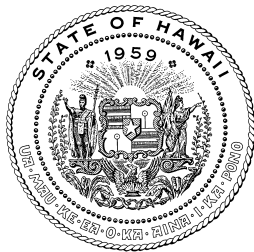


Small Business Regulatory Review Board Meeting

March 14, 2023

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel: 808 798-0737

Josh Green, M.D.
Governor

Chris J. Sadayasu
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Sanford Morioka
O'ahu

Tessa Gomes
O'ahu

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

AGENDA

Tuesday, March 14, 2023 ★ 10:00 a.m.

**Leiopapa A Kamehameha Building – State Office Tower
235 Beretania Street, Conference Room 405
Honolulu, HI 96813**

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

**A. By attending the in-person meeting at:
Leiopapa A Kamehameha Building – State Office Tower
235 Beretania Street,
Conference Room 405, Honolulu, HI 96813; or**

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

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQ109>

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

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

Members of the public may also submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Monday, March 13, 2023.

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

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

- I. Call to Order**
- II. Approval of January 19, 2023 Meeting Minutes**

III. New Business – Before Public Hearing

- A. Discussion and Action on the Proposed Amendments to Hawaii Administrative Rules Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by Department of Health – **Discussion Leader – Sanford Morioka**
 - a. Appendix C – Discharges of Storm Water Associated with Construction Activities
 - b. Appendix J – Occasional or Unintentional Discharges from Recycled Water Systems
 - c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks

IV. Legislative Matter

- A. Review of House Bill 511, Related to the Small Business Regulatory Review Board” - for appropriation for staffing, commissioner inter-island travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism
- B. Discussion and Action on the Upcoming Governor’s Message Submitted for Consideration for the Gubernatorial Nomination of Sanford Morioka to the Small Business Regulatory Review Board for a term to expire June 30, 2027
- C. Discussion and Action on the Upcoming Governor’s Message Submitted for Consideration for the Gubernatorial Nomination of Jennifer Salisbury to the Small Business Regulatory Review Board for a term to expire June 30, 2027

V. Administrative Matters

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

VI. Next Meeting: Thursday, April 20, 2023 at 10:00 a.m., held via Zoom and at 250 S. Hotel Street, Conference Room 436, Honolulu, HI 96813

VII. Adjournment

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

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

II. Approval of January 19, 2023 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - **DRAFT**

January 19, 2023

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- Sanford Morioka
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walsh
- William Lydgate
- Taryn Rodighiero
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF November 17, 2022 MINUTES**

Mr. Ritchie motioned to accept the November 17, 2022 meeting minutes, as presented. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

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

Discussion leader Mr. Morioka stated that this Board reviewed the pre-public hearing rules at its August 18, 2022 meeting; the rules are before the Board today after the public hearing. Mr. Darryl Lum, Engineering Section Supervisor at DOH's Clean Water Branch,

explained that the rule changes are for the National Pollutant Discharge Elimination System (NPDES) permits. The rules package also includes Hawaii's proposed re-issuance of five NPDES general permits.

Prior to the virtual public hearing held in November 2022, notices were sent to all permittees covered under the five general permits, as well as governmental accounts that have expressed a need to be notified of changes to the rules. Seven attendees were at the public hearing. Written comments were received from the City and County of Honolulu, the Department of Land and Natural Resources, and Par Hawaii Refining; all testimonies and comments are provided in the Board's agenda packet. Mr. Lum discussed the testimonies, and based on those testimonies, explained what changes were made, or not made, to the rules.

In response to Mr. Yamamoto's inquiry as to what entity is responsible when drainage flows into a drainage canal over a private property/small business that leads to state waters, Mr. Lum explained that the NPDES is responsible for only certain situations regarding storm water. Thus, only the City and County of Honolulu and a portion of the County of Maui is affected by these certain situations. If the County falls within a certain criteria, it needs to request a special permit for all of the drainage structures that discharge state waters. If the County is part of the certain criteria, the County would be held responsible for the discharge.

Chair Cundiff thanked Mr. Lum and the work of the Clean Water Branch for the fantastic outreach conducted to the impacted stakeholders. DOH's summaries to the changes, the responsiveness to the input from those impacted parties, and those changes that were made as a result, are highly commendable.

Mr. Morioka motioned to send the proposed rules to the Governor for adoption. Mr. Lee seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

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

Chair Cundiff mentioned that the terms for board members Mr. Morioka, Ms. Rodighiero and Mr. Yamamoto's expire June 30, 2023. Mr. Morioka is planning to re-register but Ms. Rodighiero has elected not to stay on due to family commitments; Mr. Yamamoto is able to stay on as a "holdover" for another year.

B. Discussion on this Board Fiscal 2023 – 2024 Goals

The following discussions and motions were made in regard to the Board's goals for the upcoming three to five years.

Vice Chair Albitz noted that the County of Maui is not submitting rules for review. She recently found out that the County's Planning Commission is promulgating rules, and despite the rules impacting small businesses, they have not been brought forth to this Board despite her requests.

Along these lines, Chair Cundiff explained that one of the goals for improved awareness is to meet with State and County agencies and explain what this Board does. Utilizing DBEDT staff, specifically the Board's Office Assistant, Ms. Jet'aime Ariola, would be extremely helpful in this area. Mr. Ritchie added that Ms. Ariola did a great job at the Small Business Fair this past year, and if she is willing, the Board should utilize her outreach skills whenever possible. Chair Cundiff asked that if any of the board members are available to join Ms. Ariola in any of the outreach efforts, to let her know.

Mr. Lee motioned to support the reimbursement of mileage for staff member Ms. Ariola when using her personal vehicle for travel and performing small business outreach for this Board. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

Mr. Yamamoto stated that there is some vagueness and confusion in reading policies and procedures and understanding the difference between a state rule versus a county ordinance. Deputy Attorney General Kato will research the Counties' processes for creating policies and procedures versus ordinances and rules and provide the information to the members.

Chair Cundiff suggested that the letter that was previously drafted to the chambers of commerce and business and trade organizations re-introducing this Board, which is included in the Board's agenda packet, but was never mailed due to the pandemic, would be equally sufficient for outreach efforts if it was also sent to the various divisions of the Counties.

Chair Cundiff believed it was a good idea to resurface this letter and perhaps have the Director of DBEDT also sign it. He asked the Board members to let staff know of any organizations to add to the list. Vice Chair Albitz stated that while the Maui Chamber of Commerce is fully aware of this Board, it would be most beneficial for the County of Maui's departments to also receive the letter; she will approach the Maui Chamber of Commerce for names and addresses. The list of chambers and business organizations will be emailed to the Board members for their review; if there are any additions or other changes, please send to Ms. Ariola.

Mr. Yamamoto motioned to update and adopt the proposed draft letter to the chambers of commerce, business and trade organizations as the Board members see fit. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

Chair Cundiff explained that sending out an "introduction" letter to the State departments, especially now that there is a new administration and new cabinet members in order to set-up meetings with the directors, is a good idea. Board members can either schedule the meeting themselves or work with DBEDT staff to help schedule; a draft letter will be sent out for the members' review.

Second Vice Chair Shick motioned to resurface, update, and send out the Board's introduction letter to the State departments' current Directors with a copy to the respective discussion leaders, which will request a time and date to meet and discuss the Board's mandates. Mr. Lee seconded the motion, and the Board members unanimously agreed.

Chair Cundiff mentioned that budget projections were created to include if and when a meeting is held on a neighbor island; the projections, which are included in the agenda packet, are comparable in cost to having neighbor island board members fly to Oahu. Thus, he suggested that one of the Board's goals would be to conduct a board meeting on a neighbor island; the board members were in concurrence with this suggestion. Mr. Ritchie also suggested we may want to include a partner/organization to help with the venue and advertising of the meeting as well as outreach after the meeting.

Ms. Palcovich mentioned that a number of years ago, members from this Board provided a PowerPoint presentation at a Governor's cabinet meeting to discuss the Board's mandates; this was well-received by the state departments. Ms. Palcovich will look into the logistic of doing another presentation at a cabinet meeting sometime in the future.

