an impervious working surface (for example, concrete); and
- (2) For existing salvage facilities holding a permit on the effective date of these rules:
 - (A) The operator shall submit to the department within one year of the effective date of these rules, unless otherwise approved by the director, a plan for converting the area for processing and salvaging activities to an impervious working surface (for example, concrete). The plan shall:
 - (i) Include a sampling plan to evaluate whether processing and salvaging activities have contaminated the ground surface and subsurface in areas where work

- is not currently conducted on an impervious working surface (for example, concrete); and
 - (ii) Specify timelines and surface areas to be converted to achieve compliance with subparagraph (D);
 - (B) If contamination is found, the operator shall submit a plan and schedule to the department for remediating the contamination;
 - (C) Sampling, remediation of existing contamination, and conversion of areas to an impervious working surface (for example, concrete) shall be completed in accordance with plans and schedules approved by the director; and
 - (D) Processing and salvaging activities, including baling, crushing, shredding, shearing, cutting, flattening, fluid removal, and removal and dismantling of fluid-containing parts, shall be conducted on an impervious working surface (for example, concrete) within five years of the effective date of these rules, unless otherwise approved by the director.
- (i) Composting facilities.
- (1) Compost shall be nonpathogenic, free of offensive odors, biologically and chemically stable, free of injurious components or particles, and able to sustain plant growth. Compost failing to meet these requirements shall be disposed of;
- (2) For a composting system using only sewage sludge with an additive such as wood chips, the maximum contaminant concentrations of the sewage sludge shall meet the applicable standards in title 40 Code of Federal Regulations part 503 or chapter 11-62, whichever is more stringent. Since other contaminants may be present in the sewage sludge as indicated by discharge monitoring

and other industrial pre-treatment requirements, the department, on a case specific basis, may determine the maximum allowable concentrations of these contaminants in the sewage sludge;

- (3) Solid waste that poses a pathogen concern shall be composted using a method for reducing pathogens that is approved by the director. In addition to approved composting methods listed below, proposed methods may be submitted to the director for review. Approved methods are:

- (A) Windrow composting method. The solid waste is maintained under aerobic conditions during the composting process. A minimum of five turnings is required during a period of fifteen consecutive days with the temperature of the mixture being fifty-five degrees Celsius or greater within six to eight inches below the surface of the pile. The temperature shall be monitored, at minimum on a daily basis, six to eight inches below the pile surface;
- (B) Aerated static pile composting method. The compost pile shall be insulated and a temperature of not less than fifty-five degrees Celsius or greater shall be maintained throughout the compost pile for at least three consecutive days. The temperature shall be monitored, at minimum on a daily basis, six to eight inches below the pile surface and six to eight inches from the outlet of the aeration pipe; and
- (C) Enclosed vessel composting method. The mixture shall be maintained at a temperature of not less than fifty-five degrees Celsius or greater throughout the mixture for at least three consecutive days. The temperature shall be monitored, at minimum on a daily

- basis, six to eight inches inside the vessel wall and six to eight inches from the aeration piping (when operating in the positive aeration mode); and
- (4) If required by the director, the facility shall follow its approved sampling and analysis plan to ensure finished compost is protective of human health and the environment.
- (j) Treatment facilities, including remediation facilities.
- (1) Treatment facilities managing infectious waste shall comply with applicable provisions of chapter 11-104.1 to render the waste non-infectious prior to disposal, except for household infectious waste, which may be disposed of as household solid waste without treatment;
- (2) Treatment facilities managing foreign waste shall incinerate the waste in accordance with the applicable requirements of this chapter or sterilize it in accordance with chapter 11-104.1; and
- (3) For remediation facilities:
- (A) Unless specified by the director, the area on which the material to be remediated is placed shall:
- (i) Be impermeable to prevent potential contamination of soil and groundwater; and
- (ii) Have a system to collect leachate and runoff; and
- (B) If a liner is used to comply with subparagraph (A) (i), it shall be of sufficient thickness and strength to withstand stresses imposed by vehicles and the material itself.
- (k) Incinerators and energy recovery facilities.
- (1) Incinerators and energy recovery facilities shall not accept:
- (A) Hazardous waste;

- (B) Electrical transformers with oil or polychlorinated biphenyls (PCB) or when generated from other than demolition projects;
 - (C) Pesticide containers, except that incinerators may accept pesticide containers that meet the definition of empty in title 40 Code of Federal Regulations section 261.7, as incorporated and amended in chapter 11-261.1, or are household waste;
 - (D) Liquid waste;
 - (E) Scrap automobiles; and
 - (F) White goods;
- (2) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all incinerators and energy recovery facilities shall implement a program for detecting and preventing the disposal of hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with title 40 Code of Federal Regulations section 761.62(b). This program shall include, at a minimum:
 - (A) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain hazardous wastes or unpermitted PCB wastes;
 - (B) Records of inspections;
 - (C) Training of facility personnel to recognize hazardous waste and unpermitted PCB wastes; and
 - (D) Notification to the director if a hazardous waste or unpermitted PCB waste is discovered at the facility; and
- (3) Ash management. Ash shall be handled as solid waste, special waste, or hazardous waste based on test results, according to the facility's permit.

(1) Recycling drop-off facilities. For recycling drop-off facilities, no processing (e.g., sorting, baling, crushing) of accepted material shall occur at the site.

(m) Recycling drop-off facilities and recycling processing facilities exempted from permitting under section 11-58.1-102(c).

(1) Recyclable material shall be free of fluids and contaminants that may cause harm to human health or the environment (i.e., paints, oils, solvents, etc.). Lead glass such as crystals shall not be accepted.

(2) Recyclable material shall be stored:

(A) In a closed container or under cover to limit the exposure of the material to precipitation; and

(B) In a safe and orderly manner that prevents creation of a nuisance, health and safety hazard, or environmental hazard. [Eff and comp]

(Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-30, 342H-36, 342J-30, 342J-31)

§11-58.1-124 Reporting and notification. (a) Annual report. The operator shall submit an annual report to the director not later than July 31 of each year reporting on operations during the previous fiscal year (July 1 to June 30). The report shall include:

(1) A summation, based on the operational record, of the total volume or weight of:

(A) Each type of solid waste accepted at the facility; and

(B) Each material leaving the facility, including residue, byproducts, and recovered material;

(2) The ultimate destination and disposition of

- each material leaving the facility, including residue, byproducts, and recovered material;
- (3) A summary of incidents outside of normal operations;
- (4) Monitoring data required by the facility's permit; and
- (5) Additional information, as requested by the department.
- (b) Notification for facilities exempted from permitting under section 11-58.1-102(c).
 - (1) Initial notification. At least thirty days prior to commencing solid waste management activities covered under section 11-58.1-102(c), the operator shall provide written notification to the director on forms provided by the department. The notification shall include:
 - (A) A site plan of appropriate scale;
 - (B) An operations narrative describing the proposed activity;
 - (C) Documentation of owner approval for the waste management activity; and
 - (D) Documentation demonstrating compliance with local zoning ordinances.
 - (2) Closure notification. No less than ninety days before ceasing operations, the operator shall provide written notification of the planned closure date to the director on forms provided by the department. [Eff and comp] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342G-30, 342H-3, 342H-36)

§11-58.1-125 Closure, closure assessment, and site remediation. (a) All facilities that manage solid waste, except landfills complying with the closure and post-closure requirements of section 11-58.1-137, 11-58.1-157, or 11-58.1-177, shall

complete closure and cleanup as follows:

- (1) Closure plan. No less than ninety days before terminating operations, the owner or operator of a facility that manages solid waste shall submit to the department a plan for closure. The closure plan shall:
 - (A) Be prepared by a qualified environmental professional, unless otherwise approved by the director;
 - (B) Consider all past solid waste activities at the site, including any incidents; and
 - (C) Include:
 - (i) A plan for the removal from the site and proper disposal of all solid waste, unsold product, and other items remaining from solid waste management operations;
 - (ii) A plan for assessing, at the time of closure, the site's potential to cause harm to human health and the environment due to facility operations; and
 - (iii) An implementation schedule;
- (2) Upon department approval of the closure plan, the owner or operator shall complete closure in accordance with the closure plan;
- (3) Within ninety days of completion of the closure assessment the owner or operator shall submit a report of the results to the department, unless otherwise approved by the director;
- (4) If the closure assessment report identifies potential threats to human health and the environment:
 - (A) Within ninety days of completion of the closure assessment, the owner or operator shall submit to the department a remediation plan to minimize or mitigate the identified threats. The remediation plan shall:
 - (i) Be prepared by a qualified

- environmental professional; and
 - (ii) Include an implementation schedule;
 - (B) Within ninety days of department approval of the remediation plan, the owner or operator shall begin implementation of the remediation plan; and
 - (C) Within ninety days of completing remediation actions in accordance with the approved remediation plan, the owner or operator shall submit a report documenting completion to the department, unless otherwise approved by the director; and
- (5) The department may require additional site assessment, remediation actions, or long-term controls based on its review of the closure plan, closure assessment report, remediation plan, or remediation completion report.
- (b) The operator of an open dump, or the owner of the real property where the open dump is located, shall complete closure and cleanup in accordance with subsection (a). The closure assessment plan shall be submitted to the department within ninety days of the department's identification of an open dump, unless otherwise approved by the director. [Eff and comp
] (Auth: HRS §§321-11, 321-21,
342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-2,
342G-13, 342G-14, 342H-3)

§§11-58.1-126 to 11-58.1-130 (Reserved) .

SUBCHAPTER 3

SPECIAL WASTE LANDFILLS

§11-58.1-131 Special waste landfills - applicability. This subchapter applies to all special waste landfills. [Eff and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)

§11-58.1-132 Special waste landfills - permit application. The permit application shall include:

- (1) All applicable components listed in section 11-58.1-122(b);
- (2) For a special waste landfill accepting municipal solid waste ash, in addition to the descriptions required by section 11-58.1-122(b) (2), a description of how the facility design meets the requirements of section 11-58.1-154;
- (3) In the site analysis, an illustration of the location of all structures including storage areas, offices, maintenance areas, limits of waste, planned areas for expansion, and property boundaries;
- (4) In the site analysis, a demonstration that the landfill meets all applicable requirements of section 11-58.1-133;
- (5) An engineering report and engineering design plan, that:
 - (A) Describes how the design of the landfill is protective of human health and the environment; and
 - (B) Includes a construction quality assurance plan;
- (6) In the operation plan, a plan for preventing acceptance of scrap automobiles, white goods, and whole motor vehicle tires;
- (7) In the operation plan, an explanation of how the facility design and operations will

- allow the operator to meet the applicable operational requirements in section 11-58.1-135 and how operations will ensure that any design assumptions will be met;
- (8) Documentation of the recording of the landfill facility with the bureau of conveyances;
- (9) Closure. A plan for complying with the closure requirements in section 11-58.1-137(a);
- (10) Post-closure care. A plan for complying with the post-closure care requirements in section 11-58.1-137(b);
- (11) Environmental monitoring. An environmental monitoring plan meeting the requirements in section 11-58.1-136(a);
- (12) Financial assurance. A plan for complying with the financial assurance requirements in section 11-58.1-138; and
- (13) For a landfill accepting green waste, in the operation plan, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)

§11-58.1-133 Special waste landfills - siting restrictions. (a) Airport safety. This subsection applies to special waste landfills that receive putrescible waste.

- (1) Owners or operators of special waste landfills that are located within ten thousand feet (3,048 meters) of any airport

runway end used by turbojet aircraft or within five thousand feet (1,524 meters) of any airport runway end used by only piston-type aircraft shall demonstrate that the landfill is designed and operated so that the landfill does not increase the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.

- (2) Owners or operators proposing to site a new special waste landfill located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration.
- (3) The owner or operator shall place the demonstration in paragraph (1) in the operating record and notify the director that it has been placed in the operating record.

(b) Floodplains. Owners or operators of special waste landfills located in one hundred-year floodplains shall demonstrate that the unit will not restrict the flow of the one-hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(c) Wetlands. Special waste landfills shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

- (1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;
- (2) The construction and operation of the landfill will not:
 - (A) Cause or contribute to violations of

- any applicable state water quality standard;
 - (B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;
 - (C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and
 - (D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;
- (3) The landfill will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the following factors:
 - (A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill;
 - (B) Erosion, stability, and migration potential of dredged and fill materials used to support the landfill;
 - (C) The volume and chemical nature of the waste managed in the landfill;
 - (D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;
 - (E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and
 - (F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;
- (4) To the extent required under section 404 of

the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

- (5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(d) Fault areas. Special waste landfills shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the landfill and will be protective of human health and the environment.

(e) Seismic impact zone. Special waste landfills shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(f) Unstable areas. Owners or operators of special waste landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the landfill will not be disrupted. The owner or operator

shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

- (1) On-site or local soil conditions that may result in significant differential settling;
- (2) On-site or local geologic or geomorphologic features; and
- (3) On-site or local artificial features or events (both surface and subsurface).
- (g) Consistency with local zoning ordinance. The owner or operator of a special waste landfill shall comply with all applicable local zoning ordinances and other applicable local ordinances. [Eff and comp
] (Auth: HRS §§321-11, 342G-13,
342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13,
342G-14, 342H-3)

§11-58.1-134 Special waste landfills - annual report. Annual report. The operator shall submit an annual report to the director not later than July 31 of each year reporting on operations during the previous fiscal year (July 1 to June 30). The report shall include:

- (1) A summation, based on the operational record, of the total volume or weight of each type of solid waste accepted at the facility;
- (2) A summary of incidents outside of normal operations;
- (3) Monitoring data required by the facility's permit; and
- (4) Additional information, as requested by the department. [Eff and comp
(Auth: HRS §§321-11, 342G-13, 342H-3,
342H-32) (Imp: HRS §§342G-13, 342G-14,
342H-3)

§11-58.1-135 Special waste landfills - operating criteria. (a) The operator shall comply with the requirements in section 11-58.1-123(a), (b), and (e).

(b) Acceptable waste. A special waste landfill shall accept only the type or types of special waste specified in its permit.

(c) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all special waste landfills shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with title 40 Code of Federal Regulations section 761.62(b). This program shall include, at a minimum:

- (1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;
- (2) Records of inspections;
- (3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and
- (4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(d) Operational records. Operational records shall be maintained and shall include:

- (1) A daily log of the volume or weight of each type of solid waste accepted at the facility;
- (2) Source of solid waste accepted at the facility; and
- (3) Major deviations from the operations plan, including incidents such as fires and explosions. [Eff and comp

] (Auth: HRS §§321-11,
342G-13, 342H-3, 342H-31, 342H-32) (Imp:
HRS §§342G-13, 342G-14, 342H-3)

**§11-58.1-136 Special waste landfills -
environmental monitoring and corrective action.** (a)

Unless the director determines that it is not
necessary, the owner or operator shall establish and
implement an environmental monitoring program based on
the type of waste to be accepted. The environmental
monitoring program shall:

- (1) Assess the site for the presence of
contamination that indicates a need for
corrective action; and
- (2) Establish standards that indicate the
effectiveness of a corrective action remedy.

(b) If environmental monitoring results indicate
a need for corrective action, the owner or operator
shall:

- (1) Submit a corrective action plan to the
director for review and approval, including
a remedy selection designed to meet the
standards established under subsection
(a)(2) and a schedule for initiating and
completing remedial activities;
- (2) Implement the approved corrective action
remedy;
- (3) Take any interim measures necessary to
ensure the protection of human health and
the environment. Interim measures shall, to
the greatest extent practicable, be
consistent with the objectives of and
contribute to the performance of any remedy
that may be required pursuant to paragraph
(2). The following factors shall be
considered by an owner or operator in
determining whether interim measures are
necessary:
 - (A) Time required to develop and implement
a final remedy;
 - (B) Actual or potential exposure of nearby
populations or environmental receptors
to hazardous constituents;
 - (C) Actual or potential contamination of

- drinking water supplies or sensitive ecosystems;
- (D) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
- (E) Weather conditions that may cause hazardous constituents to migrate or be released;
- (F) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
- (G) Other situations that may pose threats to human health and the environment; and
- (4) Determine, based on information developed after implementation of the remedy has begun or other information, whether the standards established under subsection (a)(2) are being achieved through the remedy selected. If the standards established under subsection (a)(2) are not being achieved, the owner or operator shall submit a revised corrective action plan to the department for review and approval and, once approved, implement the revised corrective action plan.
- (c) Remedies selected pursuant to subsection (b) shall be considered complete when:
 - (1) The environmental monitoring program results indicate that the cleanup standards established under subsection (a)(2) have been achieved; and
 - (2) All actions required to complete the remedy have been satisfied.
 - (d) Upon completion of the remedy, the owner or operator shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of subsection (c) has been placed in the operating record. The certification shall be signed by the owner

or operator.

(e) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements in subsection (c), the owner or operator shall be released from the requirements for financial assurance for corrective action under section 11-58.1-138. [Eff and comp]

(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-137 Special waste landfills - closure and post-closure care. (a) Closure criteria.

- (1) The owner or operator shall prepare a written closure plan that describes the steps necessary to close the special waste landfill at any point during its active life. The closure plan, at a minimum, shall include the following information:
 - (A) A description of the final cover and the methods and procedures to be used to install the cover;
 - (B) An estimate of the largest area of the special waste landfill ever requiring a final cover at any time during the active life;
 - (C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
 - (D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.
- (2) No less than ninety days before beginning closure of a special waste landfill as specified in paragraph (3), an owner or operator shall notify the director that a notice of intent to close the landfill has been placed in the operating record.
- (3) The owner or operator shall begin closure

activities of the special waste landfill within thirty days after the date on which the landfill receives the known final receipt of wastes or, if the special waste landfill has remaining capacity and there is a reasonable likelihood that the landfill will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the special waste landfill has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed special waste landfill.

- (4) The owner or operator of all special waste landfills shall complete closure activities of the special waste landfill in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in paragraph (3). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed special waste landfill.
- (5) Following closure of the special waste landfill, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.
- (6) (A) Following closure of all special waste

landfills, the owner shall:

- (i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director for approval;
 - (ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and
 - (iii) Following recording, notify the director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.
- (B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:
- (i) The land has been used as a landfill facility; and
 - (ii) The land's use is restricted during the post-closure period as described in the post-closure plan. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with other requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.
- (7) Following the removal of all wastes from the

- facility and completion of a risk assessment that illustrates that the waste did not impact the environmental integrity of the site and there is no residual contamination that needs to be managed, the owner may request permission from the director to terminate the environmental covenant.
- (b) Post-closure care requirements.
- (1) Following closure of the special waste landfill, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:
- (A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
- (B) Maintaining and operating the leachate collection system, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- (C) Monitoring the groundwater and maintaining the groundwater monitoring system, if applicable; and
- (D) Maintaining and operating the gas monitoring system, if applicable.
- (2) The length of the post-closure care period may be:
- (A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or

- (B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.
- (3) The owner or operator of the special waste landfill shall prepare a written post-closure plan that includes, at a minimum, the following information:
 - (A) A description of the monitoring and maintenance activities required in paragraph (1) for each special waste landfill, and the frequency at which these activities will be performed;
 - (B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
 - (C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to repair post-closure monitoring systems. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.
- (4) Following completion of the post-closure care period for each special waste landfill, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has

been placed in the operating record. [Eff
and comp] (Auth: HRS
§§321-11, 342G-13, 342H-3, 342H-31, 342H-32)
(Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-138 Special waste landfills – financial
assurance. (a) Applicability. The requirements of
this section apply to owners and operators of all
special waste landfills, except owners or operators
who are state or federal government entities whose
debts and liabilities are the debts and liabilities of
a state or the United States.

(b) Financial assurance for closure.

(1) The owner or operator shall have a detailed
written estimate, in current dollars, of the
cost of hiring a third party to close the
largest area of the special waste landfill
ever requiring a final cover as required
under section 11-58.1-137(a) at any time
during the active life in accordance with
the closure plan. The owner or operator
shall notify the director that the estimate
has been placed in the operating record.

(A) The cost estimate shall equal the cost
of closing the largest area of the
special waste landfill ever requiring a
final cover at any time during the
active life when the extent and manner
of its operation would make closure the
most expensive, as indicated by its
closure plan (see section
11-58.1-137(a)).

(B) During the active life of the special
waste landfill, the owner or operator
shall annually adjust the closure cost
estimate for inflation.

(C) The owner or operator shall increase
the closure cost estimate and the
amount of financial assurance required
under paragraph (2) if changes to the

closure plan or special waste landfill conditions increase the maximum cost of closure at any time during the remaining active life.

- (D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the special waste landfill. The owner or operator shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each special waste landfill shall establish financial assurance for closure of the special waste landfill in compliance with subsection (e). The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section 11-58.1-137(a)(6) and (7).
- (c) Financial assurance for post-closure care.
- (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the special waste landfill in compliance with the post-closure plan developed under section 11-58.1-137(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

- (A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.
 - (B) During the active life of the special waste landfill and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.
 - (C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or special waste landfill conditions increase the maximum costs of post-closure care.
 - (D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each special waste landfill shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section 11-58.1-137(b). The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with section 11-58.1-137(b) (4).
- (d) Financial assurance for corrective action.
- (1) An owner or operator of a construction and

demolition landfill unit required to undertake a corrective action program under section 11-58.1-136 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under section 11-58.1-136. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

- (A) The owner or operator shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section 11-58.1-136(d).
 - (B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if changes in the corrective action program or special waste landfill conditions increase the maximum costs of corrective action.
 - (C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each special waste landfill required to undertake a corrective

action program under section 11-58.1-136 shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with section 11-58.1-136(d) and (e).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators shall choose from the options specified in paragraphs (1) to (10).

(1) Trust fund.

(A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this paragraph. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be placed in the facility's operating record.

(B) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the special waste landfill, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(C) For a trust fund used to demonstrate

financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:
Next Payment = $\frac{CE-CV}{Y}$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:
Next Payment = $\frac{RB-CV}{Y}$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(E) The initial payment into the trust fund shall be made before the initial

receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136.

(F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.

(G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in

- accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).
- (2) Surety bond guaranteeing payment or performance.
- (A) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The owner or operator shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
- (B) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).
- (C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- (D) The owner or operator shall establish a standby trust fund. The standby trust

fund shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1) (B) to (E).

(E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

(F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this subsection.

(G) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(3) Letter of credit.

(A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The owner or operator shall notify the director that a copy of the letter of

credit has been placed in the operating record. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.

(C) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, except as provided in paragraph (11). The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

(D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility

in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(4) Insurance.

(A) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance shall be effective before the initial receipt of waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator shall notify the director that a copy of the insurance policy has been placed in the operating record.

(B) The closure or post-closure care insurance policy shall guarantee that funds will be available to close the special waste landfill whenever final closure occurs or to provide post-closure care for the special waste landfill whenever the post-closure care period begins, whichever applies. The policy shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(C) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by

the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(E) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.

(F) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancellation. If the insurer cancels the

- policy, the owner or operator shall obtain alternate financial assurance as specified in this subsection.
- (G) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.
- (H) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).
- (5) Corporate financial test. (Reserved.)
- (6) Local government financial test. An owner or operator that satisfies the requirements of section 11-58.1-140(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-140(d).
- (7) Corporate guarantee. (Reserved.)
- (8) Local government guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-142. The guarantor shall meet the requirements of the local government financial test in section

- 11-58.1-140 and shall comply with the terms of the written guarantee specified in section 11-58.1-142. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-140(d).
- (9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.
- (10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and corrective action requirements of sections 11-58.1-136 and 11-58.1-137, or assures that the funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this subsection. Any state assumption of responsibility shall meet the criteria specified in paragraph (12).
- (11) Use of multiple financial mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms shall be as specified in paragraphs (1) to (10), except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, may be provided by a combination of mechanisms rather than a single mechanism.
- (12) The language of the mechanisms listed in paragraphs (1) to (10) shall ensure that the

instruments satisfy the following criteria:

- (A) The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
- (B) The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed;
- (C) The financial assurance mechanisms shall be obtained by the owner or operator prior to the initial receipt of solid waste in the case of closure and post-closure care and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136, until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).
- (D) The financial assurance mechanisms shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-139 (Reserved) .

§11-58.1-140 Special waste landfills – local government financial test specifications. (a)
Financial component.

- (1) The owner or operator shall satisfy

subparagraph (A) or (B) as applicable:

- (A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or
- (B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
 - (i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - (ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.
- (2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).
- (3) A local government is not eligible to assure its obligations under this section if it:
 - (A) Is currently in default on any outstanding general obligation bonds;
 - (B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
 - (C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or
 - (D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion

from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (2).

(4) The following terms used in this subsection are defined as follows:

- (A) Deficit equals total annual revenues minus total annual expenditures;
- (B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;
- (C) Total expenditures include all expenditures excluding capital outlays and debt repayment;
- (D) Cash plus marketable securities is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and
- (E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR

not later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

- (c) Recordkeeping and reporting requirements.
- (1) The local government owner or operator shall place the following items in the facility's operating record:
 - (A) A letter signed by the local government's chief financial officer that:
 - (i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);
 - (ii) Provides evidence and certifies that the local government meets the conditions of subsection (a) (1), (a) (2), and (a) (3); and
 - (iii) Certifies that the local government meets the conditions of subsections (b) and (d).
 - (B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State

- agency that conducts equivalent comprehensive audits;
 - (C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and
 - (D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.
- (2) The items required in paragraph (1) shall be placed in the facility operating record as follows:
 - (A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or
 - (B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-136.
- (3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
- (4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

- (A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-138(e); or
 - (B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements section 11-58.1-138(b) (2), (c) (2), or (d) (2).
- (5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-138, place the required submissions for that assurance in the operating record, and notify the director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.
- (6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with section 11-58.1-138(e).
- (d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:
 - (1) If the local government owner or operator

does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total annual revenue.

- (2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under title 40 Code of Federal Regulations part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The total that may be assured shall not exceed forty-three per cent of the local government's total annual revenue.
- (3) The owner or operator shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (1) and (2). [Eff and comp
] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-141 (Reserved) .

§11-58.1-142 Special waste landfills – local government guarantee specifications. (a) Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste in the case of closure or post-closure care, or no later than

one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136. The guarantee shall provide that:

- (1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:
 - (A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or
 - (B) Establish a fully funded trust fund as specified in section 11-58.1-138(e)(1) in the name of the owner or operator.
- (2) The guarantee will remain in force unless the guarantor sends notice of cancelation by certified mail to the owner or operator and to the director. Cancelation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.
- (3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide that alternate assurance within one hundred twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.
- (b) Recordkeeping and reporting.
 - (1) The owner or operator shall place a certified copy of the guarantee along with

the items required under section 11-58.1-140(c) into the facility's operating record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-136.

- (2) The owner or operator is no longer required to maintain the items specified in this subsection when:
- (A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-138(e); or
 - (B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-138(b)(2), (c)(2), or (d)(2).
- (3) If a local government guarantor no longer meets the requirements of section 11-58.1-140, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3)

§11-58.1-143 to 11-58.1-150 (Reserved) .

MUNICIPAL SOLID WASTE ~~[DISPOSAL FACILITIES]~~ LANDFILLS

~~[\$11-58.1-11]~~ \$11-58.1-151 **Municipal solid waste landfills – purpose, scope, and applicability.** (a)

The purpose of ~~[sections 11-58.1-11 through 11-58.1-18]~~ this subchapter is to establish minimum state criteria for all municipal solid waste landfill (MSWLF) units including municipal solid waste landfills that are used to dispose of sewage sludge. These minimum state criteria ensure the protection of human health and the environment.

(b) ~~[These criteria apply]~~ This subchapter applies to owners and operators of new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in ~~[sections 11-58.1-11 through 11-58.1-18.]~~ this subchapter.

(c) ~~[These criteria do]~~ This subchapter does not apply to MSWLF units that did not receive waste after October 9, 1991.

(d) MSWLF units that ~~[receive]~~ received waste after October 9, 1991, but ~~[stop]~~ stopped receiving waste before October 9, 1993, are exempt from all ~~[the]~~ requirements of ~~[sections 11-58.1-11 through 11-58.1-18,]~~ this subchapter except ~~[for]~~ the final cover requirement ~~[specified]~~ in section ~~[11-58.1-17(a)(1).]~~ 11-58.1-157(a)(1). The final cover ~~[must]~~ shall be installed within six months of the last receipt of ~~[wastes.]~~ waste. Owners or operators of MSWLF units ~~[described in this subsection]~~ that fail to complete cover installation within this six-month period ~~[will be]~~ are subject to all ~~[the]~~ requirements of ~~[sections 11-58.1-11 through 11-58.1-18,]~~ this subchapter, unless otherwise specified.

~~[(e) All MSWLF units that receive waste on or after October 9, 1993, must comply with all requirements of sections 11-58.1-11 through 11-58.1-18, unless otherwise specified.]~~

~~(f)]~~ (e) Exemption for small MSWLF units.

(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions

that dispose of less than twenty tons of municipal solid waste daily, based on an annual average, are exempt from sections ~~[11-58.1-14 and 11-58.1-16,]~~ 11-58.1-154 and 11-58.1-156, so long as ~~[(1) There]~~ there is no evidence of existing ~~[ground-water]~~ groundwater contamination from the MSWLF unit ~~[(2) The]~~ and the MSWLF unit serves either:

- (A) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility; or
- (B) A community that has no practicable waste management alternative and the MSWLF unit is located in an area that annually receives less than or equal to twenty-five inches of precipitation ~~[(and)]~~.

~~[(3)]~~ (2) ~~[The owners]~~ Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that meet the criteria in paragraph (1) shall place in the operating record information demonstrating ~~[that the requirements of this subsection are met.]~~ this.

~~[(g)]~~ (3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ~~[ground-water]~~ groundwater contamination resulting from the unit that has asserted the exemption in ~~[subsection (f),]~~ paragraph (1), the owner or operator ~~[must]~~ shall notify the director of the contamination and shall thereafter comply with sections ~~[11-58.1-14 and 11-58.1-16.]~~ 11-58.1-154 and 11-58.1-156.

~~[(h)]~~ (f) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA.

~~[(i)]~~ (g) MSWLF units failing to satisfy these

criteria constitute open dumps, which are prohibited under section 4005 of RCRA~~[-]~~ and section 342H-30, HRS.

~~[(j)]~~ (h) MSWLF units containing sewage sludge and failing to satisfy these criteria violate sections 309 and 405(e) of the Clean Water Act.

~~[(k)]~~ ~~The effective date of sections 11-58.1-11 through 11-58.1-17 is October 9, 1993. Section 11-58.1-18 is effective April 9, 1994.~~

~~(l)]~~ (i) The owner or operator of a MSWLF unit ~~[must]~~ shall comply with any other applicable state ~~[or]~~ and federal rules, laws, regulations, ~~[or]~~ and other requirements.

~~[(m)]~~ ~~Extensions of the effective dates in 40 CFR 258 and this chapter may be approved on a case-by-case basis only following rule changes to 40 CFR 258 promulgated by the EPA authorizing such extensions or under statutory authority granted by the U.S. Congress.]~~

[Eff 1/13/94; §11-58.1-11; am, ren §11-58.1-151, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-55, 342H-56, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

~~§11-58.1-12]~~ §11-58.1-152 **Municipal solid waste landfills – permit requirements. (a) All municipal solid waste landfills (MSWLF) ~~[require a permit and]~~ shall comply with ~~[the requirements of]~~ section ~~[11-58.1-04.]~~ 11-58.1-104.**

(b) Permit notification. The director shall ensure that the public receives notice of each application for a new municipal solid waste landfill permit or any application for modification or renewal of an existing permit through the public notification process. Procedures for the circulation of public notices shall include at least the following:

- (1) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include publishing in local newspapers

- and periodicals, or, if appropriate, in a daily newspaper of general circulation.
- (2) Notice shall be mailed to any person or group upon request.
 - (3) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all [~~variance~~] permit applications within the State or within a certain geographical area.
 - (4) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written [~~reviews~~] comments with respect to the application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
 - (5) The contents of public notice shall include at least the following:
 - (A) Name, address, and phone number of agency issuing the public notice;
 - (B) Name and address of each applicant;
 - (C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the application;
 - (D) A short description of the location of each disposal or activity indicating whether such disposal or activity is new or existing;
 - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (4) and any other means by which interested persons may influence or comment upon those determinations; and
 - (F) Address and phone number of state agency premises at which interested persons may obtain further information

and inspect a copy of the [~~variance~~]
permit applications and supporting and
related documents.

- (6) Public hearings. The director may hold a public hearing if, after reviewing the comments submitted under paragraph (4), the director determines that a public hearing is warranted. Any hearing [~~brought~~] pursuant to this subsection shall be held in the geographical area of the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

(c) Permit application requirements. In order to obtain a permit to construct and operate, the owner or operator of a municipal solid waste landfill unit shall submit the following:

- (1) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;
- (2) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste;
- (3) A plan for closure in accordance with section 11-58.1-157(a);
- (4) A plan for post-closure care in accordance with section 11-58.1-157(b); and
- (5) Any additional information requested by the director. [Eff 1/13/94; §11-58.1-12; am, ren §11-58.1-152, and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-54, 342H-55, 342H-56)
(Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-52)

[~~\$11-58.1-13~~] §11-58.1-153 Municipal solid waste landfills - site analysis[~~-~~] and siting restrictions.

(a) Airport safety.

- (1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within ten thousand feet (3,048 meters) of any airport runway end used by turbojet aircraft or within five thousand feet (1,524 meters) of any airport runway end used by only piston-type aircraft ~~[must]~~ shall demonstrate that the units are designed and operated so that the MSWLF unit does not ~~[pose a bird hazard to aircraft.]~~ increase the likelihood of aircraft collisions with birds that may cause damage to the aircraft or injury to its occupants.
- (2) Owners or operators proposing to site new MSWLF units and lateral expansions located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft ~~[must]~~ shall notify the affected airport and the Federal Aviation Administration ~~[-(FAA)-]~~.
- (3) The owner or operator ~~[must]~~ shall place the demonstration in paragraph (1) in the operating record and notify the director that it has been placed in the operating record.
- (4) A prohibition on locating a new MSWLF near certain airports was enacted in section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 United States Code section 44718 note). Section 503 prohibits the construction or establishment of new MSWLFs after April 5, 2000 within six miles of certain smaller public airports. The Federal Aviation Administration administers the Ford Act and has issued guidance in Federal Aviation Administration Advisory Circular 150/5200-34, dated August 26, 2000. For further information, please contact the

Federal Aviation Administration.

(b) Floodplains. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in one hundred-year floodplains ~~[must]~~ shall demonstrate that the unit will not restrict the flow of the ~~[one hundred-year]~~ one-hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator ~~[must]~~ shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(c) Wetlands. New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

- (1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;
- (2) The construction and operation of the MSWLF unit will not:
 - (A) Cause or contribute to violations of any applicable state water quality standard;
 - (B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;
 - (C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and
 - (D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;
- (3) The MSWLF unit will not cause or contribute

to significant degradation of wetlands. The owner or operator [~~must~~] shall demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

- (A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the MSWLF unit;
 - (B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;
 - (C) The volume and chemical nature of the waste managed in the MSWLF unit;
 - (D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;
 - (E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and
 - (F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;
- (4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and
- (5) Sufficient information is available to make a reasonable determination with respect to

these demonstrations.

(d) Fault areas. New MSWLF units and lateral expansions shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(e) Seismic impact zone. New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator ~~[must]~~ shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(f) Unstable areas. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area ~~[must]~~ shall demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator ~~[must]~~ shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator ~~[must]~~ shall consider the following factors, at a minimum, when determining whether an area is unstable:

- (1) On-site or local soil conditions that may result in significant differential settling;
- (2) On-site or local geologic or geomorphologic features; and
- (3) On-site or local artificial features or events (both surface and subsurface).

(g) Tidal wave (tsunami) zone. New ~~[MSWLFs]~~ MSWLF units and lateral expansions shall not be

located in possible tsunami inundation areas[~~(1)~~], except where owners or operators demonstrate that engineering measures have been incorporated into the MSWLF unit design to ensure that the structural components of the MSWLF unit will not be damaged or disrupted and seawater from the tsunami run-up does not infiltrate the MSWLF unit. Tsunami inundation areas [on the islands of Oahu, Hawaii, Maui, and Kauai] are those areas delineated in a report entitled ["Hawaii Tsunami Inundation Evacuation Map Project" by George D. Curtis, University of Hawaii Joint Institute for Marine and Atmospheric Research, dated April 19, 1991.] "Hawaii Tsunami Mapping Project: Data Sources, Procedures, and Products for Extreme Aleutian Events, Final Report, Prepared for Hawaii Emergency Management Agency" by Kwok Fai Cheung, PhD, PE, Department of Ocean and Resources Engineering, University of Hawaii at Manoa dated June 30, 2015.

~~[(2) Tsunami inundation areas on other islands shall be determined by the director.]~~

(h) Closure of existing MSWLF units.

(1) Existing MSWLF units that cannot make the demonstration specified in subsection (a)(1) pertaining to airports, subsection (b) pertaining to floodplains, or subsection (f) pertaining to unstable areas, ~~[must]~~ shall close by October 9, 1996, in accordance with section ~~[11-58.1-17(a)]~~ 11-58.1-157(a) and conduct post-closure activities in accordance with section ~~[11-58.1-17(b).]~~ 11-58.1-157(b).

(2) The deadline for closure required by paragraph (1) may be extended up to two years if the owner or operator demonstrates to the director that:

(A) There is no available alternative disposal capacity; and

(B) There is no immediate threat to human health and the environment.

(i) Consistency with local zoning ordinance. The owner or operator of a MSWLF ~~[must]~~ shall comply with ~~[any]~~ all applicable local zoning ordinances ~~[or]~~ and

other applicable local ordinances. [Eff 1/13/94; §11-58.1-13; am, ren §11-58.1-153, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

~~§11-58.1-14~~ §11-58.1-154 Municipal solid waste landfills - design criteria. (a) The design of new MSWLF units and lateral expansions shall be approved by the director before commencement of construction.

(b) The design shall either:

- (1) Ensure that the concentration values listed in Table 1~~[, which is incorporated by reference, or Hawaii Administrative Rules, title 11, chapter 20,]~~ in title 40 Code of Federal Regulations section 258.40, published by the Office of the Federal Register, as amended as of July 1, 2024, or in sections 11-20-3 to 11-20-7, whichever is more stringent, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the director under subsection (e); or
- (2) Include a composite liner as described in subsection (c) and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner.

(c) A composite liner shall consist of two components:

- (1) An upper component that ~~[must]~~ shall consist of a minimum 30-mil flexible membrane liner (FML) with a hydraulic conductivity of no more than 1×10^{-7} cm/sec~~[(FML components consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick. The FML component must]~~ and shall be installed in direct and uniform contact with the compacted soil component~~[.]~~; provided that an FML component consisting of High Density

Polyethylene (HDPE) shall be at least 60-mil thick; and

- (2) A lower component that ~~[must]~~ shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(d) When approving a design that complies with subsection (b)(1), the director shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The climatic factors of the area; and
- (3) The volume and physical and chemical characteristics of the leachate.

(e) The relevant point of compliance specified by the director shall be no more than one hundred fifty meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance, the director shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The volume and physical and chemical characteristics of the leachate;
- (3) The quantity, quality, and direction of flow of ~~[ground water;]~~ groundwater;
- (4) The proximity and withdrawal rate of the ~~[ground water]~~ groundwater users;
- (5) The availability of alternative drinking water supplies;
- (6) The existing quality of the ~~[ground water,]~~ groundwater, including other sources of contamination and their cumulative impacts on the ~~[ground water]~~ groundwater and whether ~~[ground water]~~ groundwater is currently used or reasonably expected to be used for drinking water;
- (7) Public health, safety, and welfare effects; and
- (8) Practicable capability of the owner or operator. [Eff 1/13/94; §11-58.1-14; am,

ren §11-58.1-154, and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3,
342H-31, 342H-55, 342H-56) (Imp: HRS
§§342G-13, 342G-14, 342H-3, 342H-30,
342H-52)

~~§11-58.1-15~~ §11-58.1-155 Municipal solid waste landfills - operating criteria. (a) Procedures for excluding the receipt of hazardous waste~~[-]~~ and unpermitted PCBs. Owners or operators of all MSWLF units ~~[must]~~ shall implement a program ~~[at the facility]~~ for detecting and preventing the disposal of regulated hazardous wastes ~~[as defined in 40 CFR Part 261]~~ and polychlorinated ~~[biphenyls]~~ biphenyl (PCB) wastes ~~[as defined in 40 CFR Part 761.]~~, except PCB bulk product waste as allowed by permit and in accordance with title 40 Code of Federal Regulations section 761.62(b). This program ~~[must]~~ shall include, at a minimum:

- (1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;
 - (2) Records of inspections;
 - (3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and
 - (4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.
- (b) Cover material requirements.
- (1) Except as provided in paragraph (2), the owners or operators of all MSWLF units ~~[must]~~ shall cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

- (2) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the director if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.
- (3) The director may grant a temporary waiver from the requirement of paragraphs (1) and (2) if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting the requirements impractical.
- (4) The director may establish alternative frequencies for cover requirements in paragraphs (1) and (2), after public review and comment, for any MSWLF that disposes of twenty tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:
 - (A) Consider the unique characteristics of small communities;
 - (B) Take into account climatic and hydrogeologic conditions; and
 - (C) Be protective of human health and the environment.

(c) Disease vector control. Owners or operators of all MSWLF units ~~[must]~~ shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

- (d) Explosive gases control.
- (1) Owners or operators of all MSWLF units ~~[must]~~ shall ensure that:
 - (A) The concentration of methane gas generated by the facility does not exceed twenty-five per cent of the lower explosive limit for methane in facility structures (excluding gas

- control or recovery system components);
and
- (B) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.
- (2) Owners or operators of all MSWLF units ~~[must]~~ shall implement a routine methane monitoring program to ensure that the standards of paragraph (1) are met.
 - (A) The type and frequency of monitoring ~~[must]~~ shall be determined based on the following factors:
 - (i) Soil conditions;
 - (ii) The hydrogeologic conditions surrounding the facility;
 - (iii) The hydraulic conditions surrounding the facility; and
 - (iv) The location of facility structures and property boundaries.
 - (B) The minimum frequency of monitoring shall be quarterly.
- (3) If methane gas levels exceeding the limits specified in paragraph (1) are detected, the owner or operator ~~[must:]~~ shall:
 - (A) Immediately take all necessary steps to ensure protection of human health and notify the director;
 - (B) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and
 - (C) Within sixty days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

- (D) The director may establish alternative schedules for demonstrating compliance with subparagraphs (B) and (C).
- (4) The director may establish alternative frequencies for the monitoring requirement of paragraph (2)(B), after public review and comment, for MSWLFs that dispose of twenty tons of municipal solid waste per day or less, based on an annual average. Any alternative monitoring frequencies established under this paragraph must:
 - (A) Consider the unique characteristics of small communities;
 - (B) Take into account climatic and hydrogeologic conditions; and
 - (C) Be protective of human health and the environment.
- (e) Air criteria.
 - (1) Owners or operators of all [~~MSWLFs must~~] MSWLF units shall ensure that the units do not violate any applicable requirements developed under the Hawaii State Implementation Plan (SIP) approved by the U.S. EPA Administrator pursuant to section 110 of the Clean Air Act, as amended.
 - (2) Open burning of solid waste, except for debris from emergency cleanup operations, is prohibited at all MSWLF units. Open burning means the combustion of solid waste without:
 - (A) Control of combustion air to maintain adequate temperature for efficient combustion;
 - (B) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
 - (C) Control of the emission of the combustion products.
- (f) Access requirements. Owners or operators of all MSWLF units [~~must~~] shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers,

natural barriers, or both, as appropriate to protect human health and the environment.

(g) Run-on ~~[or]~~ and run-off control systems.

(1) Owners or operators of all MSWLF units ~~[must]~~ shall design, construct, and maintain:

(A) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a ~~[twenty-five-year]~~ twenty-five year storm; and

(B) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a ~~[twenty-four-hour, twenty-five-year]~~ twenty-four hour, twenty-five year storm.

(2) Run-off from the active portion of the landfill unit ~~[must]~~ shall be handled in accordance with subsection (h) (1).

(h) Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under sections 208 or 319 of the Clean Water Act, as amended.

(i) Landfill units shall not accept the following items:

(1) Scrap automobiles;

(2) White goods; and

(3) Whole motor vehicle tires.

~~[(i)]~~ (j) Liquids restrictions.

- (1) Bulk or noncontainerized liquid waste ~~[may]~~ shall not be placed in MSWLF units unless:
 - (A) The waste is household waste other than septic waste; or
 - (B) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF or lateral expansion, is designed with a composite liner and leachate collection system as described in section ~~[11-58.1-14(b)(2)].~~ 11-58.1-154(b)(2). The owner or operator ~~[must]~~ shall place ~~[the]~~ a demonstration that the conditions of section 11-58.1-154(b)(2) have been met in the operating record and notify the director that it has been placed in the operating record.
 - (2) Containers holding liquid waste ~~[may]~~ shall not be placed in a MSWLF unit ~~[unless:]~~ except:
 - (A) ~~[The container is a small container]~~ Small containers similar in size to that normally found in household waste;
 - (B) ~~[The container is]~~ Containers designed to hold liquids for use other than storage;
 - (C) ~~[The waste is household]~~ Household waste; or
 - (D) ~~[The oil filters are drained for at least twenty-four hours or crushed and are not a regulated hazardous waste.]~~ Oil filters from which the used oil has been properly drained to the extent possible such that no visible signs of free-flowing oil remain in or on the material.
- ~~[(j)]~~ (k) Recordkeeping requirements.
- (1) The owner or operator of a MSWLF unit ~~[must]~~ shall record and retain near the facility in an operating record or in an alternative location approved by the director the

following information as it becomes available:

- (A) Any location restriction demonstration required under section [~~11-58.1-13;~~ 11-58.1-153;
 - (B) Inspection records, training procedures, and notification procedures required in subsection (a);
 - (C) Gas monitoring results from monitoring and any remediation plans required by subsection (d);
 - (D) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under subsection [~~(i) (1) (B);~~ (j) (1) (B);
 - (E) Any demonstration, certification, finding, monitoring, testing, or analytical data required by section [~~11-58.1-16;~~ 11-58.1-156;
 - (F) Closure and post-closure [~~care~~] plans and any monitoring, testing, or analytical data as required by section [~~11-58.1-17(a) and (b);~~ 11-58.1-157(a) and (b);
 - (G) Any cost estimates and financial assurance documentation required by [~~section 11-58.1-18 ; and~~ sections 11-58.1-158 to 11-58.1-162;
 - (H) Any information demonstrating compliance with the small community exemption as required by section [~~11-58.1-11(f) (3);~~ 11-58.1-151(e) (2);
 - (I) Any major deviation from the operations plan (fires and explosions); and
 - (J) Daily operating records. Daily records shall include:
 - (i) The weight or volume, source, and type of solid waste being disposed.
 - (ii) Additional information, as requested by the department.
- (2) The owner or operator [~~must~~] shall notify

the director when the documents from paragraph (1) have been placed or added to the operating record, except daily operating records required by paragraph (1)(J), and all information contained in the operating record ~~[must]~~ shall be furnished upon request to the director or be made available at all reasonable times for inspection by the director.

- (3) The director can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) and (2), except for the notification requirements in sections ~~[11-58.1-13(a)(2) and 11-58.1-16(e)(7)(A)(iii).]~~ 11-58.1-153(a)(2) and 11-58.1-156(e)(7)(A)(iii).

~~[(k)]~~ (1) Public health, safety, and welfare. The director ~~[shall]~~ may require an owner or operator to fulfill any other requirements that the director believes necessary to protect the public health, safety, and welfare. [Eff 1/13/94; §11-58.1-15; am, ren §11-58.1-155, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-55, 342H-56, 342J-4, 342J-31, 342J-52) (Imp: HRS §§342G-13, 342G-14, 342G-30, 342H-3, 342H-30, 342H-52, 342J-30)

~~[\$11-58.1-16]~~ §11-58.1-156 Municipal solid waste landfills - ~~[ground water]~~ groundwater protection.

- (a) Applicability.
- (1) The requirements in ~~[sections 11-58.1-11 through 11-58.1-18]~~ this section apply to all MSWLF units, except as provided in paragraph (2).
- (2) ~~[Ground water]~~ Groundwater monitoring requirements under subsections (b) ~~[through]~~ to (e) may be suspended by the director for a MSWLF unit if the owner or operator can demonstrate that there is no potential for

migration of hazardous constituents from that MSWLF unit to the uppermost aquifer [~~as defined in section 11-58.1-03~~] during the active life of the unit and the post-closure care period. This demonstration [~~must~~] shall be certified by a qualified [~~ground-water~~] groundwater scientist and approved by the director, and [~~must~~] shall be based upon:

- (A) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and
 - (B) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.
- (3) Owners and operators of MSWLF units [~~must~~] shall comply with the [~~ground-water~~] groundwater monitoring requirements of [~~sections 11-58.1-11 through 11-58.1-18~~] this section according to the following schedule unless an alternative schedule is specified under paragraph (4):
- (A) Existing MSWLF units and lateral expansions less than one mile from a drinking water intake (surface or subsurface) [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) by October 9, 1994;
 - (B) Existing MSWLF units and lateral expansions greater than one mile but less than two miles from a drinking water intake (surface or subsurface) [~~must~~] shall be in compliance with the [~~ground-water~~] groundwater monitoring requirements specified in subsections (b) [~~through~~] to (e) by October 9, 1995;

- (C) Existing MSWLF units and lateral expansions greater than two miles from a drinking water intake (surface or subsurface) ~~[must]~~ shall be in compliance with the ~~[ground-water]~~ groundwater monitoring requirements specified in subsections (b) ~~[through]~~ to (e) by October 9, 1996;
 - (D) New MSWLF units ~~[must]~~ shall be in compliance with the ~~[ground-water]~~ groundwater monitoring requirements specified in subsections (b) ~~[through]~~ to (e) before waste can be placed in the unit.
- (4) The director may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with the ~~[ground-water]~~ groundwater monitoring requirements specified in subsections (b) ~~[through]~~ to (e). This schedule ~~[must]~~ shall ensure that fifty per cent of all existing MSWLF units are in compliance by October 9, 1994 and that all existing MSWLF units are in compliance by October 9, 1996. In setting the compliance schedule, the director ~~[must]~~ shall consider potential risks posed by the unit to human health and the environment. The following factors ~~[should]~~ shall be considered in determining potential risk:
- (A) Proximity of human and environmental receptors;
 - (B) Design of the MSWLF unit;
 - (C) Age of the MSWLF unit;
 - (D) ~~[The size]~~ Size of the MSWLF unit;
 - (E) Types and quantities of wastes disposed including sewage sludge; and
 - (F) Resource value of the underlying aquifer, including:
 - (i) Current and future uses;
 - (ii) Proximity and withdrawal rate of users; and

- (iii) [~~Ground-water~~] Groundwater quality and quantity.
- (5) Once established at a MSWLF unit, [~~ground-water~~] groundwater monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in section [~~11-58.1-17(b).~~] 11-58.1-157(b).
- (6) The director may establish alternative schedules for demonstrating compliance with [~~subsection~~]:
 - (A) Subsection (b) (4) (B), pertaining to notification of placement of certification in operating record; [~~subsection~~]
 - (B) Subsection (d) (3) (A), pertaining to notification that statistically significant increase (SSI) notice is in operating record; [~~subsection~~]
 - (C) Subsection (d) (3) (B) and (C), pertaining to an assessment monitoring program; [~~subsection~~]
 - (D) Subsection (e) (2), pertaining to sampling and analyzing Appendix II constituents; [~~subsection~~]
 - (E) Subsection (e) (4) (A), pertaining to placement of notice (Appendix II constituents detected) in record and notification of notice in record; [~~subsection~~]
 - (F) Subsection (e) (4) (B), pertaining to sampling for Appendix I and II; [~~subsection~~]
 - (G) Subsection (e) (7), pertaining to notification (and placement of notice in record) of SSI above [~~ground-water~~] groundwater protection standard; [~~subsections~~]
 - (H) Subsections (e) (7) (A) (iv) and (f) (1), pertaining to assessment of corrective measures; [~~subsection~~]
 - (I) Subsection (g) (1), pertaining to

- selection of remedy and notification of placement in record; [~~subsection~~]
- (J) Subsection (h) (3) (D), pertaining to notification of placement in record (alternative corrective action measures); and [~~subsection~~]
- (K) Subsection (h) (6), pertaining to notification of placement in record (certification of remedy completed).
- (b) [~~Ground-water~~] Groundwater monitoring systems.
- (1) A [~~ground-water~~] groundwater monitoring system [~~must~~] shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield [~~ground-water~~] groundwater samples from the uppermost aquifer [~~(as defined in section 11-58.1-03)~~] that:
- (A) Represent the quality of background [~~ground-water~~] groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:
- (i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or
- (ii) Sampling at other wells will provide an indication of background [~~ground-water~~] groundwater quality that is as representative as or more representative than that provided by the upgradient wells; and
- (B) Represent the quality of [~~ground-water~~] groundwater passing the relevant point of compliance specified by the director under section [~~11-58.1-14(e)~~]. 11-58.1-154(e). The downgradient monitoring system [~~must~~] shall be

installed at the relevant point of compliance specified by the director under section ~~[11-58.1-14(e)]~~ 11-58.1-154(e) that ensures detection of ~~[ground-water]~~ groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of ~~[ground-water]~~ groundwater monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system ~~[may]~~ shall be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the director under section ~~[11-58.1-14]~~ 11-58.1-154 that ensures detection of ~~[ground-water]~~ groundwater contamination in the uppermost aquifer.

- (2) The director may approve a multi-unit ~~[ground-water]~~ groundwater monitoring system instead of separate ~~[ground-water]~~ groundwater monitoring systems for each MSWLF unit when the facility has several units, if the multi-unit ~~[ground-water]~~ groundwater monitoring system meets the requirement of paragraph (1) and will be as protective of human health and the environment as individual monitoring systems for each MSWLF unit, based on the following factors:
 - (A) Number, spacing, and orientation of the MSWLF units;
 - (B) Hydrogeologic setting;
 - (C) Site history;
 - (D) Engineering design of the MSWLF units~~[7]~~; and
 - (E) Type of waste accepted at the MSWLF units.
- (3) Monitoring wells ~~[must]~~ shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing

~~[must]~~ shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of representative ~~[ground-water]~~ groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth ~~[must]~~ shall be sealed to prevent contamination of samples and the ~~[ground-water.]~~ groundwater.

- (A) The owner or operator ~~[must]~~ shall notify the director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and
 - (B) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices ~~[must]~~ shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.
- (4) The number, spacing, and depths of monitoring systems shall be:
- (A) Determined based upon site-specific technical information that ~~[must]~~ shall include thorough characterization of:
 - (i) Aquifer thickness, ~~[ground-water]~~ groundwater flow rate, ~~[ground-water]~~ groundwater flow direction including seasonal and temporal fluctuations in ~~[ground-water]~~ groundwater flow; and
 - (ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer;

- including, but not limited to:
thicknesses, stratigraphy,
lithology, hydraulic
conductivities, porosities, and
effective porosities.
- (B) Certified by a qualified [~~ground-water~~]
groundwater scientist or approved by
the director. Within fourteen days of
this certification, the owner or
operator [~~must~~] shall notify the
director that the certification has
been placed in the operating record.
- (c) [~~Ground-water~~] Groundwater sampling and
analysis requirements.
- (1) The [~~ground-water~~] groundwater monitoring
program [~~must~~] shall include consistent
sampling and analysis procedures that are
designed to ensure monitoring results that
provide an accurate representation of
[~~ground-water~~] groundwater quality at the
background and downgradient wells installed
in compliance with subsection (b)(1). The
owner or operator [~~must~~] shall notify the
director that the sampling and analysis
program documentation has been placed in the
operating record and the program [~~must~~]
shall include procedures and techniques for:
- (A) Sample collection;
(B) Sample preservation and shipment;
(C) Analytical procedures;
(D) Chain of custody control; and
(E) Quality assurance and quality control.
- (2) The [~~ground-water~~] groundwater monitoring
program [~~must~~] shall include sampling and
analytical methods that are appropriate for
[~~ground-water~~] groundwater sampling and that
accurately measure hazardous constituents
and other monitoring parameters in [~~ground-~~
~~water~~] groundwater samples. [~~Ground-water~~]
Groundwater samples shall not be field-
filtered before laboratory analysis.
- (3) The sampling procedures and frequency [~~must~~]

- shall be protective of human health and the environment.
- (4) [~~Ground-water~~] Groundwater elevations [~~must~~] shall be measured in each well immediately before purging, each time [~~ground-water~~] groundwater is sampled. The owner or operator [~~must~~] shall determine the rate and direction of [~~ground-water~~] groundwater flow each time [~~ground-water~~] groundwater is sampled. [~~Ground-water~~] Groundwater elevations in wells which monitor the same waste management area [~~must~~] shall be measured within a period of time short enough to avoid temporal variations in [~~ground-water~~] groundwater flow which could preclude accurate determination of [~~ground-water~~] groundwater flow rate and direction.
 - (5) The owner or operator [~~must~~] shall establish background [~~ground-water~~] groundwater quality in a hydraulically upgradient or background [~~well(s)~~] well for each of the monitoring parameters or constituents required in the particular [~~ground-water~~] groundwater monitoring program that applies to the MSWLF unit, as determined under subsections (d) (1) or (e) (1). Background [~~ground-water~~] groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of subsection (b) (1) (A) .
 - (6) The number of samples collected to establish [~~ground-water~~] groundwater quality data [~~must~~] shall be consistent with the appropriate statistical procedures determined pursuant to paragraph (7). The sampling procedures shall be those specified under subsection (d) (2) for detection monitoring, subsections (e) (2) and (e) (4) for assessment monitoring, and subsection (f) (2) for corrective action.
 - (7) The owner or operator [~~must~~] shall specify

in the operating record one of the following statistical methods to be used in evaluating [~~ground-water~~] groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

- (A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method [~~must~~] shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
- (B) An ANOVA based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method [~~must~~] shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
- (C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
- (D) A control chart approach that gives control limits for each constituent.
- (E) Another statistical test method that meets the performance standards of paragraph (8). The owner or operator [~~must~~] shall place a justification for this alternative in the operating record and notify the director of the use of this alternative test. The justification [~~must~~] shall demonstrate

- that the alternative method meets the performance standards of paragraph (8).
- (8) Any statistical method chosen under paragraph (7) shall comply with the following performance standards, as appropriate:
- (A) The statistical method used to evaluate ~~[ground-water]~~ groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data ~~[should]~~ shall be transformed or a distribution-free theory test ~~[should]~~ shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.
 - (B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ~~[ground-water]~~ groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I ~~[experiment-wise]~~ experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons ~~[must]~~ shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
 - (C) If a control chart approach is used to evaluate ~~[ground-water]~~ groundwater

monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

- (D) If a tolerance interval or a predictional interval is used to evaluate [~~ground-water~~] groundwater monitoring data, the levels of confidence and, for tolerance intervals, the per cent of the population that the interval [~~must~~] shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

- (9) The owner or operator [~~must~~] shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular [~~ground-water~~] groundwater monitoring program that applies to the MSWLF unit, as determined under subsections (d) (1) or (e) (1).
 - (A) In determining whether a statistically significant increase has occurred, the owner or operator [~~must~~] shall compare the [~~ground-water~~] groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subsection (b) (1) (B) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (7) and (8).
 - (B) Within a reasonable period of time after completing sampling and analysis, the owner or operator [~~must~~] shall determine whether there has been a statistically significant increase over background at each monitoring well.
- (d) Detection monitoring program.
- (1) Detection monitoring is required at MSWLF units at all [~~ground-water~~] groundwater monitoring wells defined under [~~subsections~~] subsection (b) (1) (A) and (B). At a minimum, a detection monitoring program [~~must~~] shall include monitoring for the constituents listed in Appendix I.
 - (A) The director may delete any of the Appendix I monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.
 - (B) The director may establish an alternative list of inorganic indicator parameters for a MSWLF unit, in lieu of

some or all of the heavy metals (constituents 1 ~~[through]~~ to 15 of Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the ~~[ground water.]~~ groundwater. In determining alternative parameters, the director shall consider the following factors:

- (i) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;
 - (ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;
 - (iii) The detectability of indicator parameters, waste constituents, and reaction products in the ~~[ground water,]~~ groundwater; and
 - (iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the ~~[ground water]~~ groundwater background.
- (2) The monitoring frequency for all constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) ~~[must]~~ shall be collected and analyzed for Appendix I ~~[which is incorporated by reference]~~, or the alternative list approved in accordance with paragraph (1)(B), during the first semiannual sampling event. At least one sample from each well (background and downgradient) ~~[must]~~ shall be collected and

analyzed during subsequent semi-annual sampling events. The director may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents, or the alternative list approved in accordance with paragraph (1)(B), during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

- (A) Lithology of the aquifer and unsaturated zone;
 - (B) Hydraulic conductivity of the aquifer and unsaturated zone;
 - (C) [~~Ground-water~~] Groundwater flow rates;
 - (D) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and
 - (E) Resource value of the aquifer.
- (3) If the owner or operator determines, pursuant to subsection (c)(7), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), at any monitoring well at the boundary specified under subsection (b)(1)(B), the owner or operator:
- (A) [~~Must~~] Shall, within twenty-four hours of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the director that this notice was placed in the operating record; and
 - (B) [~~Must~~] Shall establish an assessment monitoring program meeting the

requirements of subsection (e) within ninety days except as provided for in subparagraph (C).