Chair Cundiff stated that Ms. Ariola is continuing to do a good job with postings on social media by creating an awareness. Changes made to this Board's website are also a driver to the website; he added that hopefully by doing weekly social media postings, it will take readers to the website. He suggested that DBEDT start tracking "hits" on the website to quantify if the new website has caused more viewings.

Chair Cundiff also stated that maintaining a full capacity board helps with improved awareness and effectiveness. As Ms. Rodighiero will be leaving the Board in June 2023, we will reach out to the Senate president with any new potential board members. Vice Chair Albitz indicated that she knows of someone from Maui who has already started her application on the Governor's Board and Commissions website.

Mr. Lee motioned to adopt this Board's proposed three to five-year goals so DBEDT staff may begin assisting in these efforts. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

V. NEXT MEETING - Thursday, February 16, 2023 at 10:00 a.m.

VI. ADJOURNMENT

Mr. Morioka motioned to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 11:22 a.m.

III. New Business – Before Public Hearing

- A. Discussion and Action on the Proposed Amendments to Hawaii Administrative Rules Title 11 Chapter 55 Water Pollution Control, as follows, promulgated by DOH
 - a. Appendix C – Discharges of Stormwater Associated with Construction Activities
 - b. Appendix J – Occasional or Unintentional Discharges from Recycled Water Systems
 - c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks

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

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

- 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.
Please see attached.

- 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.)

*

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*

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.

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

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

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

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

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

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
-
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3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

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

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

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

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>

Small Business Regulatory Review Board Small Business Impact Statement

For Proposed Revisions to Hawaii Administrative Rules (HAR) Chapter 11-55 Water Pollution Control

Department of Health (DOH)
Environmental Management Division (EMD)
Clean Water Branch (CWB)

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

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

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

Appendix C of HAR Chapter 11-55 authorizes the discharges of storm water associated with construction activities to a State receiving water. Construction activities include but are not limited to: clearing; grading; excavation; and on or off-site construction support activities, that result in the disturbance of one acre or more of total land area. This

general permit also covers activities that disturb less than one acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Appendix J of HAR Chapter 11-55 authorizes unintentional discharges from recycled water systems to a State receiving water. The discharge shall be composed entirely of R-1 water, or R-1 water with any combination of storm water or potable water or water used primarily for irrigation. R-1 water is defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in HAR Chapter 11-62. Unintentional discharges are waters that are discharged rarely and were never planned to be discharged to State waters.

Appendix L of HAR Chapter 11-55 authorizes discharges of circulation water from decorative ponds or tanks to a State receiving water. The decorative ponds or tanks may contain fish or other aquatic species, not including mammals. Appendix L also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled “Water Quality Standards.”

The only portions of the main body of HAR 11-55 that are proposed to be substantively revised (i.e., are not grammatical or stylistic revisions) are:

1. HAR 11-55-34.02 to reflect the new expiration dates for the proposed General Permits in Appendices C, J, and L; and
2. HAR 11-55-42 reflecting references to Chapter 11-54 due to the section’s relocation from Chapter 11-54 to 11-55.

Early Stakeholder Outreach on the proposed revisions to HAR 11-55 and the general permits was conducted from February 8, 2023 through March 1, 2023. The CWB successfully transmitted nearly 1800 emails to notify current permittees and organizations and to solicit comments. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

Acronyms used in this reference:

CWA	Clean Water Act
HRS	Hawaii Revised Statutes
HAR	Hawaii Administrative Rules
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
DOH	State of Hawaii, Department of Health
CWB	Clean Water Branch
NPDES	National Pollutant Discharge Elimination System
NGPC	Notice of General Permit Coverage

HRS §201M Determination of Small Business Impact

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

The Appendix C, Storm Water Associated with Construction Activities General Permit being revised and renewed affects businesses that either perform or contract someone to perform construction activities of one acre or more. Appendix C primarily impacts government agencies, municipalities, small businesses who are land developers, and businesses undergoing new development or capital improvements. The proposed revisions to Appendix C include updating the effective dates; adding coverage from snowmelt runoff; strengthening pollution prevention for chemicals onsite; streamlining documentation of problems and corrective actions taken; specifying permit coverage extension procedures under the proposed General Permit; maintaining uniformity with the requirements for meeting water quality standards; and specifying permit coverage extension procedures under the existing General Permit. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

The Appendix J, Unintentional Discharges from Recycled Water Systems General Permit being revised and renewed would affect businesses that use recycled water and unintentionally discharge that water to a State receiving water such as the ocean or a stream. The proposed revisions to Appendix L include updating the effective dates; requiring practices to prevent pollutants from being discharged to State receiving waters; specifying permit coverage extension procedures under the proposed General Permit; clarifying analysis reporting processes; and specifying permit coverage extension procedures under the existing General Permit. **There is no permittee covered under Appendix J, so no small businesses will be affected currently.**

The Appendix L, Circulation Water from Decorative Ponds or Tanks General Permit being revised and renewed affects businesses that discharge water from decorative ponds or tanks to a State receiving water such as the ocean or a stream. There are three permittees: a government agency, a residential subdivision, and a private business. The private business is Wai Koa Guava Plantation LLC. The proposed revisions to Appendix L include updating the effective dates; requiring practices to prevent pollutants from being discharged to State receiving waters; specifying permit coverage extension procedures under the proposed General Permit; photographing the discharge; and specifying permit coverage extension procedures under the existing General Permit. **DOH does not expect any of the proposed revisions to the rules to significantly impact small business.**

- (2) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction,

labor, professional services, revenue loss, or other costs associated with compliance.

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

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

No direct cost increase for small businesses (no increase in fees or fines).

No significant indirect cost increase expected for small businesses.

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

There is no additional monetary cost to CWB or other agencies affected by the rule changes. The CWB does not receive direct monetary benefit from the proposed revisions.

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

Revisions of HAR Chapter 11-55, either benefit or have no adverse impact on small business; therefore, methods to reduce the impact on small business were not explored.

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

DOH does not believe there are less restrictive alternatives to the proposed amendments.

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

DOH does not believe that these revisions to HAR Chapter 11-55 will have an adverse impact on small business. Therefore, alternative methods of compliance for small businesses were not explored.

- (7) How the agency involved small business in the development of the proposed rules.
- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Early Stakeholder Outreach on the proposed revisions was conducted from February 8, 2023 through March 1, 2023. The CWB emailed permittees, government agencies, public notice distribution list (list of anyone in the public that wants to be notified of all CWB public notices), General Contractors Association, and Kauai Contractors Association. Combined, the CWB sent out approximately 1800 emails. CWB did receive 6 substantive comments from various entities, 3 from government agencies and 3 from consultants, all of which are small businesses.

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

The standards proposed are not more stringent than any comparable or related federal, state, or county standards.

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

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

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

Public Hearing Approval Request

The DOH-CWB requests approval to conduct a public hearing.

- Summary of changes

- Why is this section of Hawaii Administrative Rules being amended?

The DOH-CWB proposes to amend HAR 11-55 and amend and reissue HAR 11-55, Appendices C, J, and L.

Rulemaking is required as Appendices C, J, and L expire on February 8, 2024 and must be readopted and reissued to continue their use.

- What problem is the rule change meant to solve?

The rule change is primarily to issue the Appendices C, J, and L before they expire.

- List all changes that are being made.

See the fact sheets for each general permit.

- Impact of changes

- How does this rule change address the problem?

As stated previously, the rule change is primarily to issue Appendices C, J, and L before they expire.

Failure to make this rule change will result in the expiration of Appendices C, J, and L on February 8, 2024.

See the fact sheets for specific explanations for each specific change.

- Who are the stakeholders? Positive and negative.

Appendices C, J, and L may impact small businesses, however, there should be no adverse impact from revisions.

- What are the potential problems with the rule change?

The CWB does not expect there to be potential problems with the rule change. The general permits have not become more stringent or costly than they were before.

- What is the fiscal impact?