- (C) The owner or operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ~~[ground-water]~~ groundwater quality. A report documenting this demonstration ~~[must]~~ shall be certified by a qualified ~~[ground-water]~~ groundwater scientist or approved by the director and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this ~~[section.]~~ subsection. If, after ninety days, a successful demonstration is not made, the owner or operator ~~[must]~~ shall initiate an assessment monitoring program as required in subsection (e).
- (e) Assessment monitoring~~[-]~~ program.
- (1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subsection (d) (1) (B).
- (2) Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator ~~[must]~~ shall sample and analyze the ~~[ground-water]~~ groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well ~~[must]~~ shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the

- complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) ~~[must]~~ shall be collected and analyzed to establish background for the constituents. The director may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The director may delete any of the Appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.
- (3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph (2), during the active life (including closure) and post-closure care of the unit considering the following factors:
- (A) Lithology of the aquifer and unsaturated zone;
 - (B) Hydraulic conductivity of the aquifer and unsaturated zone;
 - (C) ~~[Ground water]~~ Groundwater flow rates;
 - (D) Minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screen (minimum distance of travel);
 - (E) Resource value of the aquifer; and
 - (F) Nature (fate and transport) of any constituents detected in response to this section.
- (4) After obtaining the results from the initial or subsequent sampling events required in paragraph (2), the owner or operator ~~[must:]~~ shall:
- (A) Within twenty-four hours, place a notice in the operating record identifying the Appendix II constituents that have been detected

- and notify the director that this notice has been placed in the operating record;
- (B) Within ninety days, and on at least a semiannual basis thereafter, resample all wells specified by subsection (b)(1), conduct analyses for all constituents in Appendix I, or in the alternative list approved in accordance with subsection (d)(1)(B), and for those constituents in Appendix II that are detected in response to paragraph (2), and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) ~~[must]~~ shall be collected and analyzed during these sampling events. The director may specify an alternative monitoring frequency during the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for Appendix I constituents, or the alternative list approved in accordance with subsection (d)(1)(B), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (3);
 - (C) Establish background concentrations for any constituents detected pursuant to paragraph (2) or (4)(B); and
 - (D) Establish ~~[ground-water]~~ groundwater protection standards for all constituents detected pursuant to paragraph (2) or (4). The ~~[ground water]~~ groundwater protection standards shall be established in accordance with paragraph (8) or (9).
- (5) If the concentrations of all Appendix II

constituents are shown to be at or below background values, using the statistical procedures in subsection (c)(7), for two consecutive sampling events, the owner or operator [~~must~~] shall notify the director of this finding and may return to detection monitoring.

- (6) If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the [~~ground water~~] groundwater protection standard established under paragraph (8) or (9), using the statistical procedures in subsection (c)(7), the owner or operator [~~must~~] shall continue assessment monitoring in accordance with this section.
- (7) If one or more Appendix II constituents are detected at statistically significant levels above the [~~ground water~~] groundwater protection standard established under paragraph (8) or (9) in any sampling event, the owner or operator [~~must,~~] shall, within fourteen days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the [~~ground water~~] groundwater protection standard and notify the director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:
 - (A) (i) [~~Must~~] Shall characterize the nature and extent of the release by installing additional monitoring wells as necessary;
 - (ii) [~~Must~~] Shall install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (4)(B);
 - (iii) [~~Must~~] Shall notify all persons

- who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with paragraph (7) (A); and
- (iv) ~~[Must]~~ Shall initiate an assessment of corrective measures as required by subsection (f) within ninety days; or
- (B) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in ~~[ground-water]~~ groundwater quality. A report documenting this demonstration ~~[must]~~ shall be certified by a qualified ~~[ground-water]~~ groundwater scientist or approved by the director and placed in the operating record. If a successful demonstration is made, the owner or operator ~~[must]~~ shall continue monitoring in accordance with the assessment monitoring program pursuant to this subsection, and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph (5). Until a successful demonstration is made, the owner or operator ~~[must]~~ shall comply with paragraph (7) including initiating an assessment of corrective measures.
- (8) The owner or operator ~~[must]~~ shall establish a ~~[ground-water]~~ groundwater protection standard for each Appendix II constituent detected in the ~~[ground-water.]~~ groundwater. The ~~[ground-water]~~ groundwater protection standard shall be:
- (A) For constituents for which a maximum

- contaminant level (MCL) has been
[~~promulgated under section 1412 of the~~
~~Safe Drinking Water Act (codified)~~
~~under~~] set in title 40 [CFR] Code of
Federal Regulations part 141[7] or
chapter 11-20, the lower MCL for that
constituent;
- (B) For constituents for which MCLs have
not been promulgated, the background
concentration for the constituent
established from wells in accordance
with subsection (b) (1) (A); or
 - (C) For constituents for which the
background level is higher than the MCL
identified under subparagraph (A) or
health-based levels identified under
paragraph [~~(9) (A)~~] (9), the background
concentration.
- (9) The director may establish an alternative
[~~ground water~~] groundwater protection
standard for constituents for which MCLs
have not been established. These [~~ground~~
~~water~~] groundwater protection standards
shall be appropriate health-based levels
that satisfy the following criteria:
- (A) The level is derived in a manner
consistent with U.S. Environmental
Protection Agency (EPA) guidelines for
assessing the health risks of
environmental pollutants (51 Fed. Reg.
33992, 34006, 34014, 34028, September
24, 1986);
 - (B) The level is based on scientifically
valid studies conducted in accordance
with the Toxic Substances Control Act
Good Laboratory Practice Standards [~~40~~
~~CFR~~] (title 40 Code of Federal
Regulations part 792) or equivalent;
 - (C) For carcinogens, the level represents a
concentration associated with an excess
lifetime cancer risk level (due to
continuous lifetime exposure) [~~with~~]

- within the 1×10^{-4} to 1×10^{-6} range;
and
- (D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed ~~[to]~~ on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this section, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.
- (10) In establishing ~~[ground-water]~~ groundwater protection standards under paragraph (9), the director may consider the following:
- (A) Multiple contaminants in the ~~[ground water,]~~ groundwater;
 - (B) Exposure threats to sensitive environmental receptors; and
 - (C) Other site-specific exposure or potential exposure to ~~[ground-water.]~~ groundwater.
- (f) Assessment of corrective measures.
- (1) Within ninety days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the ~~[ground-water]~~ groundwater protection standards defined under subsection (e)(8) or (e)(9), the owner or operator ~~[must]~~ shall initiate an assessment of corrective measures. The assessment ~~[must]~~ shall be completed within a reasonable period of time.
- (2) The owner or operator ~~[must]~~ shall continue to monitor in accordance with the assessment monitoring program as specified in subsection (e).
- (3) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection (g), addressing at least

the following:

- (A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
 - (B) The time required to begin and complete the remedy;
 - (C) The costs of remedy implementation; and
 - (D) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the ~~[remedy(s)]~~ remedy.
- (4) The owner or operator ~~[must]~~ shall discuss the results of the corrective measures assessment, before the selection of remedy, in a public meeting with interested and affected parties.
- (g) Selection of remedy.
- (1) Based on the results of the corrective measures assessment conducted under subsection (f), the owner or operator ~~[must]~~ shall select a remedy that, at a minimum, meets the standards listed in paragraph (2). The owner or operator ~~[must]~~ shall notify the director, within fourteen days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (2).
- (2) Remedies ~~[must]~~ shall:
- (A) Be protective of human health and the environment;
 - (B) Attain the ~~[ground-water]~~ groundwater protection standard as specified pursuant to subsection (e)(8) or (9);
 - (C) Control the ~~[source(s)]~~ source of releases so as to reduce or eliminate, to the maximum extent practicable,

- further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (D) Comply with standards for management of wastes as specified in subsection (h) (4).
- (3) In selecting a remedy that meets the standards of paragraph (2), the owner or operator shall consider the following evaluation factors:
 - (A) The long- and short-term effectiveness and protectiveness of the potential ~~[remedy(s)]~~, remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:
 - (i) Magnitude of reduction of existing risks;
 - (ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
 - (iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;
 - (iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
 - (v) Time until full protection is achieved;
 - (vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the

- potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
- (vii) Long-term reliability of the engineering and institutional controls; and
- (viii) Potential need for replacement of the remedy.
- (B) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:
 - (i) The extent to which containment practices will reduce further releases;
 - (ii) The extent to which treatment technologies may be used.
- (C) The ease or difficulty of implementing a potential [~~remedy(s)~~] remedy based on consideration of the following types of factors:
 - (i) Degree of difficulty associated with constructing the technology;
 - (ii) Expected operational reliability of the technology;
 - (iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;
 - (iv) Availability of necessary equipment and specialists; and
 - (v) Available capacity and location of needed treatment, storage, and disposal services.
- (D) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.
- (E) The degree to which community concerns are addressed by a potential [~~remedy(s)~~] remedy.
- (4) The owner or operator shall specify as part of the selected remedy a [~~schedule(s)~~]

schedule for initiating and completing remedial activities. Such a schedule [~~must~~] shall require the initiation of remedial activities within a reasonable period of time taking into consideration the [~~factors set forth in subparagraphs (A) through (H).~~]. ~~The owner or operator must consider the~~ following factors [~~in determining the schedule of remedial activities~~]:

- (A) Extent and nature of contamination;
- (B) Practical capabilities of remedial technologies in achieving compliance with [~~ground water~~] groundwater protection standards established under subsection (e)(7) or (8) and other objectives of the remedy;
- (C) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (D) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (E) Potential risks to human health and the environment from exposure to contamination before completion of the remedy;
- (F) Resource value of the aquifer including:
 - (i) Current and future uses;
 - (ii) Proximity and withdrawal rate of users;
 - (iii) [~~Ground water~~] Groundwater quantity and quality;
 - (iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (v) The hydrogeologic characteristic

- of the facility and surrounding land;
- (vi) [~~Ground water~~] Groundwater removal and treatment costs; and
- (vii) The cost and availability of alternative water supplies;
- (G) Practicable capability of the owner or operator; and
- (H) Other relevant factors.
- (5) The director may determine that remediation of a release of an Appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the director that:
 - (A) The [~~ground water~~] groundwater is additionally contaminated by substances that have originated from a source other than a MSWLF unit and that those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or
 - (B) The [~~constituent(s)~~] constituent is present in [~~ground water~~] groundwater that:
 - (i) Is not currently or reasonably expected to be a source of drinking water; and
 - (ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a [~~concentration(s)~~] concentration that would exceed the [~~ground water~~] groundwater protection standards established under subsection (e) (8) or (9); or
 - (C) Remediation of the [~~release(s)~~] release is technically impracticable; or
 - (D) Remediation results in unacceptable

cross-media impacts.

- (6) A determination by the director pursuant to ~~[subsection (g)(5)]~~ paragraph (5) shall not affect the authority of the ~~[State]~~ director to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ~~[ground-water,]~~ groundwater, to prevent exposure to the ~~[ground-water,]~~ groundwater, or to remediate the ~~[ground-water]~~ groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.
- (h) Implementation of the corrective action program.
 - (1) Based on the schedule established under subsection (g)(4) for initiation and completion of remedial activities the owner or operator ~~[must:]~~ shall:
 - (A) Establish and implement a corrective action ~~[ground-water]~~ groundwater monitoring program that:
 - (i) At a minimum, meets the requirements of an assessment monitoring program under subsection (e);
 - (ii) Indicates the effectiveness of the corrective action remedy; and
 - (iii) Demonstrates compliance with ~~[ground-water]~~ groundwater protection standard pursuant to paragraph (5);
 - (B) Implement the corrective action remedy selected under subsection (g); and
 - (C) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures ~~[should,]~~ shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be

required pursuant to subsection (g). The following factors [~~must~~] shall be considered by an owner or operator in determining whether interim measures are necessary:

- (i) Time required to develop and implement a final remedy;
 - (ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
 - (iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
 - (iv) Further degradation of the [~~ground water~~] groundwater that may occur if remedial action is not initiated expeditiously;
 - (v) Weather conditions that may cause hazardous constituents to migrate or be released;
 - (vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
 - (vii) Other situations that may pose threats to human health and the environment.
- (2) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of subsection (g) (2) are not being achieved through the remedy selected. In these cases, the owner or operator [~~must~~] shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph (3).
- (3) If the owner or operator determines that

compliance with requirements under subsection (g) (2) cannot be practically achieved with any currently available methods, the owner or operator ~~[must:]~~ shall:

- (A) Obtain certification of a qualified ~~[ground-water]~~ groundwater scientist or approval by the director that compliance with the requirements under subsection (g) (2) cannot be practically achieved with any currently available methods;
 - (B) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and
 - (C) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:
 - (i) Technically practicable; and
 - (ii) Consistent with the overall objective of the remedy.
 - (D) Notify the director ~~[within]~~ at least fourteen days before implementing alternative measures that a report justifying the alternative measures ~~[before implementing the alternative measures]~~ has been placed in the operating record.
- (4) All solid wastes that are managed pursuant to a remedy required under subsection (g), or an interim measure required under paragraph (1) (C), shall be managed in a manner:
- (A) That is protective of human health and the environment; and
 - (B) That complies with applicable RCRA requirements.
- (5) Remedies selected pursuant to subsection (g)

shall be considered complete when:

- (A) The owner or operator complies with the ~~[ground-water]~~ groundwater protection standards established under subsection (e)(8) or (9) at all points within the plume of contamination that lie beyond the ~~[ground-water]~~ groundwater monitoring well system established under subsection (b)(1) ~~[-]~~ ;
- (B) Compliance with the ~~[ground-water]~~ groundwater protection standards established under subsection (e)(8) or (9) has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the ~~[ground-water]~~ groundwater protection ~~[standard(s)]~~ standard for a period of three consecutive years using the statistical procedures and performance standards in subsection (c)(7) and ~~[(e)(8)-]~~ (8). The director may specify an alternative length of time during which the owner or operator ~~[must]~~ shall demonstrate that concentrations of Appendix II constituents have not exceeded the ~~[ground-water]~~ groundwater protection ~~[standard(s)]~~ standard taking into consideration:
 - (i) Extent and concentration of the ~~[release(s)-]~~ release;
 - (ii) Behavior characteristics of the hazardous constituents in the ~~[ground-water-]~~ groundwater;
 - (iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and
 - (iv) Characteristics of the ~~[ground water-]~~ groundwater; and
- (C) All actions required to complete the remedy have been satisfied.

- (6) Upon completion of the remedy, the owner or operator ~~[must]~~ shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of paragraph (5) has been placed in the operating record. The certification ~~[must]~~ shall be signed by the owner or operator and by a qualified ~~[ground-water]~~ groundwater scientist or approved by the director.
- (7) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (5), the owner or operator shall be released from the requirements for financial assurance for corrective action under section ~~[11-58.1-158(d)].~~ 11-58.1-158(d). [Eff 1/13/94; §11-58.1-16; am, ren §11-58.1-156, and comp
] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-53, 342H-54, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52)

~~[\$11-58.1-17]~~ §11-58.1-157 Municipal solid waste landfills – closure and post-closure care. (a)
Closure criteria.

- (1) Owners or operators of all MSWLF units ~~[must]~~ shall install a final cover system that is designed to minimize infiltration and erosion. The final cover system ~~[must be]~~ shall:
 - (A) Be comprised of an erosion layer underlain by an infiltration layer ~~[as follows:]~~ ;
 - ~~[(A)]~~ (B) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or

- a permeability no greater than 1×10^{-5} cm/sec, whichever is less~~[, and]~~;
- ~~[(B)]~~ (C) Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum eighteen inches of earthen material~~[, and]~~; and
- ~~[(C)]~~ (D) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum six inches of earthen material that is capable of sustaining native plant growth.
- (2) The director may approve an alternative final cover design that includes:
- (A) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraph ~~[(1)(A) and (1)(B)]~~ (1)(B) and (C); and
- (B) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph ~~[(1)(C)]~~ (1)(D).
- (3) The director may establish alternative requirements for the infiltration barrier in paragraph (2)(A), after public review and comment, for any MSWLF that disposes of twenty tons of municipal solid waste per day or less, based on an annual average. Any alternative requirements established under this paragraph must:
- (A) Consider the unique characteristics of small communities;
- (B) Take into account climatic and hydrogeologic conditions; and
- (C) Be protective of human health and the environment.
- ~~[(3)]~~ (4) The owner or operator ~~[must]~~ shall prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during ~~[its]~~ their active life in

accordance with the cover design requirements in paragraph (1) or (2), as applicable. The closure plan, at a minimum, ~~[must]~~ shall include the following information:

- (A) A description of the final cover, designed in accordance with paragraph (1) and the methods and procedures to be used to install the cover;
- (B) An estimate of the largest area of the MSWLF unit ever requiring a final cover as required under paragraph (1) at any time during the active life;
- (C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
- (D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.

~~[(4)]~~ (5) The owner or operator ~~[must]~~ shall notify the director that a closure plan has been prepared and placed in the operating record by October 9, 1993, or by the initial receipt of waste, whichever is later.

~~[(5)]~~ (6) ~~[Before]~~ No less than ninety days before beginning closure of each MSWLF unit as specified in paragraph ~~[(6)],~~ (7), an owner or operator ~~[must]~~ shall notify the director that a notice of intent to close the unit has been placed in the operating record.

~~[(6)]~~ (7) The owner or operator ~~[must]~~ shall begin closure activities of each MSWLF unit within thirty days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the

MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

- ~~[(7)]~~ (8) The owner or operator of all MSWLF units ~~[must]~~ shall complete closure activities of each MSWLF unit in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in paragraph ~~[(6)].~~ (7). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.
- ~~[(8)]~~ (9) Following closure of each MSWLF unit, the owner or operator ~~[must]~~ shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.
- ~~[(9)]~~ (10) (A) Following closure of all MSWLF units, the owner ~~[or operator must record a notation on the deed to]~~ shall:
- (i) Prepare an environmental covenant for the landfill facility property[, or some other instrument that is normally examined during title search, and] in accordance with chapter 508C, HRS, and submit it to the director for approval;
 - (ii) Following approval, fully execute the environmental covenant and record it with the bureau of

- conveyances in accordance with chapter 508C, HRS; and
 - (iii) Following recording, notify the director that the ~~[notation]~~ environmental covenant has been recorded with the bureau of conveyances and submit a copy ~~[has been placed in the operating record.]~~ to the director.
 - (B) The ~~[notation on the deed must]~~ environmental covenant shall in perpetuity notify any potential purchaser of the property that:
 - (i) The land has been used as a landfill facility; and
 - (ii) ~~[Its]~~ The land's use is restricted under subsection (b) (3) (C).
- ~~[-(10)-]~~ (11) The owner ~~[or operator]~~ may request permission from the director to ~~[remove]~~ terminate the ~~[notation from the deed]~~ environmental covenant if all wastes are removed from the facility.
- (b) Post-closure care requirements.
- (1) Following closure of each MSWLF unit, the owner or operator ~~[must]~~ shall conduct post-closure care. Post-closure care ~~[must]~~ shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:
 - (A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
 - (B) Maintaining and operating the leachate collection system in accordance with the requirements in section ~~[11-58.1-14,]~~ 11-58.1-154, if applicable. The director may allow the

- owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- (C) Monitoring the ~~[ground-water]~~ groundwater in accordance with the requirements of section ~~[11-58.1-16]~~ 11-58.1-156 and maintaining the ~~[ground-water]~~ groundwater monitoring system, if applicable; and
 - (D) Maintaining and operating the gas monitoring system in accordance with the requirements of section ~~[11-58.1-15(d)-.]~~ 11-58.1-155(d).
- (2) The length of the post-closure care period may be:
- (A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the director; or
 - (B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.
- (3) The owner or operator of all MSWLF units ~~[must]~~ shall prepare a written post-closure plan that includes, at a minimum, the following information:
- (A) A description of the monitoring and maintenance activities required in paragraph (1) for each MSWLF unit, and the frequency at which these activities will be performed;
 - (B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
 - (C) A description of the planned uses of the property during the post-closure

period. Post-closure use of the property shall not disturb the integrity of the final cover, [~~liner(s),~~] liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in [~~sections 11-58.1-11 through 11-58.1-18.~~] this subchapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

- (4) The owner or operator [~~must~~] shall notify the director that a post-closure plan has been prepared and placed in the operating record no later than [~~the effective date of this Subchapter, October 9, 1993,~~] January 13, 1994 or [~~by~~] the date of initial receipt of waste, whichever is later.
- (5) Following completion of the post-closure care period for each MSWLF unit, the owner or operator [~~must~~] shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record. [Eff 1/13/94; §11-58.1-17; am, ren §11-58.1-157, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

~~[\$11-58.1-18]~~ **\$11-58.1-158** **Municipal solid waste landfills – financial assurance.** (a) Applicability and effective date.

- (1) The requirements of this section apply to owners and operators of all MSWLF units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.
- (2) The requirements of this section are effective April 9, 1994.
- (b) Financial assurance for closure.
- (1) The owner or operator ~~[must]~~ shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under section ~~[11-58.1-17(a)]~~ 11-58.1-157(a) at any time during the active life in accordance with the closure plan. The owner or operator ~~[must]~~ shall notify the director that the estimate has been placed in the operating record.
 - (A) The cost estimate ~~[must]~~ shall equal the cost of closing the largest area of all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section ~~[11-58.1-17(a)(3)(B))]~~ 11-58.1-157(a)(4)(B)).
 - (B) During the active life of the MSWLF unit, the owner or operator ~~[must]~~ shall annually adjust the closure cost estimate for inflation.
 - (C) The owner or operator ~~[must]~~ shall increase the closure cost estimate and the amount of financial assurance required under paragraph (2) if changes to the closure plan or MSWLF unit

- conditions increase the maximum cost of closure at any time during the remaining active life.
- (D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator ~~[must]~~ shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each MSWLF unit ~~[must]~~ shall establish financial assurance for closure of the MSWLF unit in compliance with subsection (e). The owner or operator ~~[must]~~ shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section ~~[11-58.1-17(a)(8) and (a)(9).]~~ 11-58.1-157(a)(9) and (10).
- (c) Financial assurance for post-closure care.
- (1) The owner or operator ~~[must]~~ shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under section ~~[11-58.1-17(b).]~~ 11-58.1-157(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) ~~[must]~~ shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator ~~[must]~~ shall notify the director that the estimate has been placed in the operating record.

- (A) The cost estimate for post-closure care ~~[must]~~ shall be based on the most expensive costs of post-closure care during the post-closure care period.
 - (B) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator ~~[must]~~ shall annually adjust the post-closure cost estimate for inflation.
 - (C) The owner or operator ~~[must]~~ shall increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.
 - (D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator ~~[must]~~ shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each MSWLF unit ~~[must]~~ shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section ~~[11-58.1-17(b).]~~ 11-58.1-157(b). The owner or operator ~~[must]~~ shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with section ~~[11-58.1-17(b)(5).]~~ 11-58.1-157(b)(5).
- (d) Financial assurance for corrective action.
 - (1) An owner or operator of a MSWLF unit

required to undertake a corrective action program under section ~~[11-58.1-16(h) must]~~ 11-58.1-156(h) shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under section ~~[11-58.1-16(h)-.]~~ 11-58.1-156(h). The corrective action cost estimate ~~[must]~~ shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator ~~[must]~~ shall notify the director that the estimate has been placed in the operating record.

- (A) The owner or operator ~~[must]~~ shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section ~~[11-58.1-16(h)-(6)-.]~~ 11-58.1-156(h) (6).
- (B) The owner or operator ~~[must]~~ shall increase the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.
- (C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator ~~[must]~~ shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

- (2) The owner or operator of each MSWLF unit required to undertake a corrective action program under section ~~[11-58.1-16(h) must]~~ 11-58.1-156(h) shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator ~~[must]~~ shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with section ~~[11-58.1-16(h) (6) and (h) (7).]~~ 11-58.1-156(h) (6) and (7).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection ~~[must]~~ shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators ~~[must]~~ shall choose from the options specified in paragraphs (1) ~~[through]~~ to (10).

(1) Trust fund.

- (A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this paragraph. The trustee ~~[must]~~ shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement ~~[must]~~ shall be placed in the facility's operating record.
- (B) Payments into the trust fund ~~[must]~~ shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half

of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

- (C) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund ~~[must]~~ shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph ~~[(10),]~~ (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments ~~[must]~~ shall be determined by the following formula:
- $$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund ~~[must]~~ shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph ~~[(10),]~~ (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments ~~[must]~~ shall be determined by the following formula:
- $$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total

costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining ~~on~~ in the pay-in period.

- (E) The initial payment into the trust fund ~~[must]~~ shall be made before the initial receipt of waste or before ~~[the effective date of this section -] April 9, [1994),]~~ 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section ~~[11-58.1-16(h).]~~ 11-58.1-156(h).
- (F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund ~~[must]~~ shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.
- (G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator ~~[must]~~ shall notify the director that

documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

- (H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).
- (2) Surety bond guaranteeing payment or performance.
 - (A) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond ~~[must]~~ shall be effective before the initial receipt of waste or before ~~[the effective date of this section - (]~~ April 9, ~~[1994),]~~ 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section ~~[11-58.1-16(h).]~~ 11-58.1-156(h). The owner or operator ~~[must]~~ shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond ~~[must]~~ shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular

570 of the U.S. Department of the Treasury.

- (B) The penal sum of the bond [~~must~~] shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).
- (C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- (D) The owner or operator [~~must~~] shall establish a standby trust fund. The standby trust fund [~~must~~] shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1)(B) [~~through~~] to (E).
- (E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund [~~must~~] shall be approved by the trustee.
- (F) Under the terms of the bond, the surety may cancel the bond by sending notice of [~~cancellation~~] cancellation by certified mail to the owner and operator and to the director one hundred twenty days in advance of [~~cancellation.~~] cancellation. If the surety cancels the bond, the owner or operator [~~must~~] shall obtain alternate financial assurance as specified in this [~~section.~~] subsection.
- (G) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to

demonstrate financial responsibility in accordance with the requirements of subsection (b)(2), (c)(2), or (d)(2).

(3) Letter of credit.

- (A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit ~~[must]~~ shall be effective before the initial receipt of waste or before ~~[the effective date of this section -] April 9, [1994],~~ 1994, whichever is later, in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section ~~[11-58.1-16(h).]~~ 11-58.1-156(h). The owner or operator ~~[must]~~ shall notify the director that a copy of the letter of credit has been placed in the operating record. The issuing institution ~~[must]~~ shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name~~[7]~~ and address of the facility, and the amount of funds assured, ~~[must]~~ shall be included with the letter of credit in the operating record.
- (C) The letter of credit ~~[must]~~ shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for

closure, post-closure care, or corrective action, whichever applies, except as provided in paragraph ~~[(1)].~~ (11). The letter of credit ~~[must]~~ shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has ~~[cancelled]~~ canceled the letter of credit by sending notice of ~~[cancellation]~~ cancellation by certified mail to the owner and operator and to the director one hundred twenty days in advance of ~~[cancellation.]~~ cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator ~~[must]~~ shall obtain alternate financial assurance.

- (D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is ~~[released from the requirements of this subsection]~~ no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(4) Insurance.

- (A) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance ~~[must]~~ shall be effective before the initial receipt of waste or before ~~[the effective date of this section -]~~ April 9, ~~[1994),]~~ 1994, whichever is later. At a minimum, the insurer ~~[must]~~ shall be licensed to transact the business of insurance, or eligible to provide insurance as an

excess or surplus lines insurer, in one or more states. The owner or operator ~~[must]~~ shall notify the director that a copy of the insurance policy has been placed in the operating record.

- (B) The closure or post-closure care insurance policy ~~[must]~~ shall guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever applies. The policy ~~[must]~~ shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.
- (C) The insurance policy ~~[must]~~ shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph ~~[(1)-.]~~ (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- (D) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs

of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator [~~must~~] shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

- (E) Each policy [~~must~~] shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.
- (F) The insurance policy [~~must~~] shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy [~~must,~~] shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of [~~cancellation~~] cancellation by certified mail to the owner and operator and to the director one hundred twenty days in advance of [~~cancellation.~~] cancellation. If the insurer cancels the policy, the owner or operator [~~must~~] shall obtain alternate financial assurance as specified in this subsection.
- (G) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase [~~must~~] shall

be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.

- (H) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).
- (5) Corporate financial test. [Reserved]
- (6) Local government financial test.
~~[[Reserved]]~~ An owner or operator that satisfies the requirements of section 11-58.1-160(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-160(d).
- (7) Corporate guarantee. [Reserved]
- (8) Local government guarantee. ~~[[Reserved]]~~ An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-162. The guarantor shall meet the requirements of the local government financial test in section 11-58.1-160 and shall comply with the terms of the written guarantee specified in section 11-58.1-162. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-160(d).
- (9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other

- mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.
- (10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care ~~[and/or]~~, and corrective action requirements of sections ~~[11-58.1-11 through 11-58.1-18,]~~ 11-58.1-156 and 11-58.1-157, or assures that the funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the requirements of this subsection. Any state assumption of responsibility ~~[must]~~ shall meet the criteria specified in paragraph (12).
- (11) Use of multiple financial mechanisms. An owner or operator may ~~[satisfy the requirements of this subsection]~~ demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility[-], except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms ~~[must]~~ shall be as specified in paragraphs (1) ~~[through]~~ to (10), except that ~~[it is the combination of mechanisms, rather than the single mechanism, which must provide]~~ financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies~~[-. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.]~~, may be provided by a combination of mechanisms rather than a single mechanism.

- (12) The language of the mechanisms listed in paragraphs (1) ~~[through]~~ to (10) ~~[must]~~ shall ensure that the instruments satisfy the following criteria:
- (A) The financial assurance mechanisms ~~[must]~~ shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
 - (B) The financial assurance mechanisms ~~[must]~~ shall ensure that funds will be available in a timely fashion when needed;
 - (C) The financial assurance mechanisms ~~[must]~~ shall be obtained by the owner or operator by ~~[the effective date of this section]~~ April 9, 1994, or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section ~~[11-58.1-16(h),]~~ 11-58.1-156(h), until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).
 - (D) The financial assurance mechanisms ~~[must]~~ shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff 1/13/94; §11-58.1-18; am, ren §11-58.1-158, and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§11-58.1-159 (Reserved) .

**§11-58.1-160 Municipal solid waste landfills –
local government financial test specifications. (a)
Financial component.**

- (1) The owner or operator shall satisfy subparagraph (A) or (B) as applicable:
 - (A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or
 - (B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
 - (i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - (ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.
- (2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).
- (3) A local government is not eligible to assure its obligations under this section if it:
 - (A) Is currently in default on any outstanding general obligation bonds;
 - (B) Has any outstanding general obligation

- bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
- (C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or
- (D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (2).
- (4) The following terms used in this subsection are defined as follows:
 - (A) Deficit equals total annual revenues minus total annual expenditures;
 - (B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;
 - (C) Total expenditures include all expenditures excluding capital outlays and debt repayment;
 - (D) Cash plus marketable securities is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and
 - (E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.
- (b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial

receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-156(h). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(c) Recordkeeping and reporting requirements.

(1) The local government owner or operator shall place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

- (i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);
- (ii) Provides evidence and certifies that the local government meets the conditions of subsection (a) (1), (a) (2), and (a) (3); and
- (iii) Certifies that the local government meets the conditions of subsections (b) and (d).

(B) The local government's independently audited year-end financial statements for the latest fiscal year (except for

- local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;
- (C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and
- (D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.
- (2) The items required in paragraph (1) shall be placed in the facility operating record as follows:
- (A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or
- (B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-156(h).
- (3) After the initial placement of the items in the facility's operating record, the local

government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-158(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements section 11-58.1-158(b) (2), (c) (2), or (d) (2).

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-158, place the required submissions for that assurance in the operating record, and notify the director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the

local government shall provide alternate financial assurance in accordance with section 11-58.1-158(e).

(d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:

- (1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total annual revenue.
- (2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under title 40 Code of Federal Regulations part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The total that may be assured shall not exceed forty-three per cent of the local government's total annual revenue.
- (3) The owner or operator shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (1) and (2). [Eff and comp
] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§11-58.1-161 (Reserved) .

§11-58.1-162 Municipal solid waste landfills – local government guarantee specifications. (a) Terms of the written guarantee. The guarantee shall be effective before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-156(h). The guarantee shall provide that:

- (1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:
 - (A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or
 - (B) Establish a fully funded trust fund as specified in section 11-58.1-158(e) (1) in the name of the owner or operator.
- (2) The guarantee will remain in force unless the guarantor sends notice of cancelation by certified mail to the owner or operator and to the director. Cancelation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.
- (3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day

period, the guarantor shall provide that alternate assurance within one hundred twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.

(b) Recordkeeping and reporting.

(1) The owner or operator shall place a certified copy of the guarantee along with the items required under section 11-58.1-160(c) into the facility's operating record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-156(h).

(2) The owner or operator is no longer required to maintain the items specified in this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-158(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-158(b) (2), (c) (2), or (d) (2).

(3) If a local government guarantor no longer meets the requirements of section 11-58.1-160, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff

and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-53, 342H-55, 342H-56) (Imp: HRS §§342G-13,

342G-14, 342H-3, 342H-30, 342H-52, 342H-53)

§§11-58.1-163 to 11-58.1-170 (Reserved) .

SUBCHAPTER 5

CONSTRUCTION AND DEMOLITION LANDFILLS

§11-58.1-171 Construction and demolition landfills – applicability. (a) Sections 11-58.1-172 to 11-58.1-182 apply to new construction and demolition landfill units, except as otherwise specifically provided in this subchapter. Sections 11-58.1-177 to 11-58.1-183 apply to existing construction and demolition landfill units.

(b) Construction and demolition landfill units failing to satisfy any applicable requirement in this subchapter are considered open dumps, which are prohibited under section 4005 of RCRA and section 342H-30, HRS.

(c) The owner or operator of a construction and demolition landfill unit shall comply with any other applicable state and federal rules, laws, regulations, and other requirements. [Eff and comp]

(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-172 Construction and demolition landfills – permit requirements. (a) All construction and demolition landfills shall comply with section 11-58.1-104.

(b) Permit application requirements. In order to obtain a permit to construct and operate, the owner or

operator of a construction and demolition landfill unit shall submit the following:

- (1) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;
- (2) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste;
- (3) A plan for closure in accordance with section 11-58.1-177(a);
- (4) A plan for post-closure care in accordance with section 11-58.1-177(b); and
- (5) Any additional information requested by the director. [Eff and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-54) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30)

§11-58.1-173 Construction and demolition landfills - site analysis and siting restrictions.

(a) Floodplains. Owners or operators of construction and demolition landfill units located in one hundred-year floodplains shall demonstrate that the landfill unit will not restrict the flow of the one-hundred year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(b) Wetlands. Construction and demolition landfill units shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the director:

- (1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;
- (2) The construction and operation of the landfill unit will not:
 - (A) Cause or contribute to violations of any applicable state water quality standard;
 - (B) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;
 - (C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and
 - (D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972, for the protection of a marine sanctuary;
- (3) The landfill unit will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the landfill unit and its ability to protect ecological resources by addressing the following factors:
 - (A) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill unit;
 - (B) Erosion, stability, and migration potential of dredged and fill materials used to support the landfill unit;
 - (C) The volume and chemical nature of the waste managed in the landfill unit;
 - (D) Impacts on fish, wildlife, and other aquatic resources and their habitat

- from release of the solid waste;
 - (E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment;
 - and
 - (F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;
 - (4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands);
 - and
 - (5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.
- (c) Fault areas. Construction and demolition landfill units shall not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the landfill unit and will be protective of human health and the environment.
- (d) Seismic impact zone. Construction and demolition landfill units shall not be located in seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are

designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record.

(e) Unstable areas. Owners or operators of new construction and demolition landfill units located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill unit's design to ensure that the integrity of the structural components of the landfill unit will not be disrupted. The owner or operator shall place the demonstration in the operating record and notify the director that it has been placed in the operating record. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

- (1) On-site or local soil conditions that may result in significant differential settling;
- (2) On-site or local geologic or geomorphologic features; and
- (3) On-site or local artificial features or events (both surface and subsurface).

(f) Tidal wave (tsunami) zone. Construction and demolition landfill units shall not be located in possible tsunami inundation areas, except where owners or operators demonstrate that engineering measures have been incorporated into the landfill unit design to ensure that the structural components of the landfill unit will not be damaged or disrupted and seawater from the tsunami run-up does not infiltrate the landfill unit. Tsunami inundation areas are those areas delineated in a report entitled "Hawaii Tsunami Mapping Project: Data Sources, Procedures, and Products for Extreme Aleutian Events, Final Report, Prepared for Hawaii Emergency Management Agency" by Kwok Fai Cheung, PhD, PE, Department of Ocean and Resources Engineering, University of Hawaii at Manoa dated June 30, 2015.

(g) Consistency with local zoning ordinance. The owner or operator of a construction and demolition landfill shall comply with all applicable local zoning

ordinances and other applicable local ordinances.

[Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-174 Construction and demolition landfills - design criteria. (a) The design of new construction and demolition landfill units and lateral expansions shall be approved by the director before commencement of construction.

(b) The design shall either:

- (1) Ensure that the concentration values listed in Table 1 in title 40 Code of Federal Regulations section 258.40, published by the Office of the Federal Register, as amended as of July 1, 2024, or in sections 11-20-3 to 11-20-7, whichever is more stringent, will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the director under subsection (e); or
- (2) Include a composite liner as described in subsection (c) and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner.

(c) To meet the requirements of subsection (b) (2), a composite liner shall consist of two components:

- (1) An upper component that shall consist of a minimum 30-mil flexible membrane liner (FML) with a hydraulic conductivity of no more than 1×10^{-7} cm/sec and shall be installed in direct and uniform contact with the compacted soil component; provided that an FML component consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick; and
- (2) A lower component that shall consist of at least a two-foot layer of compacted soil

with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(d) When approving a design that complies with subsection (b)(1), the director shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The climatic factors of the area; and
- (3) The volume and physical and chemical characteristics of the leachate.

(e) The relevant point of compliance specified by the director shall be no more than one hundred fifty meters from the waste management unit boundary and shall be located on land owned by the owner of the construction and demolition landfill unit. In determining the relevant point of compliance, the director shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The volume and physical and chemical characteristics of the leachate;
- (3) The quantity, quality, and direction of flow of groundwater;
- (4) The proximity and withdrawal rate of the groundwater users;
- (5) The availability of alternative drinking water supplies;
- (6) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;
- (7) Public health, safety, and welfare effects; and
- (8) Practicable capability of the owner or operator. [Eff and comp]

(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-175 Construction and demolition landfills - operating criteria. (a) Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all construction and demolition landfill units shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with title 40 Code of Federal Regulations section 761.62(b). This program shall include, at a minimum:

- (1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;
- (2) Records of inspections;
- (3) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and
- (4) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.

(b) Cover material requirements. The application of interim cover at construction and demolition solid waste landfill units will be on a case-specific basis, as specified in the permit. It will consist of at least six inches of earthen material unless otherwise approved by the director.

(c) Disease vector control. Owners or operators of all construction and demolition landfill units shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(d) Access requirements. Owners or operators of all construction and demolition landfill units shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the

environment.

(e) Run-on and run-off control systems.

(1) Owners or operators of all construction and demolition landfill units shall design, construct, and maintain:

(A) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five year storm; and

(B) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm.

(2) Run-off from the active portion of the landfill unit shall be handled in accordance with subsection (f) (1).

(f) Surface water requirements. Construction and demolition landfill units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under sections 208 or 319 of the Clean Water Act, as amended.

(g) Landfill units shall not accept the following items:

(1) Electrical transformers with oil or polychlorinated biphenyls (PCBs);

(2) Pesticide containers;

(3) Scrap automobiles;

(4) White goods;

(5) Whole motor vehicle tires; and

(6) Industrial solid waste.

- (h) Liquids restrictions.
- (1) Bulk or noncontainerized liquid waste shall not be placed in construction and demolition landfill units unless the waste is leachate derived from the landfill unit and the landfill unit is designed with a composite liner and leachate collection system as described in section 11-58.1-174(b) (2). The owner or operator shall place a demonstration that the conditions of section 11-58.1-174(b) (2) have been met in the operating record and notify the director that it has been placed in the operating record.
- (2) Containers holding liquid waste shall not be placed in a construction and demolition landfill unit.
- (i) Landfill units may accept the following items:
 - (1) Friable asbestos containing material complying with chapter 11-501;
 - (2) Petroleum contaminated soils, if the soil complies with the landfill's permit conditions; and
 - (3) Hazardous waste generated by a very small quantity generator, as defined in title 40 Code of Federal Regulations section 260.10, as incorporated and amended in chapter 11-260.1.
- (j) Recordkeeping requirements.
- (1) The owner or operator of a construction and demolition landfill unit shall record and retain near the facility in an operating record or in an alternative location approved by the director the following information as it becomes available:
 - (A) Any location restriction demonstration required under section 11-58.1-173;
 - (B) Inspection records, training procedures, and notification procedures required in subsection (a);
 - (C) Any construction and demolition

- landfill unit design documentation for placement of leachate in a landfill unit as required under subsection (h) (1);
- (D) Any demonstration, certification, finding, monitoring, testing, or analytical data required by section 11-58.1-176;
- (E) Closure and post-closure plans and any monitoring, testing, or analytical data as required by section 11-58.1-177(a) and (b); and
- (F) Any cost estimates and financial assurance documentation required by sections 11-58.1-178 to 11-58.1-182.
- (2) The owner or operator shall notify the director when the documents from paragraph (1) have been placed or added to the operating record, and all information contained in the operating record shall be furnished upon request to the director or be made available at all reasonable times for inspection by the director.
- (3) The director can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) and (2), except for the notification requirements in section 11-58.1-176(e) (7) (A) (iii).
- (k) Public health, safety, and welfare. The director may require an owner or operator to fulfill any other requirements that the director believes necessary to protect the public health, safety, and welfare. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342J-30)

§11-58.1-176 Construction and demolition landfills - groundwater protection. (a)

Applicability.

- (1) The requirements in this section apply to all construction and demolition landfill units, except as provided in paragraph (2).
- (2) Groundwater monitoring requirements under subsections (b) to (e) may be suspended by the director for a construction and demolition landfill unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that construction and demolition landfill unit to the uppermost aquifer during the active life of the unit and the post-closure care period. This demonstration shall be certified by a qualified groundwater scientist and approved by the director, and shall be based upon:
 - (A) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and
 - (B) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.
- (3) A construction and demolition landfill unit shall be in compliance with the groundwater monitoring requirements specified in subsections (b) to (e) before waste can be placed in the unit.
- (4) Once established at a construction and demolition landfill unit, groundwater monitoring shall be conducted throughout the active life and post-closure care period of that unit as specified in section 11-58.1-177(b).
- (5) The director may establish alternative schedules for demonstrating compliance with:
 - (A) Subsection (b) (4) (B), pertaining to notification of placement of certification in operating record;

- (B) Subsection (d) (3) (A), pertaining to notification that statistically significant increase (SSI) notice is in operating record;
- (C) Subsection (d) (3) (B) and (C), pertaining to an assessment monitoring program;
- (D) Subsection (e) (2), pertaining to sampling and analyzing Appendix II constituents;
- (E) Subsection (e) (4) (A), pertaining to placement of notice (Appendix II constituents detected) in record and notification of notice in record;
- (F) Subsection (e) (4) (B), pertaining to sampling for Appendix I and II;
- (G) Subsection (e) (7), pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;
- (H) Subsections (e) (7) (A) (iv) and (f) (1), pertaining to assessment of corrective measures;
- (I) Subsection (g) (1), pertaining to selection of remedy and notification of placement in record;
- (J) Subsection (h) (3) (D), pertaining to notification of placement in record (alternative corrective action measures); and
- (K) Subsection (h) (6), pertaining to notification of placement in record (certification of remedy completed).
- (b) Groundwater monitoring systems.
- (1) A groundwater monitoring system shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:
 - (A) Represent the quality of background groundwater that has not been affected by leakage from a unit. A determination

of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

- (i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or
 - (ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that provided by the upgradient wells; and
- (B) Represent the quality of groundwater passing the relevant point of compliance specified by the director under section 11-58.1-174(e). The downgradient monitoring system shall be installed at the relevant point of compliance specified by the director under section 11-58.1-174(e) that ensures detection of groundwater contamination in the uppermost aquifer.
- (2) The director may approve a multi-unit groundwater monitoring system instead of separate groundwater monitoring systems for each construction and demolition landfill unit when the facility has several units, if the multi-unit groundwater monitoring system meets the requirement of paragraph (1) and will be as protective of human health and the environment as individual monitoring systems for each construction and demolition landfill unit, based on the following factors:
 - (A) Number, spacing, and orientation of the construction and demolition landfill units;
 - (B) Hydrogeologic setting;
 - (C) Site history;

- (D) Engineering design of the construction and demolition landfill units; and
 - (E) Type of waste accepted at the construction and demolition landfill units.
- (3) Monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of representative groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.
 - (A) The owner or operator shall notify the director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and
 - (B) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.
- (4) The number, spacing, and depths of monitoring systems shall be:
 - (A) Determined based upon site-specific technical information that shall include thorough characterization of:
 - (i) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and
 - (ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials

comprising the uppermost aquifer,
and materials comprising the
confining unit defining the lower
boundary of the uppermost aquifer;
including, but not limited to:
thicknesses, stratigraphy,
lithology, hydraulic
conductivities, porosities, and
effective porosities.

- (B) Certified by a qualified groundwater
scientist or approved by the director.
Within fourteen days of this
certification, the owner or operator
shall notify the director that the
certification has been placed in the
operating record.

(c) Groundwater sampling and analysis
requirements.

- (1) The groundwater monitoring program shall
include consistent sampling and analysis
procedures that are designed to ensure
monitoring results that provide an accurate
representation of groundwater quality at the
background and downgradient wells installed
in compliance with subsection (b)(1). The
owner or operator shall notify the director
that the sampling and analysis program
documentation has been placed in the
operating record and the program shall
include procedures and techniques for:
- (A) Sample collection;
(B) Sample preservation and shipment;
(C) Analytical procedures;
(D) Chain of custody control; and
(E) Quality assurance and quality control.
- (2) The groundwater monitoring program shall
include sampling and analytical methods that
are appropriate for groundwater sampling and
that accurately measure hazardous
constituents and other monitoring parameters
in groundwater samples.
- (3) The sampling procedures and frequency shall

be protective of human health and the environment.

- (4) Groundwater elevations shall be measured in each well immediately before purging, each time groundwater is sampled. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.
- (5) The owner or operator shall establish background groundwater quality in a hydraulically upgradient or background well for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the construction and demolition landfill unit, as determined under subsections (d) (1) or (e) (1). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the construction and demolition landfill unit if it meets the requirements of subsection (b) (1) (A) .
- (6) The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to paragraph (7). The sampling procedures shall be those specified under subsection (d) (2) for detection monitoring, subsections (e) (2) and (e) (4) for assessment monitoring, and subsection (f) (2) for corrective action.
- (7) The owner or operator shall specify in the operating record one of the following statistical methods to be used in evaluating groundwater monitoring data for each

hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

- (A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
 - (B) An ANOVA based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
 - (C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
 - (D) A control chart approach that gives control limits for each constituent.
 - (E) Another statistical test method that meets the performance standards of paragraph (8). The owner or operator shall place a justification for this alternative in the operating record and notify the director of the use of this alternative test. The justification shall demonstrate that the alternative method meets the performance standards of paragraph (8).
- (8) Any statistical method chosen under paragraph (7) shall comply with the following performance standards, as

appropriate:

- (A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.
- (B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
- (C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of

- the concentration values for each constituent of concern.
- (D) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the per cent of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.
- (9) The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the construction and demolition landfill unit, as determined under subsections (d)(1) or (e)(1).
- (A) In determining whether a statistically

significant increase has occurred, the owner or operator shall compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subsection (b) (1) (B) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (7) and (8).

(B) Within a reasonable period of time after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background at each monitoring well.

(d) Detection monitoring program.

(1) Detection monitoring is required at construction and demolition landfill units at all groundwater monitoring wells defined under subsection (b) (1) (A) and (B). At a minimum, a detection monitoring program shall include monitoring for the constituents listed in Appendix I.

(A) The director may delete any of the Appendix I monitoring parameters for a construction and demolition landfill unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(B) The director may establish an alternative list of inorganic indicator parameters for a construction and demolition landfill unit, in lieu of some or all of the heavy metals (constituents 1 to 15 of Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the construction and demolition landfill unit to the groundwater. In determining alternative

parameters, the director shall consider the following factors:

- (i) The types, quantities, and concentrations of constituents in wastes managed at the construction and demolition landfill unit;
- (ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the construction and demolition landfill unit;
- (iii) The detectability of indicator parameters, waste constituents, and reaction products in the groundwater; and
- (iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

- (2) The monitoring frequency for all constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1)(B), shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for Appendix I, or the alternative list approved in accordance with paragraph (1)(B), during the first semiannual sampling event. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semi-annual sampling events. The director may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix I constituents, or the alternative list approved in accordance with paragraph

(1) (B), during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

- (A) Lithology of the aquifer and unsaturated zone;
- (B) Hydraulic conductivity of the aquifer and unsaturated zone;
- (C) Groundwater flow rates;
- (D) Minimum distance between upgradient edge of the construction and demolition landfill unit and downgradient monitoring well screen (minimum distance of travel); and
- (E) Resource value of the aquifer.

(3) If the owner or operator determines, pursuant to subsection (c) (7), that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, or in the alternative list approved in accordance with paragraph (1) (B), at any monitoring well at the boundary specified under subsection (b) (1) (B), the owner or operator:

- (A) Shall, within twenty-four hours of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the director that this notice was placed in the operating record; and
- (B) Shall establish an assessment monitoring program meeting the requirements of subsection (e) within ninety days except as provided for in subparagraph (C).
- (C) The owner or operator may demonstrate that a source other than a construction

and demolition landfill unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be certified by a qualified groundwater scientist or approved by the director and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this subsection. If, after ninety days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required in subsection (e).

(e) Assessment monitoring program.

(1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subsection (d) (1) (B).

(2) Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator shall sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the constituents. The director may specify an appropriate subset of wells to be sampled and analyzed for

Appendix II constituents during assessment monitoring. The director may delete any of the Appendix II monitoring parameters for a construction and demolition landfill unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

- (3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph (2), during the active life (including closure) and post-closure care of the unit considering the following factors:

 - (A) Lithology of the aquifer and unsaturated zone;
 - (B) Hydraulic conductivity of the aquifer and unsaturated zone;
 - (C) Groundwater flow rates;
 - (D) Minimum distance between the upgradient edge of the construction and demolition landfill unit and the downgradient monitoring well screen (minimum distance of travel);
 - (E) Resource value of the aquifer; and
 - (F) Nature (fate and transport) of any constituents detected in response to this section.
- (4) After obtaining the results from the initial or subsequent sampling events required in paragraph (2), the owner or operator shall:

 - (A) Within twenty-four hours, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the director that this notice has been placed in the operating record;
 - (B) Within ninety days, and on at least a semiannual basis thereafter, resample all wells specified by subsection

- (b)(1), conduct analyses for all constituents in Appendix I, or in the alternative list approved in accordance with subsection (d)(1)(B), and for those constituents in Appendix II that are detected in response to paragraph (2), and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) shall be collected and analyzed during these sampling events. The director may specify an alternative monitoring frequency during the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for Appendix I constituents, or the alternative list approved in accordance with subsection (d)(1)(B), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (3);
- (C) Establish background concentrations for any constituents detected pursuant to paragraph (2) or (4)(B); and
- (D) Establish groundwater protection standards for all constituents detected pursuant to paragraph (2) or (4). The groundwater protection standards shall be established in accordance with paragraph (8) or (9).
- (5) If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in subsection (c)(7), for two consecutive sampling events, the owner or operator shall notify the director of this finding and may return to detection monitoring.

- (6) If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph (8) or (9), using the statistical procedures in subsection (c) (7), the owner or operator shall continue assessment monitoring in accordance with this section.
- (7) If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph (8) or (9) in any sampling event, the owner or operator shall, within fourteen days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

 - (A) (i) Shall characterize the nature and extent of the release by installing additional monitoring wells as necessary;
 - (ii) Shall install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (4) (B);
 - (iii) Shall notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with paragraph (7) (A); and
 - (iv) Shall initiate an assessment of

corrective measures as required by
subsection (f) within ninety days;

or

- (B) May demonstrate that a source other
than a construction and demolition
landfill unit caused the contamination,
or that the SSI resulted from error in
sampling, analysis, statistical
evaluation, or natural variation in
groundwater quality. A report
documenting this demonstration shall be
certified by a qualified groundwater
scientist or approved by the director
and placed in the operating record. If
a successful demonstration is made, the
owner or operator shall continue
monitoring in accordance with the
assessment monitoring program pursuant
to this subsection, and may return to
detection monitoring if the Appendix II
constituents are at or below background
as specified in paragraph (5). Until a
successful demonstration is made, the
owner or operator shall comply with
paragraph (7) including initiating an
assessment of corrective measures.
- (8) The owner or operator shall establish a
groundwater protection standard for each
Appendix II constituent detected in the
groundwater. The groundwater protection
standard shall be:

 - (A) For constituents for which the
department has established a standard
under paragraph (9), the standard
established by the department; or
 - (B) For constituents for which the
background level established from wells
in accordance with subsection (b) (1) (A)
is higher than the standard established
by the department under paragraph (9)
or for which the department has not
established a standard under paragraph

- (9), the background concentration.
- (9) The director may establish an alternative groundwater protection standard. These groundwater protection standards shall be appropriate health-based levels that satisfy the following criteria:
- (A) The level is derived in a manner consistent with U.S. Environmental Protection Agency (EPA) guidelines for assessing the health risks of environmental pollutants (51 Fed. Reg. 33992, 34006, 34014, 34028, September 24, 1986);
- (B) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (title 40 Code of Federal Regulations part 792) or equivalent;
- (C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-6} range; and
- (D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this section, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.
- (10) In establishing groundwater protection standards under paragraph (9), the director may consider the following:
- (A) Multiple contaminants in the groundwater;
- (B) Exposure threats to sensitive environmental receptors; and
- (C) Other site-specific exposure or

- potential exposure to groundwater.
- (f) Assessment of corrective measures.
 - (1) Within ninety days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under subsection (e)(8) or (e)(9), the owner or operator shall initiate an assessment of corrective measures. The assessment shall be completed within a reasonable period of time.
 - (2) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in subsection (e).
 - (3) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection (g), addressing at least the following:
 - (A) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
 - (B) The time required to begin and complete the remedy;
 - (C) The costs of remedy implementation; and
 - (D) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy.
 - (4) The owner or operator shall discuss the results of the corrective measures assessment, before the selection of remedy, in a public meeting with interested and affected parties.
 - (g) Selection of remedy.
 - (1) Based on the results of the corrective

measures assessment conducted under subsection (f), the owner or operator shall select a remedy that, at a minimum, meets the standards listed in paragraph (2). The owner or operator shall notify the director, within fourteen days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (2).

(2) Remedies shall:

- (A) Be protective of human health and the environment;
- (B) Attain the groundwater protection standard as specified pursuant to subsection (e) (8) or (9);
- (C) Control the source of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (D) Comply with standards for management of wastes as specified in subsection (h) (4) .

(3) In selecting a remedy that meets the standards of paragraph (2), the owner or operator shall consider the following evaluation factors:

- (A) The long- and short-term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:
 - (i) Magnitude of reduction of existing risks;
 - (ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
 - (iii) The type and degree of long-term

- management required, including monitoring, operation, and maintenance;
 - (iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
 - (v) Time until full protection is achieved;
 - (vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
 - (vii) Long-term reliability of the engineering and institutional controls; and
 - (viii) Potential need for replacement of the remedy.
- (B) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:
 - (i) The extent to which containment practices will reduce further releases;
 - (ii) The extent to which treatment technologies may be used.
- (C) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:
 - (i) Degree of difficulty associated with constructing the technology;
 - (ii) Expected operational reliability

- of the technology;
 - (iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;
 - (iv) Availability of necessary equipment and specialists; and
 - (v) Available capacity and location of needed treatment, storage, and disposal services.
 - (D) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.
 - (E) The degree to which community concerns are addressed by a potential remedy.
- (4) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the:
 - (A) Extent and nature of contamination;
 - (B) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under subsection (e) (7) or (8) and other objectives of the remedy;
 - (C) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
 - (D) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
 - (E) Potential risks to human health and the environment from exposure to contamination before completion of the remedy;
 - (F) Resource value of the aquifer

including:

- (i) Current and future uses;
 - (ii) Proximity and withdrawal rate of users;
 - (iii) Groundwater quantity and quality;
 - (iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (v) The hydrogeologic characteristic of the facility and surrounding land;
 - (vi) Groundwater removal and treatment costs; and
 - (vii) The cost and availability of alternative water supplies;
 - (G) Practicable capability of the owner or operator; and
 - (H) Other relevant factors.
- (5) The director may determine that remediation of a release of an Appendix II constituent from a construction and demolition landfill unit is not necessary if the owner or operator demonstrates to the satisfaction of the director that:
- (A) The groundwater is additionally contaminated by substances that have originated from a source other than a construction and demolition landfill unit and that those substances are present in concentrations such that cleanup of the release from the construction and demolition landfill unit would provide no significant reduction in risk to actual or potential receptors; or
 - (B) The constituent is present in groundwater that:
 - (i) Is not currently or reasonably expected to be a source of drinking water; and
 - (ii) Is not hydraulically connected

- with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration that would exceed the groundwater protection standards established under subsection (e) (8) or (9); or
 - (C) Remediation of the release is technically impracticable; or
 - (D) Remediation results in unacceptable cross-media impacts.
- (6) A determination by the director pursuant to paragraph (5) shall not affect the authority of the director to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.
- (h) Implementation of the corrective action program.
 - (1) Based on the schedule established under subsection (g) (4) for initiation and completion of remedial activities the owner or operator shall:
 - (A) Establish and implement a corrective action groundwater monitoring program that:
 - (i) At a minimum, meets the requirements of an assessment monitoring program under subsection (e);
 - (ii) Indicates the effectiveness of the corrective action remedy; and
 - (iii) Demonstrates compliance with groundwater protection standard pursuant to paragraph (5);
 - (B) Implement the corrective action remedy

- selected under subsection (g); and
 - (C) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subsection (g). The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:
 - (i) Time required to develop and implement a final remedy;
 - (ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
 - (iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
 - (iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
 - (v) Weather conditions that may cause hazardous constituents to migrate or be released;
 - (vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
 - (vii) Other situations that may pose threats to human health and the environment.
- (2) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of subsection (g) (2) are not

being achieved through the remedy selected.
In these cases, the owner or operator shall
implement other methods or techniques that
could practicably achieve compliance with
the requirements, unless the owner or
operator makes the determination under
paragraph (3).

- (3) If the owner or operator determines that
compliance with requirements under
subsection (g) (2) cannot be practically
achieved with any currently available
methods, the owner or operator shall:

 - (A) Obtain certification of a qualified
groundwater scientist or approval by
the director that compliance with the
requirements under subsection (g) (2)
cannot be practically achieved with any
currently available methods;
 - (B) Implement alternate measures to control
exposure of humans or the environment
to residual contamination, as necessary
to protect human health and the
environment; and
 - (C) Implement alternate measures for
control of the sources of
contamination, or for removal or
decontamination of equipment, units,
devices, or structures that are:

 - (i) Technically practicable; and
 - (ii) Consistent with the overall
objective of the remedy.
 - (D) Notify the director at least fourteen
days before implementing alternative
measures that a report justifying the
alternative measures has been placed in
the operating record.
- (4) All solid wastes that are managed pursuant
to a remedy required under subsection (g),
or an interim measure required under
paragraph (1) (C), shall be managed in a
manner:

 - (A) That is protective of human health and

- the environment; and
 - (B) That complies with applicable RCRA requirements.
- (5) Remedies selected pursuant to subsection (g) shall be considered complete when:
 - (A) The owner or operator complies with the groundwater protection standards established under subsection (e) (8) or (9) at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subsection (b) (1);
 - (B) Compliance with the groundwater protection standards established under subsection (e) (8) or (9) has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard for a period of three consecutive years using the statistical procedures and performance standards in subsection (c) (7) and (8). The director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard taking into consideration:
 - (i) Extent and concentration of the release;
 - (ii) Behavior characteristics of the hazardous constituents in the groundwater;
 - (iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and
 - (iv) Characteristics of the groundwater; and
 - (C) All actions required to complete the

remedy have been satisfied.

- (6) Upon completion of the remedy, the owner or operator shall notify the director within fourteen days that a certification that the remedy has been completed in compliance with the requirements of paragraph (5) has been placed in the operating record. The certification shall be signed by the owner or operator and by a qualified groundwater scientist or approved by the director.
- (7) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (5), the owner or operator shall be released from the requirements for financial assurance for corrective action under section 11-58.1-178(d). [Eff and comp
] (Auth: HRS §§321-11,
342G-13, 342H-3, 342H-31, 342H-32, 342H-54)
(Imp: HRS §§342G-13, 342G-14, 342H-3,
342H-30)

**§11-58.1-177 Construction and demolition
landfills – closure and post-closure care. (a)
Closure criteria.**

- (1) Owners or operators of all construction and demolition landfill units shall install a final cover system that is designed to minimize infiltration and erosion. The final cover system shall:
 - (A) Be comprised of an erosion layer underlain by an infiltration layer;
 - (B) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;
 - (C) Minimize infiltration through the closed construction and demolition

- landfill by the use of an infiltration layer that contains a minimum eighteen inches of earthen material; and
 - (D) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum six inches of earthen material that is capable of sustaining native plant growth.
- (2) The director may approve an alternative final cover design that includes:
 - (A) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraph (1)(B) and (C); and
 - (B) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (1)(D).
- (3) The owner or operator shall prepare a written closure plan that describes the steps necessary to close all construction and demolition landfill units at any point during their active life in accordance with the cover design requirements in paragraph (1) or (2), as applicable. The closure plan, at a minimum, shall include the following information:
 - (A) A description of the final cover, designed in accordance with paragraph (1) and the methods and procedures to be used to install the cover;
 - (B) An estimate of the largest area of the construction and demolition landfill unit ever requiring a final cover as required under paragraph (1) at any time during the active life;
 - (C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
 - (D) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection.

- (4) The owner or operator of an existing construction and demolition landfill unit shall notify the director that a closure plan has been prepared and placed in the operating record no later than six months after the effective date of these rules or ninety days before beginning closure, whichever is earlier.
- (5) No less than ninety days before beginning closure of each construction and demolition landfill unit as specified in paragraph (6), an owner or operator shall notify the director that a notice of intent to close the unit has been placed in the operating record.
- (6) The owner or operator shall begin closure activities of each construction and demolition landfill unit within thirty days after the date on which the unit receives the known final receipt of wastes or, if the construction and demolition landfill unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, within one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the construction and demolition landfill unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed construction and demolition landfill unit.
- (7) The owner or operator of all construction and demolition landfill units shall complete closure activities of each construction and demolition landfill unit in accordance with the closure plan within one hundred eighty days following the beginning of closure as

specified in paragraph (6). Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed construction and demolition landfill unit.

(8) Following closure of each construction and demolition landfill unit, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(9) (A) Following closure of all construction and demolition landfill units, the owner shall:

- (i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director for approval;
- (ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and
- (iii) Following recording, notify the director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.

(B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:

- (i) The land has been used as a landfill facility; and

- (ii) The land's use is restricted under subsection (b) (3) (C).
- (10) The owner may request permission from the director to terminate the environmental covenant if all wastes are removed from the facility.
- (b) Post-closure care requirements.
- (1) Following closure of each construction and demolition landfill unit, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for thirty years, except as provided under paragraph (2), and consist of at least the following:
 - (A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
 - (B) Maintaining and operating the leachate collection system in accordance with the requirements in section 11-58.1-174, if applicable. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment; and
 - (C) Monitoring the groundwater in accordance with the requirements of section 11-58.1-176 and maintaining the groundwater monitoring system, if applicable.
- (2) The length of the post-closure care period may be:
 - (A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and

- this demonstration is approved by the director; or
- (B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.
- (3) The owner or operator of all construction and demolition landfill units shall prepare a written post-closure plan that includes, at a minimum, the following information:
- (A) A description of the monitoring and maintenance activities required in paragraph (1) for each construction and demolition landfill unit, and the frequency at which these activities will be performed;
- (B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and
- (C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this subchapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.
- (4) The owner or operator of an existing construction and demolition landfill unit shall notify the director that a post-closure plan has been prepared and placed in the operating record no later than six

months after the effective date of these rules or ninety days before beginning closure, whichever is earlier.

- (5) Following completion of the post-closure care period for each construction and demolition landfill unit, the owner or operator shall notify the director that a certification, signed by an independent registered professional engineer or approved by the director, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record. [Eff and comp
] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-178 Construction and demolition

landfills – financial assurance. (a) Applicability.
The requirements of this section apply to owners and operators of all construction and demolition landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Financial assurance for closure.

- (1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all construction and demolition landfill units ever requiring a final cover as required under section 11-58.1-177(a) at any time during the active life in accordance with the closure plan. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate shall equal the cost of closing the largest area of all construction and demolition landfill

- units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see section 11-58.1-177(a)(3)(B)).
- (B) During the active life of the construction and demolition landfill unit, the owner or operator shall annually adjust the closure cost estimate for inflation.
- (C) The owner or operator shall increase the closure cost estimate and the amount of financial assurance required under paragraph (2) if changes to the closure plan or construction and demolition landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.
- (D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the construction and demolition landfill unit. The owner or operator shall notify the director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.
- (2) The owner or operator of each construction and demolition landfill unit shall establish financial assurance for closure of the construction and demolition landfill unit in compliance with subsection (e). The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with section 11-58.1-177(a)(8)

and (9).

(c) Financial assurance for post-closure care.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the construction and demolition landfill unit in compliance with the post-closure plan developed under section 11-58.1-177(b). The post-closure cost estimate used to demonstrate financial assurance in paragraph (2) shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

(A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the construction and demolition landfill unit and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(C) The owner or operator shall increase the post-closure care cost estimate and the amount of financial assurance required under paragraph (2) if changes in the post-closure plan or construction and demolition landfill unit conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum costs of post-closure care remaining over the

post-closure care period. The owner or operator shall notify the director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

- (2) The owner or operator of each construction and demolition landfill unit shall establish, in a manner in accordance with subsection (e), financial assurance for the costs of post-closure care as required under section 11-58.1-177(b). The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with section 11-58.1-177(b) (5) .
- (d) Financial assurance for corrective action.
- (1) An owner or operator of a construction and demolition landfill unit required to undertake a corrective action program under section 11-58.1-176(h) shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under section 11-58.1-176(h). The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the director that the estimate has been placed in the operating record.

 - (A) The owner or operator shall annually adjust the estimate for inflation until the corrective action program is completed in accordance with section 11-58.1-176(h) (6) .
 - (B) The owner or operator shall increase the corrective action cost estimate and the amount of financial assurance

required under paragraph (2) if changes in the corrective action program or construction and demolition landfill unit conditions increase the maximum costs of corrective action.

(C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance required under paragraph (2) if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(2) The owner or operator of each construction and demolition landfill unit required to undertake a corrective action program under section 11-58.1-176(h) shall establish, in a manner in accordance with subsection (e), financial assurance for the most recent corrective action program. The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with section 11-58.1-176(h) (6) and (7).

(e) Allowable mechanisms. The mechanisms used to demonstrate financial assurance under this subsection shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators shall choose from the options specified in paragraphs (1) to (10).

(1) Trust fund.

(A) An owner or operator may satisfy the requirements of this subsection by establishing a trust fund which conforms to the requirements of this

paragraph. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement shall be placed in the facility's operating record.

(B) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the construction and demolition landfill unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(C) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (11), divided by the number of years in the pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:
Next Payment = $\frac{CE-CV}{Y}$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(D) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the

trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (11), divided by the number of years in the corrective action pay-in period as defined in subparagraph (B). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (E) The initial payment into the trust fund shall be made before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h).
- (F) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this subsection, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.
- (G) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these

expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(H) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(2) Surety bond guaranteeing payment or performance.

(A) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h).

The owner or operator shall notify the director that a copy of the bond has been placed in the operating record. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

- (B) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever applies, except as provided in paragraph (11).
- (C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- (D) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of paragraph (1) except the requirements for initial payment and subsequent annual payments specified in paragraph (1) (B) to (E).
- (E) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.
- (F) Under the terms of the bond, the surety may cancel the bond by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this subsection.
- (G) The owner or operator may cancel the bond only if alternate financial

assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(3) Letter of credit.

(A) An owner or operator may satisfy the requirements of this subsection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit shall be effective before the initial receipt of waste in the case of closure and post-closure care, or within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). The owner or operator shall notify the director that a copy of the letter of credit has been placed in the operating record. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility, and the amount of funds assured, shall be included with the letter of credit in the operating record.

(C) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or

corrective action, whichever applies, except as provided in paragraph (11). The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance.

(D) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).

(4) Insurance.

(A) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance shall be effective before the initial receipt of waste. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator shall notify the director that a copy of the insurance policy has been placed in the operating record.

(B) The closure or post-closure care insurance policy shall guarantee that funds will be available to close the

construction and demolition landfill unit whenever final closure occurs or to provide post-closure care for the construction and demolition landfill unit whenever the post-closure care period begins, whichever applies. The policy shall also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(C) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever applies, except as provided in paragraph (11). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(D) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever applies. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator shall notify the director that the documentation of the justification for reimbursement has been placed in the operating record and

- that reimbursement has been received.
- (E) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditional upon consent of the insurer, if the consent is not unreasonably refused.
- (F) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancelation by certified mail to the owner and operator and to the director one hundred twenty days in advance of cancelation. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this subsection.
- (G) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. The increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty-five per cent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for twenty-six week Treasury securities.
- (H) The owner or operator may cancel the insurance policy only if alternate

- financial assurance is substituted as specified in this subsection or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (b) (2), (c) (2), or (d) (2).
- (5) Corporate financial test. (Reserved.)
 - (6) Local government financial test. An owner or operator that satisfies the requirements of section 11-58.1-180(a) to (c) may demonstrate financial assurance up to the amount specified in section 11-58.1-180(d).
 - (7) Corporate guarantee. (Reserved.)
 - (8) Local government guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d), by obtaining a written guarantee provided by a local government as specified in section 11-58.1-182. The guarantor shall meet the requirements of the local government financial test in section 11-58.1-180 and shall comply with the terms of the written guarantee specified in section 11-58.1-182. The guarantee may demonstrate financial assurance up to the amount specified in section 11-58.1-180(d).
 - (9) State-approved mechanism. An owner or operator may satisfy the requirements of this subsection by obtaining any other mechanism that meets the criteria specified in paragraph (12), and that is approved by the director.
 - (10) State assumption of responsibility. If the director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and corrective action requirements of sections 11-58.1-176 and 11-58.1-177, or assures that the funds will be available from state sources to cover the requirements, the owner or operator will be in compliance with the

- requirements of this subsection. Any state assumption of responsibility shall meet the criteria specified in paragraph (12).
- (11) Use of multiple financial mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by subsections (b), (c), and (d) by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments. The mechanisms shall be as specified in paragraphs (1) to (10), except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever applies, may be provided by a combination of mechanisms rather than a single mechanism.
- (12) The language of the mechanisms listed in paragraphs (1) to (10) shall ensure that the instruments satisfy the following criteria:
- (A) The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
 - (B) The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed;
 - (C) The financial assurance mechanisms shall be obtained by the owner or operator prior to the initial receipt of solid waste in the case of closure and post-closure care and within one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h),

until the owner or operator is released from the financial assurance requirements under subsections (b), (c), and (d).

- (D) The financial assurance mechanisms shall be legally valid, binding, and enforceable under Hawaii and federal law. [Eff and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-179 (Reserved) .

§11-58.1-180 Construction and demolition landfills – local government financial test specifications. (a) Financial component.

- (1) The owner or operator shall satisfy subparagraph (A) or (B) as applicable:
- (A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds;
or
- (B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
- (i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
(ii) A ratio of annual debt service to

- total expenditures less than or
equal to 0.20.
- (2) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).
 - (3) A local government is not eligible to assure its obligations under this section if it:
 - (A) Is currently in default on any outstanding general obligation bonds;
 - (B) Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
 - (C) Operated at a deficit equal to five per cent or more of total annual revenue in each of the past two fiscal years; or
 - (D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (2).
 - (4) The following terms used in this subsection are defined as follows:
 - (A) Deficit equals total annual revenues minus total annual expenditures;
 - (B) Total revenues include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;
 - (C) Total expenditures include all expenditures excluding capital outlays and debt repayment;
 - (D) Cash plus marketable securities is all the cash plus marketable securities

held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(E) Debt service is the amount of principal and interest due on a loan in a given time period, typically the current year.

(b) Public notice component. The local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) prior to the initial receipt of waste at the facility. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(c) Recordkeeping and reporting requirements.

(1) The local government owner or operator shall place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

- (i) Lists all the current cost estimates covered by a financial test, as described in subsection (d);
 - (ii) Provides evidence and certifies that the local government meets the conditions of subsection (a)(1), (a)(2), and (a)(3); and
 - (iii) Certifies that the local government meets the conditions of subsections (b) and (d).
- (B) The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;
- (C) A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). The CPA or State agency's report shall state the procedures performed and the CPA or State agency's findings; and
- (D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) or certification that the requirements of General Accounting Standards Board Statement 18

- have been met.
- (2) The items required in paragraph (1) shall be placed in the facility operating record as follows:

 - (A) In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or
 - (B) In the case of corrective action, not later than one hundred twenty days after the corrective action remedy is selected in accordance with the requirements of section 11-58.1-176(h).
 - (3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
 - (4) The local government owner or operator is no longer required to meet the requirements of this subsection when:

 - (A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-178(e); or
 - (B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements section 11-58.1-178(b) (2), (c) (2), or (d) (2).
 - (5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within two hundred ten days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of section 11-58.1-178, place the required submissions for that assurance in the operating record, and notify the

director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

- (6) The director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with section 11-58.1-178(e).

(d) Calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this section is determined as follows:

- (1) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to forty-three per cent of the local government's total annual revenue.
- (2) If the local government assures other environmental obligations through a financial test, including those associated with petroleum underground storage tank facilities under chapter 11-280.1, PCB storage facilities under title 40 Code of Federal Regulations part 761, facilities managing hazardous secondary materials under chapter 11-261.1, and hazardous waste treatment, storage, and disposal facilities under chapters 11-264.1 and 11-265.1, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this section. The

total that may be assured shall not exceed
forty-three per cent of the local
government's total annual revenue.

- (3) The owner or operator shall obtain an
alternate financial assurance instrument for
those costs that exceed the limits set in
paragraphs (1) and (2). [Eff and comp
] (Auth: HRS §§321-11,
342G-13, 342H-3, 342H-31) (Imp: HRS
§§342G-13, 342G-14, 342H-3, 342H-30)

§11-58.1-181 (Reserved) .

**§11-58.1-182 Construction and demolition
landfills – local government guarantee specifications.**

(a) Terms of the written guarantee. The guarantee
shall be effective before the initial receipt of waste
in the case of closure or post-closure care, or no
later than one hundred twenty days after the
corrective action remedy has been selected in
accordance with the requirements of section
11-58.1-176(h). The guarantee shall provide that:

- (1) If the owner or operator fails to perform
closure, post-closure care, or corrective
action of a facility covered by the
guarantee, the guarantor will:
- (A) Perform, or pay a third party to
perform, closure, post-closure care, or
corrective action as required; or
- (B) Establish a fully funded trust fund as
specified in section 11-58.1-178(e) (1)
in the name of the owner or operator.
- (2) The guarantee will remain in force unless
the guarantor sends notice of cancelation by
certified mail to the owner or operator and
to the director. Cancelation may not occur,
however, during the one hundred twenty days
beginning on the date of receipt of the

notice of cancelation by both the owner or operator and the director, as evidenced by the return receipts.

- (3) If a guarantee is canceled, the owner or operator shall, within ninety days following receipt of the cancelation notice by the owner or operator and the director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the director. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor shall provide that alternate assurance within one hundred twenty days following the guarantor's notice of cancelation, place evidence of the alternate assurance in the facility operating record, and notify the director.

- (b) Recordkeeping and reporting.

- (1) The owner or operator shall place a certified copy of the guarantee along with the items required under section 11-58.1-180(c) into the facility's operating record before the initial receipt of waste in the case of closure or post-closure care, or no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of section 11-58.1-176(h).

- (2) The owner or operator is no longer required to maintain the items specified in this subsection when:

(A) The owner or operator substitutes alternate financial assurance as specified in section 11-58.1-178(e); or

(B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of section 11-58.1-178(b) (2), (c) (2), or (d) (2).

- (3) If a local government guarantor no longer

meets the requirements of section 11-58.1-180, the owner or operator shall, within ninety days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the director. If the owner or operator fails to obtain alternate financial assurance within that ninety-day period, the guarantor shall provide that alternate assurance within the next thirty days. [Eff and comp] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

[§11-58.1-19 Construction] §11-58.1-183

Existing construction and demolition [solid waste landfill.] landfills. (a) Applicability. This section is applicable to [the landfilling of all] existing construction and demolition [solid wastes. ~~The landfill shall be designed, constructed, and operated to properly dispose of construction and demolition wastes. "Construction and demolition waste" is solid waste resulting from the construction, repair, demolition, or razing of buildings, of roads, and other structures. It includes the land clearing debris from the clearing of land for construction. Construction and demolition wastes typically consist of concrete, hollow tile, bituminous concrete, asphaltic pavement, wood, glass, masonry, roofing, siding, plaster, alone or in combinations. Land clearing debris typically consist of dirt, rock, stumps, boulders, brush, and other similar material. Demolition and construction waste does not include cleanup materials contaminated with hazardous wastes, asbestos, waste paints, solvents, sealers, adhesives, or similar materials.] landfill units.~~

(b) Permit ~~[requirements. (1)]~~ requirement. All construction and demolition ~~[solid waste landfills]~~ landfill units ~~[require a permit and must]~~ shall comply with ~~[sections 11-58.1-4 and 11-58.1-12(a),~~

~~unless exempted.]~~ section 11-58.1-104.

(c) Permit application. ~~[-(2)]~~ The application shall ~~[contain an engineering report and an operation plan.]~~ include:

- (1) Engineering report. The engineering report shall include a leachate management plan, site description, utilization, solid waste characteristics and volume, user population, and a controlled access to the landfill~~[-]~~;
 - (2) [In addition to the requirements in section 11-58.1-12(a), the operation plan shall include methods to control insects, birds, rodents, other disease vectors, nuisance conditions, drainage, and develop an emergency fire plan.] Operation plan;
 - (3) Evidence that the landfill unit meets or will meet all applicable requirements of this subchapter and an explanation of how each requirement is or will be met;
 - (4) For a landfill unit accepting green waste, a plan to require source separation of green waste entering the facility that details methods for diversion of seventy-five per cent of all uncontaminated commercially generated green waste and fifty per cent of all uncontaminated household green waste;
 - (5) Closure plan in accordance with section 11-58.1-177(a);
 - (6) Post-closure plan in accordance with section 11-58.1-177(b); and
 - (7) Any additional information requested by the director.
- ~~[-(e)]~~ (d) [Design requirements.] Siting restrictions.
- (1) Landfills shall not be located in areas susceptible to flooding, in wetlands, close to potable water supplies, near fault areas, or any other unstable locations.
 - (2) (Reserved.)
- (e) Design requirements.
- (1) The landfill unit shall be designed, constructed, and operated to properly dispose of construction and demolition

- wastes.
- (2) The permeability of the underlying soil liner will be dependent on the hydrogeological condition of the area. It ~~[will]~~ shall consist of a minimum of two feet thick layer of soil, with a maximum permeability of 1×10^{-5} ~~[cm per sec.]~~ cm/sec or an alternative design, with approval on a case specific basis.
 - (3) When required, ~~[ground water]~~ groundwater monitoring systems ~~[will]~~ shall include a minimum of three monitoring wells, located to provide adequate data of ~~[ground water]~~ groundwater movement and quality. Additional wells may be required by the director.
- ~~[(d)]~~ (f) Operating requirements.
- (1) ~~[Implement the operation]~~ Landfill units shall be operated in accordance with the procedures in the operation plan.
 - (2) ~~[The landfills]~~ Landfill units shall not accept the following items:
 - (A) Hazardous waste ~~[as defined in these rules.]~~, including hazardous waste generated by a very small quantity generator, as defined in title 40 Code of Federal Regulations section 260.10, as incorporated and amended in chapter 11-260.1, except as allowed in paragraph (8);
 - (B) Electrical transformers with oil or polychlorinated biphenyls ~~[(PCB) or when generated from other than demolition projects.]~~ (PCBs);
 - (C) Pesticide containers~~[, unless they meet the requirements of 40 CFR 261.7 and 261.4(b) household waste.];~~
 - (D) ~~[Liquids, as defined in these rules.]~~ Liquid waste;
 - (E) Scrap automobiles;
 - (F) White goods;
 - (G) Whole motor vehicle tires; and
 - (H) Industrial solid waste.

- (3) ~~[The owner and/or operator shall record at the bureau of conveyances the landfill location on the property and on any other instrument that would normally be examined during the title search and note any land use restrictions from the closure plans. The notation shall notify any potential purchaser of the property that the area has been used for construction and demolition solid waste landfill.]~~ Procedures for excluding the receipt of hazardous waste and unpermitted PCBs. Owners or operators of all construction and demolition landfill units shall implement a program for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyl (PCB) wastes, except PCB bulk product waste as allowed by permit and in accordance with title 40 Code of Federal Regulations section 761.62(b). This program shall include, at a minimum:
- (A) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or unpermitted PCB wastes;
 - (B) Records of inspections;
 - (C) Training of facility personnel to recognize regulated hazardous waste and unpermitted PCB wastes; and
 - (D) Notification to the director if a regulated hazardous waste or unpermitted PCB waste is discovered at the facility.
- (4) The application of interim cover of earthen material will be on a case-specific basis and ~~[will]~~ shall be a minimum of ~~[six inches.]~~ six inches. Final cover shall be two feet of earthen material or as approved in the closure plan.
- (5) The facility shall maintain daily operating

records. At a minimum, ~~[it should]~~ records shall include ~~[weights (or volumes),]~~ number of vehicles ~~[entering, source and]~~ entering and weights or volumes, source, and type of solid waste being disposed. Major deviation from the operations plan (fires and explosions) ~~[should]~~ shall be noted on the daily operating record.

- (6) Landfills may accept friable asbestos containing material complying ~~[to the latest 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) Regulations.]~~ with chapter 11-501.
- (7) Petroleum contaminated soils may be accepted at the landfill if the contaminated soil complies with the landfill's ~~[special]~~ permit conditions.
- (8) A construction and demolition landfill unit that meets the requirements of sections 11-58.1-173 to 11-58.1-176 may receive hazardous waste generated by a very small quantity generator, as defined in title 40 Code of Federal Regulations section 260.10, as incorporated and amended in chapter 11-260.1.

(g) Access requirements. Owners or operators of construction and demolition landfills shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

~~[(e)]~~ (h) ~~[Ground water]~~ Groundwater protection.

- (1) ~~[Ground water]~~ Groundwater protection and monitoring plans are required unless the applicant can justify their omission. The monitoring plan shall include:
 - (A) Location of the monitoring wells;
 - (B) Detailed description of the monitoring well construction;
 - (C) A monitoring well head protection or security plan; and

- (D) Boring log of each monitoring well.
- (2) Prior to starting operations, the ~~[ground water]~~ groundwater monitoring wells ~~[will]~~ shall be sampled and tested by the applicant to establish baseline data for the landfill. The chemicals to be tested shall include, but not be limited to the following:

Heavy Metals:

Arsenic
Barium
Cadmium
Chromium
Lead
Mercury
Selenium
Silver

Volatile Organic Compounds (VOCs):

Chemical Oxygen Demand (COD)
Total Organic Carbon (TOC)
Total Petroleum Hydrocarbon (TPH) for diesel, oil, and grease

Others:

Cyanide

- (3) A sampling plan including tests to be performed, methods to be used, and frequency of sampling ~~[must]~~ shall be submitted for approval. The method used for testing ~~[should]~~ shall be equivalent to ~~[EPA-SW-846]~~ EPA publication SW-846, Test Methods for Evaluating Solid Waste, Third Edition.
- (4) Corrective actions shall be submitted should the results of testing be deficient. The results of the testing ~~[must]~~ shall be submitted to the director for evaluation.
- ~~[(f)] (i) Closure [and post-closure] requirements. [The owner and/or operator shall develop a closure plan in accordance with section 11-58.1-17 as part of the application for a permit.]~~

- (1) The owner or operator shall complete closure activities in accordance with the approved closure plan, unless otherwise approved by the director.
- (2) (A) Following closure of all construction and demolition landfill units, the owner shall:
 - (i) Prepare an environmental covenant for the landfill facility property in accordance with chapter 508C, HRS, and submit it to the director for approval;
 - (ii) Following approval, fully execute the environmental covenant and record it with the bureau of conveyances in accordance with chapter 508C, HRS; and
 - (iii) Following recording, notify the director that the environmental covenant has been recorded with the bureau of conveyances and submit a copy to the director.
- (B) The environmental covenant shall in perpetuity notify any potential purchaser of the property that:
 - (i) The land has been used as a landfill facility; and
 - (ii) The land's use is restricted during the post-closure period as described in the post-closure plan. Post-closure use of the property shall not disturb the integrity of the final cover, liner, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with other requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover,

liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

- (3) The owner may request permission from the director to terminate the environmental covenant if all wastes are removed from the facility.

(j) Post-closure requirements. The owner or operator shall complete post-closure activities in accordance with the approved post-closure plan, unless otherwise approved by the director.

~~[(g)]~~(k) Financial assurance. The owner ~~[and/or]~~ or operator shall develop ~~[a]~~ cost estimates and establish financial assurance ~~[plan]~~ in accordance with ~~[section 11-58.1-18.]~~ sections 11-58.1-178 to 11-58.1-182.

~~[(h)]~~(l) Reporting requirement. At a minimum, an annual report shall be submitted to the department no later than ~~[thirty days after June 30]~~ July 31 of each year. The annual report shall ~~[detail the]~~ include:

- (1) The volume or weight of solid waste received at the facility~~[-, the];~~
(2) The origin and transporter of the solid waste~~[-];~~ and
(3) Additional information, as requested by the department. [Eff 1/13/94; §11-58.1-19; am, ren §11-58.1-183, and comp]
(Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31)
(Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30)

§§11-58.1-184 to 11-58.1-190 (Reserved) .

~~§11-58.1-20 Solid waste incinerator and refuse-derived fuel processing facility. (a) Applicability.~~

~~This section regulates facilities designed to reduce volume of solid waste by the use of an enclosed device using controlled combustion. Solid waste used for incineration must not include materials contaminated with hazardous waste as defined in these rules. In addition, those facilities handling and disposing infectious waste must comply with the applicable provisions of chapter 104 of this title. Regulations governing construction and operation of solid waste incinerators for purposes of air pollution control are set forth in chapter 60 of this title.~~

~~(b) Exemption. Exemption for a permit is contained in section 11-58.1-4(b).~~

~~(c) Permit requirements.~~

~~(1) All solid waste incinerators or refuse derived fuel processing facilities require a permit and must comply with section 11-58.1-04, unless otherwise exempted. Other permit requirements are listed in section 11-58.1-12(a).~~

~~(2) Site analysis. A site plan and analysis shall be submitted with the application. The analysis shall include a brief description of the area, the location of any equipment and machinery, surrounding land uses, public access, and, where determined by the director, a description of mitigative measures taken to reduce the impact of facility upon neighboring properties.~~

~~(d) Design requirements.~~

~~(1) An engineering report which addresses a general description of the overall process, design criteria, anticipated performance and a process flow diagram.~~

~~(2) Equipment. A description of the overall operation and a functional description of all processing equipment to be used in the remediation process and the personnel trained to operate them.~~

~~(3) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be~~

~~provided.~~

- ~~(4) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~
- ~~(5) A description of the ash residue system, the ash removal procedures and the landfill or landfills that will receive the ash residue.~~
- ~~(6) Operation plan. The operation plan shall include a description of the process and the equipment necessary, by-products produced, and the means for their disposal.~~
- ~~(7) Design the energy recovery facilities and solid waste incinerators in compliance with state air pollution control authority emission and operating requirements.~~
- ~~(8) Provide equipment and space for the storage and charge areas and elsewhere to allow periodic cleaning and temporary upsets as may be required in order to maintain the plant in a vector free, sanitary, and clean condition.~~
- ~~(c) Operating requirements.~~
- ~~(1) Each owner or operator shall operate their facility in accordance with the operation plan submitted and approved during the application for a permit. The operation plan should be used in the operation of the disposal facility. The operation plan shall address alternative storage and/or disposal plans for all breakdowns that would result in overfilling of the storage facility. The plan shall also include effective methods to control liquids, insects, birds, rodents, emergency fire explosions, and other disease vectors and nuisance conditions at the facility.~~
- ~~(2) All solid waste received at the facility and~~

~~ash residues must be weighed and recorded and the results must be incorporated in the annual report.~~

- ~~(3) Ash residue generated by energy recovery facilities or solid waste incinerators shall be handled as special waste unless determined to be otherwise and shall be disposed in an ash monofill or as determined by the director.~~
- ~~(4) Reporting. The owner or operator must submit to the director an annual report by the end of July for the previous fiscal year (July 1 — June 30). The report shall cover the facility's activities during previous fiscal year.~~
- ~~(5) The facility shall maintain daily operating records. At a minimum, it should include weights (or volumes), number of vehicles entering, source and type of solid waste being disposed. Major deviation from the operations plan (fires and explosions) should be noted on the daily operation record.~~
- ~~(6) The incinerator shall not accept the following items:~~
 - ~~(A) Hazardous waste as defined in these rule.~~
 - ~~(B) Electrical transformers with oil or polychlorinated biphenyls (PCB) or when generated from other than demolition projects.~~
 - ~~(C) Pesticide containers, unless they meet the requirements of 40 CFR 261.7 and 261.4(b) household waste.~~
 - ~~(D) Liquids, as defined in these rules.~~

~~(f) Sampling and testing. The owner or operator must test the ash residue within one month following the date in which the solid waste incinerator begins operating and must continually test semi-annually thereafter, or as determined by the director. The ash residue must contain less than ten percent organic matter by weight. The frequency of testing for organic~~

~~matter will be determined by the director. A representative sample of solid waste and ash residue shall be tested for the following: arsenic, barium, cadmium, chromium (total and hexavalent), lead, mercury, selenium, silver, and any other parameters determined by the director to be necessary or should be eliminated. The test methods used shall be EPA documented (SW-846, Test Methods for Evaluating Solid Waste, Third Edition) or its equivalent.] [Eff 1/13/94; R] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342G-30, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)~~

~~[SUBCHAPTER 3~~

~~SOLID WASTE STORAGE, HANDLING, AND PROCESSING
FACILITIES~~

~~§11-58.1-31 Transfer stations. (a)~~

~~Applicability. All solid waste transfer stations are subject to the requirements set forth in this subchapter.~~

~~(b) Permit requirements. In order to obtain a permit to construct and operate, each transfer station shall submit the following:~~

- ~~(1) Site analysis. A site plan and analysis of the facility which illustrates the location of all structures including storage areas on the site; offices, maintenance areas, planned areas for expansion, and property boundaries. Included in the analysis will be a description of neighboring land uses and measures taken to mitigate interference with those existing or anticipated uses.~~

- ~~(2) Design requirements.~~

~~(A) Adequate drainage. Adequate drainage to prevent standing water and to control~~

- ~~"run-on" and "run-off" of rainwater shall be provided.~~
- ~~(B) Machinery and equipment. A description of machinery and equipment to be used at the facility.~~
- ~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The transfer station shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~
- ~~(D) Facility sign. Provide a posted sign which displays owner or operators of the facility, the hours of operation and a contact in case of emergency. The sign shall clearly state which wastes are or are not acceptable at the site.~~
- ~~(3) Operation plan. An operation plan shall be submitted with the permit application which includes the following:~~
 - ~~(A) General operations. A description of its purpose, the facility's general operating plan including origin, composition, and expected volume of solid waste to be handled at the site.~~
 - ~~(B) Acceptable wastes. Only household waste and commercial waste shall be accepted at the facility. No industrial waste, infectious waste, construction and demolition waste, or regulated hazardous waste shall be accepted unless specifically approved by the director.~~
 - ~~(C) Ultimate disposal of waste. All solid waste passing through this facility shall be collected, treated, recycled, or disposed of at a solid waste disposal facility authorized by the department.~~

- ~~(D) Transfer route. Provide a plan for the transfer of the solid waste including route, frequency, haulers, and alternative transfer routes.~~
- ~~(4) Closure plan. As part of the application for a permit, the owner or operator shall develop a closure plan to ensure no adverse environmental impacts.~~
- ~~(c) Reporting requirements.~~
- ~~(1) Operational records. Operational records shall be maintained and shall include a daily log of the volume of solid waste received, transported, and disposal site of the solid waste.~~
- ~~(2) Annual report. An annual report shall be submitted to the director no later than thirty days after June 30 of each year. The annual report shall detail the volume or weight of solid waste received at the facility, the origin and transporter of the solid waste and the ultimate disposal site. One combined report may be submitted for owners with more than one transfer station.]~~
- [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-30, 342J-31)

~~§11-58.1-32 Recycling and materials recovery facilities. (a) Applicability. This Subpart regulates the construction and operation of recyclables handling and recovery facilities including but not limited to the following:~~

- ~~(1) Recycling centers which process only source separated materials such as batteries, motor oil, and metal sludges.~~
- ~~(2) Recycling facilities which separate recyclables from nonrecyclables on-site.~~
- ~~(3) Recycling facilities which only collect,~~

~~buy, broker, bale, compact or shred
recyclable materials.~~

- ~~(4) Exemptions. The following facilities are exempt from regulation under this section.~~
 - ~~(A) Composting operations which separate or treat greenwaste, sludge, or ash. These are regulated in sections 11-58.1-04 and 11-58.1-41.~~
 - ~~(B) Facilities which process hazardous or other regulated wastes as determined by 40 CFR 261 and the Clean Air Act and do not produce a recycled material or solid waste requiring disposal.~~
 - ~~(C) Buy back and refillable container centers.~~
 - ~~(D) Recycling drop-off centers are permitted by rule and are not subject to this subchapter.~~
 - ~~(E) Manufacturers that use clean, source separated paper products, glass, and plastic as feedstock for their manufacturing process, and which as a result of this process, produce an end-product for resale.~~
 - ~~(F) Repair and re-sale of clean, source separated clothing, residential and commercial furniture.~~
- ~~(5) Recycling facilities which are in operation at the time this subchapter becomes effective shall complete the requirements for a permit within one year after the effective date of these rules.~~
 - ~~(b) Permit requirements. A permit is required to construct and operate a facility used in the recovery, collection, storage, or treatment of recyclable material. The application shall contain the following:~~
 - ~~(1) Site analysis. A site analysis shall be submitted and shall include at least a site plan, description of siting of equipment and machinery, public access, and turnaround areas. The site analysis shall include surrounding land uses and, where determined~~

~~necessary by the director, describe mitigative measures taken to reduce the impact of the facility upon neighboring properties.~~

~~(2) Design requirements.~~

~~(A) Equipment. A description of the overall operation and a functional description of all processing equipment to be used to load, bale, shred, compact, or process recyclables and the personnel trained to operate them.~~

~~(B) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~

~~(3) Operation plan. An operation plan shall be submitted to the director detailing the following:~~

~~(A) Recoverable materials collected. A description of the recoverable materials proposed to be collected, stored, treated, and/or disposed of at the facility including the current management of the recoverable materials.~~

~~(B) A means of weighing or measuring all materials accepted at the facility and a means of weighing or measuring residue, bypass waste, and recyclables recovered.~~

~~(C) Residue disposal. Intended disposal measures and capacities for residue created or separated during processing.~~

~~(4) Closure plan. As part of the application for~~

~~a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements. An annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume in tons of each recoverable material collected, processed, shipped, and disposed of.] [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-4, 342H-30)~~

~~**[§11-58.1-33 Solid waste salvage facilities.**~~

~~(a) Applicability. This subchapter regulates the construction and operation of materials recovery facilities. This includes, but is not limited to, automobile dismantlers, scrap metal, and white goods processors, and junkyards.~~

~~(1) Exemptions. The following facilities are exempt from regulations under this subchapter.~~

~~(A) Facilities which store twenty-five cars or less at any one time.~~

~~(B) Facilities which store twenty-five units of white goods or less at any one time.~~

~~(b) Permit requirement. A permit is required to construct and operate a materials recovery facility. The application shall contain the following:~~

~~(1) Site analysis. A site plan and analysis including the siting of any equipment and machinery, surrounding land uses, and public access.~~

~~(2) Design requirements.~~

~~(A) Equipment. A description of the overall operation and a functional description of all processing equipment to be used and the personnel to operate them.~~

~~(B) Adequate drainage. Adequate drainage to~~

~~prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The salvage facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~

~~(3) Operation plan. An operation plan shall be submitted and should include a brief description of the process, recoverable materials proposed to be collected, stored, and disposed at the facility. A means of weighing or measuring the incoming materials and a description of the intended method of disposal of the salvageable by-products must be included.~~

~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~

~~(c) Reporting requirements. At a minimum, an annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and the salvageable material recovered and how disposed.] [Eff 1/13/94; R~~

~~] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-4, 342H-30)~~

~~[SUBCHAPTER 4~~

~~SOLID WASTE RECLAMATION FACILITIES~~

~~§11-58.1-41 Composting facilities. (a)~~

~~Applicability. This section regulates the construction and operation of composting facilities for sewage sludge, green waste (yard waste), and other solid wastes.~~

- ~~(A) Exemption. Composting facilities processing less than three thousand tons of green wastes (yard wastes) per year are permitted by rule.~~
- ~~(b) Permit requirements:~~
 - ~~(1) Site analysis. A site analysis shall be submitted and shall include at least a site plan, description of the siting of equipment and machinery, public access, and turnaround areas. The site analysis shall include surrounding land uses and, where determined necessary by the director, describe mitigative measures taken to reduce the impact of the facility upon neighboring properties.~~
 - ~~(2) Design requirements.~~
 - ~~(A) Provide engineering plans and specifications for the entire composting facility, including manufacturer's performance data for the selected equipment.~~
 - ~~(B) The composting facility must have sufficient temperature monitoring to ensure that the pathogen reduction criteria are met. For a windrow and an aerated static pile process, this may include monitoring six to eight inches below the pile surface and for an aerated static pile process, six to eight inches from the outlet of the aeration pipe. For an enclosed vessel system, this may include monitoring six to eight inches inside the vessel wall and six to eight inches from the aeration piping (when operating in the positive aeration mode). Temperature~~

- ~~monitoring must occur, at a minimum, on a daily basis.~~
- ~~(C) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The transfer station shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~
 - ~~(D) The waste storage area and the active composting, curing, and compost storage areas must be located on surfaces capable of minimizing leachate release into the groundwater under the site and the surrounding land surface.~~
 - ~~(E) All leachate must be collected and treated by a method (in the engineering report) approved by the department.~~
 - ~~(F) For composting system using only sewage sludge with an additive such as wood chips, the maximum contaminant concentrations of the sewage sludge shall meet the applicable standards in 40 CFR Part 503. Since other contaminants may be present in the sewage sludge as indicated by discharge monitoring and other industrial pretreatment requirements, the department, on a case specific basis, may determine the maximum allowable concentrations of these contaminants in the sewage sludge.~~
 - ~~(G) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~
- ~~(3) Operation plan.~~
- ~~(A) Provide a description of the type and size of the facility, detention times for handling and processing the~~

~~material, a process flow diagram of the entire process, and all the major equipment required. Include in the report monitoring information, such as the locations of all the temperature monitoring points and their frequency of reading.~~

- ~~(B) Provide a detailed description of the source, quality and quantity of the solid waste to be composted, including the source, quality, and expected quantity of any bulking agent to be used. If sewage sludge is to be composted, data on the material must be submitted.~~
- ~~(C) The compost from composting operations shall be nonpathogenic, free of offensive odors, biologically and chemically stable, and free of injurious components or particles, and able to sustain plant growth. Rejects generated by the composting process shall be disposed of in accordance with these rules.~~
- ~~(D) Solid waste that possess a pathogen concern, shall be composted and meet the criteria for reducing pathogens. Three acceptable methods are:
 - ~~(i) Using the windrow composting method, the solid waste is maintained under aerobic conditions during the composting process. A minimum of five turnings is required during a period of fifteen consecutive days with the temperature of the mixture being fifty five degrees Celsius or greater within six to eight inches below the surface of the pile.~~
 - ~~(ii) Using the aerated static pile composting method, the compost~~~~

- ~~pile must be insulated and a temperature of not less than fifty-five degrees Celsius or greater must be maintained throughout the compost pile for at least three consecutive days.~~
- ~~(iii) Using the enclosed vessel composting method, the mixture must be maintained at a temperature of not less than fifty-five degrees Celsius or greater throughout the mixture for at least three consecutive days.~~
- ~~(iv) Other methods may be submitted to the director and they will be approved on a case-by-case basis.~~
- ~~(E) Provide a description of the ultimate use for the finished compost and the method of removal from the site. Include a plan for disposal of the finished compost that cannot be used.~~
- ~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure plan to ensure no adverse environmental impacts.~~
- ~~(c) Reporting requirements. At a minimum, an annual report shall be submitted to the department, not later than thirty days after June 30 of each year. The report must include:~~
 - ~~(A) The type and quantity, by weight or volume after primary processing, of solid waste received by the facility.~~
 - ~~(B) The quantity, by weight or volume, of compost produced and removed from the facility.~~
 - ~~(C) A summary of monitoring done during the operation.] [Eff 1/13/94; R~~
 - ~~] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32)~~
 - ~~(Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-36)~~

~~§11-58.1-42 Remediation facilities.~~ (a)

~~Applicability. This subchapter regulates the construction and operation of off-site remedial facilities. It will include, but not be limited to facilities utilizing the physical, chemical, and biological conversion processes in the recovery of waste materials. Each process will use the best practicable technology and must be in the best interest of the public. Facilities developed for a one-time operation are exempt from these regulations.~~

~~(b) Permit requirements.~~

~~(1) Site analysis. A site plan and analysis shall be submitted with the application. The analysis shall include a brief description of the area, the location of any equipment and machinery, surrounding land uses, public access, and where determined by the director, a description of mitigative measures taken to reduce the impact of facility upon neighboring properties.~~

~~(2) Design requirements.~~

~~(A) Unless specified by the director, the area on which the material is to be placed shall be impermeable to prevent subsurface soil and potential ground water contamination with a system to collect leachate and runoff. If a liner is used it should be of sufficient thickness and strength to withstand stresses imposed by vehicles and the material itself.~~

~~(B) Equipment. A description of the overall operation and a functional description of all processing equipment to be used in the remediation process and the personnel trained to operate them.~~

~~(C) Adequate drainage. Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~

- ~~(D) Nuisance, health, and safety control. Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards. The facility shall maintain a neat and orderly appearance and must be screened and buffered to minimize nuisances to neighboring properties.~~
- ~~(3) Operation plan. The operation plan shall include a description of the process and the equipment necessary, by-products produced, and the means for their disposal.~~
- ~~(4) Closure plan. As part of the application for a permit, the owner and/or operator shall develop a closure and post-closure plan to ensure no adverse environmental impacts.~~
- ~~(c) Reporting requirement. At a minimum, an annual report shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and the material recovered from the process.] [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-2, 342G-13, 342G-14, 342H-3, 342H-4, 342H-30)~~

~~[SUBCHAPTER 5~~

~~SPECIAL WASTE MANAGEMENT~~

- ~~**§11-58.1-51 Special waste landfills.** (a) Applicability. Solid wastes which do not fall under the categories contained in subchapter 3 or 4 are termed special wastes and the landfill shall comply to these requirements (when disposal is by landfill). A permit will be required for the landfill.~~
- ~~(b) Permit requirements. Each special waste landfill permit application will be evaluated on a~~

~~case by case basis and shall include, but not limited to the following:~~

- ~~(1) Site analysis. A site plan and analysis of the facility which illustrates the location of all structures including storage areas on the site; offices, maintenance areas, planned areas for expansion, and property boundaries. Including in the analysis will be a description of neighboring land uses and measures taken to mitigate interference with those existing or anticipated uses.~~
- ~~(2) Design requirements.~~
 - ~~(A) Adequate design of the landfill depending on the type of waste to be disposed.~~
 - ~~(B) Adequate drainage to prevent standing water and to control "run-on" and "run-off" of rainwater shall be provided.~~
 - ~~(C) Design methods to control litter, insects, odors, and vectors or any other possibilities of nuisance or to protect health and safety.~~
 - ~~(D) Ash monofill shall meet the requirements of subchapter 2.~~
- ~~(3) Operation plan. An operation plan will be submitted with the permit application.~~
- ~~(c) Reporting requirement. At a minimum, an annual report for the twelve-month period ending June 30 shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight in tons of the incoming material and any monitoring data required by the permit.] [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30)~~

~~**[§11-58.1-52 Medical waste treatment and disposal facilities.** (a) Applicability. The purpose of this section is to regulate the disposal of~~

~~infectious wastes from the point at which such waste is received from a health care facility which generates such wastes for the purpose of off-site transport for storage, treatment, or disposal.~~

~~(b) Permit requirements.~~

~~(1) All facilities involved with the storage, transfer treatment and disposal of infectious waste are subject to the requirements of this subchapter. Facilities treating, transferring, managing, and disposing of infectious wastes must comply with chapter 11-104. Infectious waste storage and transfer facilities are not authorized to accept low level radioactive waste, solid waste, or treated and destroyed medical waste; unless authorized in writing by the director.~~

~~(2) Exemptions. A health care facility with treatment and disposal units located on-site and treating and disposing infectious waste generated on-site.~~

~~(3) The application for a permit shall include but not be limited to:~~

~~(A) Engineering report including site and security analysis, methods to control litter, insects, odors, and vectors. Development of a fire plan to prevent and minimize fire hazards. Adequate drainage plan to control "run-on" and "run-off".~~

~~(B) Operation plan to include a brief description of its purpose and major equipment to be used.~~

~~(c) Reporting requirements. At a minimum, an annual report for a twelve-month period ending June 30 be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight of incoming material.]~~

[Eff 1/13/94; R] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32)
(Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4)

~~§11-58.1-53 Foreign waste treatment and disposal.~~ (a) ~~Applicability.~~ Foreign solid waste generated by carriers which left foreign ports and their first port of entry to the United States is Hawaii must comply with the procedures for the treatment and disposal of foreign solid waste as contained in the U. S. Department of Agriculture Title 7, Chapter III, Part 330, Subpart Garbage regulations. Sterilization and incineration are the methods used for the treatment and disposal of the foreign wastes.

~~(b) Permit requirements. Treatment facilities used to treat foreign wastes must comply with the requirements contained in sections 11-58.1-20 and 11-58.1-52 for permits as contained in this chapter.]~~
[Eff 1/13/94; R _____] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30)

~~§11-58.1-54 Used oil transport and recycle facilities. (a) Applicability. The purpose of these rules is to establish minimum requirements governing the management of used oil pursuant to and for the purpose of implementing Hawaii Revised Statutes, chapter 342N, used oil transport, recycling, and disposal.~~

~~(b) Permit requirement. A person who operates as a transporter, recycler, or marketer, as defined in chapter 342N, HRS, of used oil shall comply with this section and obtain a permit from the department.~~

- ~~(1) Each application shall include but not be limited to: A description detailing the management and operation of the facility, the geographical area to be served, the source and disposition of the used oil, construction plans and specifications and certification of compliance with local ordinances and zoning requirements.~~

- ~~(2) Each application shall be signed by the applicant and shall constitute an acknowledgement that the applicant assumes responsibility for the construction, modification, and operation of the facility in accordance with permit conditions and this section.~~
- ~~(3) The design of the facility must consider methods to control litter, insects, odors and vectors. A fire plan must be developed to prevent and minimize fire hazards.~~
- ~~(4) Design of an adequate drainage plan to control "run-on and run-off"~~
- ~~(5) Operation plan requirements:~~
 - ~~(i) Sampling and testing: The director may require a sampling and testing plan to analyze for constituents of specification fuel. The constituents are:~~

<u>Constituent/property</u>	<u>Allowable Level</u>
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium (Total)	10 ppm maximum
Lead	100ppm maximum
Total Halogen	1,000ppm maximum
Flash Point	100° F minimum
Polychlorinated biphenyl (PCB)	2 ppm maximum

- ~~(ii) Blending of used oil: When specification fuel is blended with virgin oil, the resulting mixture is considered virgin oil for burning. When used oil is blended with virgin oil or specification fuel, the resulting mixture is considered used oil unless an analysis is performed to indicate otherwise. The method of sampling and analysis shall be included in the operation plan.~~
- ~~(6) Used oil transporter requirements:~~
 - ~~(i) A used oil transporter shall provide~~

- ~~a signed voucher to each person surrendering or accepting the used oil.~~
- ~~(ii) A transporter may temporarily store used oil on the transporter's premises before delivery to a recycler, marketer, transporter, or incinerator.~~
- ~~(iii) All vehicles used in the actual transporting of used oil shall be identified with the firm's name and the permit number.~~
- ~~(c) Reporting requirements.~~
 - ~~(1) At a minimum, an annual report for the twelve-month period ending June 30 shall be submitted to the director not later than thirty days after June 30 of each year. The report shall detail the volume or weight of the incoming material and the salvageable material recovered and how disposed.~~
 - ~~(2) Voucher or invoice is required to track the movement of used oil. At a minimum the voucher shall contain the name and address of the parties, the quantity and type of used oil, whether an analysis has been performed, date of transaction and signature.] [Eff 1/13/94; R~~

(Auth: HRS §§ HRS §§321-11, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32, 342J-52, 342J-53)

(Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342J-52, 342J-53, 342J-54)

~~§11-58.1-55 Other non-specified technologies.~~

- ~~(a) Applicability. The purpose of this section is to provide a procedure by which new innovative technologies in the treatment and disposal of solid wastes will be considered for permitting.~~
- ~~(b) Permit requirements. An engineering report providing an extensive justification will be required before any new technology is approved by the director for use. The justification shall include:~~
 - ~~(1) Experiences where the technology was used~~

- ~~and found to be successful.~~
- ~~(2) A brief description of the operating process to be used, equipment necessary, and any technical training required by the personnel.~~
 - ~~(3) Design methods to control litter, insects, odors, and vectors. Develop a fire plan to prevent and minimize fire hazards.~~
 - ~~(c) Reporting requirements. At a minimum, an annual report for the twelve-month period ending June 30 shall be prepared and submitted to the director, not later than thirty days after June 30 of each year. The report should summarize the data collected either by weight or volume of the incoming material.] [Eff 1/13/94; R] (Auth: HRS §§321-11, 321-21, 342G-13, 342H-3, 342H-4, 342H-31, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-4, 342H-30, 342H-36)~~

~~[SUBCHAPTER 6~~

~~SOLID WASTE MANAGEMENT RESPONSIBILITIES~~

~~**§11-58.1-61 General responsibilities.** (a) The aesthetic, nonhazardous, and sanitary storage of solid waste is the responsibility of the person owning, operating, or managing the property, premises, business establishment, or industry where the solid waste is accumulated.~~

~~(b) Any person not exempted in section 11-58.1-04(b) owning, operating, or managing a property, premise, business establishment, or industry, has the responsibility of removing accumulated solid waste to an approved solid waste disposal facility. Contractual or other arrangements for the removal of accumulated solid waste shall not relieve a person of this primary responsibility as stated above. Solid waste shall be removed to an~~

~~approved solid waste disposal facility, prior to creating a nuisance condition or health or safety hazard.~~

~~(c) The disposal of animal carcasses is the responsibility of the land owner or land occupant or both upon whose land the animal carcass is found. On-site disposal of the carcass shall be by immediate burial, covered by at least two feet of compacted earth, or by other methods approved by the director.]~~
[Eff 1/13/94; R] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342H-3, 342H-30)

~~§11-58.1-62 Hazardous wastes.~~ ~~(a) Owners and operators of solid waste disposal facilities shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous waste as defined in 40 CFR Part 261 or the State of Hawaii's rules or statutes, whichever is more stringent, and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR Part 761 into the solid waste disposal facility.~~

~~(b) Preparation for disposal of pesticide containers shall be in accordance with section 4-66-55, Hawaii Administrative Rules.~~

~~(c) Soils determined to be hazardous shall be treated as hazardous waste as defined in 40 CFR 261 or the State of Hawaii's rules or statutes, whichever is more stringent and shall be disposed as hazardous waste.]~~ [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342J-4, 342J-31) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342J-30, 342J-31)

~~§11-58.1-63 Infectious wastes.~~ ~~The management and disposal of infectious waste shall be in accordance with chapter 11-104, Hawaii Administrative Rules. Treated infectious waste which have been rendered non-infectious may be disposed in a municipal solid waste landfill or incinerated. All infectious~~

~~wastes generated within the household may be disposed as residential solid waste.] [Eff 1/13/94; R~~
] (Auth: HRS §§321-11, 321-21,
342H-3) (Imp: HRS §§342G-13, 342G-14, 342H-3,
342H-30)

~~**[§11-58.1-64 Radioactive wastes.** Disposal of radioactive waste at all solid waste disposal facilities shall be subject to regulation or control pursuant to the U.S. Nuclear Regulatory Commission, the Hawaii Administrative Rules, and the Hawaii Revised Statutes, whichever is more stringent.] [Eff 1/13/94; R~~
] (Auth: HRS §§321-11, 342H-3) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30)

~~**[§11-58.1-65 Special solid waste controls.** (a) Applicability. The special solid wastes regulated under this subchapter are green wastes, scrap automobiles, white goods, and tires.~~

~~(b) Green wastes. Solid waste disposal facilities shall have in place by December 31, 1994, a plan to ban or require source separation of green waste from entering the disposal facility. The plan shall detail requirements for diversion of seventy-five per cent of all commercially generated green waste by December 31, 1995 and fifty percent of all residential green waste by December 31, 1996. If, based on data submitted by the operator as part of the annual report, these diversion rates are not achieved, all commercial green waste shall be banned from the facility by December 31, 1995, and residential green waste by December 31, 1996.~~

~~(c) Scrap automobiles, white goods, and tires. Scrap automobiles may not be accepted at disposal facilities permitted under these rules. White goods and motor vehicle tires may not be accepted at disposal facilities permitted under these rules after~~

~~June 30, 1994. A plan must be developed by the operator of solid waste disposal facility and included in the facility operations plan to implement this ban]. [Eff 1/13/94; R] (Auth: HRS §§321-11, 342G-13, 342H-3, 342H-32) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-36)~~

SUBCHAPTER 6

ENFORCEMENT

~~[§11-58.1-05]~~ **§11-58.1-191 Inspections.** The director, in accordance with the law, may enter and inspect ~~[the]~~ any facility, building, or place for the purpose of investigating an actual or suspected source of solid waste~~[, or other]~~ pollution~~[+]~~, ascertaining compliance or non-compliance with any [rule,] rule or standard promulgated by the department[+] pursuant to chapter 342H, HRS, including this chapter, and making reasonable tests in connection therewith. [Eff 1/13/94; §11-58.1-05; am, ren §11-58.1-191, and comp] (Auth: HRS §§321-11, 342G-13, 342H-2, 342H-3, 342H-6, 342J-4, 342J-6, 342J-31, 342J-52, 342J-55) (Imp: HRS §§342G-13, 342G-14, 342H-3, 342H-30, 342H-36, 342H-52, 342J-30)

~~[SUBCHAPTER 7~~

~~MISCELLANEOUS PROVISIONS~~

~~§11-58.1-71]~~ **§11-58.1-192 Penalties and remedies.** (a) Any person who violates any provision of this chapter shall be subject to ~~[the]~~ penalties and remedies as provided in sections 342G-71, 342G-72,

342H-7, 342H-8, 342H-9, 342H-10, and 342H-11, Hawaii Revised Statutes.

(b) The director may provide notice of violations of chapter 342H, Hawaii Revised Statutes, or any provision of these rules and issue an order assessing administrative penalties, requiring either an immediate return to compliance or compliance within a specified time, and may seek to enforce such order and collect penalties pursuant to the procedures set forth in section 342H-7, Hawaii Revised Statutes."
[Eff 1/13/94; §11-58.1-71; am, ren §11-58.1-192, and comp] (Auth: HRS §§321-11, 342H-3)
(Imp: HRS §§342H-3, 342H-9, 342H-10, 342H-11, 342H-37, 342H-39)

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

3. Additions to update source notes and other notes to reflect these amendments and compilation are not bracketed, struck through, or underscored.

4. The amendments to and compilation of chapter 11-58.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

Kenneth S. Fink, MD, MGA, MPH

Director of Health

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

III. Old Business

B. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 11 Chapter 55, Water Pollution Control, and Chapter 55 Appendices B, E, F, G, and K, promulgated by DOH - *Exhibit 2*

**SMALL BUSINESS STATEMENT
“AFTER” PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Hawaii Department of Health, Clean Water Branch (CWB)
Administrative Rule Title and Chapter: HAR 11-55, Appendices B,E,F,G,& K
Chapter Name: Water Pollution Control
Contact Person/Title: Mr. Reef Migita/Engineering Section Supervisor
Phone Number: (808) 586-4309
E-mail Address: reef.migita@doh.hawaii.gov **Date:** 6/1/2026

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

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

☒ **Yes** ☐ **No**

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

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

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

☒ **Yes** ☐ **No** (If “No,” no need to submit this form.)

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

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

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

☐ **Yes** ☒ **No**

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

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

☐ **Yes** ☐ **No**

(If “Yes” no need to submit this form.)

* * *

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

The CWB conducted early stakeholder outreach, also the CWB provided notice of the public hearing in the newspaper and on the CWB website soliciting comments for 30-days prior to the public hearing. All comments received (including from any affected small businesses) were considered.

a. Were there any recommendations incorporated into the proposed rules?

If yes, explain. If not, why not?

No recommendations were incorporated into the proposed rules based on comments received during the public comment period and public hearing. No comments were received from small business, please see the attached Response to Comments document for a record of all comments.

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

1. A description of how opinions or comments from affected small businesses were solicited.

The CWB provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. The CWB also sent emails to existing permit holders and individuals who requested the CWB notify them of any public notice by the CWB.

2. A summary of the public's and small businesses' comments.

The CWB received comments from two (2) individuals (student and consultant) and five (5) government agencies. No comments were received from small business. Please see the attached Response to Comments document for a copy of received comments.

3. A summary of the agency's response to those comments.

The CWB provided responses to all received comments, with no recommendations incorporated into the proposed rules. Please see the attached Response to Comments document.

4. The number of persons who:

(i) Attended the public hearing: 14 public members, 8
CWB staff

(ii) Testified at the hearing: 1 (Procedural question)

(iii) Submitted written comments: 7

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

(i) If "Yes," was the change adopted? ☐ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

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

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

Small Business Regulatory Review Board

MEETING MINUTES

February 19, 2026

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

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Sanford Morioka, Vice Chair
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL of JANUARY 15, 2026 MINUTES**

Mr. Park motioned to approve the January 15, 2026 meeting minutes as presented. Mr. Lee seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

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

Mr. David Sakuda, Fisheries Program Manager at DLNR's Division of Aquatic Resources (DAR), provided a comprehensive summary of the subject rule proposal, which had previously been presented to this Board during the November 2025 board meeting.

The summary presentation included background information, an outline of this Board's request for additional information, and stakeholder scoping. The Board's request entailed: 1) an environmental impact statement; 2) biological impact report; 3) cultural impact report; 4) studies on how much fish come out of the farm-raised industry versus wild collection; 5) economic costs for enforcement; and 6) five-year study from the Legislature. The presentation also included DLNR's findings on the review of data and fisheries management.

February 19th Meeting Minutes

Discussion leader and Second Vice Chair Albitz stated that DOH has indicated that the subject new rules do not have an impact on small business and requested that this Board review and confirm.

Mr. Edward Wada, Program Specialist at DOH's Office of Language Access (OLA), explained that this proposed HAR relates to OLA's online roster, which is entirely voluntary and of no cost. Anyone can utilize this online vehicle if they meet the specified criteria such as being 18 years of age and possessing specific training or certifications.

The primary compliance obligations, including the establishment of language access plans and the filing of semi-annual encounter reports, apply specifically to state agencies and covered entities, not to individual interpreters or translators. Based on this information, Mr. Wada concluded that the proposed rules do not impose mandatory compliance costs or restrictive barriers on the small business community of interpreters and translators. He believes they do not have a significant economic impact on small businesses.

Ms. Ige moved that the proposed new HAR Chapter 11-220 Office of Language Access Rules of Practice and Procedures, has no apparent small business impact. Mr. Park seconded the motion, and the members unanimously agreed.

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

Mr. Reef Migita, Clean Water Branch (CWB) Engineering Supervisor at DOH, introduced his team members to discuss the proposed rule amendments. CWB governs water pollution permits in Hawaii and is authorized to oversee certain types of point source discharges, as well as storm water discharges to surface waters such as streams, lakes and oceans.

Chapter 55 describes the policies and requirements for the National Pollutant Discharge Elimination System (NPDES) program. It also incorporates twelve NPDES general permits which are codified as Appendices B through M. The five general permits (Appendices B, E, F, G, and K) that will expire January 14, 2027, were discussed by Mr. Migita. All small businesses who are regulated under NPDES permit program will be affected by the proposed rule changes. Dr. Salisbury noted that the NPDES is very "unforgiving" and was happy to see the proposed amendments.

Small business stakeholder outreach was performed January 12, 2026, through February 11, 2026. Over 350 emails were sent to existing permittees, government agencies and those on the public notice distribution list. Attendees at the 2026 Pacific Water Conference on February 12th were also notified that CWB was beginning this rule amendment process. Seven sets of comments were received on the rules' proposal; five of the comments referred to Appendix B.

Appendix B authorizes the discharge of storm water associated with industrial activities. While many of the regulated entities are larger businesses, small businesses may be required to apply for coverage under this Appendix. However, the rules are mandated by the Federal

Clean Water Act, and a majority of current and proposed rules are consistent with the EPA's own industrial storm water permit.

In some cases, when a small business is the permittee, they will bear costs related to pollution prevention and compliance. Overall, however, DOH does not expect the proposed revisions to have an adverse impact on small business.

Mr. Lee moved to send the proposed rules to public hearing. Second Vice Chair Albitz seconded the motion, and the members unanimously agreed.

C. Discussion and Action on the Small Business Impact Statement to and proposed Amendments to HAR Title 11 Chapter 58.1 Solid Waste Management Control, promulgated by DOH

Ms. Lauren Cruz, Environmental Health Specialist from DOH's Solid and Hazardous Waste Branch, explained that the subject rules have not been updated in over 30 years. As a result, substantive changes are being proposed to be aligned with State Statutes and Federal regulations.

Many of the changes consist of adopting certain EPA rules that had not been adopted since 1984, adding new requirements and clarifying existing requirements for construction demolition landfills, clarifying closure requirements for other types of solid waste facilities, and clarifying and adding some post-closure environmental corrective actions for special wasteland fills.

Some changes that may impact small businesses include changes to the permit program as permit operation fees will be increased from \$25 to \$125. Because the fees have not been increased in 30 years, the increase is justifiable due to inflationary costs and because the fees will be better aligned with other state permit fees.

DOH is required to propose that salvaging activities be conducted on services such as concrete; this will affect one existing small business. As a result, the language in the rule was revised to allow one impacted business sufficient time to become compliant with the new ruling. This is so the cost to the business will be spread out over time instead of incurring one large expense. In addition, a few permit exemptions are being removed, and a few are being added.

In response to Second Vice Chair Albitz's question about the duration of increased permit fees, Ms. Cruz responded that DOH is expecting to increase fees every five years. It was appreciated that DOH representatives reached out to the stakeholders for feedback.