The CWB does not expect there to be any major fiscal impacts as a result of this rule change. There may even possibly be reduced fiscal impact to permittees due to changes in effluent limitations and monitoring requirements. Further, the increased penalties do not affect permittees that comply with the general permit.

- What is the economic impact to the State?

There should be no significant economic impact to the State. There are no additional fees or costs associated with the changes to these general permits. As stated previously, State agencies issued coverage under these general permits may even save money as a result of changes to effluent limitations and monitoring requirements. Further, the increased penalties do not affect State agency permittees that comply with the general permit.

- Consequences if changes are not made.

- What are the consequences if the rule change does not get adopted, amended, or repealed?

If the General Permits are not renewed, all potential permittees will be required to apply for NPDES Individual permits. The filing fee for an NPDES Individual permit application is \$1000 vs. \$500 for general permit coverage. The individual permitting process adds significant processing time and burden to CWB staff. Further, the individual permitting process requires a public notice in a local newspaper (with all costs borne by the applicant) and a public comment period of a minimum of 30 days. The individual permitting process may also involve a public hearing. These additional procedures would cause delays in projects that could be covered under the general permit.

Amendment and Compilation of Chapter 11-55
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 11-55, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-55

WATER POLLUTION CONTROL

\$11-55-01	Definitions
\$11-55-02	General policy of water pollution control
\$11-55-03	General prohibition
\$11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
\$11-55-05	Receipt of federal information
\$11-55-06	Transmission of information to regional administrator
\$11-55-07	Identity of signatories to NPDES forms
\$11-55-08	Formulation of tentative determinations and draft permit
\$11-55-09	Public notice of applications
\$11-55-10	Fact sheet

§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits
§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to regional administrator of proposed NPDES permits
§11-55-26	Transmission to regional administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms
§11-55-34.04	General permit conditions
§11-55-34.05	Requiring an individual permit
§11-55-34.06	Reserved

§11-55-34.07 Degree of waste treatment
 §11-55-34.08 Notice of intent
 §11-55-34.09 Notice of intent review, notice of
 general permit coverage, additional
 conditions, terms, renewals, effective
 dates, and automatic coverage
 §11-55-34.10 Review of coverage issues and notice of
 intent and notice of general permit
 coverage decisions
 §11-55-34.11 Notice of general permit coverage
 revocation and/or termination
 §11-55-34.12 General permit compliance
 §11-55-35 Penalties and remedies
 §11-55-36 Hearings and appeals
 §11-55-37 Severability clause
 §11-55-38 Repealed
 §11-55-39 Public interest
 §11-55-40 Field Citations; non-compliance with
 NPDES requirements
 §11-55-41 Zones of mixing
 §11-55-42 Intake credits

Appendix A Department of Health Standard General
 Permit Conditions
 Appendix B NPDES General Permit Authorizing
 Discharges of Storm Water Associated
 with Industrial Activities
 Appendix C NPDES General Permit Authorizing
 Discharges of Storm Water Associated
 with Construction Activity
 Appendix D NPDES General Permit Authorizing
 Discharges of Treated Effluent from
 Leaking Underground Storage Tank
 Remedial Activities
 Appendix E NPDES General Permit Authorizing
 Discharges of Once Through Cooling
 Water Less Than One (1) Million
 Gallons Per Day
 Appendix F NPDES General Permit Authorizing
 Discharges of Hydrotesting Waters

Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing [Occasional or] Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions.

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of July 1, 2018 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence.

Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M.

For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of

Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to State waters or at water's edge adjacent to State waters. For calculating the annual treatment area, count each treatment area as a separate area treated.

Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or

- Section 303(c) of the Act, 33 U.S.C.
§1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under
Section 303(b) of the Act, 33 U.S.C.
§1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to State waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that is a:

- (1) Eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) Procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) Parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar

and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)). "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process

water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.81(c).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to State waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(f)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is

being used as a means of transportation. This includes additions of pollutants into State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

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

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating,

monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates,

living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means a notice to the owner/operator by the department that they are authorized to discharge and are covered under and must comply with the general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals,

channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(f) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to State waters.

"Pesticide" means the same thing as defined in section 11-54-4(f)(1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

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

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to State waters;
- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The

term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control

weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute State waters.

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

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and

comp 10/29/92; comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution

- control.** (a) It is the public policy of this State:
- (1) To conserve State waters;
 - (2) To protect, maintain, and improve the quality of State waters:
 - (A) For drinking water supply, and food processing;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) For oceanographic research;
 - (D) For the conservation of coral reefs and wilderness areas; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses;
 - (3) To provide that no waste be discharged into any State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
 - (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
 - (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion.

(a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres

of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, or for regulated small municipal separate storm sewer systems, unless the director waives NPDES permit coverage in accordance with 40 CFR §122.32(d) or (e), a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e).

An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or, for renewals, at least three hundred sixty days before the expiration date of the existing permit. The director may waive this three hundred sixty day requirement by issuing the permit with an effective date before the three hundred sixty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an

urbanized area, significant contributor of pollutants to State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or

otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application; and
- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to State waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator.
[Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp:

HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts
122; 123; 124, Subparts A and D; 125;
§123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the deficiency and shall, if the regional administrator so

- requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;
- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
 - (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms. (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business

function, or any other person who performs similar policy- or decision-making functions for the corporation, or

- (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (A) The chief executive officer of the agency, or
 - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
- (4) For a trust. By a trustee; or

- (5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position);
- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and

comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
 - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
 - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
 - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
 - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact

upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a)

The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) Notice shall comply with section 1-28.5, HRS;
- (2) Notice shall be mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in

40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;
- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;

- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
 - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
 - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
 - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;
- (3) The tentative determinations required under section 11-55-08;

- (4) A brief citation, including a brief identification of the uses for which the receiving State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
 - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (A) The thirty-day comment period required by section 11-55-09(b);
 - (B) Procedures for requesting a public hearing and the nature thereof; and
 - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
 - (6) The name and telephone number of a person to contact for additional information; and
 - (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.
- (c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

- (a) The director shall notify other appropriate

government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and
- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the

following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp

01/15/22; comp] (Auth: HRS
§§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251,
1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts
2; 122; 123; 124, Subparts A and D; 125;
§§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit, provided that persons submitting oral statements also submit a written copy of their oral statements prior to the end of the public comment period. The public comment period under section 11-55-09 shall automatically be extended to the close of any public

hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published in accordance with section 1-28.5, HRS;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed or emailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;

- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
- (5) Information regarding the date, time, and location of the hearing;
- (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
 - (A) Obtain further information;
 - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
 - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
 - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp

01/06/01; am and comp 11/07/02; comp 08/01/05; am and
comp 10/22/07; comp 06/15/09; comp 10/21/12; comp
12/06/13; comp 11/15/14; comp 02/09/19; am and comp
10/22/21; comp 01/15/22; comp] (Auth:
HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C.
§§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
 - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
 - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;

- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
 - (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
 - (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;
 - (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
 - (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
 - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into State waters and the effects of the wastes on the receiving State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
 - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
 - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be

provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

(h) Within 30 days from the date of issuance of the NPDES final permit, any interested party who submitted comments during the public notice period described by 40 CFR §25.5(b) or submitted testimony in the public hearing may appeal the NPDES final permit

decision issued under this chapter by filing a request for a contested case hearing, in accordance with HRS Chapter 91. "Interested" means any person with "standing" as defined by the Hawaii Constitution, statutes, rules, and Court decisions. The appeal shall be limited to specific issues raised during the public comment period or public hearing for the NPDES permit being appealed.

(1) All publication and mailing costs associated with any public notification of any permit modification during the appeal shall be paid by the appellant to the appropriate publishing agency or agencies determined by the director. The appellant shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to deny an appeal.

(2) Any revisions made to the permit during the appeals process shall comply with HAR 11-55-16.

(i) The director may deny applications for a permit from persons who are respondents in department issued open enforcement actions associated with water pollution, who fail to make payments as required by law for permit fees or penalties, or who have a history of violating water pollution laws such as failing to comply with permit requirements, effluent limits, or enforcement orders. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5,

122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a),
124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years.