Mr. Lee moved to send the proposed rules to public hearing. Ms. Ige seconded, and the members unanimously agreed.

STATE OF HAWAII
DEPARTMENT OF HEALTH
HEARINGS OFFICE

REPORT OF THE HEARINGS OFFICER

Public Hearing on Proposed Amendments to Administrative Rules
Relating to Clean Water

On May 11, 2026, at 10:00am, I presided over a public hearing, held in person and via Microsoft Teams, regarding the Department of Health's proposed amendments to Chapter 11-55, Hawaii Administrative Rules, and its proposed readoption of Chapter 11-55 Appendices B, E, F, G, and K.

No member of the public attended in person. Twenty-two people attended the public hearing via Microsoft Teams. Among them were fourteen members of the public. After a brief introduction that identified the rules and general permits to be amended and other hearing procedures, I asked if anyone wished to speak. One member of the public gave brief comments. No one else wished to speak. I kept the hearing open until 10:10am in case anyone arrived late and wished to speak. Although some people arrived late, no one wished to speak. At 10:10am I adjourned the hearing.

I hereby certify that the public hearing was noticed and conducted in accordance with all applicable legal requirements.

DATED: Honolulu, Hawaii, May 11, 2026.



Mike S. Wallerstein
DOH Hearings Officer

Response to January 12, 2026, Early Stakeholder Written Comments Received on the Draft Revisions to HAR Chapter 11-55 and Appendices BEFGK

The Department of Health (DOH), Clean Water Branch (CWB) conducted an early stakeholder outreach period from January 12, 2026, through February 11, 2026, to solicit written input on the proposed draft amendments to Hawaii Administrative Rules (HAR) Chapter 11-55 and HAR 11-55 Appendices B, E, F, G, and K. The purpose of this outreach was to gather feedback specifically on the proposed amendments; comments on existing provisions were not considered during this process

Copies of the proposed amendments and accompanying fact sheets were made available on the CWB website. Stakeholders were invited to review and comment on the following documents:

- HAR Chapter 11-55 and Fact Sheet
- HAR Chapter 11-55 Appendix B - NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activity and Fact Sheet;
- HAR Chapter 11-55 Appendix E - NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons per Day (MGD) and Fact Sheet;
- HAR Chapter 11-55 Appendix F - NPDES General Permit Authorizing Discharges of Hydrotesting Water and Fact Sheet;
- HAR Chapter 11-55 Appendix G - NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering and Fact Sheet; and
- HAR Chapter 11-55 Appendix K - NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and Fact Sheet.

This document serves to acknowledge the early stakeholder outreach period and summarize the process by which the DOH-CWB sought input prior to public notice. All comments received during this outreach were reviewed and considered in the development of the proposed rule amendments and general permits.

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The DOH-CWB received comments from the following:

	Commenter	Contact(s)
1.	City and County of Honolulu, Department of Design and Construction, Civil Division; 1 page; <i>949628 Signed.pdf</i> ; Received January 30, 2026.	ddc@honolulu.gov
2.	County of Maui, Department of Public Works (via Paul Barany); 7 pages; <i>COM Comments_HAR-11-55 Proposed Revisions_260203.pdf</i> ; Received February 9, 2026.	Public.Works@co.maui.hi.us ; paul.barany@co.maui.hi.us ; michael.kinores@co.maui.hi.us ;
3.	State of Hawaii, Department of Transportation, Airports Division (via Stacy Paquette); 11 pages; <i>2026 AIR-EE Combined Comments to Proposed HAR-55 (sic) Amendments_260209.docx</i> ; Received February 10, 2026.	stacy.a.paquette@hawaii.gov
4.	Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (via Lisa Parente); 3 pages; <i>5090_106.3_26-015 HAR 11-55 Early Stakeholder Input.pdf</i> ; Received February 11, 2026	lisa.n.parente.civ@us.navy.mil jade.s.katsuda.civ@us.navy.mil troy.a.otake.civ@us.navy.mil lewis.hsu.civ@us.navy.mil kelly.j.yamashita.civ@us.navy.mil edward.s.drielak.civ@us.navy.mil kristen.m.mock.civ@us.navy.mil
5.	Freer Consulting (via Brian Carmichael); 2 pages; <i>20260211.Brian Carmichael.Free Consulting.pdf</i> ; Received February 11, 2026	b.carmichael@freerconsulting.com
6.	Airlines for America (via Kenley Farmer); 3 pages; <i>Hawaii MSGP – Final.pdf</i> ; Received February 11, 2026	kfarmer@airlines.org
7.	State of Hawaii, Department of Transportation, Highways Division – Maui District (via Ty Fukuroku); 2 pages; <i>HAR 11-55 Proposed Revision Comments</i> ; Received February 11, 2026	ty.h.fukuroku@hawaii.gov

Comments from Non-Government Entities

Freer Consulting

Comment 1

Citation for Comment

Part 7.3.3

Explanation of Views

Per work with a client, we have had issues meeting the deadline for submission of sampling data. The proposed permit maintains the existing deadline of the 28th day of the month following the date of sample. Due to metals analysis requiring shipment of the sample to a mainland laboratory, the results have at times been received close to and up to one day before the deadline.

Assumptions and Data Used in Support

This assumption is based on past experience as noted above. While it is not a regular occurrence, it has happened more than once in the existing permit period. It is most likely to occur when a sample is obtained at the end of the month. Per the lab, "normal turnaround time is approximately 3 weeks, and is not usually considered late until it surpasses 4 weeks."

Explanation of How the Burden Was Estimated

The burden is not meeting the deadline. While the e-Permitting Portal allows for explanation of missing the deadline, an alternative would be to adjust the deadline to be based on when the lab results are received. This deadline structure is used in other parts of the permit.

Specific Examples to Illustrate this Point

The following date ranges for 2024-2026 show monitoring samples where of the number of days from date of sampling to the date the lab reports were received were 27 days or greater:

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Date of Sampling	Date Report Received	Number of Days From Sampling to Received Date
3/17/2025	4/23/2025	37
3/21/2024	4/24/2024	34
12/24/2024	1/27/2025	34
12/18/2025	1/16/2026	29
12/18/2025	1/16/2026	29
2/22/2024	3/21/2024	28
9/29/2025	10/27/2025	28
2/27/2024	3/25/2024	27
5/16/2024	6/12/2024	27
9/11/2025	10/8/2025	27
1/15/2026	2/11/2026	27

In many of these examples the turnaround time was not an issue given the time of the month the sample was obtained. In two of the examples we only had one day to complete the submission after receiving the lab results.

Alternatives

As noted above, adjusting the deadline to be based on when the lab results are received would be one solution. Another alternative would be to have the deadline based on the date of sampling, but extend the time frame. One final alternative would be to have quarterly samples due a certain amount of days after the end of the quarter such as 45 days.

Thank you for your consideration,

Response

As noted by the commenter, the submission deadline for monitoring data is retained from the current Appendix B, which the DOH-CWB will not be revising at this time for consistency with the current Appendix B. While the commenter has noted this situation has occurred during this permit term, it is not a regularly occurring issue. The DOH-CWB does not believe this warrants a departure from the current monitoring schedule framework which all permittees have been operating under since the issuance of the last version of the general permit in 2022. Further, as noted by the commenter, there are procedures in place for permittees to provide explanations in those instances where sample results are reported late due to delays with the laboratory.

As such, no changes were made due to this comment.

Airlines for America

Comment 1

Changes Intended to Conform with the U.S. Supreme Court's Decision in [City & County of San Francisco v. EPA](#), 145 S. Ct. 704 (2025) (San Francisco)

A4A appreciates the Agency's intent to incorporate changes to Appendix B to conform with San Francisco, including to Part 1.1.3.1., Part 1.1.3.2(c), Part 1.1.3.2(c)(i), Part 2.1, Part 2.2.1, Part 4.2, and Part 5.1.1.3., as described in the Fact Sheet at 9-11, 14-17, 21-22, and 24-25.

However, we have further suggestions as to how the proposed changes to Appendix B could better meet the U.S. Supreme Court's ruling in San Francisco that a permit may not impose "end result" requirements and look forward to providing more detailed feedback through the formal comment process.

Response

Thank you for your comment.

Comment 2

Aviation-Specific Considerations Pertaining to Implementation of Control Measures and Other Requirements A4A and our member airlines have a long history of supporting and working cooperatively with EPA and state permitting authorities in implementing the CWA and the NPDES permitting program. One important outcome of this longstanding, constructive engagement is that EPA has explicitly acknowledged that the aviation safety and efficiency imperatives imposed by Congress through federal aviation statutes must be taken into consideration in implementing CWA. Accordingly, in every instance in Part 8, Subpart S-Air Transportation of the 2021 MSGP where EPA identified a control measure for potential implementation, it explicitly recognized the control measure need only be implemented "where determined to be feasible and [to] accommodate considerations of safety, space, operational constraints and flight considerations."¹ These same considerations must apply to and be incorporated into other substantive obligations imposed on dischargers by the permit, including the Additional Implementation Measures ("AIM") framework in Part 5 and selection of Storm Water Control Measures in Part 2 of Appendix B.

In addition, the 2021 MSGP and Draft Changes to Appendix B acknowledge the unique circumstances and complexities that attend the aviation context, in which an airport authority and its tenants often must work collaboratively to effectively and efficiently fulfill permit requirements.² One aspect of this complexity is that some airport tenants

¹ (DOH-CWB notes that this footnote is listed as footnote 4 in the source document) See, e.g., 2021 MSGP Part 8.S.4.1.1.

² (DOH-CWB notes that this footnote is listed as footnote 5 in the source document) See Part 8.S.3.2.

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may not have direct control over or access to all outfalls and control measures that are the subject of the permit. Indeed, at some facilities, stormwater outfalls are not under direct control or adjacent to the facility and discharges may combine with flows from other sources before reaching an outfall. As such, discharge monitoring and control measure documentation (particularly through photographic documentation) requirements, will often require review and approval by the Federal Aviation Administration and, due to operational and safety imperatives, may require extended planning and implementation schedules.

Response

As noted in the Fact Sheet for the revisions to Appendix B, DOH-CWB intends to match EPA's 2021 MSGP where possible. Notably, EPA's 2021 MSGP does not contain the "where determined feasible..." outside of Sector S for those activities specific to air transportation industrial facilities. As such, DOH-CWB will not add this language to the Storm Water Control Measures in Part 2 or the Additional Implementation Measures (AIM) framework in Part 5.

It should be noted that while the exact language regarding feasibility from Sector S in Part 8 is not included in Part 2, Part 2 defines infeasible (in the context of storm water control measures) as "not technologically possible or not economically practicable and achievable in light of best industry practices." The DOH-CWB believes this gives sufficient flexibility for storm water control measure selection for air transportation facilities. By extension, the requirement for feasible storm water control measures would extend to storm water control measure selection pursuant to additional control measures required by the AIM framework. Similarly, Part 5 includes various opportunities for permittees to provide explanations for instances where completing corrective actions within the required time frame is infeasible.

Photographic documentation requirements are retained from the current Appendix B and are necessary to correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required. Existing permittees were required to comply with this since the current permit became effective in 2022. Facilities should already have developed procedures and methods to take photographic documentation of control measures. Further, facilities should be able to access control measures that they are using to comply with this permit, as routine inspection and maintenance of control measures is critical to ensuring that the discharge leaving the facility is in compliance with the terms of the general permit.

As noted in the Fact Sheet, photo requirements of the discharge are intended to corroborate the effectiveness of control measures and reported sampling results. As noted by the commenter, there may be instances where the discharge from the facility is in a distant or difficult to access location, particularly in cases where a discharge leaves the facility and enters a drainage system which may travel long distances collecting storm water from other facilities before entering the state receiving waters.

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To address this concern, Part 4 and 4.2.4 have been revised to require photographic documentation of the discharge point. Discharge point is defined in Part 3.1.3.8 as the location(s) where storm water leaves the facility either directly or through a separate storm sewer system to a state water. The DOH-CWB believes this revision should address those situations where facilities encounter difficulties accessing the location where storm water from their facility actual enters the receiving water such as through a storm drain system.

Comment 3

Part 8 - Subsector S

Although this addresses an existing provision that is ostensibly beyond the scope of the Agency's solicitation for written input here, and while deicing is typically uncommon in Hawaii, we suggest that for consistency, Part 8.S.2.1 - Limitations on Coverage, be amended to parallel the language in EPA's 2021 MSGP Part 8.S.2.1 to read³:

Limitations on Coverage. This permit authorizes stormwater discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations or deicing operations.

Note: the term "deicing" in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

Similarly, references to deicing in Part 8.S.3.2. of the 2021 MSGP should be carried through in Part 8.S.3.2. of Appendix B.

Response

As noted by the commenter there is an erroneous discrepancy between the proposed Appendix B revisions and EPA's 2021 MSGP.

As such, Parts 8.S.2.1 and 8.S.3.2 have been revised to match EPA's 2021 MSGP.

³ (DOH-CWB notes that this footnote is listed as footnote 6 in the source document) *This language is also consistent with 40 C.F.R. §122.26(a)(14)(viii). Addition of this language is also consistent with the Agency's affirmation that it is "including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to include any unforeseen situations and to align closely with EPA's 2021 MSGP where possible."* Fact Sheet at 7.

Comments from Government Agencies

City and County of Honolulu, Department of Design and Construction,
Civil Division

Comment 1

Thank you for the opportunity to review and comment.

Out Civil Division has the following comments:

HAR 11-55 1) Section 11-55-07(d) requires updating the contact information for the Certifying Person and the Authorized Representative. Can this change be made globally to the Department's open NGPCs as opposed to submission for each NGPC on the DOH Portal?

Response

Thank you for your comment. As this question is outside the scope of rulemaking as this is an implementation/procedural question, please contact the Clean Water Branch separately for this issue.

As such, no changes were made due to this comment.

County of Maui, Department of Public Works

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

"Discharges which may not require an NPDES permit include, but are not limited to, the following:

- 1. Water line flushing;*
- 2. Landscape irrigation and incidental irrigation runoff;*
- 3. Diverted stream flows;*
- 4. Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
- 5. Discharges from potable water sources;*
- 6. Discharges from foundation drains;*
- 7. Air conditioning condensate;*
- 8. Springs;*
- 9. Uncontaminated water from crawl space pumps and footing drains;*
- 10. Water from individual residential car washing;*
- 11. Flows from riparian habitats and wetlands;*
- 12. Dechlorinated freshwater swimming pool discharges;*

13. Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and

14. Discharges or flows from firefighting activities.”

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, “landscape irrigation,” “irrigation water,” and “lawn watering runoff” describe substantially similar activities and do not appear to represent distinct discharge types and “rising ground waters,” “uncontaminated ground water infiltration,” and “uncontaminated pumped ground water” are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation.

Additionally, the list is inconsistent with HAR 11-55, Appendix K. The following revisions are suggested:

- Remove the distinction “using potable water” from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add “and similar impervious surfaces” to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.
- Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai‘i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

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Revise this section to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in 11-55-01.

The definition of an “Authorized Representative” in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term “duly authorized representative” is understandable but can lead to confusion as to whether this is a different person than an “authorized representative.”

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 3

Page: Various Section: Various

Revise Appendix K to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term “authorized representative,” while Appendix K uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout Appendix K.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 4

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

“The following non-storm water discharges are authorized by this general permit:

- 1. Water line flushing;*
- 2. Landscape irrigation and incidental irrigation runoff;*
- 3. Diverted stream flows;*
- 4. Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
- 5. Discharges from potable water sources;*
- 6. Discharges from foundation drains;*
- 7. A/C condensate;*
- 8. Springs;*
- 9. Uncontaminated water from crawl space pumps and footing drains;*
- 10. Water from individual residential car washing;*
- 11. Flows from riparian habitats and wetlands;*
- 12. Dechlorinated freshwater swimming pool discharges;*
- 13. Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
- 14. Discharges or flows from firefighting activities.”*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

- “Landscape irrigation,” “irrigation water,” and “lawn watering runoff” describe substantially similar activities and do not appear to represent distinct discharge types.
- “Rising ground waters,” “uncontaminated ground water infiltration,” and “uncontaminated pumped ground water” are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

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- *Separate potable water sources from foundation drains.*
- *Specify “uncontaminated” in reference to water from crawl space pumps and footing drains.*
- *Revise “Residual street wash water” to “Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives” – note the suggested addition of “and similar impervious surfaces” to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 5

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

“Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge ~~[from the discharge]~~ and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain ~~[with]~~ observable deposits of floating solids, scum, sheen or other substances~~;~~ ~~[an observable]~~ film, sheen or discoloration from oil and grease~~;~~ or foam or substances that produce an observable change in color, odor, or cloudiness~~[in the discharges]~~.”

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as “visible plumes from the discharge” and “observable change in color, odor, or cloudiness in the discharges,” could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

The language “prohibit visible plumes and,” was removed and made consistent with DOH permit language to the following:

“Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.”

Comment 6

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 7

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

“Schedules and protocols for ~~[identification of priority areas]~~ prioritizing areas of the MS4 for detailed screening ~~[of the system]~~ based on the likelihood of illicit discharges and illegal connections.”

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The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Response

The proposed language in Section 6(a)(3)(C)(i) is consistent with 40 CFR 122.34(b)(3), which require MS4s to establish procedures for detecting and addressing illicit discharges. The current proposed text provides permittees with flexibility to develop a reasonable process for identifying priority areas while maintaining alignment with federal MS4 requirements. The permit language has been updated to include “illicit” for consistency with the federal requirements. Section 6(a)(3)(C)(i) is revised to the following:

“Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening can include visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.”

Comment 8

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

“Detailed screening [~~can include~~] may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.”

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing “can include” with “may include, as appropriate” would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Response

Accepted—revised wording (“may include, as appropriate”) improves clarity and preserves permittee discretion while remaining consistent with standard regulatory drafting conventions.

Comment 9

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

“Inform public employees, businesses, and the general public of hazards associated with ~~[illegal]~~ illicit discharges and improper disposal of waste.”

The revised language uses the term “illegal discharges,” while the remainder of the permit consistently uses the term “illicit discharges,” as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term “illicit discharges” will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

Response

The permit language has been updated to include “illicit” for consistency with the federal requirements.

State of Hawaii, Department of Transportation, Airports Division

Comment 1

Page: Pg. 30 in PDF Section: 11-55-04(j)(3)

Proposed Revision to Existing Text (Clean):

“Discharges which may not require an NPDES permit include, but are not limited to, the following:

- 1. Water line flushing;*
- 2. Landscape irrigation and incidental irrigation runoff;*
- 3. Diverted stream flows;*
- 4. Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
- 5. Discharges from potable water sources;*

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6. *Discharges from foundation drains;*
7. *Air conditioning condensate;*
8. *Springs;*
9. *Uncontaminated water from crawl space pumps and footing drains;*
10. *Water from individual residential car washing;*
11. *Flows from riparian habitats and wetlands;*
12. *Dechlorinated freshwater swimming pool discharges;*
13. *Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
14. *Discharges or flows from firefighting activities.”*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, “landscape irrigation,” “irrigation water,” and “lawn watering runoff” describe substantially similar activities and do not appear to represent distinct discharge types and “rising ground waters,” “uncontaminated ground water infiltration,” and “uncontaminated pumped ground water” are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation. Additionally, the list is inconsistent with HAR 11 55, Appendix K. The following revisions are suggested:

- Remove the distinction “using potable water” from water line flushing, landscape irrigation, lawn watering, and sidewalk rinsing, as federal MS4 guidance generally allows these discharges when they are uncontaminated and non-polluting. Note: it is also suggested to add “and similar impervious surfaces” to the description of sidewalk rinsing to both HAR 11-55-04(j)(3) and Appendix K to reflect common MS4 practices and improve consistency with federal guidance.*
- Remove the limitation of dechlorinated freshwater swimming pool discharges to non-marine environments, which is unclear in Hawai‘i where most MS4 outfalls ultimately discharge to marine waters. Dechlorinated freshwater swimming pool discharges are functionally similar to potable water discharges from a pollutant-risk standpoint and should not be excluded based solely on the receiving water classification.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

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As such, no changes were made due to this comment.

Comment 2

Page: Pg. 30 in PDF Section: 11-55-07(b)

Revise this section to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in 11-55-01.

The definition of an “Authorized Representative” in 11-55-01 describes that this means a duly authorized individual as described in the definition and in 11-55-07(b). The purpose of the emphasis on the term “duly authorized representative” is understandable but can lead to confusion as to whether this is a different person than an “authorized representative.”

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 3

Page: Various Section: Various

Revise Appendix B to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term “authorized representative,” while Appendix B uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout Appendix B.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the

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designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 4

Page: 55-B-86 Section: 2.2.1

Proposed Revisions to Amended Text:

“Prohibit discharges [with] that, at the point of discharge and prior to mixing with receiving waters, contain observable deposits of floating solids, scum, sheen or other substances, [an observable] film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness at the point of discharges, excluding naturally occurring conditions;”

*The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in *City and County of San Francisco v. EPA*.*

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as “observable deposits of floating solids, scum, sheen or other substances” and “observable change in color, odor, or cloudiness in the discharges,” could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

As noted by the commenter and in the Fact Sheet, the intent of the proposed revision is to comply with the U.S. Supreme Court’s decision in *City and County of San Francisco v. EPA* end-result ruling. To ensure that the general permit is still as protective as the current general permit, while still complying with the Supreme Court decision, the DOH-CWB attempted to revise previous language which encompassed all of the narrative water quality conditions in HAR 11-54-4 to only those that can be observed and controlled within the discharge. The DOH-CWB believes the proposed language is clear that the requirements are to be applied to the discharge from the regulated facility.

As such, no changes have been made due to this comment.

Comment 5

Page: 55-B-41 Section: 1.2.2.1(f)

Proposed addition: *“Control measures to generally be implemented consistent with manufacturer specifications, unless the operator documents site specific justification demonstrating equivalent or greater pollutant control, or DOH provides written direction specifying alternative measures.”*

The proposed addition is intended to provide procedural clarity and consistency in enforcement across facilities.

Response

Please see Part 2.1 Storm Water Control Measures, which specifies that the “selection, design, installation, and implementation of these control measures must be in accordance with good engineering practices and manufacturer’s specifications and consistent with direction by the DOH. Note that you may deviate from such manufacturer’s specifications where you provide justification for such deviation and include documentation of your rationale...” The DOH-CWB believes this language already in the proposed revisions provides procedural clarity and consistency in line with the commenter’s proposed addition.

As such, no changes were made due to this comment.

Comment 6

Page: 55-B-50 Section: 1.3.4

Proposed Revisions to Amended Text:

“You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to your facility. Where physical signage cannot be posted due to safety, security, or operational restrictions, or [Public signage is not required] where other laws, regulations, or official policies [or local ordinances] prohibit or discourage such signage, [in which case] you must document in your SWPPP a brief explanation for why you cannot post a sign and a reference to the law, regulation, or policy [or ordinance].”

The current language assumes the permitted “facility” has a publicly accessible perimeter frontage. For certain regulated operators, including large, secured transportation facilities (e.g., airports), the industrial activities covered under the permit, such as maintenance baseyards, fueling support areas, and material storage, occur within restricted operational areas that are not accessible to the public for safety and security reasons.

Although a local ordinance may not prohibit signage, state operational and aviation security policies restrict the placement of non-operational signage within secure or

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operational areas. As written, the permit may create a compliance obligation without a practicable compliance pathway for these types of facilities.

Response

The proposed revision includes language that specifies that the sign or other notice of permit coverage in a safe, publicly accessible location in close proximity to the permitted facility. Depending on a specific facility's layout or other circumstances this may mean that the notice is placed in a safe publicly accessible location that may be a distance away from the actual facility. This is allowable under the proposed language. This language does not require a sign to be placed in a restricted or secure area. The DOH-CWB believes that the proposed language has the flexibility to address the concern identified by the commenter. It should be noted that EPA received a similar comment during their 2021 rulemaking and declined to make any changes (see: <https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349>, see response to EPA-HQ-OW-2019-0372-0269-A1, Comment Excerpt Number 16, PDF page 358 and EPA-HQ-OW-2019-0372-0196-A1, Comment Excerpt Number 11, PDF page 310).

As such, no changes were made due to this comment.

Comment 7

Page: 55-B-96 Section: 3.1.5

Proposed addition: *"Where photographs are used to document inspections, corrective actions, or discharge samples, images shall clearly depict the condition observed and include date and time information and be retained with SWPPP records."*

The proposed addition is intended to provide a standard for objective evidence and enforcement needs.

Response

The DOH-CWB agrees that the proposed language clarifies what photographs should depict and the additional date and time information is useful for both the permittee and inspectors.

As such, the following language has been inserted into Parts 3.1.5, 3.2.3, and 4.2.4, which contain photographic requirements for routine facility inspections, visual assessments, and analytical monitoring respectively:

"Photographs shall clearly depict the condition observed and include date and time information and be retained with SWPPP records."

Comment 8

Page: 55-B-109 Section: 4.1.3

Proposed Revisions to Amended Text:

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“You must conduct all required monitoring on a storm event that results in an actual discharge (“measurable storm event”) that follows the preceding measurable storm event by at least 72 hours (three days). For purposes of this definition, the 72-hour period begins when stormwater discharge from the previous storm event has ceased at the discharge point.”

The current definition establishes a minimum 72-hour separation between measurable storm events but does not specify how the end of a storm event is determined. Because stormwater discharges may continue after rainfall has stopped due to drainage system routing, storage, infiltration, or groundwater interaction, it is unclear whether the antecedent period should be measured from the end of precipitation or from cessation of discharge.

Clarifying that the 72-hour period begins after stormwater discharge has ceased provides an objective and observable field condition for operators and inspectors. This aligns the definition with the purpose of stormwater sampling, which is to characterize distinct runoff events, and improves consistency of implementation across permittees.

Response

The DOH-CWB believes that the proposed language is unnecessary as a measurable storm event is defined as a storm event that results in an actual discharge. By extension the end of a measurable storm event would be the end of an actual discharge due to the measurable storm event.

As such, no changes were made due to this comment.

Comment 9

Page: 55-B-142 Section: 5

Proposed addition: *“Facilities with concentrations below applicable benchmark thresholds for two consecutive monitoring periods may return to baseline status, consistent with EPA MSGP AIM provisions.”*

The proposed addition is intended to address AIM level reset conditions to avoid facilities remaining indefinitely in elevated tiers, consistent with EPA MSGP AIM provisions.

Response

Please see parts 5.2.3.4, 5.2.4.4, and 5.2.5.4 for criteria to return to baseline status for AIM level 1, 2, and 3 respectively. While the criteria are not exactly what the commenter has proposed, there is already specific language to prevent a Facility from being stuck at an elevated AIM level when discharge concentrations have fallen below benchmark thresholds.

As such, no changes have been made due to this comment.

Comment 10

Page: 55-B-144 Section: 5.1.1.3

Proposed Revisions to Amended Text: *“Your storm water control measures are not stringent enough ~~for your storm water discharge to be controlled as necessary such that the discharge will meet applicable water quality standards or to meet the non-numeric effluent limits in~~ of this permit.”*

The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

Language removes “end-result” requirements and aligns with CWA compliance.

Response

The proposed language is a result of DOH-CWB revising the current Appendix B language to comply with the Supreme Court’s “end-result” ruling. In order to retain as much of the original language as possible to prevent any reduction in protections to receiving waters, the DOH-CWB simply replaced instances where the permittee must control their discharge such that the receiving water meets applicable water quality standards, to instead require that the discharge meet applicable water quality standards. This ensures that the original protections offered by the current Appendix B language while still in compliance with the Supreme Court ruling. It should also be noted that Part 2.2.1 specifies that DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. This further ensures that Appendix B is in compliance with the Supreme Court decision, as permittees are given explicit requirements (i.e., those contained in the permit) to follow to be considered in compliance with applicable water quality standards.

As such, no changes were made due to this comment.

Comment 11

Page: 55-B-146 Section: 5.1.3.1

Proposed Revisions to Amended Text: *“immediately” means that the day you find a condition requiring corrective action, you must take all reasonable steps to minimize or prevent the discharge of pollutants until you can implement ~~a permanent solution~~. the required storm water control measure specified in this permit.”*

Language aligns with CWA and removes implication of end condition.

Response

The DOH-CWB does not believe the language specified by the commenter is related to the “end result” Supreme Court decision. As such, there is no reason to deviate from the proposed language.

As such, no changes were made due to this comment.

Comment 12

Page: 55-B-314 Section: 8.P.2.1

Proposed addition:

“This permit authorizes storm water discharges from only those portions of the transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations.”

Certain land transportation and warehousing facilities do not conduct activities typically covered under this industrial permit.

The proposed addition is intended to provide consistency with the language for Sector S and the [NPDES Industrial Storm Water General Permit FAQs](#) posted on the DOH webpage.

Response

As noted by the commenter, the DOH-CWB’s FAQs for Appendix B includes excerpts from 40 CFR 122.26(b)(14)(viii) which specifies the applicability for transportation facilities that have vehicle maintenance shops, equipment cleaning operations, or airport de-icing operations. The DOH-CWB believes it is unnecessary to include this language in Appendix B, as when the DOH-CWB responds to questions regarding eligibility for coverage under Appendix B, the DOH- CWB refers potential applicants to the FAQs. These FAQs clearly specify that not all transportation facilities require industrial storm water coverage, and it is up to potential applicants to determine whether the operations at their facility meet the requirements to apply for industrial storm water coverage.

As such, no changes were made due to this comment.

Comment 13

Page: Various Section: Various

Revise Appendix K [sic] to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

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HAR 11-55-01 defines the term “authorized representative,” while Appendix F uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout Appendix F.

Response

The DOH-CWB concurs that only the term “authorized representative” is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes were made due to this comment.

Comment 14

Page: 55-F-8 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

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As such, no changes were made due to this comment.

Comment 15

Page: 55-F-15 Section: 8(a)(6)

Proposed Revisions to Amended Text: *“Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall ~~[switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director]~~ submit Discharge Monitoring Reports online at the department’s e-Permitting portal.”*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH’s NPDES program and applicable national standards for environmental permitting.

Response

The DOH-CWB agrees that the requirements specified in Section 8(a)(6) of HAR Chapter 11-55 Appendix F for submitting discharge monitoring reports are unclear.

To comply with federal electronic reporting regulations specified in NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40CFR Part 3), the DOH-CWB is revising Section 8(a)(6) of HAR Chapter 11-55 Appendix F as follows:

~~[Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.]~~
The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department’s e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Comment 16

Page: Various Section: Various

Revise Appendix K [sic] to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term “authorized representative,” while Appendix G uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

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For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout Appendix G.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person.

As such, no changes were made due to this comment.

Comment 17

Page: 55-G-12 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K [sic].

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 18

Page: 55-G-18 Section: 8(a)(6)

Proposed Revisions to Existing Text: *“Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall ~~[switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director]~~ submit Discharge Monitoring Reports online at the department’s e-Permitting portal.”*

The existing statement is ambiguous as to whether DMRs are required to be submitted in paper form or electronically. Compliance with federal electronic reporting regulations is assumed to be required for DMR submittals, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate the electronic collection and submission of NPDES program data. The proposed clarified statement explicitly requires electronic DMR submittal and ensures consistency with DOH’s NPDES program and applicable national standards for environmental permitting.

Response

The DOH-CWB agrees that the requirements specified in Section 8(a)(6) of HAR Chapter 11-55 Appendix G for submitting discharge monitoring reports are unclear.

To comply with federal electronic reporting regulations specified in NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40CFR Part 3), the DOH-CWB is revising Section 8(a)(6) of HAR Chapter 11-55 Appendix G as follows:

~~[Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.]~~
The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department’s e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Comment 19

Page: Various Section: Various

Revise Appendix K to replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term “authorized representative,” while Appendix K uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout Appendix K.

Response

The DOH-CWB concurs that only the term "authorized representative" is defined in Section HAR 11-55-01. However, all references to "duly authorized representative" are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person.

As such, no changes were made due to this comment.

Comment 20

Page: 55-K-2 Section: 1(a)

Proposed Revision to Existing Text (Clean):

"The following non-storm water discharges are authorized by this general permit:

- 1. Water line flushing;*
- 2. Landscape irrigation and incidental irrigation runoff;*
- 3. Diverted stream flows;*
- 4. Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
- 5. Discharges from potable water sources;*
- 6. Discharges from foundation drains;*
- 7. A/C condensate;*
- 8. Springs;*
- 9. Uncontaminated water from crawl space pumps and footing drains;*
- 10. Water from individual residential car washing;*
- 11. Flows from riparian habitats and wetlands;*
- 12. Dechlorinated freshwater swimming pool discharges;*
- 13. Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
- 14. Discharges or flows from firefighting activities."*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping.

Specifically, the following revisions are suggested:

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- “Landscape irrigation,” “irrigation water,” and “lawn watering runoff” describe substantially similar activities and do not appear to represent distinct discharge types.
- “Rising ground waters,” “uncontaminated ground water infiltration,” and “uncontaminated pumped ground water” are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty for permittees and reviewers regarding whether different conditions apply. Consolidating these items would improve clarity and consistency without altering the substantive scope of authorized non stormwater discharges.

Additionally, the existing list is inconsistent with HAR 11 55-04(j)(3). The following revisions are suggested:

- *Separate potable water sources from foundation drains.*
- *Specify “uncontaminated” in reference to water from crawl space pumps and footing drains.*
- *Revise “Residual street wash water” to “Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives” – note the suggested addition of “and similar impervious surfaces” to both HAR 11-55-04(j)(3) and Appendix K.*

This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 21

Page: 55-K-5 Section: 2(c)

Proposed Revisions to Amended Text:

“Permittees authorized by this general permit are required to prohibit visible plumes at the point of discharge ~~[from the discharge]~~ and prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain ~~[with]~~ observable deposits of floating solids, scum, sheen or other substances~~;~~ ~~[an observable]~~ film, sheen or discoloration from oil and grease~~;~~ or foam or substances that produce an observable change in color, odor, or cloudiness~~[in the discharges]~~.”

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The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA.

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as “visible plumes from the discharge” and “observable change in color, odor, or cloudiness in the discharges,” could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

The language “prohibit visible plumes and,” was removed and made consistent with DOH permit language to the following:

“Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.”

Comment 22

Page: 55-K-9 Section: 5

Revise Appendix A of HAR Chapter 11-55 in lieu of the proposed revision to Section 5 of Appendix K.

The proposed revision appropriately excludes Section 1 (Basic Water Quality Criteria) of Appendix A to avoid potential conflicts with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in City and County of San Francisco v. EPA. This approach provides a practical short-term solution for this general permit.

However, rather than addressing the issue through exclusions on a permit-by-permit basis, it would be preferable for DOH to revise Appendix A of HAR Chapter 11 55 directly to ensure that the standard conditions are fully consistent with current legal requirements. Maintaining outdated or potentially unenforceable language in Appendix A, while carving it out through individual permit language, may create confusion and inconsistency across the NPDES program.

We request that DOH initiate a separate rulemaking to update Section 1 of Appendix A to reflect the Supreme Court decision and to clarify that standard conditions apply solely to the characteristics of the discharge itself, rather than to receiving water conditions.

Response

Thank you for your comment. As noted by the commenter, revisions to Appendix A are outside of the scope of this current rulemaking. The DOH-CWB will consider revisions to Appendix A in future rulemaking efforts.

As such, no changes were made due to this comment.

Comment 23

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

“Schedules and protocols for ~~[identification of priority areas]~~ prioritizing areas of the MS4 for detailed screening ~~[of the system]~~ based on the likelihood of illicit discharges and illegal connections.”

The proposed language is difficult to follow and may create uncertainty regarding implementation as it could be interpreted as requiring a complex or highly prescriptive methodology for identifying priority areas, rather than simply requiring permittees to establish a reasonable process for prioritizing portions of the system for investigation.

The suggested revision uses clearer and more direct terminology while maintaining the substantive intent of the requirement.

Response

The proposed language in Section 6(a)(3)(C)(i) is consistent with 40 CFR 122.34(b)(3), which require MS4s to establish procedures for detecting and addressing illicit discharges. The current proposed text provides permittees with flexibility to develop a reasonable process for identifying priority areas while maintaining alignment with federal MS4 requirements. The permit language has been updated to include “illicit” for consistency with the federal requirements. Section 6(a)(3)(C)(i) is revised to the following:

“Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening can include visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.”

Comment 24

Page: 55-K-12 Section: 6(a)(3)(C)(i)

Proposed Revisions to Amended Text:

“Detailed screening ~~[can include]~~ may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information

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submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.”

The existing language could be interpreted as implying that all listed activities, particularly water sampling, are expected components of routine detailed screening. For many MS4 permittees, including DOT Airports, sampling of conveyances and outfalls under the MS4 program is typically conducted on a targeted basis in response to suspected illicit discharges, rather than as a routine screening tool.

Replacing “can include” with “may include, as appropriate” would clarify that the listed activities are examples of acceptable approaches rather than mandatory elements of every screening effort. This change would better reflect standard MS4 IDDE practices and avoid unintentionally establishing sampling as a default requirement.

Response

Accepted—revised wording (“may include, as appropriate”) improves clarity and preserves permittee discretion while remaining consistent with standard regulatory drafting conventions.

Comment 25

Page: 55-K-14 Section: 6(a)(3)(D)

Proposed Revisions to Amended Text:

“Inform public employees, businesses, and the general public of hazards associated with ~~[illegal]~~ illicit discharges and improper disposal of waste.”

The revised language uses the term “illegal discharges,” while the remainder of the permit consistently uses the term “illicit discharges,” as defined by 40 CFR Section 122.26(b)(2).

Maintaining consistent terminology throughout the permit will avoid potential confusion and provide alignment with existing definitions in 40 CFR §122.26(b)(2) and established MS4 program language.

In addition, we interpret this requirement as a general public education and outreach provision rather than as a requirement for incident-specific public notification. Using the established term “illicit discharges” will help clarify that the intent is programmatic education consistent with federal MS4 regulations.

Response

The permit language has been updated to include “illicit” for consistency with the federal requirements.

Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility

Comment 1

File (Appendix): HAR 11-55 **PDF Page Number:** N/A **Sector/Section:** 11-55-01
HAR 11-55 Page Number: N/A

Requesting to add the definition of “Storm Water Run-On”

HAR 11-55 defines “Storm Water” and “Storm Water discharge associated with industrial activities” which are types of Storm Water Run Off. HAR 11-55 appendix B makes several references to Storm Water Run-On but does not fully define what is or qualifies as Storm Water Run-On

Response

The DOH-CWB will add the following definition for run-on to Part 5.2.6.2 (Due to Run-On) of Appendix B:

“Run-On – sources of storm water that drain from land located upslope or upstream from the regulated facility in question.”

This definition is from EPA’s 2021 MSGP and should clarify what run-on refers to when used throughout Appendix B.

Comment 2

File (Appendix): Appendix B **PDF Page Number:** 785 **Sector/Section:** Fact Sheet Part 4) (pg. 7) **HAR 11-55 Page Number:** N/A

Please correct the last sentence to state “Storm event”

Typo

Response

The typo has been revised.

Comment 3

File (Appendix): Appendix B **PDF Page Number:** 796 **Sector/Section:** Fact Sheet Part 3.1.5.4(f) (pg. 18) **HAR 11-55 Page Number:** 55-B-97

Requesting removal of Part 3.1.5.4(f)

It is unreasonable for permittees to know if certain upstream discharges are authorized under another individuals NPDES permit. Certain facilities or entities may have several overlaps within their property and certain discharges may be authorized under a different permit or SWPPP. Appendix K allows permittees to add in additional authorized non-stormwater discharges which will not be considered illicit discharges so long as

they are deemed to not be significant sources of pollutants and might be unknown from the downstream permittee.

Response

As noted in the Fact Sheet, facilities should be aware of and checking for any unauthorized discharges from their facility. Note that the language specifies that these are unauthorized discharges from the facility which should be under the control and management of the Permittee or the Permittee's operators. It is not unreasonable for DOH-CWB to require Permittees to document observations of unauthorized discharges from the Permittee's own facility. Additionally, it is to the Permittee's benefit to find any unauthorized discharges from their facility as soon as possible, as delays to good-faith corrective actions (such as applying for a permit for the unauthorized discharge or ceasing the discharge) may impact any potential enforcement actions taken by the DOH-CWB.

As such, no changes were made due to this comment.

Comment 4

File (Appendix): Appendix B PDF Page Number: 798 Sector/Section: Fact Sheet Part 4.1.2 (pg. 20) HAR 11-55 Page Number: 55-B-108

Request to keep in the phrase "to the extent practicable" in the monitoring requirement

For certain facilities or entities with large foot prints and shared storm drain systems, it may be impossible to grab samples of authorized storm water discharges prior to commingling with discharges not authorized under this permit. Certain entities may have other coverage for their stormwater (i.e., individual permits) that are not covered under this general permit. The EPA includes the language of "to the extent practicable" in its Multi-Sector General Permit.

Response

The DOH-CWB intends to keep the revision that removes "to the extent practicable" from Part 4.1.2 to eliminate confusion about what is practicable and how practicability is determined, and to ensure that facilities only sample their authorized discharges. It is in the best interest of the facility to only sample their discharges to ensure that they do not inherit pollutants from other facilities or waste streams that may make their storm water discharges appear worse. Accurate sampling also benefits regulated facilities by informing them if they are implementing appropriate storm water pollution prevention controls, not too much or too little. Additionally, the phrase "to the extent practicable" potentially creates a situation where a facility may refuse liability of their storm water discharges because they have commingled with other discharges.

In the case that a facility has received run-on from another facility or location outside their control, and it has commingled and cannot be distinguished from their storm water,

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the facility has adopted that run-on and is now responsible for it. In that case, the facility must sample the run-on as part of their authorized discharge. If a facility is receiving some other unauthorized waste stream aside from storm water run-on, they are accepting an illicit discharge and discharging it, which is not authorized. If PHNSY is aware of a specific situation where the facility cannot sample their authorized discharge prior to commingling, please contact the DOH-CWB so the situation may be considered and understood better.

As such, no changes were made due to this comment.

Comment 5

File (Appendix): Appendix B PDF Page Number: 798 Sector/Section: Fact Sheet Part 4.2 (pg. 20) HAR 11-55 Page Number: 55-B-116

*Requesting to change the sentence to “Part 1.3.6, in the event that the permit is administratively continued, monitoring **and reporting** requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration.*

Addition of “and reporting” aligns with the rationale for revising this section. How the revised statement was written did not make clear that reporting also remains the same, it only mentions the monitoring remains the same.

Response

An administrative extension of an NPDES permit simply means that the term of an NPDES permit has been continued and will not terminate on the expiration date specified on the permit. As such, it is known that when an administrative extension is granted, all terms of the NPDES permit remains in effect. While the 2021 EPA MSGP includes the subject language, the DOH-CWB believes it is unnecessary to further clarify EPA’s language as an administrative extension means that all terms of the NPDES permit are continued.

As such, no changes were made due to this comment.

Comment 6

File (Appendix): Appendix B PDF Page Number: 799 Sector/Section: Fact Sheet Part 4.2.1 (pg. 21) HAR 11-55 Page Number: 55-B-118

Remove the following “The requirement in Part 2.2.1 that your stormwater storm water discharge be controlled as necessary such that the receiving water of the United States discharge will meet applicable water quality standards still applies.”

Conflict exists in the revised section where it states indicator monitoring parameters are “report only” and have “no follow-up action” but then mentions the “storm water discharge be controlled as necessary such that the discharge will meet applicable water

quality standards.” Water Quality Standards are applicable to the receiving water and not the discharge. This would violate the recent Supreme Court Ruling No. 23-753 City and County of San Francisco v. Environmental Protection Agency, March 4, 2025.

Response

Nowhere in the Supreme Court’s ruling in *County of San Francisco v. Environmental Protection Agency* does the Supreme Court rule that water quality standards are not applicable to a discharge. From page 10 of the Supreme Court opinion written by Justice Alito for the Court:

“We begin with the text of §1311(b)(1)(C), which, as noted, requires a permit to contain, in addition to ‘effluent limitations,’ ‘any more stringent *limitation*’ that is ‘necessary to *meet*’ certain ‘water quality standards’ that are imposed under state law ‘or any other federal law or regulation’; and ‘any more stringent *limitation*’ that is ‘required to *implement* any applicable water quality standard established pursuant to this chapter.’ (Emphasis added.) All the italicized terms in the preceding sentence suggest that the most natural reading of §1311(b)(1)(C) is that it authorizes the EPA to set rules that a permittee must follow in order to achieve a desired result, namely, a certain degree of water quality.”

The cited text from the Clean Water Act itself (§1311(b)(1)(C)) specifies that limitations (including any more stringent limitation) are required to implement applicable water quality standards. At question in the Supreme Court case were instances where a permitting agency conditions a Permittee’s compliance with conditions of the receiving water without providing specific permit conditions on how to meet this requirement. Notably, Part 2.2.1 of the proposed Appendix B specifies that DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. This further ensures that Appendix B is in compliance with the Supreme Court decision, as permittees are given explicit requirements (i.e., those contained in the permit) to follow to be considered in compliance with applicable water quality standards.

As such, no changes were made due to this comment.

Comment 7

File (Appendix): Appendix B PDF Page Number: 803 Sector/Section: Fact Sheet Part 5.2.6.52 (pg. 25) HAR 11-55 Page Number: 55-B-170

Please correct Fact sheet reference from “Part 5.2.6.52” to Part 5.2.6.2.

Typo and no HAR 11-55 Part 5.2.6.52.

Response

The typo has been revised.

Comment 8

**File (Appendix): Appendix B PDF Page Number: 803 Sector/Section: Fact Sheet
Part 5.2.6.52 (pg. 25) HAR 11-55 Page Number: 55-B-170**

*Requesting the inclusions of the following words to this section: “Due to Run-On: You must demonstrate that run-on from a neighboring source (e.g., a source external to your facility **or entity**) is the cause of the exceedance, provided that all the following conditions are met and you include you analysis in your SWPPP.”*

Addition of “or entity” is consistent with wording in sections a and b following this paragraph. It provides clarity for larger facilities that may have other entities on their facility that there could be run on associated with their activities that may affect the individual’s facility seeking coverage under this general permit.

Response

As part of the SWPPP, Permittees must include a site map. This map determines the bounds of the permitted facility. Any area that is to be permitted under a specific Notice of General Permit Coverage is the responsibility of the Permittee. Regardless of whether there may be other entities on site, if the area is included in a permit coverage, the Permittee that the permit coverage is issued to is responsible. Similar to construction sites which may have various other entities such as contractors and subcontractors all operating on the same site, the responsibility for the permitted area falls onto the Permittee.

As such, no changes were made due to this comment.

Comment 9

**File (Appendix): Appendix B PDF Page Number: 809 Sector/Section: Fact Sheet
Part 64.1.1 (pg. 31) HAR 11-55 Page Number: 55-B-216**

Include verbiage that submission of current SWPPP by January 30th of each year is not required if no modifications were made that year.

Concerns with repeated submissions of a document that has no modifications.

Response

The proposed language (excluding the revision to the due date) for SWPPP revisions is consistent with EPA’s 2021 MSGP. The DOH-CWB, consistent with EPA believes that the SWPPP is intended to be a “living document” and it is unlikely that there would be no changes to a facility’s SWPPP throughout the year. It should be noted that EPA received a similar comment during their 2021 rulemaking and declined to make any changes (see: <https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349>, see response to EPA-HQ-OW-2019-0372-0248-A1, Comment Excerpt Number 20, PDF page 1235).

As such, no changes were made due to this comment.

Comment 10

File (Appendix): Appendix K **PDF Page Number:** 31 **Sector/Section:** Fact Sheet
Section 2(c) HAR 11-55 Page Number: 55-K-5

Request the removal of “Prohibit visible plumes from the discharge and”

Requesting the removal of these words to be consistent and align with other individual permit language that state: “Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.”

Response

The language “prohibit visible plumes and,” was removed and made consistent with DOH permit language to the following:

“Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.”

State of Hawaii, Department of Transportation, Highways Division – Maui District

Comment 1

Field citation language revision

§11-55-40 Field citations; non-compliance with NPDES requirements

(c) Resolution of field citation.

(1) A person issued a field citation may accept the citation by:

(C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty calendar days after the person receives the field citation; and

(D) Correction within seven calendar days, or unless otherwise specified on the field citation, of

Request to revise the language 11-55-40©(1)© to read as follows: (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department

must receive the signed field citation and full payment within thirty calendar days after the person receives the field citation; and

Rationale: DOT would like to request a thirty (30) calendar day time frame instead of twenty calendar day time frame to pay the field citation to account for nonwork days such as weekends and holidays. This request is also consistent with the typical time frames within HAR 11-55.

Response

We are unable to implement your proposed revision to have field citations and payments due 30 calendar days after receipt rather than the currently prescribed twenty days. The Hawaii Revised Statutes §342D-9 states that "...any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein requires in writing a hearing before the director...". Therefore, we are unable to revise the rule to 30 days to ensure that the rule is consistent with the statute.

Comment 2

Implements narrative water quality standards as discharge prohibitions

2. Limitations on Coverage under this General Permit

(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.

Request to revise this current language to be as follows:

"(c) Permittees authorized by this general permit are required to prohibit visible plumes from the discharge and prohibit to implement best management practices (BMPs) that reduce the discharge of pollutants to the Maximum Extent Practicable (MEP), consistent with Section 402(p)(3)(B) of the CWA. The discharges must not contain observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

Rationale: The rationale for this request is to make minor revisions to be consistent with the Supreme Court ruling in the case of City and County of San Francisco versus EPA to remove language that can be interpreted to impose compliance based on receiving water conditions, Clean Water Act (CWA) Maximum Extent Practicable (MEP) standard, and the nature of stormwater discharges from MS4s. Many state-issued MS4 General Permits (which cover the majority of Phase II communities) do not include "visible plume" prohibitions since it is primarily a receiving water characteristic. The CWA

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mandates that MS4s reduce pollutant discharges to the MEP and the MS4 permits are designed to handle variable, episodic precipitation events rather than consistent industrial wastewater flows. The EPA notes that typical industrial "end-of-pipe" limits, such as those that might restrict a visible plume, are "poorly suited" for the largely uncontrolled, variable flow of MS4s (MS4 Stormwater Permitting Guide, NACWA). The "visible plume" language is often used for industrial facilities (under the MSGP) to measure immediate compliance, and is not appropriate for the municipal SWMP framework. The EPA's 2017 Compendium of Clean, Specific & Measurable Permitting Examples focuses on numerical, quantifiable metrics for stormwater, such as retention standards and, specifically,, for TMDL compliance, rather than "visual" monitoring. This is also consistent with the Section 6(a) of this General Permit that prohibits non-storm water discharges into the permittee's MS4 consistent with the EPA ruling and Section 7 that removes inspection requirements based on receiving water quality conditions.

Removing the "visible plume" language brings the permit in line with the MEP standard, aligns with the majority of other state-issued permits and revisions made by DOH to their narrative water quality standards removing plumes from Section 2(c)(2) of the HAR 11-55 Appendices F & G. This also allows for the focus to remain on implementing effective BMPs rather than visual monitoring during storm events.

Response

The language "prohibit visible plumes and," was removed and made consistent with DOH permit language to the following:

"Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges."

Comment 3

Permit term revisions/ NOI Submission

3. Term of General Permit

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

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

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

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

Thank DOH you for revising the renewal procedures to reapply i.e., submit an NOI within sixty (60) days of the effective date of the new general permit such that permittees have opportunity to review the permit prior to submitting an NOI.

Request DOH to clarify the timeline for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Section 4(a) of this general permit and the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

Rationale: *This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 4. Notice of Intent Requirements, (a). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Response

HAR 11-55 Appendix K has been updated to 180-days to align with the Hawaii NPDES Industrial Storm Water MSGP. The Fact Sheet was updated to 180-days also.

Comment 4

NOI Submission

4. Notice of Intent Requirements

(a) New Permittees (those MS4s not covered under the previous ~~[2013]~~2022 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous ~~[2013]~~2022 general permit) shall submit a complete notice of intent no later than ~~[120]~~180 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

Request DOH to clarify the timeline for existing permittees for submission of NOI to be 180 calendar days from the effective date of this general permit, to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.

Rationale: *This language contradicts the new language of CHAPTER 11-55 APPENDIX K, 3. Term of General Permit, ©(2). Requesting revision to be consistent with the Industrial Storm Water General Permit, HAR 11-55, Appendix B.*

Response

HAR 11-55 Appendix K has been updated to 180-days to align with the Hawaii NPDES Industrial Storm Water MSGP. The Fact Sheet was updated to 180-days also.

Comment 5

Proposed HAR 11-55 Appendix B

Benchmark Monitoring Schedule

4.2.2.3 Benchmark Monitoring Schedule

Benchmark monitoring of storm water discharges is required quarterly, as identified in Part 4.1.7, in the first and fourth year of permit coverage, as follows:

a. Year one of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your first year of permit coverage, beginning in your first full quarter of permit coverage, no earlier than 90 days after permit issuance.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the next two years (i.e., eight quarters).

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter until monitoring resumes in year four of permit coverage, per Part 4.2.2.3.b below.

b. Year four of permit coverage: You must conduct benchmark monitoring for all parameters applicable to your subsector(s) for four quarters in your fourth year of permit coverage (i.e., your thirteenth through sixteenth quarters), unless the first quarter of your fourth year of permit coverage occurs on or after the date this permit expires.

i. If the annual average for a parameter does not exceed the benchmark threshold, you can discontinue benchmark monitoring for that parameter for the remainder of your permit coverage.

ii. If the annual average for a parameter exceeds the benchmark threshold, you must comply with Part 5.2 (Additional Implementation Measures responses and deadlines) and continue quarterly benchmark monitoring for that parameter until results indicate that the annual average is no longer exceeded, after which you can discontinue benchmark monitoring for that parameter for the remainder of permit coverage.

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Request DOH to provide clarification on the reasons for including the benchmark monitoring in the fourth year even if the first four (4) quarterly samples are below the benchmark threshold.

Rationale: *EPA's Fact Sheet for 2026 Proposed MSGP states that, "The principle underpinning this schedule is that operators that have consistently shown their stormwater controls are controlling discharges so as to not exceed the benchmarks are allowed a relief period from benchmark monitoring." and does not provide an analysis or rationale for increasing the frequency of benchmark monitoring. This new requirement essentially doubles the burden on facilities that do not exceed benchmark thresholds thereby punishing the operators that continue to implement measures to ensure their controls are working properly and consistently.*

Response

As noted in the Fact Sheet, the purpose of the majority of the proposed changes to Appendix B is to conform with EPA's 2021 MSGP. As noted by the commenter, EPA has a **proposed** 2026 MSGP which has not completed EPA's NPDES permit issuance process and is not currently finalized. The DOH-CWB is choosing not to revise Appendix B to the EPA's proposed 2026 MSGP at this time due to it not being finalized, since the conditions of EPA's 2026 MSGP may change once it is finalized.

As such, no changes were made due to this comment.

Comment 6

Proposed HAR 11-55 Appendix B

Major Storm Event Resilience

2.1.1.9 Implementing structural improvements, enhanced/resilient pollution prevention measures, and other mitigation measures can help to minimize impacts from storm water discharges from major storm events such as hurricanes, storm surge, extreme/heavy precipitation, and flood events. If such storm water control measures are already in place due to existing requirements mandated by other state, local or federal agencies, you should document in your SWPPP a brief description of the controls and a reference to the existing requirement(s). If your facility may be exposed to or has previously experienced such major storm events, additional storm water control measures that may be considered include, but are not limited to:

- a. Reinforce materials storage structures to withstand flooding and additional exertion of force;*
- b. Prevent floating of semi-stationary structures by elevating to the Base flood Elevation (BFE) level or securing with noncorrosive device;*

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c. When a delivery of exposed materials is expected, and a storm is anticipated within 48 hours, delay delivery until after the storm or store materials as appropriate (refer to emergency procedures);

d. Temporarily store materials and waste above the BFE level;

e. Temporarily reduce or eliminate outdoor storage;

f. Temporarily relocate any mobile vehicles and equipment to higher ground;

g. Develop scenario-based emergency procedures for major storms that are complementary to regular storm water pollution prevention planning and identify emergency contacts for staff and contractors; and

h. Conduct staff training for implementing your emergency procedures at regular intervals.

Request to revise Section 2.1.1.9 to include "When implementing structural improvements, adaptive measures, or a combination of adaptive measures can help to minimize impacts from stormwater discharges from major storm and flood events."

Rationale: *This language is consistent with the proposed 2026 MSGP and the associated Fact Sheet that states, "EPA is not requiring operators to implement additional controls if the operator determines such controls to be unnecessary, but EPA is requiring operators to consider the benefits of selecting and designing control measures that reduce risks to their industrial facility and the potential impact of pollutants in stormwater discharges caused by major storm events."*

Response

As noted in the Fact Sheet, the purpose of the majority of the proposed changes to Appendix B is to conform with EPA's 2021 MSGP. As noted by the commenter, EPA has a **proposed** 2026 MSGP which has not completed EPA's NPDES permit issuance process and is not currently finalized. The DOH-CWB is choosing not to revise Appendix B to the EPA's proposed 2026 MSGP at this time due to it not being finalized, since the conditions of EPA's 2026 MSGP may change once it is finalized.

As such, no changes were made due to this comment.

Response to April 10, 2026, Public Notice Written Comments Received on the
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The Department of Health (DOH), Clean Water Branch (CWB) conducted a public comment period from April 10, 2026, through May 11, 2026, to solicit written input on the proposed draft amendments to Hawaii Administrative Rules (HAR) Chapter 11-55 and HAR 11-55 Appendices B, E, F, G, and K. A public hearing on the proposed revisions was held on May 11, 2026. The purpose of this outreach was to gather feedback specifically on the proposed amendments; comments on existing provisions were not considered during this process.

Copies of the proposed amendments and accompanying fact sheets were made available on the CWB website. Stakeholders were invited to review and comment on the following documents:

- HAR Chapter 11-55 and Fact Sheet
- HAR Chapter 11-55 Appendix B - NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activity and Fact Sheet;
- HAR Chapter 11-55 Appendix E - NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons per Day (MGD) and Fact Sheet;
- HAR Chapter 11-55 Appendix F - NPDES General Permit Authorizing Discharges of Hydrotesting Water and Fact Sheet;
- HAR Chapter 11-55 Appendix G - NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering and Fact Sheet; and
- HAR Chapter 11-55 Appendix K - NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and Fact Sheet.

This document serves to acknowledge the public comment period and summarize the process by which the DOH-CWB sought input on the proposed revisions. All comments received during the public comment period were reviewed and considered in the development of the proposed rule amendments and general permits.

Response to April 10, 2026, Public Notice Written Comments Received on the
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The DOH-CWB received comments from the following:

	Commenter	Contact(s)
1.	State of Hawaii, Department of Transportation, Airports Division (via Stacy Paquette); 11 pages; <i>2026 AIR-EE Combined Comments to Proposed HAR-55 (sic) Amendments for Public Comment.docx</i> ; Received April 29, 2026.	stacy.a.paquette@hawaii.gov
2.	City and County of Honolulu, Department of Design and Construction; 1 page; <i>952919 Signed.pdf</i> ; Received May 4, 2026.	ddc@honolulu.gov
3.	Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (via Nathaniel Cremer); 2 pages; <i>5090_106.3_26-045 HAR 11-55 Public Comment Period.pdf</i> ; Received May 11, 2026.	nathaniel.v.cremer.civ@us.navy.mil PHNS_C106_CleanWaterTeam@us.navy.mil lewis.hsu.civ@us.navy.mil troy.a.otake.civ@us.navy.mil jade.s.katsuda.civ@us.navy.mil
4.	Brian Carmichael; 1 page; <i>20260511. B Carmichael.pdf</i> ; Received May 11, 2026.	b.carmichael@freerconsulting.com
5.	County of Kauai (via Renee Palmer); 3 pages; <i>20260511. R Palmer.pdf</i> ; Received May 11, 2026.	rpalmer@kauai.gov afrale@kauai.gov ttanigawa@kauai.gov rmatsuyama@kauai.gov
6.	Nick Lonborg; 1 page; <i>DOH cleanwater public comment 5_11_26</i> ; Received May 11, 2026.	nlonborg@hawaii.edu
7.	Sarah Reichert; 1 page; <i>20260511. S Reichert.pdf</i> ; Received May 11, 2026.	sarah.reichert@co.maui.hi.us

Comments from Non-Government Entities

Brian Carmichael

Comment 1

Regarding the request for public comments for proposed amendments to HAR Chapter 11-55 Appendix B, one clarifying question about parameter limits: Are natural background levels of metals due to soil and volcanic activity considered when setting parameter limits?

Response

The limits in the proposed general are those contained in EPA's 2021 MSGP, which did not specifically consider soils in specific states such as Hawaii as it intended to be used across the country where EPA is the permitting authority. Please see Part 5.2.6.1 of the general permit for AIM exception procedures in situations where a benchmark exceedance is shown to be solely attributable to background pollutant levels. While not directly used to set parameter limits, this exception addresses situations where elevated levels of a pollutant are already present in soils at a permitted Facility.

As such, no changes were made due to this comment.

Nick Lonborg

Comment 1

In its published Notice of Public Comment and Public Hearing (4/11/26), DOH states that “NPDES Permits serve as enforceable tools for implementing the State Water Quality Standards, which are designed to safeguard all designated and existing uses of State Waters including, but not limited to, Native Hawaiian traditional and customary practices. The DOH does not anticipate that the proposed amendments to the NPDES rules and general permits will affect or impair these rights. Nevertheless, the DOH welcomes input from stakeholders who may hold a different view.”

I make the following comments to the General NPDES Multi-Sector General Permit For Storm Water Discharges Associated With Industrial Activity (MSGP).

A. §11-55-01 Definitions. New definition to be included:

“Lands of exclusive federal jurisdiction” means lands in the United States where the federal government asserts exclusive jurisdiction in relevant respects.