(f) Changes from paper to electronic reporting requirements including those specified in 40 CFR Part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR Part 127 (Electronic Reporting Requirements for the NPDES Program) may be incorporated by minor modification as defined in 40 CFR 122.63. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).
- (5) The permittee's failure to comply with enforcement orders associated with the applicable NPDES permit.
- (6) The permittee's failure to pay penalties or fees, as required by law.

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the

director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4,

342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33
U.S.C. §§1252, 1342, 1370, 1251-1387;
40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D;
125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
 - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
 - (B) Necessary to meet any other federal law or regulations including, but not limited to:
 - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
 - (ii) Secondary treatment regulation in 40 CFR Part 133;
 - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
 - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
 - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and

- (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
 - (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
- (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants;
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it;

- (9) Intake credits in accordance with 40 CFR §122.45(g) and section 11-54-12; and
- (10) Recreational criteria for all State waters in section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
 - (A) Applicable effluent standards and limitations;
 - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or

(C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written

notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit

renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);
- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the

director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);

- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
 - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
 - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
 - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
 - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment

works, the permittee shall notify the director in writing of the following:

- (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
 - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
 - (C) The quality and quantity of effluent to be introduced into a treatment works; and
 - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of

- the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;
- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit;
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am

and comp 10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342,
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5,
342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C.
§§1251, 1284, 1311, 1316, 1317, 1318, 1342,
1370, 1251-1387; 40 CFR Parts 122; 123; 124,
Subparts A and D; 125; 403; §§122.41,
122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
- (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
- (3) Sample any discharge of pollutants or effluent.

(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

- (e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:
- (1) Establish and maintain records;
 - (2) Make reports;
 - (3) Install, use, and maintain monitoring equipment or methods;
 - (4) Sample effluent and State waters;
 - (5) Provide access to and copying of any records which are maintained; and
 - (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the

- authorization by the proposed NPDES permit of the discharge of pollutants;
- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
 - (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
 - (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp

10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13;
comp 11/15/14; comp 02/09/19; comp 10/22/21; comp
01/15/22; comp] (Auth: HRS §§342D-4,
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp:
HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C.
§§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;
124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least three hundred sixty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and
- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or

other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period:

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(l), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to

monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

- (1) Flow (in gallons per day or cubic feet per second); and
- (2) All of the following pollutants:
 - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
 - (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of State waters;
 - (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
 - (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge

of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
 - (A) The date, exact place, and time of sampling or measurements;
 - (B) The individual(s) who performed the sampling or measurements;
 - (C) The date(s) the analyses were performed;
 - (D) The individual(s) who performed the analyses;
 - (E) The analytical techniques or methods used; and
 - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This

period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(l)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a)

All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of

water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The

prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251,

1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
 - (A) Involve the same or substantially similar types of operations;
 - (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - (D) Require the same or similar monitoring; and
 - (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; comp 09/23/96; am and comp

09/22/97; comp 01/06/01; am and comp
11/07/02; comp 08/01/05; am and comp
10/22/07; comp 06/15/09; comp 10/21/12; comp
12/06/13; comp 11/15/14; comp 02/09/19; comp
10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-4,
342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;
40 CFR §122.28) (Imp: HRS §§342D-2,
342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311,
1342, 1370, 1251-1387; 40 CFR Parts 122;
123; 124; 125; §122.2, 122.28,
123.25(a) (11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial

activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi), dated January 15, 2022;

- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated ~~[February 9, 2019,]~~ _____;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities, dated July 13, 2018;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less, dated January 15, 2022;
- (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water, dated January 15, 2022;
- (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a

- construction activity, dated January 15, 2022;
- (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals, dated July 13, 2018;
 - (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities, dated July 13, 2018;
 - (9) Appendix J, titled "NPDES General Permit Authorizing [~~Occasional or~~] Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems, dated [~~February 9, 2019,~~]
_____;
 - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16), dated January 15, 2022;
 - (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks, dated [~~February 9, 2019,~~]
_____;
 - (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides", dated July 13, 2018. [Eff and comp 10/29/92; comp

09/23/96; am and comp 09/22/97; comp
 01/06/01; am and comp 11/07/02; comp
 08/01/05; am and comp 10/22/07; comp
 06/15/09; am and comp 10/21/12; am and comp
 12/06/13; comp 11/15/14; am and comp
 02/09/19; am and comp 10/22/21; am and comp
 01/15/22; am and comp]
 (Auth: HRS §§342D-4, 342D-5; 33 U.S.C.
 §§1342, 1370, 1251-1387; 40 CFR §122.28)
 (Imp: HRS §§342D-2, 342D-4, 342D-5,
 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-
 1387; 40 CFR Parts 122; 123; 124; 125;
 §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions.
 (a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a) (11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or

either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to State waters. In making this determination, the director may consider the following factors:
 - (A) The location of the discharge with respect to State waters;
 - (B) The size of the discharge;
 - (C) The quantity and nature of the pollutants discharged to the State waters; and
 - (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general

permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;

- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
 - (A) To meet any existing federal laws or regulations; or
 - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

- (b) A notice of intent shall:
 - (1) Be submitted on forms provided by the director;

- (2) Comply with the notice of intent requirements of the respective general permit; and
 - (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.
- (c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.
- (d) Material submitted shall be complete and accurate.
- (e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).
- (f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).
- (g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f).
- (h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).
- (i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
- (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500; and
- (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
 - (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;
 - (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than thirty calendar days after the start of construction activities;
 - (3) The expiration date of the existing general permit; or
 - (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).
- (l) (Reserved).

(m) A notice of intent shall be submitted to the director for:

- (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
- (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly

authorized representative that the notice of intent is incomplete, the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage.

(a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under

subsection (e) (2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the permittee otherwise. The department shall inform the permittee of any deadlines to submit a complete NOI to request authorization to discharge under the new general permit. Any permittee granted coverage under the general permit that receives an administrative extension for coverage, shall remain covered by the general permit until the earlier of:

- Authorization for coverage under reissuance or replacement of the general permit;
- The permittee's submittal of a notice of cessation;
- The issuance of an individual NPDES permit;
- A formal permit decision by the director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general or individual permit; or
- A formal permit decision by the director to terminate the administrative extension due to the Permittee failing to submit by the deadline specified by the director, a complete NOI to request authorization to discharge under the new general permit.

The department shall notify the permittee in writing that its administrative extension is being terminated and the reason(s) why. An administrative

extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance may be terminated and may be required to apply for individual NPDES permit coverage.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage. This paragraph does not apply to a notice of intent for small municipal separate storm sewer systems.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit

coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e) (2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am and comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 02/09/19; am and comp 10/22/21; comp 01/15/22; comp]

(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren §11-55-34.10, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp]
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general permit coverage and automatic coverage under section 11-55-34.09(e) (2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; comp 11/15/14; comp 2/9/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall

comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a) (11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 2/9/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; comp 09/23/96; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp

10/22/21; comp 01/15/22; comp] (Auth:
HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33
U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and
§§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11,
342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-
1387; 40 CFR Parts 122; 123; 124, Subparts A and D;
125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected.
[Eff 11/27/81; comp 10/29/92; comp 09/23/96; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [R 6/15/09]

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;

- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 06/15/09; comp 10/21/12; comp 12/06/13; comp 11/15/14; comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter.

Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in their storm water pollution control plan or best management practices plan or other plan;
- (iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;
- (v) Any person who fails to retain on-site or at a nearby office or field office:
 - a) a copy of the NPDES permit application or notice of

- intent or "no exposure" certification,
 - b) storm water pollution control plan, best management practices plan or all other plans required in the NPDES permit and NGPC and all subsequent revisions,
 - c) individual NPDES permit, notice of general permit coverage, or conditional "no exposure" exclusion, or
 - d) discharge monitoring reports;
 - (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.
- (B) A field citation shall indicate the following amounts:
 - (i) \$500 for any person who violates paragraphs (1)(A)(i), (ii), (iii), or (iv) for the first violation, and \$2,000 for a subsequent violation;
 - (ii) \$100 for any person who violates paragraph (1)(A)(v) for the first violation, and \$200 for a subsequent violation;
 - (iii) \$500 for any person who violates paragraph (1)(A)(vi) for the first violation, and \$1,000 for a subsequent violation.
- (2) Resolution of field citation.

- (A) A person issued a field citation may accept the citation by:
 - (i) Signing the field citation;
 - (ii) Paying the full amount indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
 - (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
 - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
 - (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
 - (ii) Pay the amount indicated; and
 - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2) (A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.

- (3) Form of citation. The department shall prescribe a field citation form. [Eff and comp 10/22/07; comp 06/15/09; comp 10/21/12; am and comp 12/06/13; am and comp 11/15/14; am and comp 02/09/19; comp 10/22/21; comp 01/15/22; comp] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

§11-55-41 Zones of mixing. (a) Zones of mixing are defined and authorized for use in discharge permits in section 11-54-1. Zones of mixing allow for dilution of wastes before compliance with the applicable water quality criteria must be met. Zones of initial dilution are a subset of zones of mixing that are applied to toxic pollutants.

- (b) Establishment, renewal, and termination.
- (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.
- (2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to chapter 11-54.
- (3) Whenever an application is approved, the

director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.

- (4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.
- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
 - (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
 - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
 - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
 - (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with

- any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
- (E) The capacity of the receiving water to dilute a pollutant or assimilative capacity is available in the receiving water for the pollutant in which a zone of mixing is being requested.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;
 - (B) The director may issue a zone of mixing for a period not exceeding five years;
 - (C) Every zone of mixing established under this section shall include conditions requiring the applicant to perform effluent monitoring, at a minimum, for pollutants with effluent limitations established in the permit, and receiving water quality monitoring, at a minimum, for pollutants for which a zone of mixing is established.

- Additional effluent and receiving water monitoring, including monitoring of bottom biological communities, may be required as appropriate. The results of all required monitoring shall be reported to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and
- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.
- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal meets the requirements in section 11-55-41. The renewal shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration, unless such an increase is in accordance with state

and federal anti-degradation and anti-backsliding regulations as applicable. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least three hundred and sixty days prior to the expiration of the zone of mixing.

- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.
- (10) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (11) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff and comp 10/22/21; comp 01/15/22; comp
] (Auth: HRS §§342D-1,

342D-4, 342D-5) (Imp: HRS §§342D-4,
342D-5)

§11-55-42 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant that is present in the intake water body.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake

pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the intake pollutant value; and
- (2) If there is no net increase in the mass of the intake pollutant for which the credit is given. A discharger may increase the concentration of the intake pollutant if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water, and the higher concentration discharge is demonstrated to not cause acute toxicity or detrimental effects.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) The intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made, or the director may waive this requirement if the director finds that no environmental degradation will result;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur;
- (3) The timing and location of the discharge of the intake pollutant would not cause adverse water quality impacts to occur; and,
- (4) The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in ~~[this chapter.]~~ chapter 11-54.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water" or request a waiver and demonstrate that no additional environmental degradation will occur in the receiving water; and
- (3) Documentation showing that pollutant(s) for which credits are being requested actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee:

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term; and
- (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under ~~[this]~~ chapter 11-54 continue to apply." [Eff and comp 10/22/21; comp 01/15/22; am and comp] (Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 11-55, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

KENNETH S. FINK, MD, MGA, MPH
Director
Department of Health

APPROVED AS TO FORM:

Dale K. Sakata

Deputy Attorney General

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix C
Authorizing Discharges of Storm Water Associated with Construction Activity

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

This general permit covers storm water discharges associated with construction activities, and on or off-site construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities, disturbing less than one acre of land area, that are part of a larger common plan with cumulative activities disturbing one acre or more of total land area.

- (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 discharges include storm water runoff, snowmelt runoff, and surface runoff and drainage that are associated with construction activities, and on or off-site construction support 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 40 CFR §124.9 (for EPA-issued permits). Language that is added to the 2019 Appendix C is shown as underlined and red-colored text, and language that is deleted is shown as ~~bracketed and strikethrough black-colored text~~.

The General Permit is divided into the following sections. Sections that are revised are shown as underlined and red-colored text.

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

3. Term of this General Permit and the Notice of General Permit Coverage
4. Standard Conditions
5. Effluent Limitations Applicable to all Discharges from Construction Sites
6. Water Quality-Based Effluent Limitations
7. Storm Water Pollution Prevention Plan (SWPPP)
8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)
9. Inspections
10. Corrective Actions
11. Notice of Intent (NOI) Requirements
12. Reporting Requirements
13. Submittal Requirements
14. Additional Conditions
15. Record Retention
16. Falsifying Report
17. Administrative Extension

Chapter 11-55, Appendix C Revisions

The proposed major revisions include:

- Adding general permit coverage for eligible storm water discharges from snowmelt runoff at sites with ongoing construction activities. Specifically, additional site inspection requirements are proposed to account for runoff due to the discharge of snowmelt after a storm event that produces 3.25 inches or more of snow within a 24-hour period. There are also additional requirements to reduce the site inspection frequency due to frozen conditions. All proposed requirements for snowmelt runoff are as stringent as the equivalent provisions that are specified in the current version of the U.S. Environmental Protection Agency Construction General Permit (2022 EPA CGP).
- Strengthening the linkage between the types of pollution prevention control needed and the volume of pollutants, including petroleum products and other chemicals, that are stored, handled, and disposed at a construction site. Specifically, storage requirements, containment controls, and spill procedures are proposed for pollutants based on their volumes. It is proposed to use the nominal volume of most industrial barrels (i.e., 55 gallons) as the volume threshold for determining the types of control. This volume threshold is also specified in the 2022 EPA CGP.

- Streamlining the documentation of problems found on the construction site and the corresponding corrective actions taken. Specifically, the current requirements for completing a corrective action report are proposed to be replaced by new requirements for updating a corrective action log. It is proposed to document on the log the same information that is currently found on a report. It is also proposed to ensure the certification, format, availability, and retention of a corrective action log. The proposed requirements for the corrective action log are identical to the provisions in the 2022 EPA CGP.
- Clarifying the renewal process of a Notice of General Permit Coverage (NGPC). Prior to the expiration date of the current general permit, permittees do not know the requirements of the new general permit, and therefore, permittees cannot request for a renewal when they do not know if compliance with the new general permit is possible. It is proposed to revise the renewal process of a NGPC, and to clarify the requirements of the administrative extension process.
- Maintaining uniformity with the requirements for meeting water quality standards (WQS), as specified in HAR Chapter 11-54. Specifically, references to the reasonable potential approach are proposed to be removed from the general permit. It is proposed to make clear that discharges not meeting WQS are prohibited, and permittees must ensure discharges do not lower water quality in the receiving state waters.

The proposed minor revisions include:

- Maintaining conformity of commonly used terms such as “storm water control”, “receiving state water”, “site drainage feature”, “permittee”, and “operator”.
- Clarifying unclear terms, incorrect references, and incomplete notes.

Revised Section 1.1

1.1.

This general permit covers ~~[discharges composed entirely of storm water runoff]~~ storm water discharges, including storm water runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities

that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Construction support activities include, but are not limited to, concrete or asphalt batch plants, rock crushing plants, equipment staging yards/areas, material storage areas, excavated material disposal areas, borrow areas, etc. Coverage under this general permit for construction support activities is allowed provided that the support activity is directly related to the construction [site]project required to have permit coverage for storm water discharges; is not a commercial operation, nor does it serve multiple unrelated construction projects; does not continue to operate beyond the completion of the construction activity at the project site it supports; and storm water controls are implemented in accordance with [this section]section 5 and if applicable, section 6, for storm water discharges from the support activity areas.