My Comment: This definition strikes me as quite vague and could benefit from clarification. For example, would this definition include State of Hawaii lands leased by the federal government where there currently exists access by Native Hawaiians to engage in traditional and customary practices? If leased lands are considered under exclusive jurisdiction, then leased lands that provide for access may not be included under the new definition.

In the “Inapplicable Requirements” segment of the fact sheet for the permits Authorizing Discharges of Storm Water Associated with Industrial Activities, the agency states that requirements in the EPA’s version of the permit that are not applicable to the state of Hawaii are not included. Included in that section as not applicable are requirements for: (1) Endangered and Threatened Species and Critical Habitat as part of the Endangered Species Act (“ESA”), (2) Historical Properties Preservation, and (3) Tribal areas, amongst others. It seems to me that requirements to protect endangered species, historical sites, and native areas could absolutely be applicable to Hawaii. Hawaii has a large number of endangered and threatened species found nowhere else, and while we do not have any federally recognized tribes, we do have an indigenous community with historical and culturally important sites that should be protected.

Response

To clarify what lands fall under Lands of Exclusive Federal Jurisdiction, the Fact Sheets for HAR 11-55 and each Appendix have been revised. The statement below has been included, which is taken from EPA’s supporting documentation for modifications to EPA’s 2022 NPDES Construction General Permit (see <https://www.federalregister.gov/documents/2025/04/15/2025-06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general>)

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Lands of Exclusive Federal Jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are Lands of Exclusive Federal Jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background on Lands of Exclusive Federal Jurisdiction in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122)]

As such, a Federal Agency simply leasing land from the State does not inherently make such leased land a Land of Exclusive Federal Jurisdiction. Notably, the CWB does issue NPDES permits and asserts regulatory authority over Federal facilities within the state, including at military sites. It should also be noted that this exclusion does not eliminate the requirement to receive NPDES permit coverage for applicable discharges/activities, only that the permitting agency would be EPA rather than the CWB.

To clarify, the “Inapplicable Requirements” section of the Fact Sheet as it relates to the Endangered Species Act, Historical Properties, and Tribal Areas requirements are due to the requirements in the permit being applicable to Federal agencies, pursuant to Federal law. The CWB is not stating that these requirements are inapplicable due to the absence of endangered species, historical properties, or indigenous communities, only that these requirements are excluded as they are requirements based on Federal law that applies to Federal Agency actions. The proposed Appendix B was developed based on State law and any other applicable Federal Law under the NPDES authorization granted by EPA to the State of Hawaii.

As such, no changes were made due to this comment.

Comments from Government Agencies

State of Hawaii Department of Transportation - Airports

Comment 1

PAGE Pg. 30 in HAR 11 55 PDF 55-K-2

SECTION 11 55-04(j)(3) Appendix K, Section 1(a)

Proposed Revision to Existing Text in 11 55-04(j)(3) and Appendix K, Section 1(a) (Clean):

“Discharges which may not require an NPDES permit include, but are not limited to, the following:

- 1. Water line flushing;*
- 2. Landscape irrigation and incidental irrigation runoff;*
- 3. Diverted stream flows;*
- 4. Uncontaminated ground water (including groundwater infiltration as defined in 40 CFR §35.2005(20), rising groundwater, and pumped groundwater);*
- 5. Discharges from potable water sources;*
- 6. Discharges from foundation drains;*
- 7. Air conditioning condensate;*
- 8. Springs;*
- 9. Uncontaminated water from crawl space pumps and footing drains;*
- 10. Water from individual residential car washing;*
- 11. Flows from riparian habitats and wetlands;*
- 12. Dechlorinated freshwater swimming pool discharges;*
- 13. Low pressure rinsing of sidewalks and similar impervious surfaces without chemical additives; and*
- 14. Discharges or flows from firefighting activities.”*

The list of allowable non-stormwater discharges includes several categories that appear to be redundant or overlapping and could be consolidated for clarity without altering the substantive scope of authorized discharges. Specifically, “landscape irrigation,” “irrigation water,” and “lawn watering runoff” describe substantially similar activities and do not appear to represent distinct discharge types and “rising ground waters,” “uncontaminated ground water infiltration,” and “uncontaminated pumped ground water” are distinct but similar enough to combine into a single category addressing uncontaminated groundwater discharges.

Maintaining separate entries for overlapping activities may create uncertainty regarding whether different conditions apply. Consolidation would improve clarity and consistency for permit implementation. Additionally, the lists provided in HAR 11 55-04(j)(3) and HAR 11 55, Appendix K are inconsistent.

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This request is intended solely to streamline the list for ease of implementation and is not intended to expand or modify the types of discharges authorized under the permit.

Response

The list of allowable non-storm water discharges in Section 1(a) is consistent with the categories identified in 40 CFR 122.26(d)(2)(iv)(B)(1) and the federal MS4 minimum control measure requirements in 40 CFR 122.34(b)(3)(ii).

As such, no changes were made due to this comment.

Comment 2

PAGE Various

SECTION Various

Replace “duly authorized representative” with “authorized representative,” consistent with the defined term in HAR 11-55-01.

HAR 11-55-01 defines the term “authorized representative,” while Appendix B uses the undefined term “duly authorized representative.” Using different terms to describe the same role may create unnecessary ambiguity regarding authorization requirements.

For clarity and consistency, and to avoid potential interpretive questions, we request the defined term “authorized representative” to be used consistently throughout HAR 11-55, including Appendix B, Appendix F, Appendix G, and Appendix K.

Response

The DOH-CWB concurs that only the term “authorized representative” is defined in Section HAR 11-55-01. However, all references to “duly authorized representative” are consistent with Section HAR 11-55-07(b) where it is specified that reports or information required to complete an application or information to comply with the conditions of general permit coverage shall be signed by a duly authorized representative of the designated certifying person. The DOH-CWB is retaining the “duly authorized representative” language to be consistent with the more specific language in HAR 11-55-07(b).

As such, no changes have been made due to this comment.

Comment 3

PAGE 55-B-41

SECTION 1.2.2.1 (f)

Proposed addition: *“Control measures to generally be implemented consistent with manufacturer specifications, unless the operator documents site specific justification*

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demonstrating equivalent or greater pollutant control, or DOH provides written direction specifying alternative measures.”

The proposed addition is intended to provide procedural clarity and consistency in enforcement across facilities.

Response

Please see Part 2.1 Storm Water Control Measures, which specifies that the “selection, design, installation, and implementation of these control measures must be in accordance with good engineering practices and manufacturer’s specifications and consistent with direction by the DOH. Note that you may deviate from such manufacturer’s specifications where you provide justification for such deviation and include documentation of your rationale...” The DOH-CWB believes this language already in the proposed revisions provides procedural clarity and consistency in line with the commenter’s proposed addition.

As such, no changes were made due to this comment.

Comment 4

PAGE 55-B-50

SECTION 1.3.4

“You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to your facility. Where physical signage cannot be posted due to safety, security, or operational restrictions, or [Public signage is not required] where other laws, regulations, or official policies ~~[or local ordinances]~~ prohibit or discourage such signage, ~~[in which case]~~ you must document in your SWPPP a brief explanation for why you cannot post a sign and a reference to the law, regulation, or policy ~~[or ordinance]~~.”

The current language assumes the permitted “facility” has a publicly accessible perimeter frontage. For certain regulated operators, including large, secured transportation facilities (e.g., airports), the industrial activities covered under the permit, such as maintenance baseyards, fueling support areas, and material storage, occur within restricted operational areas that are not accessible to the public for safety and security reasons.

Although a local ordinance may not prohibit signage, state operational and aviation security policies restrict the placement of non-operational signage within secure or operational areas. As written, the permit may create a compliance obligation without a practicable compliance pathway for these types of facilities.

Response

The proposed revision includes language that specifies that the sign or other notice of permit coverage in a safe, publicly accessible location in close proximity to the permitted facility. Depending on a specific facility's layout or other circumstances this may mean that the notice is placed in a safe publicly accessible location that may be a distance away from the actual facility. This is allowable under the proposed language. This language does not require a sign to be placed in a restricted or secure area. The DOH-CWB believes that the proposed language has the flexibility to address the concern identified by the commenter. It should be noted that EPA received a similar comment during their 2021 rulemaking and declined to make any changes (see: <https://www.regulations.gov/document/EPA-HQ-OW-2019-0372-0349>, see response to EPA-HQ-OW-2019-0372-0269-A1, Comment Excerpt Number 16, PDF page 358 and EPA-HQ-OW-2019-0372-0196-A1, Comment Excerpt Number 11, PDF page 310).

As such, no changes were made due to this comment.

Comment 5

PAGE 55-B-86

SECTION 2.2.1

Proposed Revisions to Amended Text:

“~~[The discharge must not]~~ Prohibit discharges that, at the point of discharge and prior to mixing with receiving waters, contain observable deposits of floating solids, scum, sheen or other substances, ~~[an observable]~~ film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness at the point of discharges, excluding naturally occurring conditions.”

*The proposed clarification is intended to provide language that is clearly and unambiguously consistent with the Clean Water Act and the March 4, 2025, U.S. Supreme Court decision in *City and County of San Francisco v. EPA*.*

The draft language proposed by DOH appropriately seeks to implement narrative water quality standards through narrative effluent limitations. However, certain phrases, such as “observable deposits of floating solids, scum, sheen or other substances” and “observable change in color, odor, or cloudiness in the discharges,” could potentially be interpreted as requiring evaluation in the receiving water body rather than solely within the effluent stream.

This clarification is not intended to alter the substantive intent of the provision. Instead, it strengthens the legal defensibility of the language by clearly establishing that the requirement applies at the point of discharge and functions as a narrative effluent limitation, rather than as an impermissible end-result or receiving-water-based standard.

Response

As noted by the commenter and in the Fact Sheet, the intent of the proposed revision is to comply with the U.S. Supreme Court's decision in *City and County of San Francisco v. EPA* end-result ruling. To ensure that the general permit is still as protective as the current general permit, while still complying with the Supreme Court decision, the DOH-CWB attempted to revise previous language which encompassed all of the narrative water quality conditions in HAR 11-54-4 to only those that can be observed and controlled within the discharge. The DOH-CWB believes the proposed language is clear that the requirements are to be applied to the discharge from the regulated facility.

As such, no changes have been made due to this comment.

Comment 6

PAGE 55-B-109

SECTION 4.1.3

Proposed Revisions to Amended Text:

"You must conduct all required monitoring on a storm event that results in an actual discharge ("measurable storm event") that follows the preceding measurable storm event by at least 72 hours (three days). For purposes of this definition, the 72-hour period begins when stormwater discharge from the previous storm event has ceased at the discharge point."

The current definition establishes a minimum 72-hour separation between measurable storm events but does not specify how the end of a storm event is determined. Because stormwater discharges may continue after rainfall has stopped due to drainage system routing, storage, infiltration, or groundwater interaction, it is unclear whether the antecedent period should be measured from the end of precipitation or from cessation of discharge.

Clarifying that the 72-hour period begins after stormwater discharge has ceased provides an objective and observable field condition for operators and inspectors. This aligns the definition with the purpose of stormwater sampling, which is to characterize distinct runoff events, and improves consistency of implementation across permittees.

Response

The DOH-CWB believes that the proposed language is unnecessary as a measurable storm event is defined as a storm event that results in an actual discharge. By extension the end of a measurable storm event would be the end of an actual discharge due to the measurable storm event.

As such, no changes were made due to this comment.

Comment 7

PAGE 55-B-142

SECTION 5

Proposed addition: *“Facilities with concentrations below applicable benchmark thresholds for two consecutive monitoring periods may return to baseline status, consistent with EPA MSGP AIM provisions.”*

The proposed addition is intended to address AIM level reset conditions to avoid facilities remaining indefinitely in elevated tiers, consistent with EPA MSGP AIM provisions.

Response

Please see parts 5.2.3.4, 5.2.4.4, and 5.2.5.4 for criteria to return to baseline status for AIM level 1, 2, and 3 respectively. While the criteria are not exactly what the commenter has proposed, there is already specific language to prevent a Facility from being stuck at an elevated AIM level when discharge concentrations have fallen below benchmark thresholds.

As such, no changes have been made due to this comment.

Comment 8

PAGE 55-B-146

SECTION 5.1.3.1

Proposed Revisions to Amended Text: *“immediately” means that the day you find a condition requiring corrective action, you must take all reasonable steps to minimize or prevent the discharge of pollutants until you can implement ~~a permanent solution~~. the required storm water control measure specified in this permit.”*

Language aligns with CWA and removes implication of end condition.

Response

The DOH-CWB does not believe the language specified by the commenter is related to the “end result” Supreme Court decision. As such, there is no reason to deviate from the proposed language.

As such, no changes were made due to this comment.

Comment 9

PAGE 55-B-314

SECTION 8.P.2.1

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Proposed addition:

“This permit authorizes storm water discharges from only those portions of the transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations.”

Certain land transportation and warehousing facilities do not conduct activities typically covered under this industrial permit.

The proposed addition is intended to provide consistency with the language for Sector S and the [NPDES Industrial Storm Water General Permit FAQs](#) posted on the DOH webpage.

Response

As noted by the commenter, the DOH-CWB’s FAQs for Appendix B includes excerpts from 40 CFR 122.26(b)(14)(viii) which specifies the applicability for transportation facilities that have vehicle maintenance shops, equipment cleaning operations, or airport de-icing operations. The DOH-CWB believes it is unnecessary to include this language in Appendix B, as when the DOH-CWB responds to questions regarding eligibility for coverage under Appendix B, the DOH- CWB refers potential applicants to the FAQs. These FAQs clearly specify that not all transportation facilities require industrial storm water coverage, and it is up to potential applicants to determine whether the operations at their facility meet the requirements to apply for industrial storm water coverage.

As such, no changes were made due to this comment.

City and County of Honolulu, Department of Design and Construction

Comment 1

Thank you for the opportunity to review and comment. The Department of Design and Construction does not have any comments.

Response

The Clean Water Branch appreciates your review of the proposed revisions, and your dedication to protect public health and island waters.

County of Maui, Department of Environmental Management

Comment 1

Aloha

I went to go into the meeting, and it was at the end of it @ 10am, on May 11, 2026. The hearing was to solicit written input from the public and other stakeholders about the proposed amendments to Hawaii Administrative Rules (HAR) Chapter 11-55 entitled "Water Pollution Control," and readopted National Pollutant Discharge Elimination System (NPDES) general permits which are specified in Appendices B, E, F, G, and K of HAR Chapter 11-55.

The website stated 10am at the Clean Water Branch.

I saw it was recording, is there a way to watch the recording?

Mahalo

Response

The following response was provided via email on May 11, 2026.

"Aloha Sarah,

The public hearing held this morning (5/11) for the proposed amendments to HAR 11-55 and the readopted NPDES general permits specified in Appendices B, E, F, G, and K of HAR 11-55 started as scheduled at 10:00 am and promptly ended 11 minutes later at 10:11 am. A single attendee provided comments.

As you pointed out, the public hearing was recorded. The CWB will upload the recording once the rulemaking process for HAR 11-55 and Appendices B, E, F, G, and K will be completed (i.e., when the rule package will be approved / signed by the Governor).

The CWB does not know when the rule package will be approved. The CWB will post an announcement at the website when the rule package will be approved. This announcement will include a link to the recording of the public hearing held today (5/11). Please let me know how I can be of further assistance.

Mahalo."

Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility

Comment 1

File (Appendix)

Appendix B

Sector/Section

Fact Sheet

Part 3.1.5.4(f)

(pg. 18)

HAR 11-55 Page Number

55-B-97

Comment

Requesting clarification of Part 3.1.5.4(f).

Concern

Request clarification on requirements to report “any unauthorized discharges” in the case of an upstream facility that has a unauthorized discharge and then crosses your facility boundary.

Response

Note that the language specifies that these are unauthorized discharges from the facility which should be under the control and management of the Permittee or the Permittee’s operators. In cases where there may be unauthorized discharges of storm water that comes from other upstream facilities (i.e., run-on as defined in Part 5.2.6.2), Permittees should follow the procedures outlined in Part 5.2.6.2. As with any discharge that may harm the environment or violate State water pollution law, Permittees may report any observed unauthorized discharges to state waters or other discharges that harm the environment to the Clean Water Branch’s Enforcement and Compliance section.

Comment 2

File (Appendix)

Appendix B

Sector/Section

Fact Sheet

Part 4.2

(pg. 20)

HAR 11-55 Page Number

55-B-116

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Comment

*Requesting to change the sentence to “Part 1.3.6, in the event that the permit is administratively continued, monitoring **and reporting** requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration.*

Concern

Addition of “and reporting” aligns with the rationale for revising this section. How the revised statement was written did not make clear that reporting also remains the same, it only mentions the monitoring remains the same.

Response

An administrative extension of an NPDES permit simply means that the term of an NPDES permit has been continued and will not terminate on the expiration date specified on the permit. As such, it is known that when an administrative extension is granted, all terms of the NPDES permit remain in effect. While the 2021 EPA MSGP includes the subject language, the DOH-CWB believes it is unnecessary to further clarify EPA’s language as an administrative extension means that all terms of the NPDES permit are continued.

As such, no changes were made due to this comment.

Comment 3

File (Appendix)

Appendix B

Sector/Section

Fact Sheet

Part 5.2.6.2

(pg. 25 - 26)

HAR 11-55 Page Number

55-B-171

Comment

*Requesting the inclusions of the following words to this section: “Due to Run-On: You must demonstrate that run-on from a neighboring source (e.g., a source external to your facility **or entity**) is the cause of the exceedance, provided that all the following conditions are met and you include your analysis in your SWPPP.”*

Concern

Addition of “or entity” is consistent with wording in sections a and b following this paragraph. It provides clarity for larger facilities that may have other entities on their facility that there could be run on associated with their activities that may affect the individual’s facility seeking coverage under this general permit.

Response

As part of the SWPPP, Permittees must include a site map. This map determines the bounds of the permitted facility. Any area that is to be permitted under a specific Notice of General Permit Coverage is the responsibility of the Permittee. Regardless of whether there may be other entities on site, if the area is included in a permit coverage, the Permittee is responsible. Similar to construction sites which may have various other entities such as contractors and subcontractors all operating on the same site, the responsibility for the permitted area falls onto the Permittee.

As such, no changes were made due to this comment.

Comment 4

File (Appendix)

Appendix K

Sector/Section

Section 8(a)(3)

HAR 11-55 Page Number

55-K-19 to 55-K-23

Comment

Request to include Wahiawa Annex to facility name: “Joint base Pearl Harbor-Hickam (JBPHH) Wahiawa Annex”

Concern

To specify that this section applies to Wahiawa Annex location or portion of Joint Base Pearl Harbor-Hickam (JBPHH).

Response

To clarify, the proposed language in Section 8(a)(3) states that the TMDL applies to the U.S. Department of the Navy service area which discharges to the North Fork of Kaukonahua Stream.

To identify the U.S. Department of the Navy, JBPHH as the applicable facility for Appendix K, the CWB first looked to the applicable Total Maximum Daily Loads for the North and South Forks of Kaukonahua Stream—which identifies the U.S. Navy as the assigned WLA holder. That WLA was incorporated into permit HIS000257. However, permit HIS000257 has since expired, and JBPHH has submitted a Notice of Intent for coverage under Appendix K, NPDES File No. HI26KI069 (Submission No. HQK-AKYP-Q3J86 on February 24, 2026).

Because the DOH established and EPA approved TMDL does not distinguish or specifically name the Wahiawa Annex, CWB will not be revising the language to specify “Wahiawa Annex” in the facility name.

County of Kauai

Comment 1

Major Storm Events and SWPPP Content (Section 2.1.1.9)

The draft permit includes new language asking permittees to consider how major storm events (such as hurricanes or extreme rainfall) could affect stormwater controls and to document related procedures in the SWPPP. We recognize the value of planning for severe weather and would appreciate clarification on how detailed these procedures are expected to be within the SWPPP. Many emergency-response actions for major storm events are already addressed in broader County or statewide emergency plans, and it would be helpful to understand whether the SWPPP may reference those existing plans rather than restating them in full.

In addition, we would appreciate clarification on how DOH intends the requirement to “consider enhancements” to be applied in situations where severe weather exceeds normal design criteria. Even well-maintained systems may be temporarily overwhelmed during rare or extreme events. It would be helpful to confirm that exceedances occurring solely due to such events—when controls are otherwise implemented and maintained—would not be treated as noncompliance.

Response

It is acceptable to reference existing plans rather than restating them in the SWPPP. Evaluation of compliance with requirements and determinations of non-compliances will take all factors of the Permittee’s efforts into account.

Comment 2

Clarification on Documenting Maintenance Timeframes in the SWPPP (Section 2.1.2.3 / Part 5.1.3 Cross Reference)

The draft permit states that if repairs or replacement of stormwater controls will take longer than 45 days, permittees must notify DOH and “document in the SWPPP” the rationale for the modified maintenance timeframe. We request clarification on what level of detail is expected in the SWPPP for this type of documentation. While the SWPPP is a living document, we are not clear how short-term, project-specific repair schedules should be incorporated or updated, or whether maintaining these schedules within the SWPPP is an existing requirement or a new one. We ask that DOH clarify how these repair timelines should be documented, and whether referencing separate maintenance logs or quarterly reports—rather than modifying the SWPPP for each repair—would meet the intent of the requirement.

Response

Repairs and replacement taking 15-45 days or 45+ days must be documented in the SWPPP. The permit allows flexibility to document the corrective actions, providing it is done so with sufficient detail that all personnel involved with implementing the NPDES permit and SWPPP are fully aware of the situation. It is acceptable to reference separate plans or reports when documenting corrective actions.

Comment 3

Routine Facility Inspections (Section 3.1.5)

While we already take photos as part of our inspections, we request clarification on the extent of the new photographic documentation requirements. The language appears broad, and we want to ensure that missing or unclear photos—when controls are otherwise in place—will be treated as minor administrative issues rather than major violations.

Response

The requirement calls for “photographic evidence of control measure/SWPPP implementation” and is intended to document controls measures installed or implemented at the facility and their condition. The photographs are meant to provide a general understanding of the control measures installed at the facility and observed during the inspection. Permittees should take all necessary steps possible to ensure that correct and clear photos are collected to satisfy this requirement. Evaluation of the Permittee’s routine facility inspections for compliance and completeness will be made at the time NPDES inspections are conducted.

Comment 4

Clarification on Where to Document Delayed Sampling (Section 4.1.3)

The draft permit requires us to document in the SWPPP when grab samples cannot be collected within the first 30 minutes of a measurable storm event. We request clarification on whether this information is intended to be recorded directly in the SWPPP itself, or if it can be included in our monitoring records and DMR/benchmark reporting files that are maintained alongside the SWPPP. Because the SWPPP is not typically used to record event-specific sampling notes, it would be helpful for DOH to clarify the appropriate location for this documentation to ensure consistent compliance.

Response

The requirement calls for documentation to be kept with the SWPPP. Records maintained with/alongside the SWPPP should meet the requirement for documentation, but determinations for compliance will be made at the time NPDES inspections are conducted.

Comment 5

Sector L Monitoring Requirements (Part 4.2 Indicator Monitoring Tables)

*The revised permit now describes **both Sector L1 and L2** subsectors using identical language, suggesting they are equally subject to the new indicator monitoring requirements. However, several monitoring tables only list **L2**, omitting L1. We request clarification on whether L1 facilities are indeed included in these new indicator monitoring requirements—or if their omission from the tables was intentional.*

Response

As noted in the Fact Sheet, revisions made in the proposed Appendix B are intended to generally align with the EPA's 2021 MSGP. As such, the indicator, benchmark, and effluent limitation monitoring tables are the same as those contained in EPA's 2021 MSGP and any additions or omissions are in line with the EPA's 2021 MSGP. For information on the rationale for EPA's 2021 MSGP, please see:

<https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>.

Comment 6

Indicator and Benchmark Monitoring (Sections 4.2.1, 4.2.2)

The draft adds several new “report only” indicator parameters and requires benchmark monitoring in both the first and fourth years of coverage. We request clarification on how these new monitoring requirements will be reported (e.g., through DMRs, benchmark forms, or another format), and when they are expected to take effect. As these changes may require additional laboratory services and budget planning, it would be helpful to understand whether DOH intends to provide a phase in period for facilities that do not currently budget for these sampling parameters.

Response

Please see Parts 7.1 and 7.3 of the proposed Appendix B, which specifies that unless otherwise directed by the DOH, all monitoring data including DMRs shall be submitted through the e-Permitting Portal.

A phase in period will not be granted, as the schedule for the required monitoring is established in the Permit. For PAHs, some “phase in” time is provided, as the schedule provides that monitoring shall commence “no earlier than 90 days after permit issuance”. However, pH, Total Suspended Solids, and Chemical Oxygen Demand are much more commonplace parameters to be analyzed, and monitoring must be conducted beginning the first full quarter of permit coverage. Permittees are expected to prepare and budget for new monitoring requirements to go into effect upon issuance of the permit.

Comment 7

Applicability of Year 1 and Year 4 Monitoring (Section 4.2.2)

The draft permit introduces mandatory indicator or benchmark monitoring in the first and fourth years of coverage. We request clarification on whether “Year 1” refers to the start of each facility’s existing permit term—if they already hold Appendix B coverage—or to Year 1 following the effective date of the new permit for all permittees. Confirming this will help us schedule and budget for additional laboratory analysis.

Response

As noted in Part 4.2.2.3.a, benchmark monitoring must be conducted for four quarters in the first year of permit coverage, beginning in the first full quarter of permit coverage. “Year 1” refers to the first year of coverage under the proposed Appendix B. It is not intended for existing facilities to skip Year 1 and Year 4 monitoring. Notably, EPA’s revisions from the 2015 MSGP to 2021 MSGP added in a required Year 4 benchmark monitoring to increase the amount of required monitoring for each covered Facility within a 5-year permit term. Under the 2015 MSGP, it was possible to conduct only 4 quarters of benchmark monitoring in the first year of coverage, then no other benchmark monitoring for the rest of the permit term, provided the benchmark was not exceeded in this first year.

Comment 8

Photographic Documentation for Monitoring (Section 4.2.4)

The draft permit requires photographic documentation as part of each monitoring event, but the expectations are unclear. We request clarification on what specific photographs are required during monitoring. For example, should we take photos of every outfall even when no discharge is occurring, or only when samples are collected? Do we need to document “no flow” conditions with photos, and what level of detail is expected in those situations?

Response

The draft permit requires photographic documentation of control measures and the discharge when analytical monitoring of storm water discharges is required. Photographs are also required to document when control measures are absent. The purpose is to represent the quality of the storm water discharge and the effectiveness of the control measures. While the requirement does not explicitly require photographic documentation of outfalls when a discharge is not occurring during a rain event, such photographs are recommended to show control measures’ performance and confirm that discharges did not occur.

Comment 9

Treatment of J Flagged Laboratory Results (Section 4.2.2.1)

The draft permit requires substituting a value halfway between the detection limit and reporting limit when a lab reports a J flagged result. We request clarification on this approach, as using a calculated substitute may overstate the result and trigger unnecessary benchmark exceedances or AIM actions. We ask whether DOH will allow permittees to use the laboratory-reported value or the lab's stated limit of detection when available, as these values are more accurate.

Response

Correct, the Permit requires reporting a value when the result falls between the method detection limit and the quantitation limit; however, the Permit instructs reporting a “value halfway between zero and the quantitation limit.” In these cases, a comment should be left on the DMR noting the situation. If the report value halfway between zero and the quantitation limit is above a benchmark, the permittee must go through the AIM process of assessing control measures to determine if better controls can be taken, making adjustments, and continuing monitoring. The permittee may at any time seek an AIM exemption as it is not the intent of the permit to require unnecessary AIM actions.

Comment 10

Corrective Action Documentation and Reporting (Section 5.1.3.2)

The corrective action timelines in the draft—14 days, up to 45 days, and extensions beyond 45 days with notification to DOH—may require more significant coordination, especially for government entities that may need to follow procurement, budget, or approval processes before certain repairs can be made. We request direction on where these schedules, delay justifications, and progress updates should be recorded (directly in the SWPPP or in separate corrective action logs kept with the SWPPP and other monitoring records). We also request guidance on how DOH wants permittees to communicate and track notifications when work will exceed the 45-day timeframe.

Response

Part 6.5 requires the Permittee to keep corrective action records with the SWPPP, however, Part 5.3 (Corrective Action and AIM Documentation), does not prescribe a specific manner of documentation. DOH encourages the Permittee to utilize the documentation method that works best, as long as it meets the requirements of Parts 5.3 and 6.5. The documentation need not be submitted but shall be made available upon request.

In the case that a corrective action will exceed 45 days, Part 5.1.3 requires that the Permittee take the minimum time to take the action, provided you notify DOH with rationale for extension and a completion date (this notification shall be included in the corrective action documentation).

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Notification of the exceeded timeframe must meet the reporting requirements in Part 7.1, which states that the Permittee must submit other reporting information via the e-Permitting Portal.

Comment 11

AIM Framework and Deadlines (Section 5.2)

The AIM process provides a structured approach for addressing ongoing benchmark exceedances; however, the timelines across Levels 1, 2, and 3 could possibly be challenging for municipal facilities that work within established procurement, contracting, and budget approval procedures. Some AIM actions, particularly at Level 3, may require planning and design steps that extend beyond the prescribed deadlines. We request consideration for additional flexibility or phased implementation schedules when justified by documented constraints and demonstrated efforts to comply.

We would also like to request clarification on how AIM requirements apply when a facility is already operating under an Administrative Order on Consent (AOC). Because AOC milestones and corrective actions may establish their own schedules and obligations, more direction is needed on whether these actions fulfill AIM requirements, or whether AIM timelines are expected to proceed independently.

Response

Per Part 5.2.5.2, when AIM actions will take longer than 90 days, DOH is able to grant extensions for justifiable cases. The realistic timeframe of procurement and contracting would be considered when granting extensions. Where there is conflict, the AOC requirement takes precedence over permit requirements unless specifically stated otherwise in the AOC, while the AOC is in effect.

Comment 12

Natural Background Exception (Section 5.2.6.1)

Two of our facilities are primarily composed of natural soils with no history of industrial contamination/runoff. We seek clarification on what data DOH would accept to demonstrate that benchmark exceedances are solely due to natural background levels. Specifically, what types of background data (e.g., regional soil/water studies or site-specific testing) will be required? And if qualified, how this documentation should be maintained?

Response

There are no specific guidelines or requirements for minimum information needed to be provided and how to document it. The permittee has flexibility in demonstrating the influence of background levels and shall make its best effort at demonstrating its case for CWB to consider.

Comment 13

Corrective Action Documentation Timelines (Section 5.3)

Sections 5.3.2 and 5.3.3 introduce 24-hour and 14-day corrective action documentation requirements, in addition to the AIM documentation outlined in Section 5.2. As written, these appear to be separate and additional reporting steps, not part of the AIM response process. We request clarification on whether the 24-hour and 14-day documentation are intended to function as standalone reports, or whether they may be integrated into AIM reporting or other existing records. We also ask for guidance on how DOH wants permittees to provide required notifications when corrective actions will exceed 45 days, including the appropriate format and point of contact.

Response

As noted in both Part 5.3.2 and 5.3.3, the subject documentation requirements are all due to conditions listed in Parts 5.1.1, 5.2.3, 5.2.4, and/or 5.2.5 so they are inherently part of the documentation requirements of the AIM response process. In the absence of specific requirements in the proposed Appendix B, formatting, filing, or other internal administrative procedures for these reports are at the Permittee's discretion, provided that these reports are readily available upon request by the DOH at any time, including during an on-site inspection.

Regarding notification to DOH, please see response to County of Kauai Comment 10.

Comment 14

Ability to Document "No Action Needed"

The previous permit allowed us to document when corrective action was not necessary. The new draft is less clear on this point. Please clarify that permittees can still use professional judgment to document when no further action is warranted, and that this documentation will be accepted.

Response

The new AIM system contained in Part 5 of the proposed Appendix B is intended by EPA to clearly outline an escalating series of steps and actions to be taken by Permittees when benchmarks are continually exceeded. The excerpt below from EPA's 2021 MSGP fact sheet (available at: <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>) explains the intent of the AIM system:

"Previous MSGPs also required corrective action in the event of an exceedance of a benchmark monitoring threshold. The 2015 MSGP required the operator to review the SWPPP and adjust SCMs, depending on the facility's assessment, to bring any exceedances below the benchmark threshold, and continue quarterly monitoring until no further exceedance occurred.

The 2021 MSGP contains revisions to those corrective actions required for benchmark exceedances, now called Additional Implementation Measures (AIM). The 2021 MSGP

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AIM requirements keep follow-up actions for benchmark exceedances clear, timely, and proportional to exceedance frequency and duration. The new AIM requirements provide a sequential, stepwise follow-up process if advancement through the AIM levels is warranted. This process provides more regulatory certainty as to what is required of an operator and in what timeframe once a benchmark triggering event occurs. The new requirements also facilitate the identification of any issues and implementation of any follow-up responses in a timely manner and addresses previous stakeholder concerns that the prior MSGP's corrective actions were not sufficient to ensure that discharges under the permit are sufficiently controlled to protect water quality. The 2015 MSGP's corrective actions for benchmark exceedances may have allowed facilities to only make minimal changes, or no changes, in their SWPPP or to their SCMs, which may have led to limited stormwater control measure effectiveness. Under the 2015 MSGP's requirements, facilities' benchmark exceedances as well as their attempts to reduce pollutant levels below the benchmark thresholds could potentially continue in an endless loop, without clear expectations in the permit for how to improve the necessary response, if warranted, nor for how to comply with certainty."

EPA notes that a weakness of the 2015 MSGP was the allowance for Facilities to potentially make minimal or no changes to their SWPPP or storm water controls. Under the AIM system, outside of the exceptions contained in Part 5.2.6, the only time it is acceptable for no action to be taken, is during the AIM level 1 response (Part 5.2.3.1), provided the Facility has determined that no action is necessary to bring pollutant levels below the benchmark threshold. If the Facility advances to AIM level 2, it is not acceptable for a Facility to determine that no action is required, as by advancing to AIM level 2, it is shown that there is an ongoing failure by the Facility to meet benchmark requirements (see Part 5.2.4.1 which notably omits the no further action determination in Part 5.2.3.1). AIM level 3 further escalates this by **requiring** structural source controls and/or treatment controls (Part 5.2.5.1). The AIM system is fundamentally designed to require an escalating series of actions to be taken by Facility's to bring their discharges below benchmark levels.

Narrowing the allowance for a determination of "no action required" is intentional and may only be accepted in the limited circumstances outlined in the proposed Appendix B.

Comment 15

Annual SWPPP Updates and Public Posting (Section 6.4)

The requirement to update and post the SWPPP annually is reasonable, but we are unclear as to what constitutes a "current" SWPPP. As per the current permit we treat the SWPPP like a living document and update it with every change of information within. How does this work in tandem with the annual update?

Response

As the commenter correctly notes, the SWPPP is intended to be a living document that is updated as-needed and in accordance with the requirements in the proposed

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Appendix B. Part 6.4 of the proposed Appendix B specifies three (3) different methods to make either a Permittee's entire SWPPP or portions of a SWPPP publicly available. Parts 6.4.1.1, 6.4.1.2, and 6.4.1.3 respectively provide instructions for each method on how to keep SWPPP information current. When Permittees attach their SWPPP to their NOI or provide select SWPPP information in their NOI, they are required to update this information (or provide an updated copy of their SWPPP) by January 30th of every year through submittal of a "CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs" in the e-Permitting Portal. For Permittees that maintain a copy of their SWPPP online, they must post any SWPPP modifications, records, and other reporting elements at the same URL as the main body of their SWPPP. This webpage and information must be updated no later than January 30th each year.

The CWB considers a "current" SWPPP to be the latest version of the SWPPP at the time that the information is submitted to CWB or when the webpage is updated. The CWB notes that SWPPPs maintained online may be updated at any time due to the nature of hosting the information on a digital platform, however, at minimum, the information maintained on the submitted URL must be updated to the most current SWPPP information and documentation, no later than January 30th of each year.

Comment 16

SWPPP Public Availability Requirements (Section 6.4)

The draft permit allows several options for making the SWPPP or portions of it publicly available, including uploading it with the NOI, providing a URL, or including certain SWPPP information in the NOI. We request some clarification on how DOH envisions these options being implemented—particularly for the URL option; what type of platform should be used or how updates should be posted. Additional guidance on what qualifies as acceptable "SWPPP information," and how frequently it must be updated, would help ensure we meet the public availability requirement.

Response

Please see Part 6.4 in its entirety for information on how and when to provide and update SWPPP information to the CWB. Part 6.4 also identifies what SWPPP information must be submitted to be compliant with the public availability requirement for each of the three methods. The CWB intends to make submitted documents pursuant to Parts 6.4.1.1 and 6.4.1.3 available to the public through an online public viewer. This viewer will allow the public to view and download copies of submitted documents, excluding any information determined to be confidential business information or other restricted information as defined in the proposed Appendix B.

Specific decisions on the online hosting platform, webpage layout and design are at the discretion of the Permittee, provided that the site is publicly accessible and contains the information and documents identified in Part 6.4.1.2. How the webpage is updated and how frequently is at the Permittee's discretion, provided that the webpage is updated to the most current information by January 30th of each year.

Comment 17

Distinguishing Substantive vs. Administrative Violations

Throughout the permit, several new documentation and reporting requirements are introduced. We would like to better understand how DOH will distinguish between substantive water quality concerns and more routine administrative issues, such as minor documentation gaps when controls are otherwise in place and functioning..

Response

Evaluation of the Permittee's overall compliance with the permit will be conducted at the time of the inspection. DOH will take all factors into consideration when conducting an evaluation and issues enforcement actions appropriate to the facility's violations.

Revision to HAR Chapter 11-55 Appendix K

The proposed HAR Chapter 11-55 Appendix K general permit was meant to include the following language (**bolded and underlined**) stating that the permit covers discharges to state waters except for:

- 1) discharges into natural freshwater lakes, saline lakes, or anchialine pools; **and**
- 2) discharges that occur within lands of exclusive federal jurisdiction.**

This language is consistent with the updates made in HAR Chapter 11-55 Appendices B, E, F, and G, general permits included in the same public notice package and reflected in the CWBs intended approach following EPA's guidance. The exclusion language had already been incorporated into the working draft of the Appendix K general permit during the rule development process, however the exclusion language was inadvertently omitted from the public notice package. All other general permits in the public notice correctly included the exclusion language.

This omission was identified after reviewing submitted public comments and as a logical outgrowth, the permit is revised with the intended language. This permit revision is necessary to make the Appendix K general permit consistent with the other general permits.

The language is now included in the final Appendix K general permit and fact sheet to provide transparency. This clarification does not create any new obligation, restriction, or requirement for the permittee.

The CWB further finds that the inclusion of the language makes explicit the jurisdictional boundaries already governing NPDES permitting and therefore does not alter the scope, conditions, or compliance requirements of the permit. Instead, it ensures that the permit accurately reflects the legal framework under which State NPDES permits operate.

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

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

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

The current revisions for this chapter include:

- HAR Section 11-55-01 New term defined, “Lands of Exclusive Federal Jurisdiction.”
- HAR Section 11-55-07 Identity of signatories to NPDES forms.
- HAR Section 11-55-40 Field citations; non-compliance with NPDES requirements.
- Reissuance of NPDES general permits:
 - Appendix B authorizing discharges of storm water associated with industrial activities;
 - Appendix E authorizing discharges of once through cooling water less than one (1) million gallons per day;
 - Appendix F authorizing discharges of hydrotesting waters;
 - Appendix G authorizing discharges associated with construction activity dewatering; and
 - Appendix K authorizing discharges of storm water and certain non-storm water discharges from small municipal separate storm sewer systems

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

Section	Current	Proposed	Rationale
Throughout		Various formatting, grammatical, and stylistic changes	Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements.

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

11-55-01	New	<u>"Lands of exclusive federal jurisdiction" means lands in the United States where the federal government asserts exclusive jurisdiction in relevant respects.</u>	Lands of Exclusive Federal Jurisdiction are lands in the U.S. where the Federal Government retains exclusive jurisdiction in relevant respects. Exclusive Federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution, article 1, section 8, clause 17. These circumstances include (1) where the Federal Government purchases land with state consent to jurisdiction, consistent with article 1, section 8, clause 17 of the U.S. Constitution; (2) where a state chooses to cede jurisdiction to the Federal Government; and (3) where the Federal Government reserved jurisdiction upon granting statehood.

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

11-55-07(d)	If an authorization under subsection (b) is no longer accurate because the certifying person changed or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.	If an authorization under subsection (b) is no longer accurate because the certifying person changed or a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. <u>All contact information for the certifying person and authorized representative must be accurate and updated with the department.</u>	It is necessary for contact information to be kept up to date to ensure permittees receives important notices from the department.
11-55-40(b)(1)	A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:	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, certified mail, <u>or by electronic means, including electronic facsimile copies by email to:</u>	Language added to allow for electronic delivery of field citations to adapt to the latest advancements and trends in technology.
11-55-40(b)(1)(I)	New	<u>Any person who fails to keep contact information up to date with the department.</u>	Category added to provide an option for a field citation when this type of violation is identified. The added language facilitates timely resolution for this type of situation.

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

11-55-40(b)(2)(B)	\$200 for any person who violates paragraph (b)(1)(E), for the first violation, and \$400 for a subsequent violation;	\$200 for any person who violates paragraph (b)(1)(E), <u>or (I)</u> for the first violation, and \$400 for a subsequent violation;	Identifies the penalty amount associated with 11-55-40(b)(1)(I). The penalty assessed maintains levels that promote timely resolution while still maintaining the deterrent effect intended.
11-55-40(c)(1)(C) and 11-55-40(c)(1)(D)	(C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and (D) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;	(C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty <u>calendar</u> days after the person receives the field citation; and (D) Correction within seven <u>calendar</u> days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;	The added language clarifies the due date for responding to a field citation.

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

Hawaii Administrative Rules (“HAR”) Chapter 11-55, Appendix B

Authorizing Discharges of Storm Water Associated with Industrial Activities

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

The proposed Appendix B, MSGP covers storm water discharges from industrial activities. Industrial activities regulated under 40 CFR 122.26(b)(14) that meet the eligibility provisions described in Part 1.1 of the permit are subject to the proposed HAR, Chapter 11-55, Appendix B, Multi-Sector General Permit (“MSGP”), except construction activities at 40 CFR 122.26(b)(14)(x).

The proposed Appendix B, MSGP is available for the following 29 sectors of industrial activities, as well as any discharges not covered under the 29 sectors (Sector AD) that has been identified by the Department of Health (“DOH”) as appropriate for coverage. The sector descriptions are based on Standard Industrial Classification (“SIC”) codes and Industrial Activity Codes consistent with the definition of storm water discharge associated with industrial activity at 40 CFR 122.26(b)(14)(i-ix, xi). The sectors are listed below:

Sector A – Timber Products	Sector P – Land Transportation
Sector B – Paper and Allied Products Manufacturing	Sector Q – Water Transportation
Sector C – Chemical and Allied Products Manufacturing	Sector R – Ship and Boat Building or Repairing Yards
Sector D – Asphalt Paving and Roofing Materials Manufactures and Lubricant	Sector S – Air Transportation Facilities
Sector E – Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing	Sector T – Treatment Works
Sector F – Primary Metals	Sector U – Food and Kindred Products
Sector G – Metal Mining (Ore Mining and Dressing)	Sector V – Textile Mills, Apparel, and other Fabric Products Manufacturing
Sector H – Coal Mines and Coal Mining-Related Facilities	Sector W – Furniture and Fixtures
Sector I – Oil and Gas Extraction and Refining	Sector X – Printing and Publishing

Sector J – Mineral Mining and Dressing	Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Sector K – Hazardous Waste Treatment Storage or Disposal	Sector Z – Leather Tanning and Finishing
Sector L – Landfills and Land Application Sites	Sector AA – Fabricated Metal Products
Sector M – Automobile Salvage Yards	Sector AB – Transportation Equipment, Industrial or Commercial Machinery
Sector N – Scrap Recycling Facilities	Sector AC – Electronic, Electrical, Photographic and Optical Goods
Sector O – Steam Electric Generating Facilities	Sector AD – Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director

Currently, an estimated 168 industrial facilities are authorized to discharge (or are “covered”) by the existing Appendix B.

- (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.

Storm water discharge associated with industrial activity, including certain allowable non-storm 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 40 CFR 124.9 (for EPA-issued permits);

The General Permit is divided into the following sections:

1. *How to Obtain Coverage [Revised]*
2. *Control Measures and Effluent Limits [Revised]*
3. *Inspections [Revised]*
4. *Monitoring [Revised]*
5. *Corrective Actions and Additional Implementation Measures (AIM) [Revised]*
6. *Storm Water Pollution Prevention Plan (SWPPP) [Revised]*
7. *Reporting and Recordkeeping [Revised]*
8. *Sector Specific Requirements [Revised]*
9. *Facilities and Activities Covered [Revised]*

10. *Notice of Intent Requirements [Revised]*
11. *Calculating Hardness in Receiving Waters for Hardness Dependent Metals [Revised]*
12. *List of SIC and NAICS Codes [Revised]*
13. *Summary of Permit Reports and Submittals [Revised]*

Basis for Draft Permit Conditions

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and... recreation in and on the water.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires the Environmental Protection Agency (“EPA”) to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the CWA, which directed the EPA to develop a phased approach to regulate storm water discharges under the NPDES program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 47990. EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). In November of 1974, EPA authorized DOH to administer the NPDES permit program in Hawaii. DOH’s proposal is to issue Appendix B, MSGP under this statutory and regulatory authority.

In 2022, DOH revised HAR Chapter 11-55, Appendix B to be consistent with the requirements and permitting approach of EPA’s 2015 MSGP, which DOH believed to be appropriate for Hawaii. Requirements from EPA’s 2015 MSGP that were included in the proposed 2022 Appendix B, MSGP included eligibility requirements; allowable non-storm water discharges; control measures; non-numeric technology-based effluent limitations; Effluent Limitations Guidelines; benchmark and other monitoring requirements; requirements for discharges to impaired waters; inspection requirements; escalating actions for benchmark exceedances; Storm Water Pollution Prevention Plan requirements; reporting and record keeping requirements; and sector specific requirements. While the majority of the 2022 Appendix B, MSGP followed EPA’s 2015 MSGP, DOH determined that certain changes were warranted. Information on the 2022 rulemaking are available on the Clean Water Branch’s website at: <https://health.hawaii.gov/cwb/hawaii-administrative-rules-har/har-11-55/>.

In accordance with HAR Section 11-55-02(c), Section 11-55-19(a)(4)(B), and 40 CFR 123.25(a), following the decision by DOH to model HAR Chapter 11-55, Appendix B after EPA’s MSGP, these proposed revisions are to update Hawaii’s MSGP to follow EPA’s 2021 revisions. While the proposed revisions largely follow EPA’s 2021 MSGP, certain deviations from EPA’s MSGP are retained from the previous 2022 Appendix B, MSGP, in addition to other revisions that were

determined by DOH to be necessary in consideration of the State's Administrative Rules, for situations specific to Hawaii's implementation of the NPDES program, and where DOH believes a revision is necessary for clarity. DOH notes that as of this rulemaking, EPA has a proposed 2026 MSGP. However, since EPA's proposed general permit has not been finalized at the time of this rulemaking and may be subject to change, DOH is not revising our Appendix B to match the proposed 2026 EPA MSGP.

EPA's 2021 MSGP became effective on January 15, 2021 and all documents related to it, including the Fact Sheet are available at:

<https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>. DOH's intent was to develop a permit modelled after EPA's 2021 MSGP. Thus, DOH recommends those interested in this Fact Sheet to refer to EPA's 2021 MSGP Fact Sheet as the primary resource. Please also refer to the previous versions of EPA's MSGP available at: <https://www.epa.gov/npdes/previous-versions-epas-msgp-documents> for information about how EPA's MSGP has evolved to the 2021 version.

Summary of Changes to Conform with EPA's 2021 MSGP

EPA's 2021 MSGP fact sheet included a section summarizing major changes in the 2021 MSGP compared to the 2015 MSGP. As DOH's 2022 Appendix B was based on EPA's 2015 MSGP and the proposed permit is based on EPA's 2021 MSGP, we are including a discussion on the summary from EPA's 2021 MSGP fact sheet to summarize the major changes DOH is proposing to conform to EPA's 2021 MSGP.

1) Streamlining of Permit

As noted in EPA's 2021 MSGP fact sheet, EPA made various changes to streamline and simplify language throughout the permit to present the requirements in a more clear and readable manner. Notably, EPA reordered and renamed Parts 4 – 6. The reorganized parts are now: Part 4 Monitoring (previously Corrective Actions); Part 5 Additional Implementation Measures (previously Storm Water Pollution Prevention Plan); and Part 6 Storm Water Pollution Prevention Plan (previously Monitoring). EPA also reworded certain sections and numbered permit conditions that were previously in bullet form. DOH largely followed EPA's revisions except in situations where language was not included in DOH's 2022 Appendix B, where it does not apply to Hawaii, or where DOH modified language that we believed provided more clarity than EPA's language.

2) Public Sign of Permit Coverage

Consistent with EPA's 2021 MSGP, the proposed permit requires covered facilities to display a public sign of permit coverage. Minor changes were made to the text to be displayed on the sign for clarity.

3) **Consideration of Storm Water Control Measure Enhancements for Major Storm Events**

Consistent with EPA's 2021 MSGP, the proposed permit requires covered facilities to consider enhancements to control measures for facilities that could be impacted by major storm events.

4) **Monitoring Changes**

- **Indicator Monitoring for pH, TSS, and COD** – Consistent with EPA's 2021 MSGP, the proposed permit requires new indicator monitoring requirements for pH, Total Suspended Solids (TSS), and Chemical Oxygen Demand (COD) quarterly for certain sectors. Indicator monitoring is report-only and is applicable to sectors B2, C5, D2, E3, F5, I1, J3, L2, N2, O1, P1, R1, T1, U3, V1, W1, X1, Y2, Z1, AB, AC, and AD.
- **Indicator Monitoring for Polycyclic Aromatic Hydrocarbons** – Consistent with EPA's 2021 MSGP, the proposed permit requires new indicator monitoring requirements for polycyclic aromatic hydrocarbons to be conducted twice per year during the first and fourth year of permit coverage for certain sectors. Indicator monitoring is report-only and is applicable to sectors with storm water discharges from paved surfaces that will be sealed or re-sealed with coal-tar sealcoat where industrial activities are located during coverage under this permit; operators in sectors A (facilities that manufacture, use, or store creosote or creosote-treated wood in areas that are exposed to precipitation), C (SIC Code 2911), D, F, H, I, M, O, P (SIC Codes 4011, 4013, and 5171), Q (SIC Code 4493), R, and S.
- **Updating Benchmark Threshold Values** – Consistent with EPA's 2021 MSGP, the proposed permit updates the benchmark values for aluminum and copper for discharges to freshwater; selenium for discharges to freshwater; and cadmium based on revised national recommended aquatic life water quality criteria. The proposed permit also removes benchmark monitoring values for magnesium and iron based on lack of acute toxicity (note that Hawaii does not have any established numeric water quality criteria for these two pollutants). The proposed permit also includes the exception for exceedances of the benchmark for discharges to freshwater for aluminum and copper provided that the covered facility demonstrate that the discharge does not result in facility-specific exceedance of the water quality criteria.
- **Updating the Benchmark Monitoring Schedule** – Consistent with EPA's 2021 MSGP, the proposed permit updates the benchmark monitoring schedule to now require quarterly monitoring at a minimum, in the first and fourth year of permit coverage. Under EPA's 2015 MSGP and DOH's 2022 Appendix B, quarterly benchmark monitoring was suspended once a facility collects four (4) quarterly samples that do not exceed the benchmark value. The proposed permit will now require that benchmark monitoring also be conducted in the fourth year of coverage even if the first four (4) quarterly samples are below the benchmark value.

- **Impaired Waters Monitoring** – Consistent with EPA’s 2021 MSGP, the proposed permit updates the benchmark monitoring schedule to now require monitoring within the first and fourth year of coverage for discharges of certain pollutants. Annual monitoring is required to continue for any pollutant for which the waterbody is impaired that is detected in the discharge during the first year.
- **Additional Implementation Measures (AIM)** – Consistent with EPA’s 2021 MSGP, the proposed permit has adopted the new Additional Implementation Measures (“AIM”) framework. The new AIM requirements specify steps to be taken in response to benchmark monitoring exceedances. While exceedances of benchmarks continue to not be violations by themselves, facilities are required to take escalating actions to bring their discharge below the benchmark. AIM requirements have a three-level structure of advancement and responses triggered by benchmark exceedances with clear follow-up actions. AIM levels are advanced through sequentially with clear “resetting” to baseline status if benchmark thresholds and responses are met within the required deadlines.

EPA’s 2021 MSGP includes five exceptions to the AIM requirements: 1) natural background sources, 2) run-on, 3) a one-time abnormal event, 4) a demonstration that discharges of copper and aluminum do not result in an exceedance of facility-specific criteria using the national recommended water quality criteria in-lieu of the applicable MSGP benchmark threshold, and 5) a demonstration that the benchmark exceedance does not result in any exceedance of an applicable water quality standard. The proposed permit includes these five exceptions.

DOH-Specific Provisions Retained from Previous Appendix B

Below are brief descriptions of provisions that were retained by DOH from the previous permit that are different from EPA’s 2021 MSGP.

1) Prohibition on Polymers and Other Chemical Treatments

As noted in the fact sheet for the 2022 Appendix B, consistent with DOH’s HAR Chapter 11-55 Appendix C, coverage is not eligible if polymers or other chemical treatments are used (notably sediment treatment chemicals for sectors G, H, and J). This prohibition is retained in the proposed permit.

2) Inapplicable Requirements

As noted in the fact sheet for the 2022 Appendix B, requirements that are not applicable to the State are not included. This includes requirements for: Endangered and Threatened Species and Critical Habitat as part of the Endangered Species Act (“ESA”) Consultation or ESA Section 10 permit as required for the Federal Government; Historical Properties Preservation; waterbody tier system and requirements; Tribal areas; and other requirements intended for other States/Regions.

However, in the proposed permit, DOH is including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to cover any unforeseen situations and to align as closely with EPA's 2021 MSGP where possible. DOH will note that these requirements only apply to facilities that conduct these types of industrial activities or experience these conditions (i.e., experience snow or snowmelt).

3) **Inactive and Unstaffed Facilities**

Consistent with the 2022 Appendix B, language regarding exceptions for certain requirements for inactive and unstaffed facilities are not included in the proposed permit.

4) **Photographic Documentation**

As noted in the fact sheet for the 2022 Appendix B, the proposed permit requires monitoring of storm water discharges as well as photographic documentation of control measure implementation. To correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required, this permit requires the Permittee to take and retain photographic documentation of control measure/SWPPP implementation when storm water discharge sampling is required. Photograph documentation of control measure/SWPPP implementation coupled with chemical analysis of discharge samples ensures Permittees and the DOH have adequate information to determine effectiveness of control measures/SWPPPs and whether the Permittee is complying with the terms of the permit. The photographic documentation is to be treated consistent with other data associated with analytical storm water monitoring and both maintained and submitted by the Permittee. Given that monitoring information is to be electronically submitted, along with the prevalence of digital cameras, requiring photographic documentation is not expected to be a significant compliance burden but provides a strong incentive to ensure control measures are in place and maintained prior to and during a storm event which results in storm water discharge.

5) **Storm Water Control Measure Considerations**

The proposed permit retains a condition from Part 2.1.1 from the 2022 Appendix B (now Part 2.1.1.8 in the proposed permit) which specifies that facilities must consider any direction from DOH upon notice when designing or selecting storm water control measures. This ensures that DOH's guidance informs the development of appropriate control measures.

6) **Spill Notification to the Clean Water Branch**

The proposed permit retains language from Part 2.1.2.4 from the 2022 Appendix B requiring facilities to notify the Clean Water Branch of oil spills that meet the reportable quantity established under federal regulations. This is

necessary to ensure that DOH is aware of any reportable spills of oil, to ensure that DOH is able to respond appropriately if necessary.

7) Authorization to Inspect

The proposed permit retains Part 3.3 from the 2022 Appendix B which makes clear that DOH retains the right to inspect any facility covered by the permit to ensure compliance with state requirements including state water quality standards. This is consistent with the statutory authority granted to DOH under Hawaii Revised Statutes (“HRS”) §342D-8.

8) Additional Monitoring Required by DOH

The proposed permit retains from the 2022 Appendix B (now in Part 4.2.6 in the proposed permit) the ability for DOH to require additional monitoring at a covered facility when it is determined necessary. This is consistent with the statutory authority granted to DOH under HRS §342D-55.

9) DOH Directed SWPPP Review

The proposed permit retains from the 2022 Appendix B (now in Part 5.1.2 in the proposed permit) the ability for DOH to direct a covered facility to conduct a SWPPP review to determine if modifications are necessary. This would be in the event that DOH determines that the SWPPP fails to adequately address potential pollutant sources identified at the facility. This is necessary to ensure that facilities create and maintain a comprehensive SWPPP, that addresses any deficiencies discovered by DOH.

Other Chapter 11-55, Appendix B Revisions

Note: In the sections below, revisions are noted as strikethroughs for deletion and bold and underlined for additions.

Non-Substantive Revisions Throughout

Rationale:

Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale, including in the rationale for specific sections with substantive revisions. All changes were identified following Ramseyer formatting requirements. Examples of non-substantive changes include changes to formatting, spacing, references to EPA as the issuing agency, rewording or rephrasing language for clarity, references to EPA’s online permit application portal, definitions, etc.

Removal of Non-DOH URLs Throughout

Rationale:

Certain URLs to EPA online resources were removed from the proposed permit due to the potential for these hyperlinks to become invalid over the course of the permit term in the event EPA moves or removes these online resources.

Cover Page

Previous: *In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 et seq.), operators of storm water discharges associated with industrial activity are authorized to discharge to state waters, except for discharges in or to natural freshwater lakes, saline lakes, or anchialine pools, in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit. This permit is structured as follows:*

Revised:

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. 1251 et seq.), operators of storm water discharges associated with industrial activity are authorized to discharge to state waters, except for ~~discharges in or to natural freshwater lakes, saline lakes, or anchialine pools, ;~~

(1) Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or

(2) Discharges that occur within lands of exclusive federal jurisdiction;

in accordance with the eligibility and Notice of Intent (NOI) requirements, effluent limitations, inspection requirements, and other conditions set forth in this permit. This permit is structured as follows:

Rationale:

For clarity, the phrase "covers all areas of the State" is revised to "covers discharges to all State waters." This revision makes clear that this general permit regulates discharges, not geographic areas, and ensures consistency with the CWA and standard NPDES permit language.

This general permit does not authorize discharges within Lands of Exclusive Federal Jurisdiction, where the State does not have NPDES permitting authority. In such areas, EPA retains responsibility for administering the NPDES program, and dischargers must obtain coverage under an applicable EPA-issued permit.

Lands of Exclusive Federal Jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are Lands of Exclusive Federal Jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background on Lands of Exclusive Federal Jurisdiction in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122) (<https://www.federalregister.gov/documents/2025/04/15/2025->

[06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general](#))

Part 1.1.3.1

EPA's 2021 MSGP [Part 1.1.6.1]: Eligibility for “New Dischargers” and “New Sources” Based on Water Quality Standards. Your stormwater discharge must be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards. You are ineligible for coverage under this permit if EPA determines prior to your authorization to discharge that your stormwater discharges will not be controlled as necessary such that the receiving water of the United States will not meet an applicable water quality standard. In such case, EPA may notify you that an individual permit application is necessary per Part 1.3.8, or, alternatively, EPA may authorize your coverage under this permit after you implement additional control measures so that your stormwater discharges will be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards.

Revised:

Eligibility for “New Dischargers” and “New Sources” Based on Water Quality Standards.

Your ~~stormwater~~ **storm water** discharge must be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards. You are ineligible for coverage under this permit if ~~EPA~~ **DOH** determines prior to your authorization to discharge that your ~~stormwater~~ **storm water** discharges will not be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will not meet an applicable water quality standard. In such case, ~~EPA~~ **DOH** may notify you that an individual permit application is necessary per ~~Part 1.3.8~~, **Part 1.3.7**, or, alternatively, ~~EPA~~ **DOH** may authorize your coverage under this permit after you implement additional control measures so that your ~~stormwater~~ **storm water** discharges will be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards.

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 1.1.3.2(c)

EPA's 2021 MSGP [Part 1.1.6.2(c)]: When submitting your NOI in NeT-MSGP, provide either data or other technical documentation, to support a conclusion that

the stormwater discharge will be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards and retain such information with your SWPPP. The information you submit must demonstrate:

Revised: When submitting your NOI in ~~Net-MSGP~~, **on the e-Permitting Portal**, provide either data or other technical documentation, to support a conclusion that the ~~stormwater~~ **storm water** discharge will be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards and retain such information with your SWPPP. The information you submit must demonstrate:

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 1.1.3.2(c)(i)

EPA’s 2021 MSGP [Part 1.1.6.2(c)(i)]: For discharges to waters without an EPA-approved or established total maximum daily load (TMDL), that the discharge of the pollutant for which the water is impaired will be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards at the point of discharge to the waterbody; or

Revised: For discharges to waters without an ~~EPA-approved or established a~~ **DOH established and EPA approved** total maximum daily load (TMDL), that the discharge of the pollutant for which the water is impaired will be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards at the point of discharge to the waterbody; or

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 1.3.4.4

EPA's 2021 MSGP [Part 1.3.5.4]: One of the following:

- a. The Uniform Resource Locator (URL) for the SWPPP (if available), and the following statement: "To report observed indicators of stormwater pollution, contact [optional: include facility point of contact and] EPA at: [include the applicable MSGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>]; or
- b. The following statement: "To obtain the Stormwater Pollution Prevention Plan (SWPPP) for this facility or to report observed indicators of stormwater pollution, contact [optional: include facility point of contact and] EPA at [include the applicable MSGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>]."