Rationale: Section 1.1 of the general permit specifies the types of storm water discharges from construction activities that are eligible for general permit coverage. This revision is proposed to include general permit coverage for storm water discharges from snowmelt runoff. Snowmelt runoffs are included in the current version of the U.S. Environmental Protection Agency (EPA) CGP that provides coverage for eligible storm water discharges from construction activities undertaken at locations where the EPA is the NPDES permitting authority. All proposed requirements for snowmelt runoffs are as stringent as the equivalent provisions specified in the 2022 EPA CGP. The 2022 EPA CGP can be accessed at:
<https://www.epa.gov/npdes/2022-construction-general-permit-cgp#2022cgp>.

This revision is also proposed to clarify the requirements for storm water discharges from the support activity areas. Specifically, storm water controls must be implemented in accordance with section 5 of the general permit, and if applicable, section 6 of the general permit for eligible discharges from the support activity areas.

Revised Section 2.2

2.2.

Discharges of storm water from new sources that ~~[have the reasonable potential to cause, or contribute to an excursion above any]~~do not meet applicable water

*quality standard are not eligible for coverage under this permit, except if the permittee has included appropriate controls and implementation procedures designed to bring the discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, the department expects that compliance with the storm water control requirements in this permit, including the requirements applicable to such discharges in section 6.2., will result in discharges that ~~[will not cause, have the reasonable potential to cause, or contribute to an excursion above any]~~**meet** applicable water quality ~~[standard.]~~**standards.***

For this permit "new sources" means projects which occur after this general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor.

Rationale: *The requirements in section 2.2 of the general permit are applicable to new sources, and they prohibit discharges that do not meet the instream water quality standards of receiving state waters. Currently, the general permit references the reasonable potential approach to prohibit all "discharges that have the reasonable potential to cause, or contribute to an excursion above any applicable quality standards." There are also water quality-based requirements in section 6.2 of the general permit that are applicable to existing sources, as well as new sources. The water quality-based requirements are specified to prohibit all discharges from all permittees that do not meet applicable water quality standards.*

This revision is proposed to maintain uniformity in the requirements for water quality standards, as specified in Hawaii Administrative Rules, Chapter 11-54 (HAR Chapter 11-54) and the general permit by removing references to the reasonable potential approach. This revision requires permittees to comply with specific requirements in the general permit, which are intended to ensure that their discharges meet applicable water quality standards in the receiving state waters. Specifically, this revision makes clear to permittees their requirements for complying with applicable water quality standards, and provides assurance that their discharges will not lead to a lowering of water quality in the receiving state waters. It is also proposed to revise sections 6.1 and 8.1 to maintain uniformity by removing references to the reasonable potential approach.

Revised Section 3.2 & Revised Section 3.3

3.2. Term of the Notice of General Permit Coverage

~~[A notice of general permit coverage under this general permit expires, the earlier of the following, unless the notice of general permit coverage is automatically terminated in accordance with section 2.3 or administratively extended under section 11-55-34.09(d):]~~

~~[3.2.1.~~

~~As specified on Page 55-C-1; or]~~

~~[3.2.2.~~

~~When the notice of general permit coverage specifies:]~~

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 3.3 of this general permit.

3.3. Administrative Extension of the Notice of General Permit Coverage

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:

3.3.1.

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;

3.3.2.

An application for a NPDES individual 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 NPDES individual permit authorizing the existing discharge; or

3.3.3.

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

Rationale: Section 3.2 of the general permit specifies the term of the general permit and a Notice of General Permit Coverage (NGPC) that is issued under the general permit. This revision is proposed to clarify that a NGPC granted under this general permit shall expire five years after the effective date of the general permit, unless it is administratively extended. This revision is also proposed to clarify the administrative extension process of a NGPC issued under the general permit.

Currently, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees need to submit a renewal NOI prior to the general permit's expiration date. This procedure creates a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees are 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 are not even aware of the requirements of the new general permit.

To avoid this situation, the renewal process for general permit coverage is revised. This revision specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Revised Section 5 (Note)

5. Effluent ~~[Limitation]~~ Limitations Applicable To All Discharges From Construction Sites

The permittee is required to comply with the following effluent limitations in this section for authorized discharges from the site and/or from construction support activities.

~~[Note: If the project is an "existing project" meaning that an administrative extension of the NGPC was granted or the NGPC was renewed under this general permit; or if the permittee is new because of a transfer of ownership and/or operation replaces the permittee of an already issued NGPC, and it is infeasible for the permittee to comply with a specific requirement in this section because (1) the requirement was not part of the 2007 Appendix C, and (2) because the permittee is prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 6, 2013, or because the permittee is unable to comply with the requirement due to the manner in which storm water controls have already been installed or were already designed prior to December 6, 2013, the permittee is required to document this fact in the SWPPP, refer to section 7, and are waived from complying with that requirement. This flexibility applies only to the requirements in sections 5.1 and 5.3.3. through 5.3.5. (except for sections 5.3.3.1., 5.3.3.2.2., 5.3.3.3.3.a., and 5.3.3.4.). This only applies to those portions of the site that have already commenced earth-disturbing activities or where storm water controls implemented in compliance with the previous permit have already been installed.]~~

Rationale: Section 5 of the general permit requires all permittees to comply with effluent limitations for authorized discharges from both the site and the construction support activities. This revision is proposed to delete the note clarifying when it is infeasible for a permittee to comply with any requirement specified in section 5 of the general permit. This clarifying note is no longer necessary due to the revision of the renewal process for a NGPC, as proposed in revised section 3 of the general permit.

Revised Section 5.1.1.2

5.1.1.2. Design requirements.

5.1.1.2.1.

The permittee shall account for the following factors in designing storm water ~~[controls:]~~controls.

Note: Storm water controls must be designed using the most recent data available to account for recent precipitation patterns and trends.

Note: If the site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, the permittee should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient storm water controls, and other mitigation measures may help minimize impacts from storm water discharges from such major storm events.

5.1.1.2.1.1.

The expected amount, frequency, intensity, and duration of precipitation;

5.1.1.2.1.2.

The nature of storm water runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and

5.1.1.2.1.3.

The range of soil particle sizes expected to be present on the site.

5.1.1.2.2.

The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize ~~[stormwater]~~ storm water infiltration to reduce pollutant discharges, unless ~~[infeasible. Use]~~ infiltration would be inadvisable due to the underlying geology and ground water contamination concerns, or infeasible due to site conditions. The permittee shall use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.

Rationale: Section 5.1.1.2 specifies the factors that permittees must account for when designing their storm water controls. This revision is proposed to stress the importance of considering historical precipitation data so that earth-disturbing activities can be planned during periods with a lower risk of precipitation, and so that erosion and sediment controls can be implemented to best manage the

expected precipitation. If earth-disturbing activities are planned during periods with a higher risk of precipitation, the permittee should consider implementing appropriate erosion and sediment controls to better manage the expected high precipitation.

This revision is also proposed to clarify the requirements for effluent limitations that prevent and control the discharge of sediment and other pollutants through the use of erosion control measures. Specifically, permittees should reduce pollutant discharges by maximizing infiltration unless there are geological features preventing the implementation of such erosion control measures, or there are potential risks of contamination to ground water.

Revised Section 5.1.1.4

5.1.1.4. Maintenance Requirements

5.1.1.4.1.

The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

5.1.1.4.2.

The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the permittee shall make the necessary repairs or modifications in accordance with the following schedule:

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If it is infeasible to complete the routine maintenance by the close of the next work day, the permittee shall document in its records why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance and complete such work by no later than 7 calendar days from the time of discovery.