Revised: One of the following:

- ~~a. The Uniform Resource Locator (URL) for the SWPPP (if available), and the following statement: "To report observed indicators of stormwater pollution, contact [optional: include facility point of contact and] EPA at: [include the applicable MSGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>]; or~~
- ~~b. The following statement: "To obtain the Stormwater Pollution Prevention Plan (SWPPP) for this facility or to report observed indicators of stormwater pollution, contact [optional: include facility point of contact and] EPA at [include the applicable MSGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>]."~~

The following statement: "To obtain the Storm Water Pollution Prevention Plan for this facility [fill in facility point of contact or if available, the website for the SWPPP]. To report storm water pollution contact the DOH at 808-586-4309 or cleanwaterbranch@doh.hawaii.gov."

Rationale:

DOH has revised the language to be put on the permit coverage signage to streamline the language.

Part 1.3.6.1

EPA's 2021 MSGP [Part 1.3.7.1]: Note that if the 2021 MSGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedure Act (see 40 CFR 122.6) and remain in force and effect for operators that were covered prior to its expiration. All operators authorized to discharge prior to the expiration date of the 2021 MSGP will automatically remain covered under the 2021 MSGP until the earliest of:

- a. The date the operator is authorized for coverage under a new version of the MSGP following the timely submittal of a complete and accurate NOI. Note

that if a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will terminate on the date that the NOI was due; or

- b. The date of the submittal of a Notice of Termination; or*
- c. Issuance of an individual permit for the facility's discharge(s); or*
- d. A final permit decision by EPA not to reissue the MSGP, at which time EPA will identify a reasonable time period for covered operators to seek coverage under an alternative general permit or an individual permit. Coverage under the 2021 MSGP will terminate at the end of this time period.*

Revised: Note that if the 2021 MSGP *if this permit* is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with section 558(c) of the Administrative Procedure Act (see 40 CFR 122.6) extended in accordance with HAR Section 11-55-34.09(d) and remain in force and effect for operators *dischargers* that were covered prior to its expiration. All operators authorized to discharge prior to the expiration date of the 2021 MSGP will automatically remain covered under the 2021 MSGP until the earliest of: *if you obtain authorization to discharge under this permit prior to the expiration date and this permit is administratively extended, any discharges authorized under this permit will automatically remain covered by this permit after its expiration date until the earliest of:*

- a. The date the operator is authorized for coverage under a new version of the MSGP following the timely submittal of a complete and accurate NOI. Note that if a timely NOI for coverage under the reissued or replacement permit is not submitted, coverage will terminate on the date that the NOI was due; or **Your authorization for coverage under a reissued permit or a replacement version of this permit following your timely submittal of a complete and accurate NOI for coverage under the new permit;***

Note: If you fail to submit a timely NOI for coverage under the reissued or replacement permit, your coverage will terminate on the date that the NOI was due.

- b. The date of the submittal of a Notice of Termination; or **Your submittal of a Notice of Cessation (NOC);***
- c. Issuance of an individual permit for the facility's discharge(s); or*
- d. A final permit decision by EPA not to reissue the MSGP, at which time EPA **formal permit decision by DOH not to reissue this general permit, at which time DOH** will identify a reasonable time period for covered operators *dischargers* to seek coverage under an alternative general permit or an individual permit. Coverage under the 2021 MSGP will terminate **this permit will cease** at the end of this time period.*

Rationale:

DOH revised the language to reference State rules contained in HAR Chapter 11-55 as well as clearly stated that failure to submit a timely NOI will result in

termination of coverage. This change clarifies that facilities must ensure that an NOI is submitted on time in accordance with the reissued permit, or else they risk loss of permit coverage. This language was retained from the 2022 Appendix B.

Part 1.7

Previous: (NEW)

Revised:

Standard Conditions

The permittee shall comply with the standard conditions as specified in HAR Chapter 11-55, Appendix A. As noted in Part 2.2.1, the DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-55, Appendix A, Section 1. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, the more stringent conditions shall apply.

Rationale:

Chapter 11-55 Appendix A contains the standard conditions that are applicable to all general permits issued by DOH. DOH is adding this section in to explicitly state that covered facilities must comply with the general permit standard conditions as applicable. Inclusion of this language is consistent with other general permits issued by DOH.

Part 2.1

EPA's 2021 MSGP:

Stormwater Control Measures

You must select, design, install, and implement stormwater control measures (including best management practices) to minimize pollutant discharges that address the selection and design considerations in Part 2.1.1, meet the non-numeric effluent limits in Part 2.1.2, meet limits contained in applicable effluent limitations guidelines in Part 2.1.3, and meet the water quality-based effluent limitations in Part 2.2.

The selection, design, installation, and implementation of control measures to comply with Part 2 must be in accordance with good engineering practices and manufacturer's specifications. Note that you may deviate from such manufacturer's specifications where you provide justification for such deviation and include documentation of your rationale in the part of your SWPPP that describes your control measures, consistent with Part 6.2.4. You must modify your stormwater control measures per Part 5.1 if you find that your control measures are not achieving their intended effect of minimizing pollutant discharges (i.e., your discharges will be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards or meet any of the other non-numeric effluent limits in this permit). Regulated

stormwater discharges from your facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at your facility.

Revised:

Stormwater Storm Water Control Measures

*You must select, design, install, and implement ~~stormwater~~ **storm water** control measures (including best management practices) to minimize pollutant discharges that address the selection and design considerations in Part 2.1.1, meet the non-numeric effluent limits in Part 2.1.2, meet limits contained in applicable effluent limitations guidelines in Part 2.1.3, and meet the water quality-based effluent limitations in Part 2.2.*

*The selection, design, installation, and implementation of **these** control measures ~~to comply with Part 2~~ must be in accordance with good engineering practices and manufacturer's specifications **and consistent with direction by the DOH**. Note that you may deviate from such manufacturer's specifications where you provide justification for such deviation and include documentation of your rationale in the part of your SWPPP that describes your control measures, consistent with Part 6.2.4. You must modify your ~~stormwater~~ **storm water** control measures per Part 5.1 if you find that your control measures are not achieving their intended effect of minimizing pollutant discharges (i.e., your discharges will be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards or meet any of the other non-numeric effluent limits in this permit). Regulated ~~stormwater~~ **storm water** discharges from your facility include ~~stormwater~~ **storm water** run-on that commingles with ~~stormwater~~ **storm water** discharges associated with industrial activity at your facility.*

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 2.2.1

Previous:

Effluent Limitation Pertaining to all Discharges Authorized by this Permit.

Discharges authorized by this permit shall not include: 1) materials or substances that will settle to form sludge or bottom deposits; 2) floating debris, grease, oil, scum or other floating materials; 3) substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts

sufficient to produce objectionable color, turbidity or other conditions in the receiving waters; 4) temperatures that impact receiving waters, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water; 5) substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and, 6) soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

Your discharge must be controlled as necessary to meet applicable water quality standards (i.e., your discharge must not cause or contribute to an exceedance of applicable water quality standards) and conditions above.

DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. If at any time you become aware, or DOH determines, that your discharge does not meet applicable water quality standards, you must take corrective action(s) as required in Part 4.1 and document the corrective actions as required in Part 4.4.

DOH may also require that you undertake additional control measures (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI, required reports, or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. You must implement all measures necessary to be consistent with an available wasteload allocation in a DOH established and EPA approved TMDL.

Revised:

Effluent Limitation Pertaining to all Discharges Authorized by this Permit: Water Quality Standards

~~Discharges authorized by this permit shall not include: 1) materials or substances that will settle to form sludge or bottom deposits; 2) floating debris, grease, oil, scum or other floating materials; 3) substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters; 4) temperatures that impact receiving waters, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water; 5) substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and, 6) soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands. The~~

discharge must not contain observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness in the discharge.

Your discharge must be controlled as necessary to meet applicable water quality standards ~~(i.e., your discharge must not cause or contribute to an exceedance of applicable water quality standards)~~ and conditions above.

DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Section 11-54-3(a) and HAR Chapter 11-55, Appendix A, Section 1. If at any time you become aware, or DOH determines, that your **storm water** discharge ~~does not meet applicable water quality standards,~~ **will not be controlled as necessary such that the discharge will not meet an applicable water quality standard,** you must take corrective action(s) as required in ~~Part 4.4~~ **Part 5.1** and document the corrective actions as required in ~~Part 4.4~~. **Part 5.3.**

DOH may also require that you undertake additional control measures (to meet the narrative water quality-based effluent limit above) on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI, required reports, or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards. You must implement all measures necessary to be consistent with an available wasteload allocation in a DOH established and EPA approved TMDL.

Rationale:

DOH revised this section to conform with the style and structure of EPA's 2021 MSGP. In addition, on March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language (particularly the first two paragraphs, retained from the 2022 Appendix B) to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 3.1.5

EPA's 2021 MSGP: Routine Facility Inspection Documentation. You must document the findings of your facility inspections and maintain this report with your SWPPP as required in Part 6.5. You must conduct any corrective action required as a result of a routine facility inspection consistent with Part 5. If you conducted a discharge visual assessment required in Part 3.2 during your facility inspection, you may include the results of the assessment with the report required in this Part, as long as you include all components of both types of inspections in the report.

Do not submit your routine facility inspection report to EPA, unless specifically requested to do so. However, you must summarize your findings in the Annual Report per Part 7.4. Document all findings, including but not limited to, the following information.

Revised:

Routine Facility Inspection Documentation.

*You must document the findings of your facility inspections and maintain this report with your SWPPP as required in Part 6.5. **Documentation shall include photographic evidence of control measure/SWPPP implementation. Photographs shall clearly depict the condition observed and include date and time information and be retained with SWPPP records.** You must conduct any corrective action required as a result of a routine facility inspection consistent with Part 5. If you conducted a discharge visual assessment required in Part 3.2 during your facility inspection, you may include the results of the assessment with the report required in this Part, as long as you include all components of both types of inspections in the report.*

*Do not submit your routine facility inspection report to ~~EPA~~, **DOH** unless specifically requested to do so. However, you must summarize your findings in the Annual Report per Part 7.4. Document all findings, including but not limited to, the following information.*

Rationale:

DOH is modifying EPA's 2021 MSGP language to also include photographic evidence as part of the routine facility inspection documentation. This is necessary as photographic documentation provides visual evidence of the condition of the facility and storm water control measures at the time of the inspection which corroborates any inspection findings.

Part 3.1.5.4(f) (NEW)

Original: (NEW)

Revised: **Any unauthorized discharges (including discharges of non-storm water) from the facility;**

Rationale:

DOH is adding this requirement to note any observations of unauthorized discharge during routine facility inspection to clearly state that when a facility is conducting an inspection, they must document any instances of unauthorized non-storm water discharge, not just unauthorized storm water discharges.

Part 3.2.2.5

EPA's 2021 MSGP: *Whenever the visual assessment shows evidence of storm water pollution in the discharge, you must initiate the corrective action procedures in Part 5.1.1.*

Revised: Whenever the visual assessment shows evidence of storm water pollution **(minimally, the characteristics listed in Part 3.2.2.4)** in the discharge, you must initiate the corrective action procedures in Part 5.1.1.

Rationale:

DOH is modifying EPA's 2021 MSGP language to clarify that the water quality characteristics listed in Part 3.2.2.4 are the minimum characteristics to be assessed when determining evidence of storm water pollution during the visual assessment.

Part 3.2.3

EPA's 2021 MSGP: You must document the results of your visual assessments and maintain this documentation onsite with your SWPPP as required in Part 6.5. Any corrective action required as a result of a quarterly visual assessment must be conducted consistent with Part 5 of this permit. You are not required to submit your visual assessment findings to DOH, unless specifically requested to do so. However, you must summarize your findings in the annual report per Part 7.4. Your documentation of the visual assessment must include, but not be limited to:

Revised: You must document the results of your visual assessments and maintain this documentation onsite with your SWPPP as required in Part 6.5. **Documentation shall include photographic evidence of the observations of water quality characteristics listed in Part 3.2.2.4. Photographs shall clearly depict the condition observed and include date and time information and be retained with SWPPP records.** Any corrective action required as a result of a quarterly visual assessment must be conducted consistent with Part 5 of this permit. You are not required to submit your visual assessment findings to DOH, unless specifically requested to do so. However, you must summarize your findings in the annual report per Part 7.4. Your documentation of the visual assessment must include, but not be limited to:

Rationale:

DOH is modifying EPA's 2021 MSGP language to include a requirement to include photographic evidence of water quality characteristics of samples collected during the visual assessment. This requirement is necessary to ensure that there is visual documentation to corroborate any determinations on the presence of storm water pollution within the sample collected for the visual assessment.

Part 3.2.3.5

EPA's 2021 MSGP: Results of observations of the storm water discharge;

Revised: Results of observations of the storm water discharge **including the water quality characteristics described in Part 3.2.2.4 at a minimum;**

Rationale:

DOH is modifying EPA's 2021 MSGP language to specify that observations of the storm water discharge must include the water quality characteristics in Part 3.2.2.4 at a minimum, consistent with the changes to Part 3.2.2.5.

Part 3.2.3.6

Original: (NEW)

Revised: Photographic documentation of the storm water discharge collected in a clean, colorless glass or plastic container showing water quality characteristics like those listed in Part 3.2.2.4;

Rationale:

DOH is adding this new requirement to ensure that there is visual documentation to corroborate any determinations on the presence of storm water pollution within the sample collected for the visual assessment.

Part 4

Original: When conducting required storm water sampling, documentation shall include photographic evidence of control measure/SWPPP implementation consistent with the requirements of this permit.

Revised: When conducting required storm water sampling, documentation shall include photographic evidence of control measure/SWPPP implementation consistent with the requirements of this permit **and the discharge point.**

Rationale:

DOH is adding this new requirement to ensure that there is visual documentation to corroborate the effectiveness of control measures and reported sampling results. To address concerns of difficulty taking photographs of the actual discharge, the requirement is to take photographs of the discharge point which is the location(s) where storm water leaves the facility either directly or through a separate storm sewer system to a state water.

Part 4.1.2

EPA's 2021 MSGP: If any authorized stormwater discharges commingle with discharges not authorized under this permit, you must conduct any required sampling of the authorized discharges at a point before they mix with other waste streams, to the extent practicable.

Revised: If any authorized stormwater **storm water** discharges commingle with discharges not authorized under this permit, you must conduct any required sampling of the authorized discharges at a point before they mix with other waste streams, ~~to the extent practicable.~~

Rationale:

DOH is removing the phrase "to the extent practicable" as the language is considered too subjective.

Part 4.2

EPA's 2021 MSGP: *Per Part 1.3.7, in the event that the permit is administratively continued, monitoring requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration. In the event that monitoring results are unable to be electronically reported in Net-DMR, operators must maintain monitoring results and records within their SWPPP.*

Revised: *Per ~~Part 1.3.7~~, **Part 1.3.6**, in the event that the permit is administratively continued, monitoring requirements remain in force and effect at their original frequency during any continuance for operators that were covered prior to permit expiration. ~~In the event that monitoring results are unable to be electronically reported in Net-DMR, operators must maintain monitoring results and records within their SWPPP.~~*

Rationale:

DOH removed the language regarding actions to take in the event monitoring results are unable to be submitted electronically (through the e-Permitting Portal for Hawaii) as DOH does not expect this situation to occur. As such, the language is unnecessary and was removed.

Part 4.2.1

EPA's 2021 MSGP: *Indicator Monitoring. This permit requires indicator monitoring of stormwater discharges for three parameters – pH, Total Suspended Solids (TSS), and Chemical Oxygen Demand (COD) – for certain sectors/subsectors (see Part 4.2.1.1.a below) and for polycyclic aromatic hydrocarbons (PAHs) for certain sectors/activities, with additional limitations (see Part 4.2.1.1.b below). Indicator monitoring data will provide you and EPA with a baseline and comparable understanding of industrial stormwater discharge quality and potential water quality problems. The indicator monitoring parameters are “report-only” and do not have thresholds or baseline values for comparison, therefore no follow-up action is triggered or required under this part. The requirement in Part 2.2.1 that your stormwater discharge be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards still applies. You may find it useful to evaluate and compare your indicator monitoring data over time to identify any fluctuating values and why they may be occurring, and to further inform any revisions to your SWPPP/SCMs if necessary. Indicator monitoring is report-only and is neither benchmark monitoring nor an effluent limitation. Instead, it is a permit condition. Thus, failure to conduct indicator monitoring is a permit violation.*

Revised:

Indicator Monitoring.

*This permit requires indicator monitoring of ~~stormwater~~ **storm water** discharges for three parameters – pH, Total Suspended Solids (TSS), and Chemical Oxygen*

*Demand (COD) – for certain sectors/subsectors (see Part 4.2.1.1.a below) and for polycyclic aromatic hydrocarbons (PAHs) for certain sectors/activities, with additional limitations (see Part 4.2.1.1.b below). Indicator monitoring data will provide you and ~~EPA~~ **DOH** with a baseline and comparable understanding of industrial ~~stormwater~~ **storm water** discharge quality and potential water quality problems. The indicator monitoring parameters are “report-only” and do not have thresholds or baseline values for comparison, therefore no follow-up action is triggered or required under this part. The requirement in Part 2.2.1 that your ~~stormwater~~ **storm water** discharge be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards still applies. You may find it useful to evaluate and compare your indicator monitoring data over time to identify any fluctuating values and why they may be occurring, and to further inform any revisions to your SWPPP/SCMs **storm water control measures** if necessary. Indicator monitoring is report-only and is neither benchmark monitoring nor an effluent limitation. ~~Instead, it~~ **It** is a permit condition. Thus, failure to conduct indicator monitoring is a permit violation.*

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 4.2.2

EPA’s 2021 MSGP: Benchmark Monitoring. This permit requires benchmark monitoring parameters of stormwater discharges for certain sectors/subsectors. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your stormwater control measures and to assist you in determining when additional action(s) may be necessary to comply with the effluent limitations in Part 2. The benchmark thresholds are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. However, if a benchmark exceedance triggers Additional Implementation Measures (AIM) in Part 5.2, failure to conduct any required measures is a permit violation. At your discretion, you may take more than four samples during separate stormwater discharge events to determine the average benchmark parameter value for facility discharges.

Revised:

Benchmark Monitoring.

*This permit requires benchmark monitoring parameters of ~~stormwater~~ **storm water** discharges for certain sectors/subsectors. Benchmark monitoring ~~data are~~*

~~primarily for your use~~ **shall be used** to determine the overall effectiveness of your ~~stormwater~~ **storm water** control measures and to assist you in determining when additional action(s) may be necessary to comply with the effluent limitations in Part 2.

The benchmark thresholds are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. However, if a benchmark exceedance triggers ~~Additional Implementation Measures (AIM)~~ **AIM** in Part 5.2, failure to conduct any required measures is a permit violation. At your discretion, you may take more than four samples during separate ~~stormwater~~ **storm water** discharge events to determine the average benchmark parameter value for facility discharges.

Rationale:

DOH revised this part to specify that the benchmark monitoring data shall be used to determine the overall effectiveness of storm water controls. As monitoring data is invaluable in determining the effectiveness of storm water controls, DOH is strengthening the language to ensure that facilities are actively using monitoring data to make changes and improvements to their storm water controls.

Part 4.2.3.3

EPA's 2021 MSGP: Follow-up Actions if Discharge Exceeds Numeric Effluent Limitation. If any monitoring value exceeds a numeric effluent limitation contained in this permit, you must indicate the exceedance on a "Change NOI" form in the NPDES eReporting Tool (NeT), and you must conduct follow-up monitoring within 30 calendar days (or during the next measurable storm event, should none occur within 30 days) of implementing corrective action(s) taken per Part 5.1. If your follow-up monitoring exceeds the applicable effluent limitation, you must:

- a. **Submit an Exceedance Report:** You must submit an Exceedance Report no later than 30 days after you have received your laboratory result consistent with Part 7.5; and
- b. **Continue to Monitor:** You must monitor, at least quarterly, until your stormwater discharge is in compliance with the effluent limit or until EPA waives the requirement for additional monitoring. Once your discharge is back in compliance with the effluent limitation you must indicate this on a "Change NOI" form per Part 7.3.

Revised:

Follow-up Actions if Discharge Exceeds Numeric Effluent Limitation.

If any monitoring value exceeds a numeric effluent limitation contained in this permit, you must indicate the exceedance on a "Change NOI" form in the NPDES eReporting Tool (NeT), and you must conduct follow-up monitoring within 30 calendar days (or during the next measurable storm event, should none occur

within 30 days) of implementing corrective action(s) taken per Part 5.1. If your follow-up monitoring exceeds the applicable effluent limitation, you must:

- a. *Submit an Exceedance Report:* You must submit an Exceedance Report no later than 30 days after you have received your laboratory result consistent with Part 7.5; and
- b. *Continue to Monitor:* You must monitor, at least quarterly, until your ~~stormwater~~ **storm water** discharge is in compliance with the effluent limit or until EPA **DOH** waives the requirement for additional monitoring. Once your discharge is back in compliance with the effluent limitation you must indicate this on a “Change NOI” form per Part 7.3. **“CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs” in the e-Permitting Portal.**

Rationale:

DOH is removing language referring to a “Change NOI” form as DOH does not have this kind of form and will not require submittal of a form when an initial exceedance of an effluent limitation occurs, unless the requirements for notification in Part 7.6 are met. This change streamlines the notification requirements for benchmark exceedances.

Part 4.2.4

Original: When analytical monitoring of storm water discharges are required, the discharger shall record and retain photographic documentation of control measures and/or pollution control measures included in a SWPPP implemented for permit compliance purposes. The photographs shall clearly depict the presence or absence of physical control measures that are required by this permit. Photographs shall be wide angle and representative of the facility/site conditions present at the time the storm water samples are taken. Photographs taken for the purposes of this section are to be maintained and submitted consistently with the analytical data required in Part 4 of this permit.

Revised: When analytical monitoring of storm water discharges are **is** required, the discharger shall record and retain photographic documentation of **the discharge point and** control measures and/or pollution control measures included in a SWPPP **that are** implemented for permit compliance purposes. The photographs shall clearly depict the presence or absence of physical control measures that are required by this permit. Photographs shall be wide angle and representative of the facility/site conditions present at the time the storm water samples are taken. **Photographs shall clearly depict the condition observed and include date and time information and be retained with SWPPP records.** Photographs taken for the purposes of this section are to be maintained and submitted consistently with the analytical data required in Part 4 of this permit.

Rationale:

DOH is adding this new requirement to ensure that there is visual documentation to corroborate the effectiveness of control measures and reported sampling results. To address concerns of difficulty taking photographs of the actual discharge, the requirement is to take photographs of the discharge point which is the location(s) where storm water leaves the facility either directly or through a separate storm sewer system to a state water.

Part 5.1.1.3

EPA's 2021 MSGP: Your stormwater control measures are not stringent enough for your stormwater discharge to be controlled as necessary such that the receiving water of the United States will meet applicable water quality standards or to meet the non-numeric effluent limits in this permit.

Revised: Your ~~stormwater~~ **storm water** control measures are not stringent enough for your ~~stormwater~~ **storm water** discharge to be controlled as necessary such that the ~~receiving water of the United States~~ **discharge** will meet applicable water quality standards or to meet the non-numeric effluent limits in this permit.

Rationale:

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Part 5.2.5.4(b)

EPA's 2021 MSGP: Your AIM Level 3 status will remain at Level 3 if you have completed the AIM Level 3 responses and the continued quarterly benchmark monitoring results indicate that an AIM triggering event per Part 5.2.2 has occurred (i.e., the benchmark threshold continues to be exceeded for the same parameter(s)). You must continue quarterly benchmark monitoring for the next four quarters for the parameter(s) that caused the AIM triggering event at all affected discharge points, beginning no later than the next full quarter after compliance. If you continue to exceed the benchmark threshold for the same parameter even after compliance with AIM Level 3, EPA may require you to apply for an individual permit.

Revised: Your AIM Level 3 status will remain at Level 3 if you have completed the AIM Level 3 responses and the continued quarterly benchmark monitoring results indicate that an AIM triggering event per Part 5.2.2 has occurred (i.e., the benchmark threshold continues to be exceeded for the same parameter(s)). You must continue quarterly benchmark monitoring for the next four quarters for the parameter(s) that caused the AIM triggering event at all affected discharge

~~points, beginning no later than the next full quarter after compliance. If you continue to exceed the benchmark threshold for the same parameter even after compliance with AIM Level 3, EPA may require you to apply for an individual permit.~~

Rationale:

DOH is not including EPA's language that may require applying for an individual permit for repeated benchmark exceedances. Currently, all industrial storm water discharges are to be covered under the general permit, and historically, any individual permit would follow the same general permit conditions. It is DOH's intent that facilities with ongoing exceedances continue corrective actions under the AIM framework until compliance with benchmark thresholds is achieved.

Part 5.2.6.2

EPA's 2021 MSGP: Due to Run-On: You must demonstrate and obtain EPA agreement that run-on from a neighboring source (e.g., a source external to your facility) is the cause of the exceedance, provided that all the following conditions are met and you submit your analysis and documentation to the applicable EPA Regional Office for concurrence:

- a. After reviewing and revising your SWPPP, as appropriate, you should notify the other facility or entity contributing run-on to your discharges and request that they abate their pollutant contribution.
- b. If the other facility or entity fails to take action to address their discharges or sources of pollutants, you should contact your applicable EPA Regional Office.

Revised: Due to Run-On: You must demonstrate and obtain EPA agreement that run-on from a neighboring source (e.g., a source external to your facility) is the cause of the exceedance, provided that all the following conditions are met and you submit include your analysis and documentation to the applicable EPA Regional Office for concurrence: in your SWPPP:

- a. After reviewing and revising your SWPPP, as appropriate, you should notify the other facility or entity contributing run-on to your discharges and request that they abate their pollutant contribution.
- b. If the other facility or entity fails to take action to address their discharges or sources of pollutants, you should contact your applicable EPA Regional Office. the DOH.

Run-On – sources of storm water that drain from land located upslope or upstream from the regulated facility in question.

Rationale:

DOH is removing the requirement to submit the run-on analysis to DOH for agreement and instead requires that the analysis be kept with the SWPPP. In cases where run-on may be causing benchmark exceedances at a facility,

Permittees must review and revise their SWPPP to ensure that they are taking appropriate measures to reduce pollutants coming from their own facility as that is within the Permittee's control. In cases where a neighboring site is believed to be the cause of benchmark exceedance and the neighboring site fails to take actions to reduce their pollutant discharge to the Permittee's site, the Permittee should contact the DOH. DOH is also adding a definition for run-on from EPA's 2021 MSGP.

Part 5.2.6.5

EPA's 2021 MSGP:

Demonstrated to not result in any exceedance of water quality standards: You must demonstrate to EPA within 30 days of the AIM triggering event that the triggering event does not result in any exceedance of water quality standards. If it is not feasible to complete this demonstration within 30 days, you may take up to 90 days, documenting in your SWPPP why it is infeasible to complete the demonstration within 30 days. EPA may also grant you an extension beyond 90 days, based on an appropriate demonstration by you, the operator. The demonstration to EPA, which will be made publicly available, must include the following minimum elements in order to be considered for approval by the EPA Regional Office:

- a. The water quality standards applicable to the receiving water;*
- b. The average flow rate of the storm water discharge;*
- c. The average instream flow rates of the receiving water immediately upstream and downstream of the discharge point;*
- d. The ambient concentration of the parameter(s) of concern in the receiving water immediately upstream and downstream of the discharge point demonstrated by full-storm composite sampling;*
- e. The concentration of the parameter(s) of concern in the storm water discharge demonstrated by full-storm, flow-weighted composite sampling;*
- f. Any relevant dilution factors applicable to the discharge; and*
- g. The hardness of the receiving water.*

Timeframe of EPA Review of Your Submitted Demonstration: EPA will review and either approve or disapprove of such demonstration within 90 days of receipt (EPA may take up to 180 days upon notice to you before the 90th day that EPA needs additional time).

- EPA Approval of Your Submitted Demonstration. If EPA approves such demonstration within this timeframe, you have met the requirements for this exception, and you do not have to comply with the corresponding AIM requirements and continued benchmark monitoring.*

- *EPA Disapproval of Your Submitted Demonstration. If EPA disapproves such demonstration within this timeframe, you must comply with the corresponding AIM requirements and continued benchmark monitoring, as required. Compliance with the AIM requirements would begin from the date EPA notifies you of the disapproval unless you submit a Notice of Dispute to the applicable EPA Regional Office in Part 7 within 30 days of EPA's disapproval.*
- *EPA Does Not Provide Response Related to Your Submitted Demonstration. If EPA does not provide a response on the demonstration within this timeframe, you may submit to the EPA Regional Office in Part 7 a Notice of Dispute.*
- *Operator Submittal of Notice of Dispute. You may submit all relevant materials, including support for your demonstration and all notices and responses to the Water Division Director for the applicable EPA Region to review within 30 days of EPA's disapproval or after 90 days (or 180 days if EPA has provided notice that it needs more time) of not receiving a response from EPA.*
- *EPA Review of Notice of Dispute. EPA will send you a response within 30 days of receipt of the Notice of Dispute. Time for action by you, the operator, upon disapproval shall be tolled during the period from filing of the Notice of Dispute until the decision on the Notice of Dispute is issued by the Water Division Director for the applicable EPA Region.*

Revised: (Removed)

Rationale:

DOH is removing this AIM exception as the DOH does not believe that exception to be applicable in most cases. Most benchmarks in the proposed permit are at or above established water quality criteria if they exist for the receiving waters. As such, there should be no cases where a benchmark exceedance is not resulting in a water quality standards exceedance.

Part 6.2.3.4

EPA's 2021 MSGP: Unauthorized Non-Stormwater Discharges Evaluation. *By the end of the first year of your permit coverage under this permit, you must inspect and document all discharge points at your facility as part of the SWPPP. If it is infeasible to complete the evaluation within the first year of permit coverage, you must document in your SWPPP why this is the case and identify the schedule by which you expect to complete the evaluation. Documentation of your evaluation must include:*

Revised:

*Unauthorized Non-Stormwater **Non-Storm Water** Discharges Evaluation.*

~~By the end of the first year of your permit coverage under this permit, you must inspect and document all discharge points at your facility as part of the SWPPP. If it is infeasible to complete the evaluation within the first year of permit coverage, you must document in your SWPPP why this is the case and identify the schedule by which you expect to complete the evaluation. **You must document in the SWPPP potential or existing non-storm water discharges in each area identified. Prior to submitting your NOI, you must inspect and document all discharge points at your facility as part of the SWPPP.**~~
Documentation of your evaluation must include:

Rationale:

DOH has revised the requirement to conduct an evaluation of the facility to document potential or existing non-storm water discharges to now require this evaluation to be completed prior to submittal of the NOI. DOH has also removed the language regarding infeasibility. DOH does not believe there is any reason why this evaluation cannot be conducted prior to submittal of the NOI. A facility should be fully aware of all potential or existing non-storm water discharges prior to applying for coverage, as an incomplete understanding of the facility affects the facility's ability to comply with the general permit. As such, DOH has revised this requirement to ensure that facilities conduct this evaluation prior to NOI submittal to ensure that they are able to comply with the general permit.

Part 6.2.3.6 [Removed]

EPA's 2021 MSGP: Sampling Data. Existing permitted facilities must summarize all stormwater discharge sampling data collected at the facility during the previous permit term. The summary shall include a narrative description (and may include data tables/figures) that adequately summarizes the collected sampling data to support identification of potential pollution sources at your facility. New dischargers and new sources must provide a summary of any available stormwater data they may have.

Revised: (REMOVED)

Rationale:

DOH is not including this requirement in the proposed permit, as there are still some facilities (specifically individual NPDES permits) that do not follow the current Appendix B requirements and may not have compatible historical sampling data. The DOH is in the process of removing industrial storm water requirements from individual permits and instead require that facilities apply for and maintain a separate coverage under the general permit. This approach ensures that all facilities within the state are following the most up-to-date industrial storm water requirements and practices. DOH may consider including this requirement in a future Appendix B revision once all facilities have transitioned to general permit coverage.

Part 6.4

EPA's 2021 MSGP:

SWPPP Availability

You must retain a complete copy of your current SWPPP required by this permit at the facility in any accessible format. A complete SWPPP includes any documents incorporated by reference and all documentation supporting your permit eligibility pursuant to Part 1.1 of this permit, as well as your signed and dated certification page. Regardless of the format, the SWPPP must be immediately available to facility employees, EPA, a state or tribe, the operator of an MS4 into which you discharge, and representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) at the time of an on-site inspection.

Revised:

SWPPP Availability

*You must retain a complete copy of your current SWPPP required by this permit at the facility in any accessible format. A complete SWPPP includes any documents incorporated by reference and all documentation supporting your permit eligibility pursuant to Part 1.1 of this permit, as well as your signed and dated certification page. Regardless of the format, the SWPPP must be immediately available to facility employees, ~~EPA, a state or tribe, the operator of an MS4 into which you discharge, and representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS)~~ **DOH, the operator of an MS4 into which you discharge, and representatives of the U.S. EPA** at the time of an on-site inspection.*

Rationale:

DOH removed references to USFWS and NMFS as DOH believes these agencies were included since they are involved in the Endangered Species Act, whose requirements are not included in the proposed permit as they only apply to federal permits.

Part 6.4.1

EPA's 2021 MSGP:

Making Your SWPPP Publicly Available

You have three options to comply with the public availability requirements for the SWPPP: attaching your SWPPP to your NOI; providing a URL of your SWPPP in your NOI; or providing SWPPP information in your NOI. To remain current for all three options, you must update your SWPPP (by updating the attachment per Part 6.4.1.1 via a Change NOI, updating your webpage per Part 6.4.1.2, or updating the SWPPP information in the NOI per Part 6.4.1.3 via a Change NOI no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. You may switch your preferred option throughout your permit coverage, but you must update your NOI as necessary to indicate your change in option. You are not required to post any CBI or restricted information (as defined in Appendix A) (such information may be redacted), but you must

clearly identify those portions of the SWPPP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within EPA, USFWS or NMFS.

Revised:

Making Your SWPPP Publicly Available

You have three options to comply with the public availability requirements for the SWPPP: attaching your SWPPP to your NOI; providing a URL of your SWPPP in your NOI; or providing SWPPP information in your NOI. ~~To remain current for all three options, you must update your SWPPP (by updating the attachment per Part 6.4.1.1 via a Change NOI, updating your webpage per Part 6.4.1.2, or updating the SWPPP information in the NOI per Part 6.4.1.3 via a Change NOI no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. You may switch your preferred option throughout your permit coverage, but you must update your NOI as necessary to indicate your change in option.~~ You are not required to post any CBI or restricted information (as defined in Appendix A) (such information may be redacted), but you must clearly identify those portions of the SWPPP that are being withheld from public access. CBI may not be withheld from those staff cleared for CBI review within EPA, USFWS or NMFS. **DOH or EPA.**

Rationale:

DOH removed the option to change how a Permittee makes their SWPPP available to reduce the administrative burden of tracking how a Permittee is making their SWPPP available. DOH does not believe many Permittees would have taken advantage of this option. For clarity, DOH has also removed the deadline to update this information from this section, and instead moved it to each subsection for each option (i.e., Parts 6.4.1.1, 6.4.1.2, and 6.4.1.3). DOH removed references to USFWS and NMFS as DOH believes these agencies were included since they are involved in the Endangered Species Act, whose requirements are not included in the proposed permit as they only apply to federal permits.

Part 6.4.1.1

EPA's 2021 MSGP: Attaching Your SWPPP to your NOI: You may attach a copy of your SWPPP, and any SWPPP modifications, records, and other reporting elements that must be kept with your SWPPP, to your NOI in NeT-MSGP.

Revised:

Attaching Your SWPPP to your NOI

You may attach a copy of your SWPPP, and any SWPPP modifications, records, and other reporting elements that must be kept with your SWPPP, to your NOI ~~in NeT-MSGP.~~ **on the e-Permitting Portal. To remain current, you must report any modifications and provide a current SWPPP by January 30th of each year after obtaining permit coverage through submittal of a "CWB**

Compliance Submittal Form for Individual NPDES Permits and NGPCs” in the e-Permitting Portal.

Rationale:

As noted in the rationale for revisions to Part 6.4.1, DOH added the deadline for updates to SWPPP information to this part. EPA’s 2021 MSGP required that this update be completed no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. For simplicity, DOH revised this deadline to instead be on January 30th of each year.

Part 6.4.1.2

EPA’s 2021 MSGP: *Providing a URL of your SWPPP in your NOI: You may provide a URL in your NOI in NeT MSGP where your SWPPP can be found, and maintain your current SWPPP at this URL. You must post any SWPPP modifications, records, and other reporting elements that must be kept with your SWPPP required for the previous year at the same URL as the main body of the SWPPP.*

Revised:

Providing a URL of your SWPPP in your NOI:

*You may provide a URL in your NOI in ~~NeT MSGP~~ **the e Permitting Portal** where your SWPPP can be found and maintain your current SWPPP at this URL. You must post any SWPPP modifications, records, and other reporting elements that must be kept with your SWPPP required for the previous year at the same URL as the main body of the SWPPP. **The SWPPP update shall be no later than January 30th of each year after obtaining permit coverage.***

Rationale:

As noted in the rationale for revisions to Part 6.4.1, DOH added the deadline for updates to SWPPP information to this part. EPA’s 2021 MSGP required that this update be completed no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. For simplicity, DOH revised this deadline to instead be on January 30th of each year.

Part 6.4.1.3

EPA’s 2021 MSGP: *Providing SWPPP Information in your NOI. You may include the following information in your NOI in NeT-MSGP. Irrespective of this requirement, EPA may provide access to portions of your SWPPP to a member of the public upon request (except any CBI or restricted information (as defined in Appendix A)).*

- a. Onsite industrial activities exposed to stormwater, including potential spill and leak areas (see Parts 6.2.3.1, 6.2.3.3 and 6.2.3.5);*
- b. Pollutants or pollutant constituents associated with each industrial activity exposed to stormwater that could be discharged in stormwater and/or any*

authorized non-stormwater discharges listed in Part 1.2.2 (see Part 6.2.3.2);

- c. Stormwater control measures you employ to comply with the non-numeric technology-based effluent limits required in Parts 2.1.2 and 8, and any other measures taken to comply with the requirements in Part 2.2 Water Quality-Based Effluent Limitations (see Part 6.2.4). If you use polymers and/or other chemical treatments as part of your erosion and sediment controls, you must identify the polymers and/or chemicals used and the purpose; and*
- d. Schedule for good housekeeping and maintenance (see Part 6.2.5.1) and schedule for all inspections required in Part 3 (see Part 6.2.5.2).*

Revised:

Providing SWPPP Information in your NOI.

*You may include the following information in your NOI in ~~NeT-MSGP~~. **The e-Permitting Portal**. Irrespective of this requirement, **EPA DOH** may provide access to portions of your SWPPP to a member of the public upon request (except any CBI or restricted information ~~(as defined in Appendix A)~~, **as defined in Part 6.4**).*

- a. Onsite industrial activities exposed to ~~stormwater~~, **storm water**, including potential spill and leak areas (see Parts 6.2.3.1, 6.2.3.3 and 6.2.3.5);*
- b. Pollutants or pollutant constituents associated with each industrial activity exposed to ~~stormwater~~ **storm water** that could be discharged in ~~stormwater~~ **storm water** and/or any authorized ~~non-stormwater~~ **non-storm water** discharges listed in Part 1.2.2 (see Part 6.2.3.2);*
- c. ~~Stormwater~~ **Storm water** control measures you employ to comply with the non-numeric technology-based effluent limits required in Parts 2.1.2 and 8, and any other measures taken to comply with the requirements in Part 2.2 Water Quality-Based Effluent Limitations (see Part 6.2.4); **and** ~~if you use polymers and/or other chemical treatments as part of your erosion and sediment controls, you must identify the polymers and/or chemicals used and the purpose; and~~*
- d. Schedule for good housekeeping and maintenance (see Part 6.2.5.1) and schedule for all inspections required in Part 3 (see Part 6.2.5.2).*

To remain current, you must report any modifications to the SWPPP information required by Part 6.3 by January 30th of each year after obtaining permit coverage through submittal of a “CWB Compliance Submittal Form for Individual NPDES Permits and NGPCs” in the e-Permitting portal.

Rationale:

As noted in the rationale for revisions to Part 6.4.1, DOH added the deadline for updates to SWPPP information to this part. EPA's 2021 MSGP required that this update be completed no later than 45 days after conducting the final routine facility inspection for the year required in Part 3.1. For simplicity, DOH revised this deadline to instead be on January 30th of each year. DOH is also retaining the prohibition on the use of polymers from the 2022 Appendix B, and as such, language referencing polymers was removed.

Part 7.3.3

EPA's 2021 MSGP (Part 7.3.4): Submission Deadline for Indicator and Benchmark Monitoring Data. For both indicator and benchmark monitoring, you are required to submit sampling results to EPA no later than 30 days after receiving your complete laboratory results for all monitored discharge points for each monitoring period that you are required to collect samples, per Part 4.2.1. and Part 4.2.2. If you collect samples during multiple storm events in a single quarter (e.g., due to adverse weather conditions, climates with irregular stormwater discharges, or areas subject to snow), you are required to submit all sampling results for each storm event to EPA within 30 days of receiving all laboratory results for the event. Or, for any of your monitored discharge points that did not have a discharge within the reporting period, using Net-DMR, you must report that no discharges occurred for that discharge point no later than 30 days after the end of the reporting period.

Revised:

Submission Deadline for Indicator and Benchmark Monitoring Data.

For both indicator and benchmark monitoring, you are required to submit sampling results to ~~EPA no later than 30 days after receiving your complete laboratory results for all monitored discharge points~~ **DOH no later than the 28th day following the month when the samples were taken for all monitored outfalls** for each monitoring period that you are required to collect samples, per Part 4.2.1. and Part 4.2.2. If you collect samples during multiple storm events in a single quarter (e.g., due to adverse weather conditions, climates with irregular stormwater **storm water** discharges, or areas subject to snow), ~~you are required to submit all sampling results for each storm event to EPA within 30 days of receiving all laboratory results for the event.~~ Or, for any of your monitored discharge points that did not have a discharge within the reporting period, using Net-DMR, ~~you must report that no discharges occurred for that discharge point no later than 30 days after the end of the reporting period.~~ **you are required to submit all sampling results for each storm event to DOH no later than the 28th day following the month when the sample was taken. Or, for any of your monitored outfalls that did not have a discharge within the reporting period, using an electronic reporting method you must report using a "no data" or "NODI" code for that outfall no later than 28th day of the month following the completed reporting period.**

Rationale:

DOH has revised the deadline for submittal of sampling results for indicator and benchmark monitoring from 30 days after receiving the results from the laboratory to the 28th day of the month following the sampling event (e.g., samples collected on January 1 are due February 28, samples collected March 3 due April 28, etc.). This change is generally consistent with regular sampling result deadlines in other NPDES permits issued by DOH. DOH does not expect this revised deadline to be difficult for Permittees to comply with.

Part 7.9 [Removed]

Original:

DOH Address for Reports.

*State of Hawaii
Clean Water Branch
2827 Waimano Home Rd #225
Pearl City, HI 96782*

Revised: (REMOVED)

Rationale:

As the NOI and any reports to be submitted to DOH are done through the e-Permitting Portal, DOH has removed the physical address as it is no longer needed.

Part 8.A.8.1 [Removed]

EPA's 2021 MSGP: Credit for Pollutants in Intake Water. *For discharges that are comprised solely of water drawn from the same body of water into which the discharges flow and that exceed an applicable effluent limitation, you may be eligible for a credit to the extent necessary to meet the limitation. To obtain this credit, you must show that your discharge would meet the limitation in the absence of the pollutant(s) in the intake water by demonstrating that the control measures you use to meet the limitation would, if properly installed and operated, meet the limitations for the pollutant (i.e., the pollutant level in your discharge is in exceedance of the limitation due to the pollutant concentration in the source or intake water). You must consult the appropriate EPA Regional Office for guidance in seeking a pollutant credit under this Part. EPA will notify you whether you are eligible for the credit, and, if so, provide the scope of such credit.*

Revised: (REMOVED)

Rationale:

DOH is not allowing the option for permittees to apply for intake credits for effluent limitations for the timber subsector. DOH currently does not allow for intake credits in any of our general permits as it requires more information and

analysis than is usually involved in general permits which are intended to generally be one-size fits all requirements for a class of discharges.

Part 8.S.2.1

Original: *Limitations on Coverage. This permit authorizes storm water discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), or equipment cleaning operations.*

Revised: *Limitations on Coverage. This permit authorizes storm water discharges from only those portions of the air transportation facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), ~~or equipment cleaning operations.~~ **equipment cleaning operations or deicing operations.***

Note: the term "deicing" in this permit will generally be used to mean both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made otherwise.

Rationale:

As noted earlier in this Fact Sheet, DOH is including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to cover any unforeseen situations and to align as closely with EPA's 2021 MSGP where possible.

Part 8.S.3.2

Original:

MSGP Implementation Responsibilities for Airport Authority and Tenants. The airport authority, in collaboration with its tenants, may choose to implement certain MSGP requirements on behalf of its tenants in order to increase efficiency and eliminate redundancy or duplication of effort. Options available to the airport authority and its tenants for implementation of MSGP requirements include:

- The airport authority performs certain activities on behalf of itself and its tenants and reports on its activities;*
- Tenants provide the airport authority with relevant inputs about tenants' activities and the airport authority compiles and reports on tenants' and its own activities;*
- Tenants independently perform, document and submit required information on their activities.*

Revised:

MSGP Implementation Responsibilities for Airport Authority and Tenants. The airport authority, in collaboration with its tenants, may choose to implement certain MSGP requirements on behalf of its tenants in order to increase efficiency and eliminate redundancy or duplication of effort. Options available to the airport authority and its tenants for implementation of MSGP requirements include:

- The airport authority performs certain activities on behalf of itself and its tenants and reports on its activities;*
- Tenants provide the airport authority with relevant inputs about tenants' activities **activities, including deicing chemical usage***, and the airport authority compiles and reports on tenants' and its own activities;*
- Tenants independently perform, document and submit required information on their activities.*

***Tenants who report their deicing chemical usage to the airport authority and rely on the airport authority to perform monitoring should not check the glycol and urea use box on their NOI forms.**

Rationale:

As noted earlier in this Fact Sheet, DOH is including requirements for salt storage piles or piles containing salt; airport deicing; and areas subject to snow and snowmelt. While these situations are not expected to be present in the state, DOH is including these requirements to cover any unforeseen situations and to align as closely with EPA's 2021 MSGP where possible.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l). The effluent limitations established in the proposed Appendix B, MSGP are consistent with State and federal anti-backsliding regulations because they are at least as stringent as those in the previous permit and are consistent with both State and federal anti-backsliding regulations (CWA Section 303(d)(4)(B) exception to the anti-backsliding provisions). While certain benchmark values have changed in the proposed permit compared to the 2022 Appendix B, these changes are consistent with EPA's 2021 MSGP and are not effluent limitations, so anti-backsliding does not apply to those changes.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR Section 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR Section 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed Appendix B, MSGP are no less stringent than in the previous permit. As explained above, the proposed Appendix B, MSGP is being revised to follow EPA's 2021 MSGP. Therefore, the proposed Appendix B, MSGP is consistent with antidegradation provisions of 40 CFR 131.12 and HAR Section 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

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

Not applicable.

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

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

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

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

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

- (8) For NPDES permits, provisions satisfying the requirements of 40 CFR 124.56. The CWA requires that discharges from existing facilities, at a minimum, meet technology-based effluent limitations considering, among other things, the technological capability of permittees to control pollutants in their discharges. WQBELs are required by CWA Section 301(b)(1)(C). Both technology-based and WQBELs are implemented through NPDES permits.

Both technology-based limits using the federally promulgated ELGs and State WQS have been applied.

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

Not applicable.

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

(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."

As of 7/4/2025, two (2) facilities are covered by the 2022 discharges of once through cooling water less than one (1) MGD general permit. The permittees are:

1. National Oceanic and Atmospheric Administration (NOAA); and
2. IES Downstream, LLC.

(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 depending on 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);

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 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 Chapter 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 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 discharge 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 discharge 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 discharge 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 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
 4. Notice of Intent Requirements [*Revised*]
 5. Standard Conditions [*Revised*]
 6. Effluent Limitations and Monitoring Requirements [*Revised*]
 7. Corrective Action [*Revised*]
 8. Reporting Requirements [*Revised*]
 9. Submittal Requirements [*Revised*]
 10. Additional Conditions
 11. Record Retention
 12. Falsifying Report
 13. Forms [*Revised*]
- Table 34.3 Effluent Limitation and Monitoring Requirements for Discharge of Once Through Cooling Water Less Than One (1) Million Gallons Per Day [*Revised*]

Sections 1 through 5 and 7 through 13 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.

HAR Chapter 11-55, Appendix E Proposed Revisions

The General Permit currently in effect expires on January 14, 2027. The proposed General Permit will be effective for a term of 5 (five) years.

Revisions are proposed in the draft 2026 Appendix E.

The minor revision is proposed to:

1. Table 34.3 – add "(Units)" as a column label.

The other revisions are proposed to:

1. Section 1 - clarify the coverage under the general permit;
2. Section 2(a) - clarify the limitations on coverage under the general permit;
3. Section 2(c) – add discharge prohibitions (before deleting equivalent effluent limitations), and implement narrative water quality standards as discharge prohibitions;
4. Section 4(b) – clarify the requirements for information submitted in the notice of intent;
5. Sections 4(e), 8(a)(5), 9(a), and 13 - comply with federal electronic reporting regulations;
6. Sections 5, 6(b), 7, and 8(c)(1) - revise language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters;
7. Section 6(a) – clarify the requirements for sampling points and test procedures;
8. Sections 6(d), 6(e), and 6(f) – delete effluent limitations (after adding equivalent discharge prohibitions); and
9. Sections 8(e) – clarify the requirements for reporting the use of chlorine, if any.

Section 1

Original: 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~~ into natural freshwater lakes, saline lakes, and anchialine pools.

Revised: *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. Source waters with chlorine residuals may be used for once through cooling waters and chlorine may be used for the control of biofouling in cooling systems.*
- (b) *This general permit covers discharges to all State waters except for:*
 - (1) *Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or*
 - (2) *Discharges that occur within lands of exclusive federal jurisdiction.*

Rationale: The source for the cooling water associated with these types of facilities is generally from, but not limited to, potable water systems or on-site ground water. Potable water sources may contain chlorine residuals for disinfection purposes. Also, the application of additions such as chlorine may be used for the operation and maintenance of the piping system in regards to biofouling.

DOH specifies effluent limitations for chlorine expressed as total residual oxidants (TRO) in Table 34.3. The effluent limitations for TRO are 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.

DOH clarifies that the coverage under this general permit includes the use of source waters with chlorine residuals and the use of chlorine for the control of biofouling of pipes in the cooling systems.

DOH also clarifies that this general permit regulates discharges instead of geographic areas by replacing “all areas of the State” with “discharges to all State waters”. This revision ensures consistency with the CWA and standard NPDES permit language.

DOH also specifies that this general permit does not authorize discharges within lands of exclusive federal jurisdiction. Lands of exclusive federal jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are lands of exclusive federal jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background section in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122) <https://www.federalregister.gov/documents/2025/04/15/2025-06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general>].

Within lands of exclusive federal jurisdiction, the State does not have NPDES permitting authority and EPA retains responsibility for administering the NPDES program. Dischargers must obtain coverage under an applicable EPA-issued permit.

Section 2(a)

Original: This general permit does not cover the following:

- (1) Discharges of once through cooling water into a sanitary sewer system;
- (2) Discharges of once through cooling water which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system; **and**
- (3) Facilities with cooling water intake structures subject to the requirements of Section 316(b) of the Clean Water Act.

Revised: *This general permit does not cover the following:*

- (1) *Discharges of once through cooling water into a sanitary sewer system;*
- (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;*
- (3) *Facilities with cooling water intake structures subject to the requirements of Section 316(b) of the Clean Water Act; and*
- (4) *Facilities that use additives other than chlorine for the control of biofouling in cooling systems.*

Rationale: DOH clarifies that the coverage under this general permit is limited to the use of chlorine for the control of biofouling in cooling systems. DOH specifies effluent limitations for chlorine expressed as total residual oxidants (TRO) in Table 34.3. The use of other additives is not covered under this general permit.

Section 2(c)

Original: (Blank)

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

- (1) Prohibit discharges of waste from the physical cleaning of cooling systems;
- (2) Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges; and
- (3) Prohibit discharges of compounds used in closed-loop systems.

Rationale: Effluent limitations for oil, waste from cleaning of cooling systems, and compounds used in closed-loop systems are respectively specified in sections 6(d), 6(e), and 6(f). DOH replaces the above effluent limitations with respective discharge prohibitions for oil, waste from cleaning of cooling systems, and compounds used in closed-loop systems in sections 2(c)(1), 2(c)(2), and 2(c)(3).

DOH revises the discharge prohibition for oil to include floating debris, grease, scum, other floating material, as well as color and taste. DOH retains the effluent limitation for oil and grease in Table 34.3. DOH specifies these discharge prohibitions since there are no numerical limits specified exist in HAR Chapter 11-54 for floating debris, grease, scum, other floating material, color, taste, waste from cleaning of cooling systems, and compounds used in closed-loop systems. DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

Section 4(b)

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

- (1) Information required in section 34 of appendix A of chapter 11-55;
- (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;
- (3) 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;
- (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.

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

- (1) Information required in section 34 of appendix A of chapter 11-55;*
- (2) List of up to four Standard Industrial Classification codes or North American Industrial Classification System codes that best represent the products or activities of the facility;*
- (3) 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;*
- (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 use of chlorine, if any in once through cooling water;*
- (7) The best estimate of the date on which the facility will begin to discharge; and*
- (8) The treatment system plan to ensure the once through cooling effluent will meet the conditions of this general permit. 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.*

Rationale: DOH clarifies the requirements for information that shall be submitted in the notice of intent.

DOH clarifies that this general permit covers the use of chlorine for the control of biofouling in cooling systems. DOH requires the applicant to indicate on the notice of intent the use of chlorine in once through cooling waters.

DOH clarifies the requirements of the treatment system plan for once through cooling waters. DOH expects that compliance with the conditions in this general permit will control discharges of once through cooling waters as necessary to meet applicable water quality standards as specified in HAR Chapter 11-54.

Section 4(e)

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

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

Revised: *The owner or operator shall submit a complete notice of intent on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*

Rationale: The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 5

Original: 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.

Revised: *The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding conditions in section 1 (basic water quality criteria). In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding conditions in section 1, the more stringent conditions shall apply.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 6(a)

Original: The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.3. (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)

(1) Sampling Points

Samples taken in compliance with the monitoring requirements shall be taken at the following point(s):

- (A) The permittee shall collect influent samples ~~downstream from any additions to the source water and prior to the cooling system.~~
- (B) The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.

(2) Collection of Samples

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.

Revised: *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 upstream of the cooling system.*
- (B) *The permittee shall collect effluent samples downstream from the cooling system and prior to actual discharge or mixing with the receiving state waters.*

(2) *Collection of Samples*

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

(3) *Type of Sample*

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

(4) *Test Procedures*

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

- (B) *Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.*
- (C) *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR §122.21(e)(3) and §122.44(i)(1)(iv).*

Rationale: DOH specifies in Table 34.3 an effluent limitation for total suspended solids. The total suspended solids limits are net increase restrictions of the effluent above that of the influent of once through cooling water. DOH clarifies in section 6(a)(1)(A) that influent samples of once through cooling water are taken upstream of the cooling system.

DOH clarifies the requirements for test procedures in section 6(a)(4). For the analysis of pollutants, the permittee must use test procedures that are approved under 40 CFR Part 136 and sufficiently sensitive to detect the applicable numerical limits as specified in HAR Chapter 11-54.

Section 6(b)

Original: ~~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.~~

Revised: *Inspections*

The permittee shall inspect the effluent, 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 prohibitions as specified in section 2(c)(2) of this general permit.

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

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Sections 6(d), 6(e), and 6(f)

Original: (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.~~

Revised: *(Blank)*

Rationale: Effluent limitations for oil, waste from cleaning of cooling systems, and compounds used in closed-loop systems are respectively specified in section 6(d), section 6(e), and section 6(f). DOH replaces the above effluent limitations with respective discharge prohibitions for oil, waste from cleaning of cooling systems, and compounds used in closed-loop systems in section 2(c)(1), section 2(c)(2), and section 2(c)(3).

DOH revises the discharge prohibition for oil to include floating debris, grease, scum, other floating material, as well as color and taste. DOH retains the effluent limitation for oil and grease in Table 34.3. DOH specifies these discharge prohibitions since there are no numerical limits specified exist in HAR Chapter 11-54 for floating debris, grease, scum, other floating material, color, taste, waste from cleaning of cooling systems, and compounds used in closed-loop systems.

Section 7

- Original:** 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.~~
- Revised:** *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 prohibitions as specified in section 2(c)(2) of this general permit.*
- Rationale:** On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.
- See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 8(a)(5)

- Original:** ~~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.~~
- Revised:** *The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*

Rationale: DOH clarifies the federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 8(c)(1)

Original: 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; and
- (C) Unanticipated bypass or upset.

Revised: *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 prohibition specified in section 2(c)(2) of this general permit;*
- (B) *Discharge or noncompliance with effluent limitations which may endanger health or the environment; and*
- (C) *Unanticipated bypass or upset.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 8(e)

Original: 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.

Revised: *Reporting Use of Chlorine*

The permittee shall submit to the director by the twenty-eighth of January of each year an annual summary of the quantities, if any, of chlorine (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.

Rationale: DOH clarifies that this general permit covers the use of chlorine for the maintenance of biofouling of cooling systems. DOH requires that an annual summary of the quantities of chlorine , if any, be submitted by the twenty-eighth of January each year.

Section 9(a)

- Original:** The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit ~~to the director at the following address or as otherwise specified:~~
- ~~Director of Health
Clean Water Branch
Environmental Management Division
State Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378~~
- Revised:** *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*
- Rationale:** The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 13

Original: ~~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/>.~~

Revised: Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Rationale: DOH clarifies that all electronic forms may be accessed online at the e-Permitting Portal. This ensures legal compliance with federal electronic reporting regulations, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

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

Not applicable.

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

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

Refer to HAR §11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 2827 Waimano Home Road, #225, Pearl City, Hawaii 96782. The procedures for requesting a hearing shall follow 40 CFR §124.11.

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

Mr. Reef Migita
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 reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.

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

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

Not applicable.

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

(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.

As of 7/3/2025, eighty-seven (87) facilities are covered by the 2022 discharges of hydrotesting waters general permit, with others in various stages of application or permit processing. Permittees that have applied for NPDES coverage include:

1. Federal agencies such as the U.S. Department of the Army, U.S. Army Corps of Engineers Honolulu District and the U.S. Department of the Navy, Naval Facilities Engineering Systems Command Hawaii;
2. State agencies such as the State of Hawaii, Department of Transportation and the State of Hawaii, Department of Accounting and General Services;
3. Municipal agencies such as the City and County of Honolulu, Board of Water Supply and various municipal agencies on all islands; and
4. Private entities.

(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);

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 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 DOH for review and approval. The information provided in the Notice of Intent (NOI) will be used for evaluating compliance with applicable water quality standards. If any constituents submitted in the NOI exceed the applicable water quality standards, DOH may require the owner or 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 is 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. Therefore, the general permit includes total residual chlorine limitations per HAR §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 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
 4. Notice of Intent Requirements [*Revised*]
 5. Standard Conditions [*Revised*]
 6. Effluent Limitations and Monitoring Requirements for Transmission Line Testing [*Revised*]
 7. Corrective Action [*Revised*]
 8. Reporting Requirements [*Revised*]
 9. Submittal Requirements [*Revised*]
 10. Additional Conditions
 11. Record Retention
 12. Falsifying Report
 13. Forms [*Revised*]
- Table 34.4 Effluent Limitations and Monitoring Requirements for Hydrotesting Water Discharges [*Revised*]

Sections 1 through 5 and 7 through 13 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.

HAR Chapter 11-55, Appendix F Proposed Revisions

The General Permit currently in effect expires on January 14, 2027. The proposed General Permit will be effective for a term of 5 (five) years.

Revisions are proposed in the draft 2026 Appendix F.

The minor revisions are proposed to:

1. Section 6(a) - replace the expression “water quality of the hydrotesting water” by “effluent”; and
2. Table 34.4 – add “(Units)” as a column label and delete the definition of “NTU” (which is not needed).

The other revisions are proposed to:

1. Section 1(b) – clarify the coverage under the general permit;
2. Section 2(a)(3) - clarify the limitations on coverage under the general permit;
3. Section 2(c)(2) - implement narrative water quality standards as discharge prohibitions;
4. Section 4(b)(4) – clarify the requirements for best management practices plans submitted in the notice of intent;
5. Sections 4(e), 8(a)(6), 9(a) and 13 - comply with federal electronic reporting regulations;
6. Sections 5, 6(b), 7, and 8(c)(1) - revise language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters; and
7. Section 6(a)(4) – clarify the requirements for test procedures.

Section 1(b)

Original: This general permit covers ~~all areas of the State~~ except for ~~discharges~~ into natural freshwater lakes, saline lakes, and anchialine pools.

Revised: *This general permit covers discharges to all State waters except for:*

(1) Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or

(2) Discharges that occur within lands of exclusive federal jurisdiction.

Rationale: DOH clarifies that this general permit regulates discharges instead of geographic areas by replacing “all areas of the State” with “discharges to all State waters”. This revision ensures consistency with the CWA and standard NPDES permit language.

DOH specifies that this general permit does not authorize discharges within lands of exclusive federal jurisdiction. Lands of exclusive federal jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are lands of exclusive federal jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background section in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122) <https://www.federalregister.gov/documents/2025/04/15/2025-06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general>].

Within lands of exclusive federal jurisdiction, the State does not have NPDES permitting authority and EPA retains responsibility for administering the NPDES program. Dischargers must obtain coverage under an applicable EPA-issued permit.