Note: Routine maintenance means minor repairs or other upkeep performed to ensure the site's storm water controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

Rationale: *Section 5.1.1.4 of the general permit requires permittees to inspect and maintain the effectiveness of all erosion and sediment controls during the term of the general permit coverage. There is considerable confusion as to the difference between routine maintenance, and the repair or replacement of a storm water control that is considered a corrective action in accordance with section 10 of the general permit. To remedy this confusion and to improve compliance with the intended meaning of the general permit, this revision defines routine maintenance of storm water controls as minor repairs or other upkeep performed to ensure their effective operating condition. This revision is proposed to clarify that permittees must treat necessary on-site repairs of storm water controls as corrective actions, and not as routine maintenance.*

When repeated routine maintenance fixes are made to the same storm water control, this revision also clarifies that permittees must document their justification for treating these problems as routine maintenance, and not as necessary on-site repairs of a storm water control. If routine maintenance fixes of a storm water control are considered to be necessary on-site repairs, permittees must treat their corrective actions in accordance with section 10 of the general permit.

Revised Section 5.1.2.1

5.1.2.1. Provide natural buffer and sediment controls

~~[Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).]~~

Note: These requirements only apply when there are receiving state waters located within 50 feet of the project's earth disturbances.

Note: The department does not consider all storm water ~~[control features]~~ controls (e.g., ~~[storm water conveyance channels,]~~ constructed or natural site drainage features, storm drain inlets, sediment basins) to be state waters.

Note: Written documentation allowing use is required from the owner of areas that are not owned by the permittee or that are otherwise outside the operational control to be considered areas of undisturbed natural buffer for purposes of compliance with this section.

~~[The permittee shall ensure that any discharges to state waters through the area between the disturbed portions of the property and any state waters located within 50 feet of the site are treated by an area of undisturbed natural buffer and sediment controls.]~~ The permittee shall provide and maintain an area of undisturbed natural buffer and sediments controls between the disturbed portions of the site and any receiving state waters that are located within 50 feet of the project's earth disturbances.

Note: If the boundary of the disturbance area is within 50 feet of ~~[the State]~~ any receiving state water, triggering this requirement, then the installation of the project's perimeter control may be considered equivalent to the installation of sediment control.

Rationale: Section 5.1.2.1 of the general permit specifies the requirements for erosion and sediment controls that are applicable to all construction sites. This revision is proposed to clarify that the requirements only apply to receiving state waters located within 50 feet of earth disturbances found at construction sites.

Revised Section 5.3.3.3

5.3.3.3. Storage, Handling, and Disposal of Construction Products, Materials, and Wastes.

The permittee shall minimize the exposure to storm water of any of the products, materials, or wastes specified below that are present at the site by complying with the requirements in this section.

Note: These requirements do not apply to those products, materials, or wastes that are not a source of storm water contamination or that are designed to be exposed to storm water.

Note: Compliance with the requirements of this permit does not relieve compliance with respect to federal, state or local requirements for the storage, handling, and disposal of solid, hazardous, or toxic wastes and materials.

To ensure meeting this requirement, the permittee shall:

5.3.3.3.1.

For building products: In storage areas, provide either:

- a. Cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or*
- b. A similarly effective means designed to prevent the discharge of pollutants from these areas.*

5.3.3.3.2.

For pesticides, herbicides, insecticides, fertilizers, and landscape materials:

- a. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals and materials from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and*
- b. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.*

5.3.3.3.3.

For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:

- ~~[a. To comply with the prohibition in section 5.3.1.3., store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and]~~

The following requirements apply to the storage and handling of chemicals on the site. If the permittee is already implementing controls as part of an SPCC or other spill prevention plan that meet or exceed the requirements of this section, the permittee may continue to do so and be considered in compliance with these requirements provided the permittee reference the applicable sections of the SPCC or other plans in the SWPP as required in section 7.2.11.1.

5.3.3.3.1.

If any chemical container has a storage capacity of less than 55 gallons:

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. If stored outside, use a spill containment pallet or similar device to capture small leaks or spills; and
- c. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

5.3.3.3.2.

If any chemical container has a storage capacity of 55 gallons or more:

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. Store containers a minimum of 50 feet from receiving state waters, constructed or natural site drainage features, and storm drain inlets. If infeasible due to site constraints, store containers as far away from these

features as the site permits. If site constraints prevent storing containers 50 feet away from receiving state waters or the other features identified, the permittee must document in the SWPPP the specific reasons why the 50-foot setback is infeasible, and how the permittee will store containers as far away as the site permits;

- c. Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to storm water, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets, double-wall, above-ground storage tank); and
- d. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

[b-]5.3.3.3.3.

Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.

5.3.3.3.4.

For hazardous or toxic ~~[waste:]~~wastes:

Separate hazardous or toxic waste from construction and domestic waste;

- a. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements;
- b. Store all containers that will be stored outside away from ~~[surface waters]~~ receiving state waters, storm drain inlets, and constructed or natural site drainage features, and within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);

- c. *Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements; and*
- d. *Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.*

5.3.3.3.5.

For construction and domestic ~~[waste:]~~wastes:

Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, the permittee shall:

- a. For waste containers with lids, keep waste container lids closed when not in use, and close lids at the end of the business day and during storm events;*
- b. For waste containers without lids, provide either cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or a similarly effective means (e.g., secondary containment) designed to minimize the discharge of pollutants;*
- ~~*[a-]c.*~~ *On work days, clean up and dispose of waste in designated waste containers; and*
- ~~*[b-]d.*~~ *Clean up immediately if containers overflow[-], and if there is litter elsewhere on the site from escaped trash.*

Note: Examples of construction and domestic wastes include packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, demolition debris; and other trash or discarded materials.

5.3.3.3.6.

For sanitary waste:

Position portable toilets so that they are secure and will not be tipped or knocked over[-], and are located away from receiving state waters, storm drain inlets, and constructed or natural site drainage features.

Rationale: Section 5.3.3.3 of the general permit requires permittees to comply with specific pollution prevention requirements for activities, including the storage, handling, and disposal of construction products, materials, and wastes, that may result in pollutant discharges. This revision is proposed to make changes to the pollution prevention requirements for diesel fuel, oil, hydraulic fuels, or other petroleum products, and other chemicals based on the volume being used and stored on the site. Specifically, it is proposed to strengthen the linkage between the type of pollution prevention control needed and the volume of the pollutant kept on site.

Where smaller amounts of chemicals are kept on site, the permittees should be able to move the controls, that are used to prevent and treat a possible spill and leak, around the project site wherever materials are being used or stored. In such instances, the proposed revision establishes control requirements that are appropriate for smaller-sized containers by requiring that the permittees use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have available at all times a spill kit in good working condition and personnel available to respond quickly to a spill or leak. These controls will be effective at preventing a discharge from a spill or leak, while also having the added advantage of being able to be maneuvered more easily around the site.

Where larger amounts of chemicals are present at the site, the proposed revision includes controls that are more geared to the storage of chemical material in a fixed location and that are effective at preventing pollution from a larger spill or leak that could pose a significantly higher risk to the receiving water. Specifically, the proposed revision requires the following for larger volumes of chemicals on site:

- Use of water-tight containers;
- Store containers a minimum of 50 feet from the receiving state waters, drainageways, or storm water inlets;
- Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to storm water, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets); and
- Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond expeditiously in the event of a leak or spill.

The department proposes that the volume threshold for determining which types of controls apply is determined by whether or not the amount of oil or other chemicals on site is above or below 55 gallons. This proposed volume threshold is based on the nominal volume of most industrial barrels (i.e., 55 gallons), and it is identical to the volume threshold that is specified in the 2022 EPA CGP for determining if the amount of oil or other chemicals is relatively small or large at a construction site.

This revision is also proposed to make a minor change to the pollution prevention control requirements for construction and domestic wastes, as specified in section 5.3.3.3.5 of the general permit, by clarifying the need to close the lids of waste containers with lids or to provide covers for waste containers without lids. Specifically, it is proposed to require that where waste containers have lids, they must be kept closed at the end of the business day and during storm events. It is also proposed to require that where waste containers have no lids, they must be provided with covers or effective means to minimize the discharge of pollutants.

Revised Section 5.3.3.4

5.3.3.4. Washing of applicators and containers used for paint, concrete, or other materials.

The permittee shall provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. To comply with this requirement, the permittee shall:

5.3.3.4.1.

Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;

5.3.3.4.2.