Section 2(a)(3)

Original: Discharges of hydrotesting waters with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and

Revised: *Discharges of hydrotesting waters with toxic parameter concentrations above those specified in appendix E of chapter 11-54; and*

Rationale: DOH requires water quality-based effluent limitations in this permit for all numeric water quality criteria specified in HAR Chapter 11-54 associated with any pollutant in the discharge that has a reasonable potential to cause or contribute to an excursion of that criteria. Discharges of hydrotesting waters with toxic parameter concentrations that exceed the applicable numeric limits, as specified in Appendix E of HAR Chapter 11-54, are not covered under this permit.

Section 2(c)(2)

Original: ~~Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;~~

Revised: Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges;

Rationale: DOH requires water quality-based effluent limitations in an NPDES permit for all numeric and narrative water quality criteria in HAR Chapter 11-54 associated with any pollutant in the discharge that has a reasonable potential to cause or contribute to an excursion of that criteria. For DOH's narrative water quality standards regarding floating debris, oil, grease, scum, other floating material, as well as color and taste, DOH implements these standards as discharge prohibitions since no numerical limits exist in the standards. DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

Section 4(b)(4)

Original: 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~~. 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.

Revised: *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. 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. The plan, and all subsequent revisions, shall be retained on-site or at a nearby field office.*

Rationale: DOH requires hydrotesting best management plans to prevent pollutants that may be present in discharges of hydrotesting waters from entering state waters. DOH expects that a hydrotesting best management practices plan which is in compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

DOH requires hydrotesting best management practices plans, and all subsequent revisions, to be retained on-site or at a nearby field office.

Section 4(e)

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

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

Revised: *The owner or operator shall submit a complete notice of intent on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>*

Rationale: The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 5

Original: 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.

Revised: *The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding conditions in section 1 (basic water quality criteria). In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding conditions in section 1, the more stringent conditions shall apply.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 6(a)(4)

Original: 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.

Revised: *Test Procedures*

- (A) *The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.*
- (B) *Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.*
- (C) *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR §122.21(e)(3) and §122.44(i)(1)(iv).*

Rationale: DOH clarifies the requirements for test procedures in section 6(a)(4). For the analysis of pollutants, the permittee must use test procedures that are approved under 40 CFR Part 136 and sufficiently sensitive to detect the applicable numerical limits as specified in HAR Chapter 11-54.

Section 6(b)

Original: ~~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.

Revised: *Inspections*

The permittee shall inspect the effluent, control measures, and best management practices at least once per discharge to detect violations of and conditions which may cause violations of the prohibitions as specified in section 2(c)(2) of this general permit.

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

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 7

Original: 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.~~

Revised: *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 prohibitions as specified in section 2(c)(2) of this general permit.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 8(a)(6)

Original: ~~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.~~

Revised: The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Rationale: DOH clarifies the federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 8(c)(1)

Original: 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 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.

Revised: *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 prohibition specified in section 2(c)(2) of this general permit;*
- (B) *Discharge or noncompliance with effluent limitations which may endanger health or the environment; and*
- (C) *Unanticipated bypass or upset.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 9(a)

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

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

Revised: *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit on forms specified by the director. Electronic forms are available online at the department’s e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*

Rationale: The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 13

Original: 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/>.

Revised: Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Rationale: DOH clarifies that all electronic forms may be accessed online at the e-Permitting Portal. This ensures legal compliance with federal electronic reporting regulations, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

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

Not applicable.

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

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

Refer to HAR §11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 2827 Waimano Home Road, #225, Pearl City, Hawaii 96782. The procedures for requesting a hearing shall follow 40 CFR §124.11.

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

Mr. Reef Migita
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 reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.

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

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

Not applicable.

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

(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.

As of 7/3/2025, thirteen (13) facilities are covered by the 2022 discharges associated with construction activity dewatering general permit. Permittees that have applied for NPDES coverage include:

1. State agencies;
2. Municipal agencies on all islands; and
3. Private entities.

(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);

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from construction dewatering activities. The general permit discharge limitations and monitoring requirements are based on HAR Chapter 11-54, Water Quality Standards.

DOH has 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.

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
4. Notice of Intent Requirements [*Revised*]
5. Standard Conditions [*Revised*]
6. Effluent Limitations and Monitoring Requirements [*Revised*]
7. Corrective Action [*Revised*]
8. Reporting Requirements [*Revised*]
9. Submittal Requirements [*Revised*]
10. Additional Conditions
11. Record Retention
12. Falsifying Report
13. Forms [*Revised*]

Table 34.5 Effluent Limitations and Monitoring Requirements for Construction Dewatering Discharges [*Revised*]

Sections 1 through 5 and 7 through 13 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.

HAR Chapter 11-55, Appendix G Proposed Revisions

The General Permit currently in effect expires on January 14, 2027. The proposed General Permit will be effective for a term of 5 (five) years.

Revisions are proposed in the draft 2026 Appendix G.

The minor revisions are proposed to:

1. Section 2(c) - correct formatting errors;
2. Section 2(c)(1) – replace “dewatering discharges” with “construction dewatering discharges”; and
3. Table 34.5 – add “(Units)” as a column label.

The other revisions are proposed to:

1. Section 1(b) – clarify the coverage under the general permit;
2. Section 2(a)(6) - clarify the limitations on coverage under the general permit;
3. Section 2(c)(2) - implement narrative water quality standards as discharge prohibitions;
4. Sections 4(b)(6) and 4(b)(7) - clarify the requirements for site-specific dewatering plans and dewatering system maintenance plans submitted in the notice of intent;
5. Sections 4(e), 8(a)(6), 9(a) and 13 - comply with federal electronic reporting regulations;
6. Section 5, 6(b), 7, and 8(c)(1) - revise language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters; and
7. Section 6(a)(4) – clarify the requirements for test procedures.

Section 1(b)

Original: This general permit covers ~~all areas of the State~~ except for discharges into natural freshwater lakes, saline lakes, and anchialine pools.

Revised: *This general permit covers discharges to all State waters except for:*

- (1) Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or*
- (2) Discharges that occur within lands of exclusive federal jurisdiction.*

Rationale: DOH clarifies that this general permit regulates discharges instead of geographic areas by replacing “all areas of the State” with “discharges to all State waters”. This revision ensures consistency with the CWA and standard NPDES permit language.

DOH specifies that this general permit does not authorize discharges within lands of exclusive federal jurisdiction. Lands of exclusive federal jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are lands of exclusive federal jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background section in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122) <https://www.federalregister.gov/documents/2025/04/15/2025-06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general>].

Within lands of exclusive federal jurisdiction, the State does not have NPDES permitting authority and EPA retains responsibility for administering the NPDES program. Dischargers must obtain coverage under an applicable EPA-issued permit.

Section 2(a)(6)

- Original:** Discharges of construction dewatering effluent with toxic parameter concentrations above ~~the applicable water quality criteria in chapter 11-54; and~~
- Revised:** *Discharges of construction dewatering effluent with toxic parameter concentrations above those specified in appendix E of chapter 11-54; and*
- Rationale:** DOH requires water quality-based effluent limitations in this permit for all numeric water quality criteria specified in HAR Chapter 11-54 associated with any pollutant in the discharge that has a reasonable potential to cause or contribute to an excursion of that criteria. Discharges of construction dewatering waters with toxic parameter concentrations that exceed the applicable numeric limits, as specified in Appendix E of HAR Chapter 11-54, are not covered under this permit.

Section 2(c)(2)

- Original:** Prohibit ~~visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.~~
- Revised:** *Prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease; or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges;*
- Rationale:** DOH requires water quality-based effluent limitations in an NPDES permit for all numeric and narrative water quality criteria in HAR Chapter 11-54 associated with any pollutant in the discharge that has a reasonable potential to cause or contribute to an excursion of that criteria. For DOH's narrative water quality standards regarding floating debris, oil, grease, scum, other floating material, as well as color and taste, DOH implements these standards as discharge prohibitions since no numerical limits exist in the standards. DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

Section 4(b)(6)

- Original:** 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;
- Revised:** *Site-specific dewatering plan to ensure the construction dewatering effluent will meet the conditions of this general permit. 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:** DOH requires site-specific dewatering plans to ensure the proper management of dewatering waters during construction activities. DOH expects a site-specific dewatering plan that is in compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

Section 4(b)(7)

Original: 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
 - (viii) Effluent control plan, and
- (C) Treatment requirements.

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; and

Revised: *Dewatering system maintenance plan to ensure that the construction dewatering effluent will meet the conditions of this general permit. 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*
 - (viii) Effluent control plan, and*
- (C) Treatment requirements.*

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; and

Rationale: DOH requires site-specific dewatering system maintenance plans to prevent pollutants that may be present in discharges of construction dewatering waters from entering state waters. DOH expects a site-specific dewatering system maintenance plan that is in compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54.

Section 4(e)

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

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

Revised: *The owner or operator shall submit a complete notice of intent on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*

Rationale: The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 5

Original: 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.

Revised: *The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding conditions in section 1 (basic water quality criteria). In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding conditions in section 1, the more stringent conditions shall apply.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters. be interpreted to impose compliance based on the conditions of receiving waters.

Section 6(a)(4)

Original: 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.

Revised: *Test Procedures*

- (A) *The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.*
- (B) *Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.*
- (C) *The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR §122.21(e)(3) and §122.44(i)(1)(iv).*

Rationale: DOH clarifies the requirements for test procedures in section 6(a)(4). For the analysis of pollutants, the permittee must use test procedures that are approved under 40 CFR Part 136 and sufficiently sensitive to detect the applicable numerical limits as specified in HAR Chapter 11-54.

Section 6(b)

Original: ~~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.~~

Revised: *Inspections*

The permittee shall inspect the effluent, 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 prohibitions as specified in section 2(c)(2) of this general permit.

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

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 7

Original: 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.~~

Revised: *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 prohibitions as specified in section 2(c)(2) of this general permit.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 8(a)(6)

Original: ~~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.~~

Revised: The permittee or its duly authorized representative shall submit discharge monitoring reports on forms specified by the director. Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Rationale: DOH clarifies the federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 8(c)(1)

Original: 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; and
- (C) Unanticipated bypass or upset.

Revised: *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 prohibition specified in section 2(c)(2) of this general permit;*
- (B) *Discharge or noncompliance with effluent limitations which may endanger health or the environment; and*
- (C) *Unanticipated bypass or upset.*

Rationale: On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act.

See https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion. DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on the conditions of receiving waters.

Section 9(a)

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

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

Revised: *The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit on forms specified by the director. Electronic forms are available online at the department’s e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.*

Rationale: The revision is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

Section 13

Original: 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/>.

Revised: Electronic forms are available online at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit>.

Rationale: DOH clarifies that all electronic forms may be accessed online at the e-Permitting Portal. This ensures legal compliance with federal electronic reporting regulations, improves administrative efficiency, and aligns DOH's program with national standards for environmental permitting.

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

Not applicable.

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

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

Refer to HAR §11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 2827 Waimano Home Road, #225, Pearl City, Hawaii 96782. The procedures for requesting a hearing shall follow 40 CFR §124.11.

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

Mr. Reef Migita
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 TBELs and WQBELs are implemented through NPDES permits.

For this permit, the limits are WQBELs because effluent limitation guidelines and TBELs do not apply.

The proposed HAR Chapter 11-55, Appendix G, Section 2(c) implements the 40 CFR §450.21(c) requirement that prohibits “discharges from dewatering activities, including discharges from dewatering of trenches and excavations” unless managed by “appropriate controls.” The specific restrictions in HAR Chapter 11-55, Appendix G, Section 2(c) provide DOH’s interpretation of what is meant by “appropriate controls” in 40 CFR §450.21(c).

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

Not applicable.

Fact Sheet for Appendix K

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

The subject of the draft National Pollutant Discharge Elimination System (NPDES) general permit is Small Municipal Separate Storm Sewer Systems (MS4s).

"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) Designed or used for collecting or conveying storm water;
- (3) Which is not a combined sewer;
- (4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2;
- (5) 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
- (6) 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 (the system must serve two (2) or more buildings).

The following is a list of Permittees that have applied for NPDES coverage:

1. University of Hawaii (UH), Honolulu Community College, Honolulu, Island of Oahu, HI 22KG627 (Issued February 13, 2026);
2. UH, Maui College, Kahului, Island of Maui, HI 22KG697 (Issued March 5, 2025);
3. UH, Kapiolani Community College, Honolulu, Island of Oahu, HI 22KG701 (Issued April 23, 2025);
4. Department of Transportation, Harbors Division, Kalaeloa Barbers Point Harbor, Kapolei, Island of Oahu, HI 22KG709 (Issued March 14, 2023);

5. Department of Transportation (DOT), Harbors Division, Honolulu Harbor, Honolulu, Island of Oahu, HI 22KG710 (Issued March 14, 2023);
6. UH, Leeward Community College, Pearl City, Island of Oahu, HI 22KG711 (Issued July 8, 2024);
7. UH at Manoa, Honolulu, Island of Oahu, HI 22KG716 (Issued October 27, 2023);
8. DOT, Highways Division (DOT-HWYs) – Maui District, Kahului, Island of Maui, HI 22KG717 (Issued August 14, 2023);
9. Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility, Pearl Harbor, Island of Oahu, HI 22KG718 (Issued June 21, 2023);
10. UH, West Oahu Campus, Kapolei, Island of Oahu, HI 22KG719 (Issued February 21, 2025);
11. Hawaii Community Development Authority (HCDA), Kakaako Community Development District, Honolulu, Island of Oahu, HI 22KG720 (In Process);
12. HCDA, Kewalo Basin, Honolulu, Island of Oahu, HI 22KG721 (In Process);
13. County of Maui, Kahului, Island of Maui, HI 22KG722 (Issued May 2, 2023);
14. Department of Transportation, Airports Division (DOT-AIR) Daniel K. Inouye International Airport, Honolulu, Island of Oahu, HI 22KG724 (Issued January 3, 2023);
15. DOT-AIR, Kahului Airport, Kahului, Island of Maui, HI 22KG725 (Issued March 6, 2023);
16. UH, Windward Community College, Kaneohe, Island of Oahu, HI 23KH156 (In Process, Developing I&M Plan);
17. State of Hawaii, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), Small Boat Harbors, Honolulu, Waianae, Kaneohe, Haleiwa, Island of Oahu HI 23KH191 (In Process);
18. Hawaii DOD, Hawaii Army National Guard, HIARNG Small MS4, Honolulu, Island of Oahu, HI 24KH601 (In Process).

Currently, thirteen (13) of the above facilities are covered by the 2022 small MS4 general permit, with others in various stages of application or permit processing.

The Hawaii Community Development Authority (HCDA), has submitted NOIs for Kakaako Community Development District and Kewalo Basin, HI 22KG720 and HI 22KG721 respectively. However, HCDA has since indicated that it is preparing a new NOI to consolidate coverage for both areas under a single general permit coverage.

The UH, Windward Community College (WCC), HI 23KH156, discharges to receiving waters with an established Total Maximum Daily Load (TMDL). WCC is currently in the process of developing its Implementation and Monitoring Plan (I&M Plan) for TMDL compliance. Once the I&M plan is finalized and approved, CWB will continue the permitting process.

DLNR-DOBOR, HI 23KH191 – Submitted a revised Notice of Intent (NOI) on August 27, 2024. The revised NOI is under review.

HIARNG, HI 24KH601 - Submitted a NOI on July 23, 2024. The NOI is under review.

As previously discussed in the 2022 Appendix K fact sheet, the Hawaii Department of Education (DOE), Honolulu Board of Water Supply (BWS), the DOH-State Hospital, and UH John A. Burns School of Medicine were granted waivers from the NPDES MS4 Phase II permit requirements, pursuant to 40 CFR 122.32(d). Additionally, the Kaena Point Satellite Tracking Station was determined to be outside the Honolulu urban area with a population of 50,000 or more people as determined by the last Decennial Census by the Bureau of the Census, therefore permit coverage was terminated on May 7, 2021.

(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.

Storm water discharge and certain allowable non-storm water from Small MS4s.

(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);

A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II Rule automatically covers on a nationwide basis all small MS4s located in urban areas with a population of at least 50,000 (unless waived by the NPDES permitting authority).

The DOH has selected the Two-Step General Permit approach under 40 CFR 122.28(d) to regulate small MS4s. Under this process, each permittee submits a NOI and a SWMP describing the BMPs and measurable goals proposed to meet the MS4 permit standard. The CWB reviews these submittals for completeness and compliance, then provides a public notice package of the NOI and SWMP to solicit public input before authorization. After considering comments, CWB issues an NGPC, at which point the contents of the SWMP document is enforceable under this permit.

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit [Revised]

3. Term of General Permit [*Revised*]
4. Notice of Intent Requirements [*Revised*]
5. Standard Conditions [*Revised*]
6. Storm Water Management Plan Requirements [*Revised*]
7. Basic Water Quality Criteria and Inspections [*Revised*]
8. TMDL Implementation and Monitoring [*Revised*]
9. Corrective Actions [*Revised*]
10. Reporting Requirements
11. Submittal Requirements [*Revised*]
12. Additional Conditions
13. Public Notice of Permit Actions and Public Comment Period
14. Public Comments and Public Hearing
15. Record Retention
16. Falsifying Report
17. Renewal
18. Forms [*Revised*]

The General Permit currently in effect expires on January 14, 2027. The proposed General Permit will be effective for a term of 5 (five) years.

Proposed Changes:

The draft 2026 Appendix K includes the following proposed changes (the sections referenced below are those of the General Permit):

Throughout HAR 11-55, Appendix K

Original: ~~Municipal Separate Storm Sewer System~~

Revised: MS4

Rationale: *The term “Municipal Separate Storm Sewer System” was replaced with “MS4” throughout the permit for consistency and clarity. This change is administrative and does not alter the permit’s requirements.*

Section 1(a)

Original: This general permit ~~covers storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards,~~ to state waters from small municipal ~~separate storm sewer systems.~~

The following non-storm water discharges are authorized by this general permit, ~~provided that they do not cause or contribute to any violation of water quality standards:~~

Revised: This general permit authorizes the discharge of storm water and certain non-storm water discharges, provided they do not cause or contribute to any violation of water quality standards, to state waters from small MS4s consistent with Section 402(p)(6) of the federal Clean Water Act.

The following non-storm water discharges are authorized by this general permit:

Rationale: *The proposed language clarifies that the permit “authorizes” the discharge and is the standard regulatory term for what a permit does.*

Citing Clean Water Act (CWA) Section 402(p)(6) clarifies the federal legal basis for the permit.

On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.

Section 1(b)(1) and 1(b)(2)

Original: This general permit covers ~~all areas of the State except for discharges in or to natural freshwater lakes, saline lakes, or anchialine pools.~~

Revised: This general permit covers all discharges to state waters except for:

- (1) Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or
- (2) Discharges that occur within lands of exclusive federal jurisdiction.

Rationale: *For clarity, the phrase “covers all areas of the State” is revised to “covers discharges to all State waters.” This revision makes clear that this general permit regulates discharges, not geographic areas, and ensures consistency with the CWA and standard NPDES permit language.*

This general permit does not authorize discharges within lands of exclusive federal jurisdiction, where the State does not have NPDES permitting authority. In such areas, EPA retains responsibility for administering the

NPDES program, and dischargers must obtain coverage under an applicable EPA-issued permit.

Lands of exclusive federal jurisdiction are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are lands of exclusive federal jurisdiction. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution. These circumstances include (1) where the federal government purchases land with State consent to jurisdiction, consistent with the Enclave Clause; (2) where a State chooses to cede jurisdiction to the federal government; and (3) where the federal government reserved jurisdiction upon granting statehood [see background on lands of exclusive federal jurisdiction in Modification to 2022 NPDES CGP for Stormwater Discharges from Construction Activities, 90 Fed. Reg. 15653 (Apr. 15, 2025) (amending 40 C.F.R. Part 122) <https://www.federalregister.gov/documents/2025/04/15/2025-06320/modification-to-2022-national-pollutant-discharge-elimination-system-npdes-construction-general>].

Section 2(a)(2)

Original: Storm water discharges from construction activities greater than one acre which discharges into the permittee's small municipal separate storm sewer system.

Revised: Storm water runoff associated with construction activities that result in the disturbance of one acre or more of total land area, as defined in 40 CFR §122.26(b)(14)(x) or (b)(15), which discharges into the permittee's small MS4.

Rationale: *The proposed changes align with NPDES permit language, 40 CFR 122.26(b)(14)(x) or (b)(15), and language more precise and consistent with the CWA.*

Section 2(a)(2)

Original: Storm water discharges from construction activities greater than one acre which discharges into the permittee's small municipal separate storm sewer system.

Revised: Storm water runoff associated with construction activities that result in the disturbance of one acre or more of total land area which discharges into the permittee's small MS4.

Rationale: *The proposed changes align with NPDES permit language, 40 CFR §122.26(b)(14)(x), and language more precise and consistent with the CWA.*

Section 2(c)

Original: (New)

Revised: (C) Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.

Rationale: *The DOH requires water quality-based effluent limitations in an NPDES permit for all numeric and narrative water quality criteria in HAR Chapter 11-54 associated with any pollutant in the discharge that has a reasonable potential to cause or contribute to an excursion of those criteria. For DOH's narrative water quality standards regarding floating debris, oil, grease, scum, other floating material, as well as color and taste, DOH implements this standard as a discharge prohibition since no numerical limits exist in the standards. The DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards as described in HAR Chapter 11-54, which includes substances or conditions in combinations or in concentrations which produce undesirable aquatic life.*

Section 3(a)

Original: This general permit becomes effective ten days after filing with the office of the lieutenant governor. ~~This general permit expires five years after the effective date.~~

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

Rationale: *This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. This is a minor change for completeness and consistency and has no functional impact on any permit requirement.*

Section 3(b)

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

- ~~(1) Five years after the effective date of this general permit;~~
- ~~(2) When the notice of general permit coverage specifies; or~~
- ~~(3) When amendments to section 11-55-34.02(b)(10) are adopted,~~

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

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

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

Section 3(c)(1) – (3)

Original: (New)

Revised: (c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire one hundred eighty (180) days after the effective date of the new general permit unless:

- (1) A notice of intent (NOI) for coverage under the new general permit is submitted within one hundred eighty (180) days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit is submitted within one hundred eighty (180) days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

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

Rationale: *Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit a NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 180 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 180 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.*

Section 4(a)

Original: (a) New Permittees (those MS4s not covered under the previous 2013 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous 2013 general permit) shall submit a complete notice of intent no later than 420 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

Revised: (a) New Permittees (those MS4s not covered under the previous 2022 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous 2022 general permit) shall submit a complete notice of intent no later than 180 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

Rationale: *The revision to Section 4(a) updates references to the previous general permit from the 2013 permit to the 2022 permit and updates the time frame for existing permittees to submit a NOI 180-days after readoption, consistent with the rest of the permit.*

Section 4(b)(6)

Original: (6) If specifically assigned a ~~WLA~~, submit an Implementation & Monitoring (I&M) Plan, which meets the applicable requirements as specified in section 8 of this general permit to comply with ~~Waste Load Allocations~~ assigned to the Permittee consistent with the assumption in the associated TMDL document. If compliance will exceed a year, the Permittee shall also include a proposed compliance schedule that meets the requirements of 40 CFR 122.47 to comply as soon as possible.

Revised: If specifically assigned a Waste Load Allocation (WLA), submit an Implementation & Monitoring (I&M) Plan, which meets the applicable requirements as specified in section 8 of this general permit to comply with WLA(s) assigned to the Permittee consistent with the assumption in the associated TMDL document. If compliance will exceed a year, the Permittee shall also include a proposed compliance schedule that meets the requirements of 40 CFR 122.47 to comply as soon as possible.

Rationale: *The term “WLA” was replaced with “Waste Load Allocation (WLA)” for grammatical correction. This change is administrative and does not alter the permit's requirements.*

Section 4(d)

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

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

Revised: The owner or operator shall submit a complete NOI on forms specified by the director electronically via DOH's e permitting portal. The e Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Rationale: *The change is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns Hawaii's program with national standards for environmental permitting.*

Section 5

Original: 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.

Revised: The permittee shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding conditions in section 1 (Basic Water Quality Criteria). In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding conditions in section 1, the more stringent conditions shall apply.

Rationale: *On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that "end-result" provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.*

Section 6(a)(1)

Original: Public Education and Outreach

Revised: Public Education and Outreach on Storm Water Impacts

Rationale: *The revised language matches regulatory language in 40 CFR 122.34(b)(1) and ensures the permit is consistent with federal requirements.*

Section 6(a)(2)

Original: Include users of the permittee's small ~~municipal separate storm sewer system~~ in developing, implementing, and reviewing the storm water management plan;

Revised: Include users of the permittee's small MS4 in developing, implementing, and reviewing the storm water management plan and comply with the public notice requirements in Part 13 of this permit, including during renewals;

Rationale: *This change ensures the permit is consistent with federal law, specifically 40 CFR 122.34(b)(2)(i), by requiring both public involvement in the storm water management plan and compliance with public notice procedures. This enhances regulatory clarity and strengthens public participation in storm water management.*

Section 6(a)(3)

Original: Develop, implement, and enforce a program to detect and eliminate illicit discharges ~~that, at a minimum, includes the following:~~

Revised: Develop, implement, and enforce a program to detect and eliminate illicit discharges, as defined in 40 CFR Section 122.26(b)(2). The illicit discharge detection and elimination program shall include, at a minimum, the following components:

Rationale: *The revised language explicitly references the federal definition of "illicit discharge" at 40 CFR 122.26(b)(2), ensuring consistency with federal law and regulatory clarity. It also aligns the permit with 40 CFR 122.34(b)(3)(i), which requires the permittee to develop, implement, and enforce a program to detect and eliminate illicit discharges "as defined at §122.26(b)(2)" into the small MS4. This change improves legal precision, ensures the program meets federal minimum standards, and clarifies the scope of the requirement for permittees.*

Section 6(a)(3)(A)

Original: (NEW)

Revised: Develop, if not already completed, a storm sewer system map showing the location of all outfalls and the names and location of all surface waters of the State that receive discharges from those outfalls, in accordance with 40 CFR 122.34(b)(3)(i)(A).

Rationale: *The new permit condition Implements the mapping requirement found in 40 CFR 122.34(b)(3)(ii).*

Section 6(a)(3)(B)

Original: (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1 ~~that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,~~

Revised: Establishment of rules, ordinances , or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1, into the permittee's small MS4.

Rationale: *On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.*

Section 6(a)(3)(C)

Original: ~~(B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b)(2)), and~~

Revised: (C) Procedures to detect and address non-storm water discharges, including illicit discharges, illegal connections, illegal dumping, and improper disposal of waste to the MS4.

Rationale: *The proposed language expands the scope to all non-storm water discharges, as required by 40 CFR 122.34(b)(3)(i)(C). It clarifies that the program must address not only procedures to detect and eliminate illicit discharges, but also illegal connections, illegal dumping, and improper*

disposal of waste to the MS4. This ensures the permit is comprehensive and compliant with federal MS4 requirements.

Section 6(a)(3)(C) and 6(a)(3)(C)(i) – (iv)

Original: ~~(C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or reduce the amount of pollutants in these discharges;~~

Revised: The Plan to detect and address illicit discharges must include, at a minimum, the following:

(i) Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.

(ii) Investigation techniques for suspected or detected illicit discharges, including procedures for source tracing, to identify the source(s) of the suspected illicit discharges, illegal connections, illegal dumping, and improper disposal to the MS4.

(iii) Procedures, including enforcement, for removal and/or correction of the source of the illicit discharge, illegal connection, illegal dumping, and improper disposal to the MS4.

(iv) Documentation of actions taken under the plan.

Rationale: *The proposed language strengthens the permit by requiring a structured, proactive approach to detecting and addressing illicit discharges in the MS4. This change aligns with EPA guidance (40 CFR 122.34(b)(3)(iii)), which recommends specific procedures for locating, tracing, removing, and documenting illicit discharges. The new language ensures that permittees will implement targeted screening, thorough investigation, and clear enforcement actions, improving the effectiveness of the illicit discharge detection and elimination program. Ultimately, these changes will better protect water quality and support regulatory compliance.*

Section 6(a)(3)(D)

Original: (NEW)

Revised: Inform public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.

Rationale: *The proposed permit condition implements the requirements found in 40 CFR 122.34(b)(3)(i)(D).*

Section 6(a)(4)

Original: Construction Site Runoff Control

Revised: Construction Site Storm Water Runoff Control

Rationale: *The revised language ensures the permit is consistent with federal regulations at 40 CFR 122.34(b)(4).*

Section 6(a)(6)

Original: Pollution Prevention/Good Housekeeping

Revised: Pollution Prevention/Good Housekeeping for Municipal Operations.

Rationale: *The revised language ensures the permit is consistent with federal regulations at 40 CFR 122.34(b)(6).*

Section 7

Original: 7. Basic Water Quality Criteria and Inspections

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

(b) ~~The permittee shall, as indicated in its SWMP, 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: 7. Inspections

The permittee shall, as indicated in its SWMP, inspect the discharge, control measures, and BMPs to detect violations of and conditions which may cause violations of the prohibitions as specified in Section 2(c) of this general permit.

Rationale: *On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.*

Section 8(a)(2)

Original: (NEW)

Revised: For the United States (U.S.) Army Garrison Hawaii

The U.S. Army Garrison Hawaii service area, which includes Wheeler Army Air Field and the portion of Schofield Barracks that lies in the Waikele watershed (approximately 3700 acres), must comply with the WLA and reductions (refer to Tables 18, 19, 20, and 21) consistent with the assumption of the TMDL document titled, “Turbidity, Sediment, and Nutrient Total Maximum Daily Loads for the Waikele Watershed, Oahu, Hawaii,” dated February 2019, within the timeframes as specified in its I&M Plan.

Rationale: *The new permit condition is being added to specifically require U.S. Army Garrison Hawaii, which includes Wheeler Army Airfield and portions of Schofield Barracks within the Waikele watershed, to comply with the wasteload allocations (WLAs) and pollutant reductions established in the EPA-approved TMDL document, “Turbidity, Sediment, and Nutrient Total Maximum Daily Loads for the Waikele Watershed, Oahu, Hawaii” (February 2019). This requirement is mandated by 40 CFR 122.44(d)(1)(vii)(B), which obligates NPDES permits to include effluent limitations consistent with the assumptions and requirements of any applicable TMDL, and by 40 CFR 122.34(a), which requires MS4 permits to include clear, specific, and measurable terms to protect water quality and satisfy the CWA.*

Section 8(a)(3)

Original: (NEW)

Revised: (3) For the U.S. Department of the Navy, Joint Base Pearl Harbor-Hickam (JBPHH)

The U.S. Department of the Navy service area, which includes Navy owned MS4 drainage areas and the Naval Telecommunication and Computer Master Station Pacific discharging to the North Fork of Kaukonahua Stream, must comply with the WLA(s) and reductions (refer to Table 4-4, TMDL document) consistent with the assumptions of the TMDL document titled, "Total Maximum Daily Loads for the North and South Forks of Kaukonahua Stream, Oahu, Hawaii," dated September 2009.

(A) At a minimum, the Permittee shall continue to implement the TMDL I&M Plan and activities stated in the "Final Waste Load Allocation Completion Report for the North Fork of Kaukonahua Stream Monitoring for January through December 2024", dated June 2025:

(i) Further revegetation of the partially unvegetated areas surrounding the antennae field in the eastern portion of the facility, and

(ii) Installation of geotextile fabric material in order to reduce erosion in areas along the southern boundary of the installation where outlet pipes concentrate storm water runoff onto steep sections of the hillside.

In lieu of revegetating the areas surrounding the antennae field and for the installation of geotextile fabric in areas along the southern boundary, the permittee may implement alternative equivalent or better BMPs as long as the reason for the change is documented in the WLA Completion Report.

The installation of the additional BMPs shall be completed by 2028 and be properly maintained.

Compliance shall be evaluated on an annual basis with monitoring beginning in 2028. The Permittee shall at a minimum monitor for at least one year for turbidity at monitoring points NSW-1, NSW-2, and NSW-3 in the Wet and Dry Season to sufficiently capture pre-BMP and post-BMP installation conditions to determine the effectiveness of each BMP measure taken. If turbidity reductions are demonstrated to DOH's satisfaction, the Permittee may discontinue turbidity monitoring.

An updated WLA Completion Report shall be prepared to demonstrate compliance with the applicable WLAs and shall include, but not be limited to, monitoring data, calculations, a comparison of applicable WLAs and measured loadings, and summary of the evaluation methodology and findings. Refer to Part 8(a)(3)(B) of this permit for the requirements of the WLA Completion Report. A comparison of applicable WLAs and measured loading, consistent with the evaluation methodology established in its WLA Completion Report, shall be provided annually with the Annual Report.

North Fork of Kaukonahua Stream WLAs

Table K-1. Numeric WLAs based on Flow Curve Intervals

<u>Parameter</u>	<u>Units</u>	<u>Receiving Water Flow Curve Intervals{1}{2}</u>					
		<u>Wet Season</u>			<u>Dry Season</u>		
		<u>High</u>	<u>Elevated</u>	<u>Stable</u>	<u>High</u>	<u>Elevated</u>	<u>Stable</u>
<u>Turbidity</u>	<u>NTU-tons/day</u>	<u>0.219</u>	<u>0.039</u>	<u>0.0011</u>	<u>0.043</u>	<u>0.014</u>	<u>0.0003</u>
<u>Total Nitrogen</u>	<u>lbs/day</u>	<u>195</u>	<u>24.6</u>	<u>1.00</u>	<u>No TMDLs Required</u>		

{1} Wet Season is from November through April; Dry Season is May through October.

{2} Curve Intervals are 0-4% flow duration (High), 4-20% flow duration (Elevated), and 20-100% flow duration (Stable).

(B) The Permittee shall submit to DOH an updated WLA Completion Report for the North Fork of Kaukonahua Stream when the Permittee submits its next permit renewal NOI form. The Permittee shall include past findings to address compliance with the WLAs for Turbidity and Total Nitrogen. The WLA Completion Report shall be made available on the Permittee's website for public review and comment. The report shall include at a minimum the following:

- (i) A map of the Small MS4 and drainage area to the North Fork of Kaukonahua Stream, which identifies collection areas, all outfalls, monitoring locations, and receiving waters.
- (ii) An inventory of the types of industrial activities that discharge into the Permittee's small MS4.
- (iii) Detailed information on the activities to be implemented to maintain compliance with the applicable WLAs.
- (iv) Monitoring data, calculations, a comparison of applicable WLAs (i.e., elevated wet and dry season WLAs for Tubidity and elevated wet season WLA for Total Nitrogen) and measured loadings, and summary of the evaluation

methodology and findings.

Rationale: *The new permit condition is being added to specifically require U.S. Department of the Navy, JBPHH, which includes Navy-owned MS4 drainage areas and the Naval Telecommunication and Computer Master Station Pacific discharging to the North Fork of Kaukonahu Stream, to comply with the WLA(s) and pollutant reductions established in the EPA-approved TMDL document, ““Total Maximum Daily Loads for the North and South Forks of Kaukonahua Stream, Oahu, Hawaii,” dated September 2009.” This requirement is mandated by 40 CFR 122.44(d)(1)(vii)(B), which obligates NPDES permits to include effluent limitations consistent with the assumptions and requirements of any applicable TMDL, and by 40 CFR 122.34(a), which requires MS4 permits to include clear, specific, and measurable terms to protect water quality and satisfy the CWA.*

Section 9

Original: 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.~~

Revised: The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the prohibitions as specified in section 2(c) of this general permit.

Rationale: *On March 4, 2025, the U.S. Supreme Court ruled 5-4 in favor of the City and County of San Francisco in its dispute with the EPA ruling that “end-result” provisions, or provisions that tells permittees that a particular end result must be achieved, are not authorized by the Clean Water Act. (see https://www.supremecourt.gov/opinions/24pdf/23-753_f2bh.pdf for the Supreme Court Opinion). DOH has revised this language to comply with the Supreme Court opinion, notably revising any language that imposes or can be interpreted to impose compliance based on receiving water conditions.*

Section 11(a)

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

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

Revised: 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 electronically via DOH's e permitting portal.
The e Permitting portal may be accessed at:
<https://eha-cloud.doh.hawaii.gov/epermit/>.

Rationale: *The change is required to comply with federal electronic reporting regulations, specifically the NPDES Electronic Reporting Rule (40 CFR Part 127) and CROMERR (40 CFR Part 3), which mandate that states collect NPDES program data electronically. This ensures legal compliance, improves administrative efficiency, and aligns Hawaii's program with national standards for environmental permitting.*

Section 11(b)

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

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

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

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

Rationale: *This revision is to make the permit language consistent with 40 CFR 144.32(d).*

Section 18

Original: ~~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/>~~

Revised: Electronic forms are available at the department's e-Permitting portal. The e-Permitting portal may be accessed at: <https://eha-cloud.doh.hawaii.gov/epermit/>.

Rationale: *The revised language clarifies the location and accessibility of the electronic forms for the permit, ensuring applicants are directed to the most current website. This change is administrative and does not alter the permit's requirements.*

(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 comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 2827 Waimano Home Road, #225, Pearl City, Hawaii 96782. The procedures for requesting a hearing shall follow 40 CFR 124.11.

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

Mr. Reef Migita
Engineering Section Supervisor
Clean Water Branch
Department of Health
Ph. (808) 586-4309

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

Refer to 40 CFR 122.30 through 122.37.

40 CFR 122.34 requires Small MS4 to reduce pollutant discharge to the Maximum Extent Practicable, which requires the implementation of minimum control measures.

(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 STORM WATER AND
CERTAIN NON-STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

This General Permit is effective on

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

In accordance with 40 CFR 122.28(d), the Director has selected the Two-Step General Permit approach to regulate ~~[Small MS4s]~~ Small Municipal Separate Storm Sewer Systems (Small MS4s) under the State's NPDES Permit Program. See 40 CFR §122.28(d)(2). "40 CFR" as used in this general permit means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, ~~[2017]~~ 2024. The DOH intends to follow and have permittees comply with the Two-Step General Permit Approach in accordance with FR Vol. 81, No. 237 pg. 89330, Section V.B.

1. Coverage under this General Permit

- (a) This general permit ~~[covers]~~ authorizes the discharge of storm water and certain non-storm water discharges ~~[, provided they do not cause or contribute to any violation of water quality standards,]~~ to state waters from small ~~[municipal separate storm sewer systems]~~ MS4s consistent with Section 402(p)(6) of the federal Clean Water Act.

The following non-storm water discharges are authorized by this general permit ~~[, provided that they do not cause or contribute to any violation of water quality standards]:~~

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- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined in 40 CFR §35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources and foundation drains;
- (8) Air conditioning condensate;
- (9) Irrigation water;
- (10) Springs;
- (11) Water from crawl space pumps and footing drains;
- (12) Lawn watering runoff;
- (13) Water from individual residential car washing;
- (14) Flows from riparian habitats and wetlands;
- (15) Dechlorinated swimming pool discharges;
- (16) Residual street wash water; and

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- (17) Discharges or flows from firefighting activities.

The Permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g., charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on the information available to the Permittee) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the Permittee has established for allowing these discharges to the MS4 (e.g., charity car washes with appropriate controls on frequency, proximity to sensitive water bodies, BMPs on the wash water, etc.). The Permittee shall document in the Storm Water Management Plan the terms and conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Permittee's MS4.

- (b) This general permit covers ~~[all areas of the State]~~discharges to state waters except for ~~[discharges in or to natural freshwater lakes, saline lakes, or anchialine pools.]~~:

(1) Discharges into natural freshwater lakes, saline lakes, or anchialine pools; or

(2) Discharges that occur within lands of exclusive federal jurisdiction.

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2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:
 - (1) Storm water discharges into a sanitary sewer system;
 - (2) Storm water [~~discharges from~~runoff associated with construction activities [~~greater than one acre~~]that result in the disturbance of one acre or more of total land area, as defined in 40 CFR §122.26(b) (14) (x) or (b) (15), which discharges into the permittee's small [~~municipal separate storm sewer system~~]MS4;
 - (3) Storm water discharges from industrial facilities as defined in 40 CFR §§122.26(b) (14) (i) through 122.26(b) (14) (ix) and 122.26(b) (14) (xi) which discharges into the permittee's small [~~municipal separate storm sewer system~~]MS4;
 - (4) Storm water discharges from small [~~municipal separate storm sewer system~~]MS4 which initially enter a separate storm water drainage system(s), unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;

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- (5) Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of industrial activity; and
 - (6) Storm water discharges 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.
 - (c) Permittees authorized by this general permit are required to prohibit discharges with observable deposits of floating solids, scum, sheen or other substances, an observable film, sheen or discoloration from oil and grease, or foam or substances that produce an observable change in color, odor, or cloudiness in the discharges.
3. Term of General Permit
- (a) This general permit becomes effective ten days after filing with the office of the lieutenant governor[. ~~This general permit expires~~] and shall expire five years after the effective date, unless amended earlier.
 - (b) ~~[A notice of general permit coverage under this general permit expires:~~
 - ~~(1) Five years after the effective date of this general permit;~~

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

~~(3) When amendments to section 11-55-34.02(b)(10) are adopted,~~

~~whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).]~~
Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

(c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire one hundred eighty (180) days after the effective date of the new general permit unless:

(1) A notice of intent (NOI) for coverage under the new general permit is submitted within one hundred eighty (180) days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

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(2) An application for an individual NPDES permit is submitted within one hundred eighty (180) days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

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

4. Notice of Intent Requirements

The Permittee shall submit a notice of intent in accordance with 40 CFR 122.28(b)(2)(ii) and provide other information the DOH identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under 40 CFR 122.33(b)(2)(i).

- (a) New Permittees (those MS4s not covered under the previous ~~[2013]~~2022 general permit) shall submit a complete notice of intent no later than 180 calendar days before the proposed starting date of the discharge.

Existing Permittees (those granted administrative extension under the previous ~~[2013]~~2022 general permit) shall submit a complete notice of intent no later than ~~[120]~~180 calendar days from the effective date of this general permit. Failure to comply with this deadline will result in the termination of the administrative extension, unless otherwise ordered by DOH.

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- (b) The owner or its duly authorized representative shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) Non-storm water discharge information;
 - (3) Facility site map;
 - (4) An assessment of the effectiveness of each control measure the storm water management plan implemented during the previous permit term (i.e., only for MS4s covered under the previous general permit) and any revisions to the plan proposed to be implemented for compliance with this general permit;
and
 - (5) Storm water management plan (SWMP), which meets the applicable requirements as specified in section 6 of this general permit, and which has been updated based on the assessment required by section 4(b)(4) of this general permit.
 - (6) If specifically assigned a Waste Load Allocation (WLA) [~~WLA~~], submit an Implementation & Monitoring (I&M) Plan, which meets the applicable requirements as specified in section 8 of this general permit to comply with WLA(s) [~~Waste Load Allocations~~] assigned to the Permittee consistent with the assumption in the associated TMDL document. If compliance will exceed a

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year, the Permittee shall also include a proposed compliance schedule that meets the requirements of 40 CFR 122.47 to comply as soon as possible.

- (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:]~~
The owner or operator shall submit a complete NOI on forms specified by the director electronically via DOH's e-permitting portal. The e-Permitting portal may be accessed at:
<https://eha-cloud.doh.hawaii.gov/epermit/>.

~~[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, excluding conditions in section 1 (Basic Water Quality Criteria). In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding conditions in section 1, the more stringent conditions shall apply.

6. Storm Water Management Plan Requirements

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The permittee shall develop, implement, and enforce a written storm water management plan document designed to meet the MS4 permit standard. The storm water management plan shall include a description of the best management practice (BMPs) that the Permittee will implement for each of the minimum control measures identified below with implementation dates; timing and frequencies, as appropriate; measurable goals [refer to section 6(b)]; and rationales for each BMP. The BMPs terms and conditions shall be expressed in clear, specific, and measurable terms to adhere to the requirements of 40 CFR 122.34. Refer to EPA's "Municipal Separate Storm Sewer System Permits, Compendium of Clear, Specific & Measurable Permitting Examples," November 2018, EPA-830-S-16-002. The rationales shall explain to the DOH's satisfaction how it meets the MS4 permit standard. Refer to the FR Vol. 81, No. 237 pg. 89333, Section VI.A. The contents of the SWMP document are enforceable under this permit.

- (a) Minimum Control Measures. In case of conflict between the minimum control measures stated herein and those in the 40 CFR 122.34(b)(1) through (6), the more stringent control measures shall apply.

- (1) Public Education and Outreach on Storm Water Impacts

- Develop and implement a public education program to distribute educational materials to users of the permittee's small [~~municipal separate storm sewer system~~]MS4 or equivalent

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outreach activities emphasizing the following:

- (A) Impacts of storm water discharges on water bodies,
 - (B) Hazards associated with illicit discharges, and
 - (C) Measures that users of the permittee's small ~~[municipal separate storm sewer system]~~MS4 can take to reduce pollutants in storm water runoff, including, but not limited to, minimizing fertilizer application and practicing proper storage and disposal of chemicals and wastes;
- (2) Public Involvement/Participation
- Include users of the permittee's small ~~[municipal separate storm sewer system]~~MS4 in developing, implementing, and reviewing the storm water management plan and comply with the public notice requirements in Part 13 of this permit, including during renewals;
- (3) Illicit Discharge Detection and Elimination

Develop, implement, and enforce a program to detect and eliminate illicit discharges, as defined in 40 CFR Section 122.26(b)(2). The illicit discharge detection and elimination program shall include, at a minimum,

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the following components:~~[that at a minimum, includes the following:]~~

(A) Develop, if not already completed, a storm sewer system map showing the location of all outfalls and the names and location of all surface waters of the State that receive discharges from those outfalls, in accordance with 40 CFR 122.34(b) (3) (i) (A) .

(B) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that prohibit non-storm water discharges, except those listed in section 1, into the permittee's small MS4. ~~[that do not cause or contribute to any violations of water quality standards, into the permittee's small municipal separate storm sewer system,]~~

~~[(B) Procedures to detect and eliminate illicit discharges (as defined in 40 CFR Section 122.26(b) (2)), and]~~

(C) Procedures to detect and address non-storm water discharges, including illicit discharges, illegal connections, illegal dumping, and improper disposal of waste to the MS4.

The Plan to detect and address illicit discharges must include, at a minimum, the following:

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- (i) Schedules and protocols for identification of priority areas for detailed screening of the system based on the likelihood of illicit discharges and illegal connections. Detailed screening may include, as appropriate, visual screening, water sampling of storm water conveyances and outfalls, investigation of information submitted by cross-trained staff that are able to detect illicit discharges in the field, or investigations of public complaints.
- (ii) Investigation techniques for suspected or detected illicit discharges, including procedures for source tracing, to identify the source(s) of the suspected illicit discharges, illegal connections, illegal dumping, and improper disposal to the MS4.
- (iii) Procedures, including enforcement, for removal and/or correction of the source of the illicit discharge, illegal connection, illegal dumping, and improper disposal to the MS4.

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- (iv) Documentation of actions taken under the plan.

~~[(C) Compilation of a list of non-storm water discharges or flows that are considered to be significant contributors of pollutants to the system and measures to be taken to prevent these discharges into the permittee's small municipal separate storm sewer system, or reduce the amount of pollutants in these discharges;]~~

- (D) Inform public employees, businesses, and the general public of hazards associated with illicit discharges and improper disposal of waste.

- (4) Construction Site Storm Water Runoff Control

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small ~~[municipal separate storm sewer system]~~ MS4 from construction activities disturbing one acre or more, including construction activities less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that

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require erosion and sediment controls,

- (B) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices,
 - (C) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality,
 - (D) Procedures for site plan review which incorporate consideration of potential water quality impacts,
 - (E) Procedures for receipt and consideration of information submitted by the public, and
 - (F) Procedures for site inspection and enforcement of control measures;
- (5) Post-Construction Storm Water Management in New Development and Redevelopment

Develop, implement, and enforce a program to reduce pollutants in storm water runoff entering the permittee's small ~~[municipal separate storm sewer system]~~MS4 from new development and redevelopment projects that disturb greater than or equal to one acre, including construction sites less than

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one acre that are part of a larger common plan of development or sale that would disturb one acre or more, that, at a minimum, includes the following:

- (A) Establishment of rules, ordinances, or other regulatory mechanism, including enforcement procedures and actions, that address post-construction runoff from new development and redevelopment projects,
 - (B) Structural and/or non-structural best management practices to minimize water quality impacts and attempt to maintain pre-development runoff conditions, and
 - (C) Procedures for long-term operation and maintenance of best management practices.
- (6) Pollution Prevention/Good Housekeeping for Municipal Operations

Develop, implement, and enforce an operation and maintenance program to prevent and reduce storm water pollution from activities, including, but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance that, at a minimum, includes the following:

- (A) Good housekeeping and other control measures, and

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- (B) Employee and contractor training on good housekeeping practices to ensure that good housekeeping measures and best management practices are properly implemented.

(b) Measurable Goals

The permittee shall develop measurable goals to gauge permit compliance and program effectiveness for each BMP as described in the Permittee's SWMP. The term "measurable" means that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. Refer to FR Vol. 81, No. 237 pg. 89336, 3rd column, 2nd paragraph.

(c) Modifications

Any modifications to the BMPs and measurable goals will require submittal of a new NOI and filing fee, unless clearly accounted for in its SWMP and that has been public noticed.

7. ~~[Basic Water Quality Criteria and]~~ Inspections

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

~~[(b) The permittee shall, as indicated in its SWMP, inspect the receiving state waters, effluent, and control measures and best management practices to detect violations of and conditions which may cause violations of~~

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~~the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)]~~

The permittee shall, as indicated in its SWMP, inspect the discharge, control measures, and BMPs to detect violations of and conditions which may cause violations of the prohibitions as specified in Section 2(c) of this general permit.

8. TMDL Implementation and Monitoring

The requirements of this section apply to Small MS4 discharges to receiving waters with established TMDLs approved by EPA where urban storm water is identified as a source of TMDL pollutant loading and the Permittee has assigned WLA(s).

(a) The Permittee shall comply with the following:

- (1) For the University of Hawaii, Windward Community College (WCC)

WCC must comply with the WLA reductions (refer to Tables 5.10 and 5.11) consistent with the assumption of the TMDL document titled, "Total Maximum Daily Load (TMDLs) for Total Suspended Solids, Nitrogen and Phosphorus in Kaneohe Stream, Kaneohe, Hawaii," dated September

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2009, within the timeframes as specified in its I&M Plan.

- (2) For the United States (U.S.) Army Garrison Hawaii

The U.S. Army Garrison Hawaii service area, which includes Wheeler Army Air Field and the portion of Schofield Barracks that lies in the Waikele watershed (approximately 3700 acres), must comply with the WLA and reductions (refer to Tables 18, 19, 20, and 21) consistent with the assumption of the TMDL document titled, "Turbidity, Sediment, and Nutrient Total Maximum Daily Loads for the Waikele Watershed, Oahu, Hawaii," dated February 2019, within the timeframes as specified in its I&M Plan.

- (3) For the U.S. Department of the Navy, Joint Base Pearl Harbor-Hickam (JBPHH)

The U.S. Department of the Navy service area, which includes Navy-owned MS4 drainage areas and the Naval Telecommunication and Computer Master Station Pacific discharging to the North Fork of Kaukonahua Stream, must comply with the WLA(s) and reductions (refer to Table 4-4, TMDL document) consistent with the assumptions of the TMDL document titled, "Total Maximum Daily Loads for the North and South Forks of Kaukonahua Stream, Oahu, Hawaii,"

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dated September 2009.

(A) At a minimum, the Permittee shall continue to implement the TMDL I&M Plan and activities stated in the "Final Waste Load Allocation Completion Report for the North Fork of Kaukonahua Stream Monitoring for January through December 2024", dated June 2025:

- (i) Further revegetation of the partially unvegetated areas surrounding the antennae field in the eastern portion of the facility, and
- (ii) Installation of geotextile fabric material in order to reduce erosion in areas along the southern boundary of the installation where outlet pipes concentrate storm water runoff onto steep sections of the hillside.

In lieu of revegetating the areas surrounding the antennae field and for the installation of geotextile fabric in areas along the southern boundary, the permittee may implement alternative equivalent or better BMPs as long as the reason for the change is documented in the WLA Completion Report.

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The installation of the additional BMPs shall be completed by 2028 and be properly maintained.

Compliance shall be evaluated on an annual basis with monitoring beginning in 2028. The Permittee shall at a minimum monitor for at least one year for turbidity at monitoring points NSW-1, NSW-2, and NSW-3 in the Wet and Dry Season to sufficiently capture pre-BMP and post-BMP installation conditions to determine the effectiveness of each BMP measure taken. If turbidity reductions are demonstrated to DOH's satisfaction, the Permittee may discontinue turbidity monitoring.

An updated WLA Completion Report shall be prepared to demonstrate compliance with the applicable WLAs and shall include, but not be limited to, monitoring data, calculations, a comparison of applicable WLAs and measured loadings, and summary of the evaluation methodology and findings. Refer to Part 8(a)(3)(B) of this permit for the requirements of the WLA Completion Report. A comparison of applicable WLAs and measured loading, consistent with the

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evaluation methodology established in its WLA Completion Report, shall be provided annually with the Annual Report.

North Fork of Kaukonahua Stream WLAs

Table K-1. Numeric WLAs based on Flow Curve Intervals

Parameter	Units	Receiving Water Flow Curve Intervals{1}{2}					
		Wet Season			Dry Season		
		High	Elevated	Stable	High	Elevated	Stable
Turbidity	NTU-tons/day	0.219	0.039	0.0011	0.043	0.014	0.0003
Total Nitrogen	lbs/day	195	24.6	1.00	No TMDLs Required		

{1} Wet Season is from November through April; Dry Season is May through October.

{2} Curve Intervals are 0-4% flow duration (High), 4-20% flow duration (Elevated), and 20-100% flow duration (Stable).

(B) The Permittee shall submit to DOH an updated WLA Completion Report for the North Fork of Kaukonahua Stream when the Permittee submits its next permit renewal NOI form. The Permittee shall include past findings to address compliance with the WLAs for Turbidity and Total Nitrogen. The WLA Completion Report shall be made available on the Permittee's website for public review and comment. The report shall include at a minimum the following:

(i) A map of the Small MS4 and drainage area to the North Fork of Kaukonahua Stream, which identifies collection areas,

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all outfalls, monitoring locations, and receiving waters.

- (ii) An inventory of industrial activities that impact storm water runoff quality.
- (iii) Detailed information on the activities to be implemented to maintain compliance with the applicable WLAs.
- (iv) Monitoring data, calculations, a comparison of applicable WLAs (i.e., elevated wet and dry season WLAs for Turbidity and elevated wet season WLA for Total Nitrogen) and measured loadings, and summary of the evaluation methodology and findings.

(4) For ALL other Permittees

As applicable, comply with any assigned WLA reductions, as additional TMDLs are adopted by DOH and approved by the EPA, consistent with the TMDL document within the timeframes as specified in its I&M Plan, unless an I&M Plan has already been developed by the DOH. If an I&M Plan has been developed by the DOH, then the Permittee shall comply with those timeframes and requirements.

As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLA reductions will, within two (2) years

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of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions. If compliance is expected to take longer than 1-year after preparation of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet the requirements of 40 CFR 122.47.

A new NOI shall be submitted to DOH upon submittal of the Permittee's I&M Plan to provide opportunity for public comment and request for a public hearing.

- (b) The requirements of an I&M Plan, includes at a minimum the following:
 - (1) Detailed information on the activities proposed to be implemented.
 - (2) Actual or literature documentation of the estimated effectiveness of the proposed activities targeted to reduce the pollutants of concern such as total nitrogen, total phosphorus, total suspended solids, and/or turbidity in the impaired waterbody addressed by the TMDL, as applicable, to demonstrate consistency with the WLA reductions consistent with the assumptions in the associated TMDL document.
 - (3) A detailed and quantitative analysis

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which demonstrates that the proposed activities would ensure consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

- (4) Information from pre and post monitoring activities to quantitatively demonstrate consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.
- (5) A monitoring plan which shall identify activities to demonstrate consistency with the WLA reductions consistent with the assumptions of the associated TMDL document.

9. Corrective Action

The permittee shall immediately stop, reduce, or modify the discharge as needed to stop or prevent a violation of the ~~[basic water quality criteria as specified in section 11-54-4.]~~prohibitions as specified in section 2(c) of this general permit.

10. Reporting Requirements

(a) Annual Report

The annual report shall be submitted by the permittee and received by the department by the twenty-eighth day of January of the following year. The annual report shall cover each calendar year during the term of this permit and include the following:

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- (1) Status of compliance with the terms and conditions of this permit;
- (2) Assessment of the effectiveness of each component in its SWMP, including the status of achieving the measurable goals for each BMP; and
- (3) Summary of the storm water activities planned to be undertaken during the next calendar year; and
- (4) Status of TMDL compliance, including progress for the proposed activities in the I&M Plan and any milestone commitments for MS4 discharges to receiving waters with TMDLs adopted by the DOH and approved by the EPA and where the Permittee has assigned WLA(s) within the regulated MS4.

(b) Planned Changes

The permittee shall report planned changes to the permitted facility in accordance with 40 CFR §122.41(l)(1)(i), (ii), and (iii) to the director on a quarterly basis.

11. Submittal Requirements

- (a) The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director [~~at the following address or as otherwise specified:~~] electronically via DOH's e-permitting portal. The e-Permitting portal may be accessed at:
<https://eha-cloud.doh.hawaii.gov/epermit/>.

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

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

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

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for delay of the processing of the document(s).

- (d) All submittals shall be made on forms provided and specified by DOH.

12. Additional Conditions

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

13. Public Notice of Permit Actions and Public Comment Period

The DOH shall follow 40 CFR 124.10 for this general permit and as otherwise specified below.

- (a) The Permittee shall publish, in accordance with HRS 1-28.5, the Director's proposal (i.e., Public Notice document) to authorize the MS4 to discharge under the general permit. The DOH will provide the Public Notice document to the Permittee at least two (2) weeks prior to the publication date as determined by DOH. The contents of Public Notice document shall include the information in accordance with 40 CFR 124.10(d).
- (b) All publication and mailing costs associated with the Public Notice document shall be paid by the Permittee to the appropriate publishing agency or agencies determined by the Director. The Permittee 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

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appropriate by the Director, is a basis to deny coverage under this general permit.

14. Public Comments and Public Hearings

The DOH shall follow 40 CFR 124.11, 124.12 and 124.17, and HAR 11-55-13 and 11-55-14 for this general permit. Public comments shall comply with 40 CFR 124.13. Publication and payment for costs associated with the Public Hearing shall comply with Sections 13(a) and (b) of this general permit.

15. 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.

16. 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.

17. Renewal

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Requests for coverage under a renewed (reissued) general permit must be received within the timeframe as specified in the reissued general permit. Requests must be made on forms provided by DOH.

18. 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/>]~~

Electronic forms are available at the department's e-Permitting portal. The e-Permitting portal may be accessed at:
<https://eha-cloud.doh.hawaii.gov/epermit/>.

IV. New Business

A. Discussion and Action on the Small Business Impact Statement to Proposed New HAR Title 4 Chapter 61, Food Hub Grant Program, promulgated by Department of Agriculture - *Exhibit 3*

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

(Hawaii Revised Statutes §201M-2)

Date: 6/1/2026

Department or Agency: Department of Agriculture and Biosecurity

Administrative Rule Title and Chapter: HAR Title 4 Chapter 4 61

Chapter Name: Food Hub Grant Program

Contact Person/Title: Yukashi Smith/ Acting Administrator

E-mail: yukashi.m.smith@hawaii.gov Phone: 808973 9627

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

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

☐

Yes

☒

No

If "Yes," provide details: _____

I. Rule Description:

☒

New

☐

Repeal

☐

Amendment

☐

Compilation

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

☒

Yes

☐

No

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

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

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

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

☐

Yes

☒

No

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

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

☐

Yes

☒

No

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

*

*

*

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

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
The proposed HAR Chapter 4 61 Food Hub Grant Program will enhance the Department of Agriculture and Biosecurity's (DAB) support to establishment of food hubs. By actively coordinating these activities along the value chain, food hubs may provide wider access to institutional and retail markets for small to very small sized producers and increase consumer access to fresh healthy food.
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.
No, grants offer funding to qualifying agricultural producers, food manufactures, co operatives and farmers.

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.
None
 - b. Amount of the proposed fee or fine and the percentage increase.
None
 - c. Reason for the new or increased fee or fine.
None
 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
None
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.
The DAB will use RFP method to select the grant awardees. After selected the awardee, we use the standard contract that includes scope of services and reporting requirements. There will be no additional requirements to the awardees.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
Not applicable.

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.
Corporations, LLC, partnerships, sole proprietorships, non profit organizations, and agricultural cooperatives are eligible to apply for this food hub grant. Those who qualified applicants may take advantage of available grant to expand their agricultural related business.

7. How the agency involved small business in the development of the proposed rules.
The DAB has been actively monitoring the needs of agricultural community to develop food hub grant programs that will be beneficial to Hawaii communities.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.
Yes, the establishment of the food hub grant program rules is recommended and supported by Hawaii's agricultural communities.

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.

None

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.
None
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
None
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
None
- 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.
None
- 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.
None

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
 - The proposed HAR Chapter 4-61, Food Hub Grant Program, will enhance the Department of Agriculture and Biosecurity's (DAB) support to establishment of food hubs. By actively coordinating these activities along the value chain, food hubs may provide wider access to institutional and retail markets for small to very small producers and increase consumer access to fresh healthy foods, including those consumers in underserved areas and food venders.
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 HAR Chapter 4-61, Food Hub Grant Program, is not expected to adversely affect small business farmers. Food hubs will create more opportunities to distribute and sell agricultural produce for retail markets and public institutional organizations for education, health and medical, correctional and public safety.
 - If the proposed rule imposes a new or increased fee or fine:
 - No, grants offer funding to qualifying agricultural producers, food manufactures, co-operatives and farmers.
 - a) Amount of the current fee or fine and the last time it was increased.
 - none
 - b) Amount of the proposed fee or fine and the percentage increase.
 - none
 - c) Reason for the new or increased fee or fine.
 - none
 - d) Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.)

- none
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.
- The DAB will use RFP method to select the grant awardees. After selecting the awardee, we use the standardized contract that includes scope of services, time of performance and reporting requirements, etc. There will be no additional requirements.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
- none
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
- Corporations, LLC, partnerships, sole proprietorships, non-profit organizations, and agricultural cooperatives are eligible to apply for this food hub grant. Those who qualified applicants may take advantage of available funds to expand their agricultural related business.
7. How the agency involved small business in the development of the proposed rules.
- The Department of Agriculture and Biosecurity and the Agricultural Development Division has been actively monitoring the needs of agricultural community to develop food hub grant programs that will be beneficial to Hawaii's communities.

Attachment A
Chapter: 4-61, HAR
SBRRB Pre-Public Hearing Statement
June 18, 2026

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.
 - Yes, the establishment of the food hub grant program rules is recommended and supported by Hawaii agricultural communities.
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.
 - None

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.
 - none
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
 - none
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
 - none
- 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,

Attachment A
Chapter: 4-61, HAR
SBRRB Pre-Public Hearing Statement
June 18, 2026

or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- none
- 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.
- none

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson
Board of Agriculture & Biosecurity

DEAN M. MATSUKAWA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE & BIOSECURITY
KA 'OIHANA MAHI'AI A KIA'I MEAOLA
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9560 FAX: (808) 973-9613

May 26, 2026

Board of Agriculture and Biosecurity
Honolulu, Hawaii

Subject: Request for:

1. Approval of the adoption of proposed Chapter 4-61, Hawaii Administrative Rules, entitled "Food Hub Grant Program" to proceed to Small Business Regulatory Review Board (SBRRB) Public Hearing.
2. Authorization to finalize and post the new rules on the Governor's HARPS portal for final approval of and the Governor's signature on proposed Chapter 4-61, Hawaii Administrative Rules.

I. Background

The Hawaii Department of Agriculture and Biosecurity, Agricultural Development Division (ADD) is proposing the creation and adoption of a new Chapter 4-61 Hawaii Administrative Rules (HAR), entitled "Food Hub Grant Program Rules" to satisfy ACT 313, SLH 2022, which was established on July 13, 2022.

On November 29, 2022, ADD requested for preliminary approval of proposed adoption of Chapter 4-61, HAR, to the Board of Agriculture (BOA), and BOA approved. On March 9, 2026, DAB conducted Public Hearing at DAB Boardroom, 1428 S. King Street, Honolulu, HI in-person and by Zoom. Before ADD proceeds to the SBRRB hearing, ADD is requesting approval of the minor changes on the preliminary approved Chapter 4-61, HAR.

II. Summary of Proposed Changes of Preliminary Approved Chapter 4-61, HAR

Listed below is a summary of the changes:

1. Adds "BIOSECURITY" to the department's name.



2. Adds citations "SLH 2022, Act 313 §2" to each section.

III. Recommendation

That the Board of Agriculture and Biosecurity:

3. Approve of the adoption of proposed Chapter 4-61, Hawaii Administrative Rules, entitled "Food Hub Grant Program" to proceed to Small Business Regulatory Review Board (SBRRB) Public Hearing.
4. Allow the Chairperson to proceed in posting proposed HAR Chapter 4-61, on the Governor's HARPS web portal for Governor's review, approval, and signature.

Respectfully submitted,



Yukashi Smith
Acting Administrator
Agricultural Development Division

APPROVED FOR SUBMISSION



Sharon Hurd
Chairperson, Board of Agriculture and Biosecurity

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

Adoption of Chapter 4-61
Hawaii Administrative Rules

April 16, 2026

1. Chapter 4-61, Hawaii Administrative Rules, entitled "Rules Relating to the Department of Agriculture and Biosecurity, Agricultural Development Division, Chapter 4-61, Hawaii Administrative Rules", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE AND BIOSECURITY

SUBTITLE 4

AGRICULTURAL DEVELOPMENT DIVISION

CHAPTER 61

FOOD HUB GRANT PROGRAM

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

- §4-61-1 Purpose
- §4-61-2 Definitions
- §4-61-3 Purpose of program
- §4-61-4 Grant; purpose; use of

§4-61-1

SUBCHAPTER 2

ELGIBILITY AND SECTION PROCESS

- §4-61-5 Eligibility requirements
- §4-61-6 Application procedure
- §4-61-7 Consideration and review of applications
- §4-61-8 Preferences and priorities in making grants
- §4-61-9 Maximum grant amount; disbursement
- §4-61-10 Acknowledgement

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§4-61-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Food Hub Grant Program authorized by Act 313, SLH 2022.
[Eff] (Auth: SLH 2022, Act 313 §2)
(Imp: SLH 2022, Act 313 §1)

§4-61-2 Definitions. As used in this chapter, unless a different meaning clearly appears in context:
"Agricultural development division" means the division within the department responsible for this program;

"Auditor" means the state Office of the Auditor;

"Board" means the state Board of Agriculture and Biosecurity;

"Chairperson" means the chairperson of the state Board of Agriculture and Biosecurity;

"Department" means the state department of agriculture and biosecurity;

"Food hub" means the United States Department of Agriculture's working definition of food hub, which means a centrally located facility with a business management structure facilitating the aggregation,

storage, processing, distribution, and/or marketing of locally/regionally produced food products;

"Grant" means financial assistance provided to awardees under the terms and conditions provided in this chapter;

"HRS" means the Hawaii Revised Statutes; "Locally produced food" means food grown, raised or sourced within the state of Hawaii; "Program" means the food hub grant program;

"Recipient" means any awardee receiving a grant under this chapter;

"Small-to very small-sized" means producers with less than \$500,000 and \$250,000 respectively in annual farm sales;

"SLH" means Session Laws of Hawaii; "State" means the State of Hawaii; and

"USDA" means the United States Department of Agriculture;

"USFDA" means the United States Food and Drug Administration. [Eff.] (Auth: SLH 2022, Act 313 § 2) (Imp: SLH 2022, Act 313 § 2)

§4-61-3 Purpose of program. The purpose of the food hub grant program is to provide funds to support the establishment of food hubs. By actively coordinating these activities along the value chain, food hubs may provide wider access to institutional and retail markets for small- to very small-sized producers and increase consumer access to fresh healthy food, including those consumers in underserved areas and food deserts. [Eff.] (Auth: SLH 2022, Act 313 §2) (Imp: SLH 2022, Act 313 §2)

§4-61-4 Grants; purpose; use of. (a) The department may provide grants in accordance with §141-2, HRS.

(b) Grants may be used by any recipient for any of the following purposes:

- (1) For the construction of critical infrastructure to establish and expand food hubs in each of the counties, including:

Construction or improvement of facilities for aggregation, washing, processing, packaging, cold storage, and other value-additions; and

(A) Provision of technical assistance to develop in state capacity to supply state institutions and other markets.

(B) For the coordination and marketing of match making activities in local or Regional markets.

(c) Grant moneys shall not be used where the direct or indirect purpose or result of the grant would be for any of the following purposes:

- (1) Repay a creditor or creditors of the recipient for any reason; or
- (2) Provide funds as a loan to owners, partners, or shareholders of the recipient;
- (3) Effect a change in ownership of the recipient;
- (4) Provide or make funds available for the acquisition of any kind of real property that is not related to a food hub;
- (5) Travel that is not related to a food hub;
- (6) Costs related to the general operation of The recipient's business that are not related to a food hub;
- (7) Wages, compensation, benefits or allowances for employees of the recipient that are not related to a food hub;
- (8) Insurance costs that are not related to a food hub;
- (9) Costs of vehicles and related vehicle expenses that are not related to a food hub;
- (10) Entertainment or lobbying activities; or
- (11) Payment for goods or services for which moneys were granted under another state or federal program. [Eff.]

(Auth: SLH 2022, Act 313 §2) (Imp: SLH 2022, Act 313 §2)

SUBCHAPTER 2

ELIGIBILITY AND SELECTION PROCESS

§4-61-5 Eligibility requirements. Qualifying applicants shall include corporations, limited liability companies, partnerships, sole proprietorships, non-profit organizations, and agricultural cooperatives. Any applicant shall meet all of the following qualifications:

(a) Meet necessary insurance requirements as determined by the state, including commercial general liability insurance and automobile liability insurance at specified levels, and provide along with the application or as specified by the department, a certificate of vendor compliance with Hawaii Compliance Express (HCE), or other similar requirements;

(b) Agree that if selected as a recipient, it will maintain its principal place of business and conduct a majority portion of its operations in the State;

(c) Either be incorporated under the laws of the State, or be registered to do business in the State, if applicable;

(d) Have bylaws or policies that describe the manner in which the activities or services for which the grant is awarded shall be conducted or provided;

(e) Be licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which the grant is awarded;

(f) If seeking to establish a new food hub where none currently exist, shall first secure a physical location for the food hub and draft a detailed plan for the food hub's operation, including activities in which the applicant intends to engage, such as serving as a marketplace for buying and selling, or providing certified kitchen space in which multiple farmers may share use of facilities for value-added product development;

(g) Explain the applicant's intended actions to increase access to locally produced food;

(h) Comply with all applicable federal, state, and county laws, rules, regulations, and ordinances, including the USFDA Food Safety Modernization Act, P.L. 111-353, and the Act's provisions on supplier

verification, and any applicable tax laws;

(i) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability and;

(j) Allow the division, department and the auditor full access to its records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditures of the grant.

[Eff.] (Auth: SLH 2022, Act 313 §2)
(Imp: SLH 2022, Act 313 §2)

§4-61-6 Application procedure. Any entity applying for a grant shall, as applicable:

(a) Submit its response to the department's Request for Proposal;

(b) Provide an Internal Revenue Service EIN number, if applicable;

(c) Certify that all information and documents submitted in support of the application are correct and complete to the best of the applicant's knowledge;

(d) For the purchase of new manufacturing equipment, provide cost justification, proof of purchase, and financing documentation;

(e) For the purchase of used manufacturing equipment, provide cost justification, proof of purchase, and financing documentation;

(f) For the training of employees on the use of manufacturing equipment, provide cost justification, training curriculum details, hours, number of employees, third party instructors' biography, resume, or curriculum vitae, and proof of purchase;

(g) For the improvement of existing energy efficiency manufacturing equipment or the purchase of improved energy efficiency equipment in the manufacturing process, provide cost justification, analysis from a third party consultant proving the foregoing, and proof of purchase; or

(h) For studying or planning the implementation of a new manufacturing facility, provide cost justification, contract for services of third party consultant, and proof of purchase; or

(i) Agree to and abide by any cap or maximum amount for equipment purchases required by the Request for Proposals. [Eff.] (Auth: SLH 2022, Act 313 § 2) (Imp: SLH 2022, Act 313 § 2)

§4-61-7 Consideration and review of applications.

(a) The department shall cause the review of the application and resolution of any questions relating to the application through contact with the primary grant applicant.

(b) Following such review and resolution, the evaluation committee appointed by the chairperson shall consider and make a recommendation on qualified applications.

(c) The department may submit the proposed awardees to the board for informational purposes, only.

[Eff.] (Auth: SLH 2022, Act 313 §2)
(Imp: SLH 2022, Act 313 §2)

§4-61-8 Preferences and priorities in making grants.

(a) Preference shall be given to:

(1) Organizations having demonstrated experience
(2) Qualified applicants receiving their first award from the department, over multiple award grantees;

(3) The department shall not grant more than one award in this program to any applicant in a fiscal year unless funding remains available in the last quarter of the fiscal year; and

(4) The department shall be guided by the nature and economic significance of the activity of each grant application, the importance of the grant to the activity's success, and the potential economic advantage or job creation prospects offered to the State in determining the distribution of funds.

[Eff.] (Auth: SLH 2022, Act 313 §2) (Imp: SLH 2022, Act 313 §2)

§4-61-9 Maximum grant amount; disbursement. (a) Maximum grant amounts shall be in accordance with the department's Request for Proposal. (b) For awards greater than \$100,000, the grant amount shall be disbursed as payments based on milestones approved by the chairperson. [Eff. _____] (Auth: SLH 2022, Act 313 §2) (Imp: SLH 2022, Act 313 §2)

§4-61-10 Acknowledgement. (a) Recipients shall acknowledge the department in a proper and appropriate manner as a funder in all promotional publications, press releases, and other informational materials relating to the awards for a period of two years following the award. Recipients shall provide such materials to the department prior to their release to the public. [Eff. _____] (Auth: SLH 2022, Act 313 §2) (Imp: SLH 2022, Act 313 §2)

1. The adoption of chapter 4-61, 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 _____, 2026 and filed with the Office of the Lieutenant Governor.

Sharon Hurd, Chairperson
Board of Agriculture and
Biosecurity

APPROVED AS TO FORM:

Deputy Attorney General

V. Legislative Matters

A. Discussion and Update on the following legislative matters:

- 1. House Bill 1618 HD1 SD1 CD1 – Relating to Cesspool Conversions**
- 2. House Bill 1710 HD2 SD2 CD1 – Relating to Historic Preservation**
- 3. House Bill 1721 HD2 SD2 CD1 – Relating to Housing**
- 4. House Bill 2104 HD2 SD1 CD1 – Relating to Island Burial Councils**
- 5. Senate Bill 2543 SD2 HD2 CD1 – Relating to State Construction Projects**
- 6. Senate Bill 2673 SD1 HD1 CD1 – Relating to Counties**

DISCUSSION LEADER ASSIGNMENTS

(SBRRB / SBRRB / Members / DiscussionLeaderAssignments)

1. Office of the Governor <http://governor.hawaii.gov>

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Executive Chambers
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Honolulu, HI 96813

Phone: (808) 586-0034
Fax: (808) 586-0006

Discussion Leader: Jonathan Shick

Back-up Discussion Leader: Mary Albitz

2. Office of the Lieutenant Governor <http://ltgov.hawaii.gov>

Address: Lieutenant Governor Sylvia Luke
State Capitol, Fifth Floor
Honolulu, HI 96813

Phone: **Oahu/** (808) 586-0255
Maui/ 984-2400 ext. 60255
Hawaii/ 974-4000 ext. 60255
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Discussion Leader: Mary Albitz

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3. Department of Accounting & General Services <http://ags.hawaii.gov>

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Discussion Leader: Nikki Ige

Back-up Discussion Leader: James Kimo Lee

5. Department of the Attorney General <http://ag.hawaii.gov>

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Discussion Leader: Nikki Ige

Back-up Discussion Leader: Sanford Morioka

6. Department of Budget & Finance <http://budget.hawaii.gov>

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Discussion Leader: Jennifer Salisbury
Back-up Discussion Leader: Leelen Park

7. Public Utilities Commission..... <http://puc.hawaii.gov>

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020
Kekuanaoa Building Fax: (808) 586-2066
465 South King Street, Room 103 Email: puc@hawaii.gov
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Discussion Leader: Tessa Gomes
Back-up Discussion Leader: Jonathan Shick

8. Department of Business, Eco Dev. & Tourism..... <http://dbedt.hawaii.gov>

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Discussion Leader: David Sikkink
Back-up Discussion Leader: Tessa Gomes

9. Department of Commerce & Consumer Affairs..... <http://cca.hawaii.gov>

Address: Nadine Ando, Director Phone: (808) 586-2850
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Discussion Leader: Tessa Gomes
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10. Department of Defense..... <http://dod.hawaii.gov>

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Office of the Adjutant General Fax: (808) 733-4499
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Discussion Leader: Jennifer Salisbury
Back-up Discussion Leader: David Sikkink

11. Department of Education..... <http://hawaiipublicschools.org>

Address: Keith Hayashi, Superintendent
1390 Miller Street
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Discussion Leader: Jennifer Salisbury
Back-up Discussion Leader: Jonathan Shick

12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>

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Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Leelen Park

13. Department of Health..... <http://health.hawaii.gov>

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14. Department of Human Resources Development..... <http://hrd.hawaii.gov>

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15. Department of Human Services..... <http://humanservices.hawaii.gov>

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16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>

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Discussion Leader: Mary Albitz
Back-up Discussion Leader: Tessa Gomes

17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>

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Discussion Leader: Jonathan Shick
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18. Department of Public Safety..... <http://dps.hawaii.gov>

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19. Department of Taxation..... <http://tax.Hawaii.gov>

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Back-up Discussion Leader: David Sikkink

20. Department of Transportation..... <http://hidot.hawaii.gov>

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Back-up Discussion Leader: Sanford Morioka

21. University of Hawaii..... <http://www.hawaii.edu>

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Phone: (808) 956-7651
Email: david@hawaii.edu

Address: Lee Putnam, Chair, Board of Regents
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Phone: (808) 956-8213
Fax: (808) 956-5156
Email: bor@hawaii.edu

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: Leelen Park

22. City and County of Honolulu..... <http://www.honolulu.gov/>

Address: **Rick Blangiardi, Mayor**
530 South King Street, Room 300
Honolulu, HI 96813

Phone: (808) 768-4141

Discussion Leader: Jonathan Shick
Back-up Discussion Leader: Tessa Gomes

23. County of Maui..... <https://www.mauicounty.gov/>

Address: **Richard T. Bissen, Jr., Mayor**
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Kalana O Maui Bldg 9th Fl.
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Phone: (808) 270-7855

Discussion Leader: Jennifer Salisbury
Back-up Discussion Leader: Mary Albitz

24. County of Hawai'i..... <https://www.hawaiicounty.gov/>

Address: **Mitch Roth, Mayor**

Phone: (808) 961-8211

East Hawai'i
25 Aupuni Street
Hilo, HI 96720

West Hawai'i
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Phone: (808) 323-4444

Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Leelen Park

25. County of Kaua'i.....<https://www.kauai.gov/Mayor>

Address: **Derek S.K. Kawakami, Mayor**
4444 Rice St., Suite 235
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Phone: (808) 241-4900
Email: mayor@kauai.gov

Discussion Leader: Nikki Ige

Back-up Discussion Leader: Jonathan Shick



STATE OF HAWAII • DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM

HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

Periodic Review; Evaluation Report

**In Compliance with
Regulatory Flexibility Act
Section 201M –7,
Hawaii Revised Statutes**

2026 - DRAFT

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MESSAGE FROM DIRECTOR



As the director of the Department of Business, Economic Development and Tourism, I am pleased to extend my appreciation to the members of the Small Business Regulatory Review Board for their continued hard work and commitment to improve the regulated climate for Hawaii's small business community.

Mahalo!

James Kunane Tokioka
DBEDT Director



SMALL BUSINESS REGULATORY REVIEW BOARD

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Chairperson
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Sanford Morioka
Vice Chairperson
O'ahu

Mary Albitz
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Maui

James (Kimo) Lee
Hawai'i

Leelen Park
Hawai'i

Tessa Gomes
O'ahu

Cynthia Hobson
O'ahu

Nikki Ige
Kaua'i

Dr. Jennifer Salisbury
Maui

David Sikkink for
Director, DBEDT
Voting Ex Officio

MESSAGE FROM CHAIR



This 2026 Report consists of existing Hawaii Administrative Rules that both the State and County departments have determined to impact small business and the reasons for the rules' continued implementation. It is in accordance with the Board's statutory effort to reduce negative small business impact and to improve rule-making procedures.

Board members continue to donate numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the regulatory climate for small businesses in Hawaii. I am continuously impressed with the thoughtfulness and the thoroughness that the members put forth. I personally thank each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

We extend a special Mahalo to Governor Green, Director Tokioka, Deputy Wicker and all the State and County departments that submitted the requested information to this Board.

Jonathan Shick, Chair, SBRRB, 2026

OVERVIEW

Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

Action Taken: In accordance with Section 201M-7(a), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) A list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) A list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Result: The information in this report is a compilation of the responses and justifications received.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology,

economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

Action Taken: In accordance with Section 201M-7(b), HRS, the SBRRB requested and received from State and County agencies the following:

- 1) A list of rules adopted during the prior year that affect small business, and
- 2) A report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Result: The information in this report is a compilation of the responses to these two requests.

(c) The board may solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.

Action Taken: In accordance with Section 201M-7(c), HRS, the SBRRB encourages testimony on new and proposed amendments to Hawaii Administrative Rules but did not specifically solicit testimony from the public regarding any report submitted by the Agencies at a public meeting held pursuant to Chapter 92.

Result: The SBRRB receives and reviews testimonies from the public on proposed new and amended Hawaii Administrative Rules submitted by State and County Agencies during monthly board meetings with each testimony handled accordingly.

ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Hawaii Administrative Rules Submitted
STATE DEPARTMENTS	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	0
DEPARTMENT OF AGRICULTURE	6
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE	0
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	8
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS	12
PUBLIC UTILITIES COMMISSION	6
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH	13
DEPARTMENT OF HUMAN SERVICES	3
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	2
DEPARTMENT OF LAND AND NATURAL RESOURCES	1
DEPARTMENT OF TAXATION	0 - ?
DEPARTMENT OF TRANSPORTATION	7
UNIVERSITY OF HAWAII	0
COUNTIES	
HAWAII COUNTY	1
MAUI COUNTY	2
KAUAI COUNTY	4
CITY AND COUNTY OF HONOLULU	6

STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Department of Accounting and General Services (DAGS)

DAGS reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Agriculture (HDOA)

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed based upon any new, amended or repealed statute:

1. HAR Title 4 Chapter 157 – Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems

Justification – Irrigation water deliver rates will be amended and rule changes are being reviewed. Most of the participants meet the statutory definition of a small business.

2. HAR Title 4 Chapter 159 – Rules Governing the Agricultural Enterprise Lands Program – new rules to be implemented based on Act 221 Session Laws of Hawaii (SLH) 2022 Relating to the Agricultural Enterprise Program

Justification – To support the growth of diverse agriculture by encouraging agricultural enterprises on the Department's agricultural lands. The program authorizes the Department or its lessees to conduct agricultural enterprise activities including the planning, design, construction, operation and management of agricultural enterprises to ensure the economic viability of agricultural operations, promote and support diversified agriculture, and increase agricultural self-sufficiency.

This program is separate and distinct from the Department's agricultural parks and non-agricultural parks programs. Most of the participants would meet the statutory definition of small businesses.

3. HAR Title 4 Chapter 8 – Agricultural Loan Program Rules – new rules to be implemented based on Act 069 (7/1/2025) Relating to Agricultural Loans

Justification – Pursuant to Act 069 (7/1/2025), the purpose and scope of the rules is to modify the state agricultural loan program to ensure equitable access to capital for farmers of all scales and help achieve the state's objectives of food security, economic resilience, and self-sufficiency. Most loan recipients would meet the statutory definition of small businesses

4. HAR Title 4 Chapter 66 – Rules Governing Pesticides

Justification – Pursuant to Act 220, SLH 2023, the proposed rule change modifies the Hawai'i Pesticide Laws, HRS Chapter 149A, clarifies requirements, provides consistency and amends the classifications of restricted use pesticide applicators to comply with the United States Environmental Protection Agency's approved State Certification Plan. The proposed changes will codify the statutory increases to the maximum civil and criminal penalties for violations of the Hawai'i Pesticide Laws, HRS Chapter 149A. Small businesses may be affected by the proposed rule changes if they repeatedly violate

Hawai'i Pesticide Laws. Act 220, SLH 2023 only increased the maximum penalties the Department may fine and did not change the minimum fine for HRS Chapter 149A violations. Generally, the Department provides written warning notices to first-time violators with no civil or criminal penalties.

5. HAR Title 4 Chapter 21 – Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules

Justification – Northern largemouth bass, *Micropterus salmonides salmoides*, for research to determine if new releases of this species can successfully augment existing stocks within the Wahiawa Public Fishing Area. This rule change is expected to have a positive impact on small businesses for fishing supplies and equipment, and potential impact on Fishing Guides.

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

6. HAR Title 4 Chapter 72 – Plant and Non-Domestic Animal Quarantine Plant and Pest Host Material Intrastate Rules

Justification – HAR Chapter 4-72 was amended pursuant to HRS Chapters 141-2 and 150A-9 to implement quarantine restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials; implement fees for inspections and the processing and issuance of permits; establish authority to prohibit the movement of infested materials within the state; include penalties for non-compliance; and make other non-substantive changes. The rules enact restrictions on the intrastate movement of certain items to minimize risk and prevent the spread of pests throughout the state.

Department of the Attorney General

The Department of the Attorney General has no plans to amend or repeal any rule based upon any new, amended, or repealed statute.

It has not adopted any rules during the prior year that affect small business and, consequently, there is no report describing the specific public purpose or interest for the adoption of rules last year.

Department of Budget and Finance (B & F)

B & F reported that no departmental administrative rules were adopted during the prior year that affect small business.

Department of Business, Economic Development, and Tourism

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Hawaii Housing Finance and Development Corporation (HHFDC)

1. HAR Title 15 Chapter 321 – Affordable Homeownership Revolving Fund

Justification – to implement the provisions of Section 201H-206, HRS, which establishes the Affordable Homeownership Revolving Fund program. Its purpose is to provide funds for the development of affordable for-sale housing projects by nonprofit community development financial institutions and nonprofit housing development organizations to facilitate greater homeownership opportunities for Hawaii residents.

It included the following fees:

Application fee	\$1,000
Loan origination fee	0.5% to 1% of the loan amount
Loan extension fee	0.5% to 1% of the loan amount
Loan interest rate (fixed)	1% to 2% per annum

The Legislature appropriated \$5 million to implement the program, which includes administrative costs. The fees are necessary to cover the costs of processing AHRF loans. AHRF is a revolving fund and therefore must demonstrate the capacity to be financially self-sustaining.

2. HAR Title 15 Chapter 309 – Dwelling Unit Revolving Fund Equity Pilot Program

Justification – Establish the Dwelling Unit Revolving Fund (DURF) Equity Pilot Program to address the high, unmet demand for for-sale units by Hawaii residents. Under the program, which sunsets on June 30, 2028, HHFDC shall enter into an agreement with the developer to purchase equity in for-sale housing development projects, which lowers the amount paid by buyers. HHFDC's share will be paid back upon the resale of the unit, obtaining additional financing or non-owner occupancy, along with the portion of the appreciation in equity given to the buyer to purchase the unit.

It included the following fees:

Calculation of program payoff amount	\$250
Release of DURF Equity Pilot Program	\$250
Notice of demand	\$250
Notice of non-compliance	\$250

The Legislature authorized the use of up to \$10 million in existing DURF. The fees are necessary to cover the costs of processing the program. DURF is a revolving fund and therefore must demonstrate the capacity to be financially self-sustaining.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed based upon any new, amended or repealed statutes in 2025:

3. The enactment of Act 312, SLH 2025, requires an amendment to Chapter 15-321, Hawaii Administrative Rules (HAR), entitled "Affordable Homeownership Revolving Fund."
4. The enactment of Act 159, SLH 2025, requires an amendment to Chapter 15-311, HAR, entitled "Rental Housing Revolving Fund Program."
5. The enactment of Act 253, SLH 2025, requires an amendment to Chapter 15-311, HAR, entitled "Rental Housing Revolving Fund Program."

In 2024, HHFDC neglected to inform the SBRRB about the following rules to be amended based on new or amended statutes:

6. The enactment of Act 34, SLH 2024, requires an amendment to Chapter 15-307, HAR, entitled “State Assisted Land and Housing Development Program,” which HHFDC will work on.
7. The enactment of Act 38, SLH 2024, requires an amendment to Chapter 15-307, HAR, entitled “State Assisted Land and Housing Development Program,” which is currently in progress.
8. The enactment of Act 235, SLH 2024, requires and amend amendment to Chapter 15-307, HAR, entitled “State Assisted Land and Housing Development Program,” which is currently in progress.

Department of Commerce and Consumer Affairs (DCCA)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules’ continued implementation:

Business Registration Division (BREG)

1. HAR Title 16 Chapter 39 – Securities

Requires both state-registered and federal covered investment adviser representatives to complete annual continuing education courses in order to maintain their registration in Hawaii. The adoption of the rules implements continuing education requirements for investment adviser representatives in alignment with those currently in effect for other financial services professionals to ensure continued competency and knowledge regarding industry standards, practices, and products.

Cable Television Division (CATV)

2. HAR Title 16 Chapter 131 – Hawaii Cable Communications Systems

Rules under review to update chapter. Expect to amend and draft new language for HAR §16-131-70 to conform to HRS §440G-8.3, which allows DCCA Director to designate public, educational, and governmental access organizations exempt from HRS Chapter 103D. And add a new rule to expressly allow DCCA Director discretion regarding the application of the rules regarding cable television providers for consistency with HRS §440G-12(a).

Insurance Division (INS)

3. HAR Title 16 Chapter 23 – Motor Vehicle Insurance Law

SB2342-SD2-HD3-CD1 (Act 138), Relating to Insurance, amended HRS §431:IOC-301 by increasing certain required motor vehicle insurance minimums and, therefore, requires HAR §16-23 “Motor Vehicle Insurance Law”, to be amended by revising Exhibit 1 to make conforming amendments. (Effective 1/1/2026)

4. HAR Title 16 Chapter 23 – Motor Vehicle Insurance Law

HB1686-HD1-SD1-CD1 (Act 92), Relating to Insurance, amended HRS §431:IOC-103.6 by increasing the reimbursement rate for chiropractic treatments for personal injury protection benefits under motor vehicle insurance and, therefore, requires HAR 16-23 Motor Vehicle Insurance Law, to be amended by revising Exhibit 1 to make conforming amendments. (Effective 6/27/2024)

5. HAR Title 16 Chapter 171 – Miscellaneous Insurance Rules

SB1245-SD2-HD2-CD1, Relating to Pharmacists, is currently under review by the Governor, and if signed, could require new administrative rules to be promulgated to effectively enforce the law.

Professional and Vocational Licensing Division

6. HAR Title 16 Chapter 72 – Acupuncture Practitioners

Proposed amendments to Chapter 72 were heard at a public hearing held on February 27, 2025. The Board approved amendments to Chapter 72 at its February 27, 2025, meeting following the hearing. Hearing minutes will be e-mailed to the SBRRB.

7. HAR Title 16 Chapter 76 – Chiropractors

The Board is working on a draft to streamline the continuing education review process and require an NPDB self query report for licensure.

8. HAR Title 16 Chapter 77 – Contractors

The Board is working on a draft to update the specialty contractor classifications. The Board is also working on a draft to amend the definition of "incidental and supplemental" work.

9. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons

The Commission is working to repeal this chapter, and replace it with three new chapters 99.1, 99.2, and 99.3.

10. HAR Title 16 Chapter 99.1 through 99.3 – Real Estate Brokers and Salespersons

Inclusion of a revision recommended by the DAG to revise the effective periods for examination certificates and equivalency certificates to one (1) year from two (2) years due to Act 21 (2023).

11. HAR Title 16 Chapter 107 – Horizontal Property Regimes

The Commission is working to repeal and replace this chapter with eight new chapters, 16-119.1 through 16-119.8, collectively for condominiums and HRS chapter 514B.

12. HAR Title 16 Chapter 119.1 through 119.8 (NEW) – Condominiums

The Commission held a public hearing on its eight proposed draft rule chapters on November 29, 2024. The new chapters are intended to replace HAR chapter 107 and effectuate HRS chapter 514B. In consideration of public testimony received, the Commission convened a Permitted Interaction (PI) Group to review and further revise its current draft rule package. The PI Group plans to present a proposed revised rule package at the Commission's next meeting on May 30, 2025.

Public Utilities Commission (PUC)

Hawaii Public Utilities Commission (PUC) reports that they are undergoing an internal staff review of the following administrative rules to determine if updates or amendments are needed:

1. Hawaii Administrative Rules (HAR) Chapter 16-601 – Rules of Practice and Procedure
2. HAR Chapter 16-603 – Motor Carrier Tariffs and Schedules
3. HAR Chapter 16-605 – Water Carriers
4. HAR Chapter 16-62 – Motor Carrier Rules and Classification of Property and Passenger Carriers

5. HAR Chapter 16-610 – Water Service
6. HAR Chapter 16-630 – Wastewater Service

PUC is estimating that they will complete this internal staff review in approximately 6 to 9 months. If a determination is made by the PUC that the abovementioned administrative rules require an update or amendments, the PUC will initiate the administrative rule procedures pursuant to Hawaii Revised Statutes Chapter 91.

PUC reported that no departmental administrative rules were amended or adopted during the prior year that affect small businesses.

Department of Hawaiian Home Lands (DHHL)

DHHL reported that no rule amendments were necessitated by any new, amended, or repealed statute and did not adopt any rules affecting small business during the period of July 1, 2023 through June 30, 2025.

Department of Health (DOH)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Solid and Hazardous Waste Branch

1. HAR Title 11 Chapters 280.1 – Underground Storage Tanks

Justification – Changes pursuant to HRS §201M-2(b) in accordance with updates from US Environmental Protection Agency toxicity factors and regional screening levels. Minimal effect to Small Businesses. Regulated businesses that own and operate underground storage tanks (mainly gasoline service stations and branches of the Department of Defense) are interested in understanding what new requirements will apply to their sites. Chapter 11-280.1, HAR, applies to all owners and operators of UST systems, but the substantive changes will affect only sites with a release from a UST system.

Environmental groups and the public may also be interested in changes to the UST rules because the rules are designed to protect human health and the environment. The department expects the public and environmental groups to be generally supportive of the rule changes.

Chapter 11-280.1, HAR, regulates the installation and operation of underground storage tank (UST) systems and the cleanup of releases from UST systems. Tank system owners and operators are required to clean up releases and remediate contaminated soil, groundwater, and surface water to a level that is protective of human health and the environment.

The Tier 1 screening levels found in Table 1 are the default criteria for the remediation of contaminated soil and groundwater following a release from a UST system. Site-specific action levels may also be approved by the Department if they are deemed to be sufficiently protective of human health and the environment.

The Tier 1 screening levels in §11-280.1-65.3 are based on the Department's Environmental Action Levels (EALs), which are based on toxicological data (dangers of exposure to a specific chemical contaminant) and risk assessments potential pathways of human health and environmental exposure to contaminants.¹ Two new contaminants are being added to Table 1 in §11-280.1- 65.3² and the action levels for five of the existing contaminants in that table are being updated.³ The proposed updates to the Tier 1 screening levels are based on recent updates to the Department's EALs, which are in turn based on new toxicological data and recent updates to the U.S. Environmental Protection Agency's toxicity factors and Regional Screening Levels. Additional minor changes are made to correct typographical errors and to clarify existing requirements and align state regulatory language with the federal language on which it is based.

Clean Water Branch

2. HAR Title 11 Chapter 55 – Water Pollution Control Appendices C,J and L

Justification – Readoption of the National Pollutant Discharge Elimination System (NPDES) general permits in HAR 11-55, Appendices C, J and L.

Reissuance of the NPDES general permits:

- C** - Authorizing discharges of storm water associated with construction activities
- J** - Authorizing unintentional discharges from recycled water systems
- L** - Authorizing discharges of circulation water from decorative ponds or tanks

The changes to the NPDES were made to be in line with the Environmental Protection Agency to regulate water quality and pollution control programs in the state of Hawaii. Minimal effect on small businesses as approved by SBRRB.

Office of Medical Cannabis Control and Regulation

3. HAR Title 11 Chapter 850 – Medical Cannabis Dispensaries

Justification – Pursuant to Act 230, Session Laws of Hawaii (SLH) 2016 and Act 159 SLH 2018, the DOH requests approval of amendments to interim HAR Title 11, Chapter 850, entitled "Medical Cannabis Dispensaries". These interim rules set forth requirements for medical cannabis dispensaries and laboratories certified to analyze cannabis and manufactured cannabis products to provide for the protection of the health and safety of qualifying patients, qualifying out-of-state patients, and the general public. Amendments are:

- Add pre-rolled cannabis flower products as an allowed type of manufactured cannabis product in accordance with the changes to section 329D-10, Hawaii Revised Statutes (HRS), made by Act 108 SLH 2023.
- Establish standards for pre-rolled cannabis flower products, including ingredient limitations and testing requirements (in addition to existing requirements applicable to all manufactured cannabis products)
- Clarify that tobacco may not be used as an ingredient in any manufactured cannabis product

Rules effective until:

1. Replaced by subsequent interim rules or rules adopted pursuant to chapter 91, HRS, or
2. Repealed on July 1, 2025, by action of §329D-27(c), HRS, whichever occurs soonest.

Food and Drug Branch

4. HAR Title 11 Chapter 37 – Hemp Processing and Hemp Products

Justification – Pursuant to section 328G-4, Hawaii Revised Statutes (HRS), Act 230, Session Laws of Hawaii (SLH) 2016 and Act 159 SLH 2018, the Department of Health requests your approval of amendments to interim Hawaii Administrative Rules (HAR), Title 11, chapter 37, entitled "Hemp Processing and Manufactured Hemp Products" and Title 11, chapter 850, entitled "Medical Cannabis Dispensaries". Act 263 SLH 2023, amendments to §328G-3(e), (g), Hawaii Revised Statutes.

Minimal effect to small business. Businesses selling products as there is minor change to labeling 11-37; 11-850 licensees can use crude extract as a component in manufactured cannabis products thus increasing products.

Chapter 11-37 (interim rules) sets forth requirements for the processing of hemp and the sale of manufactured hemp products to provide for the protection of the health and safety of the general public. This chapter regulates hemp processors processing hemp biomass into crude extract or preparing manufactured hemp products, as defined in section 328G-1, HRS.

Chapter 11-850 (interim rules) sets forth requirements for medical cannabis dispensaries and laboratories certified to analyze cannabis and manufactured cannabis products to provide for the protection of the health and safety of qualifying patients, qualifying out-of-state patients and the general public.

The purpose of the amendments is to align the regulations with significant changes to chapter 328G, HRS, adopted in Act 263 SLH 2023. Changes to Chapter 11-37, HAR and 11-850, HAR, align with new hemp-related definitions and to allow medical cannabis licensees to purchase crude extract for use in manufactured cannabis products, which also creates a market for hemp processors to sell crude extract.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Examination and Immunization Branch Disease Outbreak and Control Division

5. HAR 11-157 – Examination and Immunization

Justification – HRS §§ 302A-1162, 321-9, 321-11(22), 325-13, 325-32 Section 11-157-5, HAR, allows religious exemptions to be granted where a parent or guardian certifies their religious beliefs prohibit the practice of immunization. The rules also state that "Requests for religious exemptions based on objections to specific immunizing agents will not be granted." The Department and DOE have interpreted this language to mean that once a child receives one vaccination, that child will lose his/her religious exemption. DOE staff and parents have raised concern that this language discourages parents with religious exemptions from choosing to vaccinate their children for certain diseases.

No effect on Small Businesses.

Solid and Hazardous Waste Branch

6. HAR Title 11 Chapter 260.1 to 279.1 – Relating to Hazardous Waste

Justification – Hawaii is an authorized state for the U.S. Environmental Protection Agency (EPA)'s national hazardous waste program implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. To maintain authorization and EPA

funding for this program, Hawaii is required by the Code of Federal Regulations (CFR), Title 40 Part 271 (40 CFR 271) to adopt state rules equivalent to and at least as stringent as the program's federal regulations, which are found in 40 CFR parts 124 and 260 to 279. Status of Rule Effective: July 7, 2025.

The department is not required to prepare a Small Business Impact Statement for these proposed rule changes because they will not affect small businesses, as this is defined in §201M-1, Hawaii Revised Statutes (HRS). Proposed changes in this rulemaking action are in response to changes EPA has made to the federal hazardous waste rules, which are incorporated by reference (with amendments) in the Department's rules. This rulemaking updates the State's incorporation of the federal rules from the July 1, 2022 version of the CFR to the July 1, 2024 version, effectively adopting two new EPA rules.

Proposed additional changes include:

- Update the after-hours phone number for contacting the Department's on-scene coordinators in case of emergency
- Apply emergency preparedness requirements to intermediate or reclamation facilities handling hazardous secondary materials
- Correct typographical errors.

Clean Air Branch

7. HAR Title 11 Chapters 60.1 – Air Pollution Control

Justification – Rules to amend HAR 11-60.1-16.5 repealed to be in accordance with mandate from the U.S. Environmental Protection Agency (EPA). DOH rules 11-60.1-16.5 must be repealed, Emergency provision and amend to remove section. EPA deadline is August 21, 2024. Amendments affect 1) removal of the emergency affirmative defense provision for air pollution control permits; and 2) improvement and clarification of open burning. Hawaii Revised Statutes affected §§342B-3, 342B-12; 42 U.S.C. §§7407, 7416).

No direct or significant economic burden or apply additional restrictions on small businesses. DOH considered all alternatives.

Food Safety Branch

8. HAR 11-50 – Food Safety Code

Final Rules to the Governor's Office 7/31/2025. Pending review August 2025.

Alcohol and Drug Abuse Division

9. HAR Title 11 Chapter 177.2 – Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists

Justification – The proposed revised Title 11 Chapter 177.2, "Certification Standards for Substance Abuse Counselors, Program Administrators, Prevention Specialists, Clinical Supervisors, Criminal Justice Addictions Professionals, and Peer Recovery Specialists", removes certification standards for an obsolete credential called Co-Occurring Disorders Professional Diplomate, establishes new standards for the certification of Peer Recovery Specialists to help clients who are in treatment and recovery, and updates ethical standards to include Peer Recovery Specialists. HRS §321-196 established the authority of DOH to adopt rules to implement HRS Chapter 321, Part XVI, "Substance Abuse" which includes the revision of rules on certification standards implemented by the DOH.

In the current administrative rules, there are no standards to include credentials with individuals who have lived experiences in recovery from substance use disorders. Peer Recovery Specialists have been adopted by many states according to standards adopted by the International Certification & Reciprocity Consortium (ICRC).

Pending within the DOH for submission to the Governor for approval of Public Hearing November 2023 Hearing (tentative) No activity as of June 2025.

Office of Language Access

10. HAR Title 11 Chapter 220 – Office of Language Access Rules of Practice and Procedures

Justification – The purpose and scope of these rules is to establish the practice and procedures for the administration of Chapter 321 C, HRS and to affirmatively address, on account of national origin, the language access needs of limited English proficient persons.

New rules being developed for the Office of Language Access Rules of Practice and Procedures. Tentative Rules for approval for a public hearing January 2024. No activity as of June 2025. Minimal effect on Small Business.

Department of Human Services

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Med-Quest Division (MQD)

1. HAR Title 17 Chapter 1747 – Hawaii Child Wellness Care Program

Justification – The adoption of the Hawaii Child Wellness Care Program implements Act 127, SLH 2022, which establishes the Hawaii Child Wellness Incentive Pilot Program as a temporary pilot program to provide Medicaid parents a \$50.00 incentive for each completed "Well-Child examination" for each child of a Medicaid parent beneficiary within a one-year period. Act 127 is scheduled for repeal on June 30, 2027, and must be extended for the program to continue.

Providing children with access to well-child examinations are an investment in the public health of the state and will help lead to economic benefits to the state by promoting a healthier and productive resident population. This program will help identify early health issues and treat any prolonged illness that may impact the child's health and well-being as they enter adulthood.

Rules to be amended or repealed, based upon any new, amended or repealed statute:

2. HAR Title 17 Chapter 1716 – Pregnant Women Group

Justification - The amendments in this chapter, Pregnant Women Group, include adding and modifying of sections and subsections to make explicit the existing pregnant women requirements. This is based on the approval of State Plan Amendment HI-22-008 to implement Section 9812 of the American Rescue Plan Act of 2021 (PL 117-2), expanding the postpartum care coverage period from sixty days to twelve months. The amended section under "Categorical requirements" changed from sixty days to twelve months so that eligibility under this chapter shall continue throughout the pregnancy and the postpartum period, which begins on the date the pregnancy ends, extends

twelve months and ends on the last day of the month in which the twelve-month period ends. The rules do not adversely affect any small business.

3. **HAR Title 17 Chapter 1745 – Funeral Payments Program**

Justification – Chapter 17-1745, Funeral Payments Program, implements Act 108, SLH 2024, S 2851 which establishes Funeral Payments Program increase from \$800 to \$1600 the amount of death benefits paid by the Department of Human Services to cover the cremation and disposition costs for a deceased person who was eligible for medical or financial assistance at the time of the person's death and whose body is unclaimed.

The proposed amendments in Chapter 17-1745 included adding and modifying of sections and subsections to codify and make explicit the existing Funeral Payments Program requirements.

Department of Land and Natural Resources

The following rules, which may affect small businesses, were repealed during the prior year.

Division of Aquatic Resources (DAR)

1. **HAR Title 13 Chapter 74 – License and Permit Provisions and Fees for Fishing, Fish and Fish Products**

Effect of Small Business – Various or not at all.

Justification – the proposed rule changes entail the creation of new commercial dealer license fees as well as adding and updating other annual fee requirements. Licenses encompass commercial dealer licenses, commercial dealer vessel licenses, and non-resident recreational fishing licenses.

HAR chapter 13-74, took effect on 5/2/24. It increased the cost for DAR's commercial licenses to reflect higher administrative costs associated with the licensing program and implemented three new licenses: Nonresident Recreational Marine Fishing License (which indirectly affects fishing charters since their nonresident customers are now required to obtain this license), Commercial Marine Dealer License (which is an added expense on commercial dealers), and Commercial Marine Vessel License (which small business fishers have been asking for so a whole crew could be covered under one commercial marine license).

The justification for continued implementation is that the fee increases continue to support the licensing program and therefore must remain in effect. Additionally, the licensing program plays a crucial role in ensuring compliance with fishery laws keeping fishers and dealers accountable and is an important source of data that informs fishery management.

Department of Labor and Industrial Relations

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Hawai'i Occupational Safety & Health Division (HIOSH)

1. HAR Title 12 Subtitle 8 Part 10 – Boiler and Pressure Vessel

Justification - To reflect the passage of Act 102 (SLH, 2022). Act 102 authorizes owner-user inspectors in the exclusive employment of owner-user inspection organizations to perform inspections on pressure retaining items.

The National Board of Boiler and Pressure Vessel Inspectors permits an Owner-User Inspection Organization (OUIO) to establish and maintain an inspection program if the OUIO's inspection procedures meet the requirements of NB-371, Accreditation of OUIO, NB-381, Quality Program for Inspection Organizations, NB-263, National Board Rules for Commissioned Inspectors, and the jurisdiction's approval.

2. HAR Title 12 Subtitle 46 Chapters 1-318 – Relating to Civil Rights Commission

Justification – Amended to clarify definitions of terms, HCRC administrative procedure, and areas of jurisdiction. Many of the proposed amended definitions are to conform with the statutory definitions/within the administrative rules itself, or to conform to other divisions within the Department of Labor & Industrial Relations (i.e. definition of “employment”) to reduce confusion.

Amended definitions are Ancestry, Employment, Sex, Arrest and Court Record, Conviction, Domestic or sexual violence victim, Final order or Final Decision, Gender identity or expression, Harassment, Protected basis, and Sexual Orientation. The proposed definition of “employment” is nearly identical to definitions used by Temporary Disability Insurance (TDI), Prepaid Healthcare Act (HAR §§ 12-11-1, 12-12-1, respectively), and Unemployment Insurance in HRS § 383-6.

Amended sections for “sex discrimination” to update gender-based terms and to conform with the federal pregnant workers’ fairness act; “ancestry discrimination” for clarification in the language discrimination section; and “disability discrimination section” to add reference to registered cannabis users with a disability.

Department of Taxation (DoTax)

As of the printing of this report, DoTax has not responded to the three attempts to receive the 201M-7 information for the subject time period.

Department of Transportation (DOT)

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules’ continued implementation:

1. HAR Title 19 Chapter 37 – Relating to Fuel Handling Procedures at Public Airports

Justification - These amendments did not directly affect any small business as all the fuel handling companies operating at Hawaii Airports are not considered small businesses. Indirectly, these amendments could possibly benefit small businesses, should they want to operate at Hawaii Airports, because the waiver of commercial driver's licenses to operate on the airfield makes hiring personnel easier.

HDOT Airports adopted amendments to HAR Chapter 19-37. The amendments included modifying the requirements for aircraft refueler unit operators when operating a non-license aircraft refueler units or hydrant cart, to possess only an Airport Operational Area motor vehicle operator permit, updating references from the National Fire Code to the National Fire Prevention Association standards, correcting statutory references, and making technical drafting improvements.

The public purpose of these changes is to allow aviation service providers flexibility when hiring operators, align state rules with updated national safety codes, and ensure regulatory consistency. Written testimonies submitted by stakeholders including aviation service providers and airlines uniformly supported the amendments, thereby justifying their continued implementation.

Administrative Rules that were added, amended or repealed after June 30, 2020:

1. Chapter 19-123 - Statewide Motorcycle, Moped, and Motor Scooter Education Courses and Licensing Skill Test Waiver was amended on November 30, 2023.
2. Chapter 19-133.2-22 - Periodic Inspection of Vehicles was amended on April 21, 2021 and will be amended by Act 172, 2025 Session Laws of Hawaii (SLH).
3. Chapter 19-149 - State Civil Identification was amended on September 12, 2023.
4. Chapter 19-152 - State Highway Enforcement Program was added on December 16, 2021 by Act 133, 2021 SLH.
5. Chapter 19-153 - Automated Speed Enforcement Program will be added from Act 212, 2025 SLH.
6. Chapter 19-154 - State Mileage-Based Road Usage Charge was added on June 13, 2025 from Act 222, 2023 SLH.

University of Hawaii (UH)

UH confirms that it currently has no administrative rules affecting small business, and that it has not amended or repealed any rules in the past year based upon any new, amended, or repealed statute impacting small business.

Follow-up on Prior SBRRB Administrative Rule Reviews

The following Hawaii Administrative Rules were previously reviewed by the SBRRB. Current updates are noted.

Department of Agriculture

Division of Measurement Standards

1. HAR Title 4 Chapter 93 – Packaging and Labeling

Justification - This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

2006 Recommendation - Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency - A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Comments - A discussion with DOA in 2018 revealed that the rules are in process of being reviewed and will be updated accordingly; no date for completion was determined.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

Division of Plant Industry

2. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules

Justification - This rule provides for export plant and plant products inspectional and disinfestation treatment services that meet the requirements of the state or country of destination. Agriculture is an important economic industry to the State of Hawaii.

From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country.

To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule.

Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met, or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

2006 Recommendation - Rule amendments were submitted to the SBRRB in 2006; however, the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB agrees the rule should be reviewed and revised.

Response from Agency - This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries.

The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

Comments - A discussion with DOA in 2018 revealed that the rules are currently "frozen" in terms of modification however because the statute governing these rules reflect a change in fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

Division of Animal Industry

3. HAR Title 4 Chapter 17 – Swine

Justification - This rule authorizes DoAg to undertake disease control measures intended to control and eradicate certain diseases of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis, and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated the rules are in process of being amended.

2006 Recommendation - The rules are 25 years old; the rules are in process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Comments - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

4. HAR Title 4 Chapter 23 – Horses

Justification - This rule controls the importation of diseases and pests that affect horses. Preventing the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. As most horses in Hawaii are pets, there is little impact on small business by these import requirements.

The rules were established in 1949 and last amended in 1981. On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation - The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Comments - A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; completion of the updates is expected in 2020.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

Department of Commerce and Consumer Affairs

5. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts

Justification - The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

2006 Recommendation - This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency - The SBRRB recommended that a full analysis and update be performed. DCCA plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. DCCA's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008. The SBRRB is in concurrence with the Agency.

Comments - A discussion with DCCA in 2018 indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

6. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks

Justification - The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

2006 Recommendation - There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

Response from Agency - The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be carried out. DCCA has reviewed the rules and determined that no substantive amendments are necessary at this time. DCCA has received an average of 18 complaints a year - there have been approximately 325 registered activity desks over the past four years. Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company.

The SBRRB is in concurrence with DCCA. Although DCCA determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, it will again, be approached by the SBRRB.

Comments - A discussion with DCCA in 2018 indicated that these rules are not in the process of being amended. They will be reviewed soon; at that time, a determination will be made if modifications are warranted.

As of the printing of this 2026 report, there have been no changes or updates to the rules.

Department of Health

Medical Division

7. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes

Justification - The rules establish minimum requirements for the certification and licensure of developmental disabilities in domiciliary homes for adult individuals with

developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities.

These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

2006 Recommendation - Standards have changed, and enforcement of the rules has been different since the rules were established in 1992. Therefore, some provisions should be deleted. Reanalysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Comments - As of 2026, DOH's website showsthe rules are "Pending Amendment."

8. Chapter 11-95 – Freestanding Surgical Outpatient Facilities

Justification - The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised, and federal reimbursement will not be realized. The rules were established in 1986.

2006 Recommendation - Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

Comments - As of 2026, DOH's website continues show the rules are "pending repeal and replacement by Chapter 92."

9. Chapter 11-96 – Freestanding Adult Day Health Centers

Justification - The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees, and the public. The rules were established in 1991.

2006 Recommendation - The Agency has indicated that the rules need revision; rules are 15 years old. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding; the SBRRB concurs.

Final Commentary - As of 2024, there were no changes or updates to the rules.

10. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded

Justification - The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

2006 Recommendation - Agency has indicated that the rules need revisions; rules are over 20 years old. The SBRRB agrees with DOH that these rules should be reviewed and revised.

Response from Agency - On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules are updated because there is a greater population within the community, so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Comments - As of 2026, there were no changes or updates to the rules.

Environmental Division

Noise, Radiation and Indoor Air Quality Branch

11. Chapter 11-39 – Air Conditioning & Ventilation System

Justification - The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Comments - As of 2026, DOH's website continues to show rules are "Pending repeal/replacement by Chapter 48."

12. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules

Justification - The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

Recommendation - These rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to a public hearing.

Commentary - As of 2026, there were no changes or updates to the rules.

13. Chapter 11-45 – “Radiation Control”

Justification - The rules are required for core public health. The rules set minimum standards for all persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

Recommendation - The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency - This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Comments - As of 2026, DOH’s website continues to show the rules are “pending amendment & compilation.”

Public Utility Commission (PUC)

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F – Title 6) to Department of Commerce and Consumer Affairs (DCCA – Title 16).

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2021 through June 30, 2023, with reasons for justifying the rules’ continued implementation:

1. HAR Title 16 Chapter 603 – Motor Carrier Tariffs and Schedules

Agency’s Justification

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically, those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. They were established in 1994.

Recommendation

Rules are more than twelve years old; full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation currently. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of 2020, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

2. HAR Title 16 Chapter 605 – Water Carriers

Agency's Justification

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. The rules have not been amended since first promulgated in 1976.

Recommendation

Rules are over 30 years old; full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Commission has determined that HAR Chapter 6-65, "Water Carriers" does not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of 2020, this rule moved from B&F Title 6 to DCCA Title 16. This transfer required the simultaneous repeal of the existing B&F chapters and adoption of new chapters in the DCCA title.

These rules were transferred with an effective date of 1/01/2019, however, no other modifications or changes were made at the time.

Under Section 201M-7(a), the following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

3. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers Agency's Justification

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS Section 271-1. The rules were established in 1992.

Recommendation

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation. The recommendation, as described above,

does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Thus, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Comments

As of 2020, contents moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii 2014, however, as of the date of this 2024 Report, the chapter remains as 62 and no changes or modifications have been made to the rules.

COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Hawaii County

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Hawai'i Fire Department

1. Hawaii Revised Statutes Chapter 17 – State Fire Code

Justification – Article 1, Division 1 & 2. Will be adopting 2021 State Fire Code, estimated completion is June 2025.

City and County of Honolulu

Pursuant to Section 201M-7, HRS, we have surveyed all our City departments and agencies and hereby affirm that except for the items listed below by department/agency, there were no rules adopted during the prior year that affect small business:

Department of Planning and Permitting (DPP)

DPP reported that there were no new, amended, or repealed Administrative Rules and that no rules were adopted affecting small business during the period of July 1, 2021 through June 30, 2023

Department of Transportation Services (DTS)

DTS may amend or repeal Chapter 23-3, Bus Advertising on City Transportation Vehicles (TheBus), within the next year because of enactment of Ord. 23-21.

DTS has not adopted any rules within the past calendar year.

Honolulu Board of Water Supply (BWS)

Although no new rules were adopted, BWS presented proposed water rates to the SBRRB on August 17, 2023 and received support to proceed to public hearing. The rates were subsequently adopted by the BWS Board on November 28, 2023 for rates and charges for the furnishing of water and water service for Fiscal Years 2024 to 2029. The rate changes go into effect as of February 1, 2024 and will have an impact on small business.

Department of Facility Maintenance

For future awareness, Storm Water Quality has existing Administrative Rules in place under Title 14, Chapter 6 that will be revised and updated in accordance with the Revised Ordinances of Honolulu (ROH), placing storm water enforcement authority under Chapter 43, ROH, versus Chapter 14 (ROH). The revised rules are scheduled for adoption in CY2024 and the SBRRB will be advised accordingly.

Honolulu Liquor Commission

On June 17, 2022, Act 076 (HB137 HD1 SD2, CD1) was signed into law, with an effective date of January 1, 2023. Act 076 made broad revisions to Hawaii Revised Statutes (HRS) Chapter 281, with a particular focus on the license application process and the investigative scope and discretion accorded an investigator in this process. Because the license application process is a core function of the Liquor Commission, the impact of Act 076 is expected to be extensive. Below is a list of existing Rules that may be amended in response to requirements found in Act 076, reserving the right to add to or delete from the list following additional review:

1. Rule §3-80-1.1. Definitions
2. Rule §3-81-19.11 Powers of the Commission in Conducting Hearings
3. Rule §3-81-20. General Right of Inspection
4. Rule §3-82-38.25. Restrictions of Conditions on Licensing
5. Rule §3-82-41.4. Management of Operating Agreements
6. Rule §3-82-45.1. Requirement for Criminal History and Fingerprint Card
7. Rule §3-83-53.1. License Applications; Notice of Hearing; Affidavits
8. Rule §3-83-56. Report by Investigator
9. Rule §3-83-57.1. Affidavits; Forms
10. Rule §3-83-61.1. Renewal of Existing License
11. Rule §3-84-79.1 Obstructing Commission Operations

Although the Honolulu Liquor Commission conducted public hearings on the adoption of proposed new rules on February 10, 2022, due to changes in the Commission and Commission administration, the process was not completed. For awareness, completion of the adoption process is anticipated in CY2024.

Department of Parks and Recreation (DPR)

The Department of Parks and Recreation amended the "Rules and Regulations Governing Shore Water Events" in CY2023. The proposed rules went before the SBRRB on July 20, 2023, a public hearing was held on October 23, 2023 and the proposed rules went back before the SBRRB on November 16, 2023. The rules were approved by Mayor Blangiardi and filed with the City Clerk on December 5, 2023.

See; [2023-12-11 fully executed Admin Rules Title 19 DPR Chap 25 Rules and Regulations Governing Shore Water Events.PDF \(honolulu.gov\)](#)

Honolulu Fire Department (HFD)

The HFD had no administrative rules or rule changes that would affect small businesses at this time. The public facing rules the HFD has jurisdiction over is the Fire Code of the City and County of Honolulu, of which only clarification changes were made in its recent adoption. Amendments to the Fire Code are under review and have not been adopted.

Adopted amendments affecting small businesses will be included in the next annual report.

Mayor's Office of Culture and the Arts (MOCA)

MOCA does not have Administrative Rules and thus this request is not applicable to the department.

City and County of Honolulu Office of the Managing Director

The following departments have reported no changes:

Department of Environmental Services (ENV)

Department of Human Services (DHR)

Office of Economic Revitalization (OER)
Department of the Corporation Counsel (COR)
Department of Information Technology (DIT),
Medical Examiner Department (MED)
Department of Emergency Management (DEM)
Office of Climate Change, Sustainability and Resiliency (CCSR)
Honolulu Authority for Rapid Transportation (HART)
Department of Customer Services (DCS)
Department of Design and Construction (DDC)
Office of Housing (HOU)
Managing Director's Office (MDO)

County of Maui

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Department of Planning

1. Maui County Code 19.29.045 – Private Restrictions on Small-Scale Agricultural Uses and the Keeping of Animals

Justification – Ordinance No. 5690 made effective August 27, 2024. Any private restriction in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances limiting or prohibiting small-scale agricultural uses and the keeping of animals in any rural district is voidable. This section does not apply to any deed, agreement of sale, or other conveyance of land existing prior to the effective date of the ordinance establishing this section.

2. Maui County Code 19.30A.050 – Title 19 Zoning Code Amendment – Composting in the Agricultural District

Justification -- Ordinance 5695: Reflects Section 205-2(s), Hawai'i Revised Statutes, via Act 131 (2022). Specifically, composting and co-composting operations will be permitted "accessory uses" in the Agricultural District on the condition that operations that process their own green waste and do not require permits from the State Department of Health must use the finished compost product only on the operation's own premises. Further, composting and composting may be permitted as a "principal use" provided that a Special Use Permit is approved by the Planning Commission.

County of Kaua'i

Under 201M-7(a), the following is a list of rules describing the specific public purpose or interest for adopting the respective rules that affect small business, during the period of July 1, 2023 through June 30, 2025, with reasons for justifying the rules' continued implementation:

Department of Parks and Recreation (DPR)

1. Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park

Justification – The Department proposes to establish uniform regulations for the operation of Concessionaires at the Spouting Horn Park and uniform processes to acquire a Contract to operate a Concession at the Spouting Horn Park.

Department of Liquor Control Commission

2. Rules and Regulations of the Liquor Control Commission of the County of Kaua'i

Justification – It is anticipated that changes will be required based on pending state legislation. This agency will engage those impacted by potential rules changes and the SBRRB as necessary.

The Planning Department

3. Special Management Area Rules and Regulations

Justification – This rule amendment will impact small businesses, and the Planning Department will seek SBRRB review.

The Finance Department

4. Real Property Tax Classification Rules

Justification – This is due to amendments of Kaua'i County Code Section 5A-1.1 et seq. as it relates to real property use for tax purposes. The amendment may impact small businesses, and more analysis will occur when drafting begins.



Department of Business, Economic Development & Tourism
Small Business Regulatory Review Board

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