Handle washout or cleanout wastes as follows:

5.3.3.4.2.1. For liquid wastes

- a. ~~Do not dump liquid wastes [in storm sewers;]~~or allow them to enter into constructed or natural site drainage features, storm drain inlets, or receiving state waters;
- b. ~~[Dispose of liquid wastes in accordance with applicable requirements in section 5.3.3.3.; and]~~Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground;
- c. Comply with applicable state or local requirements for the disposal of liquid wastes; and

5.3.3.4.2.2. For solid wastes

~~[e.]~~Remove and dispose of hardened concrete waste consistent with the handling of other construction wastes in section 5.3.3.3.; and

5.3.3.4.3.

Locate any washout or cleanout activities as far away as possible from receiving state waters~~[and storm water inlets or conveyances;]~~, constructed or natural site drainage features, and storm drain inlets, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

Rationale: Section 5.3.3.4 of the general permit requires permittees to comply with specific requirements applicable to the washing of applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials. This revision is proposed to clarify the handling of liquid wastes and solid wastes from washout and cleanout activities. Specifically, permittees cannot allow liquid wastes from entering storm inlets or receiving state waters, and permittees cannot dispose liquid wastes through infiltration.

Revised Section 6.1 & Revised Section 6.2

6.1. General Effluent limitation to meet applicable water quality standards

~~[The permittee shall not cause or contribute to a violation of the basic water quality criteria]~~ Discharges shall be controlled as necessary to meet applicable water quality standards as specified in section 11-54-4.

In the absence of information demonstrating otherwise, the department expects that compliance with the conditions in this permit will result in storm water

discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the department determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in section 10.2.1., and document the corrective actions as required in section 10.2.1. and section 10.4.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information in the NOI, or from other sources indicates that the discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in a state-established and EPA-approved Total Maximum Daily Load (TMDL).

6.2. ~~[Discharge limitations for]~~ Water quality-based conditions for sites discharging to impaired state waters

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or phosphorus, the permittee is required to comply with the requirements in section 6.2.2.

Note: For the purposes of this section, "impaired waters" are waters identified as impaired on the State CWA section 303(d) list, and waters with a state-established and EPA-approved TMDL. The construction site will be considered to discharge to an impaired water if the first state water to which the discharge enters is to a water on the section 303(d) list or one with a state established and EPA-approved TMDL. For discharges that enter a storm water drainage system prior to discharge, the first state water to which discharge is the water body that receives the storm water discharge from the storm water drainage system.

If discharge is to ~~[an impaired]~~ a state water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards~~[, including for it]~~. These controls might include those necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL~~[, or if coverage under an individual permit is necessary]~~. In addition, the department may require the permittee to apply for or obtain coverage under a NPDES individual permit.

If during the coverage under a previous permit, the permittee was required to install and maintain storm water controls specifically to meet the assumptions and requirements of a state-established and EPA-approved TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the permittee shall continue to implement such controls as part of this permit.

Rationale: Section 6.2 of the general permit specifies the requirements for construction sites with discharges to impaired state waters. State waters are identified as impaired when a nutrient-related parameter or a sediment-related parameter exceeds applicable state water quality criteria. This revision is proposed to clarify that the department may require additional limitations, controls or individual permit coverage when a permittee is discharging to an impaired state water. This revision is also proposed to maintain uniformity by removing references to the reasonable potential approach. For more details, see the rationale for the revised section 2.2 of the general permit.

Revised Section 7.2

7.2. SWPPP Contents

The SWPPP must include the following information, at a minimum.

7.2.1. Storm water team.

The permittee shall assemble and oversee a "storm water team," which is responsible for the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.

*The SWPPP must identify the personnel (by name ~~[or]~~ **and** position) that ~~[are]~~ **the permittee made** part of the storm water team, as well as their individual responsibilities. Each member of the storm water team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.*

7.2.2. Nature of construction activities.

The SWPPP must describe the nature of the construction activities, including the size of the project site (in acres) and the total area expected to be disturbed by the construction activities (in acres), construction support activity areas covered by this permit (see section 5), and the maximum area expected to be disturbed at any one time.

7.2.3. Emergency-related projects.

If conducting earth-disturbing activities in response to a public emergency (see section 1.3.), the permittee shall document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., state emergency proclamation or similar state proclamation), and a description of the construction necessary to reestablish effected public services. The proclamation of a civil defense emergency or similar proclamation is required to be from the President of the United States or State Governor.

7.2.4. Identification of other site contractors.

The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities.

7.2.5. Sequence and estimated dates of construction activities.

The SWPPP must include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity, for the following activities:

7.2.5.1.

*Installation of storm water [~~control measures,~~ **controls**], and when they will be made operational, including an explanation of how the sequence and schedule for installation of storm water [~~control measures~~ **controls**] complies with section 5.1.1.3.1. and of any departures from manufacturer specifications pursuant to section 5.1.1.3.2., including removal procedures of the storm water [~~control measures~~ **controls**] after construction has ceased;*

7.2.5.2.

Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;

7.2.5.3.

Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site;

7.2.5.4.

Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which the permittee is subject to in section 5.2.1.; and

7.2.5.5.

Removal of temporary [~~storm water conveyances/channels~~] site drainage features and other storm water [~~control measures,~~]controls, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the permittee or contractor to meeting these projections. When departures from initial projections are necessary, this should be documented in the SWPPP itself or in associated records, as appropriate.

7.2.6. Site map.

The SWPPP must include a legible site map, or series of maps, showing the following features of the project:

Note: Included in the project site are any construction support activities covered by this permit (see section 5).

7.2.6.1.

Boundaries of the property and of the locations where construction activities will occur, including:

- a. *Locations where earth-disturbing activities will occur, noting any sequencing of construction activities;*
- b. *Approximate slopes before and after major grading activities and drainage patterns with flow arrows. Note areas of steep slopes, as defined in section 5.1.2.6.;*
- c. *Locations where sediment, soil, or other construction materials will be stockpiled;*
- d. *Locations of any contaminated soil or contaminated soil stockpiles;*
- e. *Locations of any crossings of receiving state waters;*
- f. *Designated points on the site where vehicles will exit onto paved roads;*
- g. *Locations of structures and other impervious surfaces upon completion of construction; and*
- h. *Locations of construction support activity areas covered by this permit (see section 5).*

7.2.6.2.

Locations of ~~[all]~~any receiving state waters, including wetlands, that exist within or in the immediate vicinity of the site and indicate which ~~[waterbodies]~~of these receiving state waters are listed as impaired;

7.2.6.3.

The boundary lines of any natural buffers provided consistent with section 5.1.2.1.1.;

7.2.6.4.

Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of storm water onto, over, and from the site property before and after major grading activities;

7.2.6.5.

Storm water discharge locations, including:

- a. *Locations of any storm drain inlets on the site and in the immediate vicinity of the site to receive storm water runoff from the [~~project;~~] project site: [~~and~~]*
- b. *Locations where storm water will be discharged to receiving state waters (including wetlands); and*
- c. *Locations where storm water will exit the site.*

7.2.6.6.

Locations of all potential pollutant-generating activities identified in section 7.2.7.;

7.2.6.7.

Locations of storm water [~~control measures;~~] controls; and

7.2.6.8.

Locations where chemicals will be used and stored.

7.2.7. *Construction site pollutants.*

The SWPPP must include the following:

- a. *A list and description of all the pollutant-generating activities on the site.*
- b. *For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall and could be discharged from the construction site. The permittee shall take into account where potential spills and leaks could occur that contribute pollutants to storm water discharges. The permittee shall also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in section 5.3.5.1.*

7.2.8. *Sources of non-storm water.*

The SWPPP must also identify all sources of non-storm water and information, including, but not limited to, the design, installation, and maintenance of the ~~[control measures]~~controls to prevent its discharge.

7.2.9. Buffer documentation.

If the permittee is required to comply with section 5.1.2.1. because a receiving state water is located within 50 feet of the project's earth disturbances, the permittee shall describe which compliance alternative the permittee has selected for the site, and comply with any additional requirements to provide documentation in section 5.1.2.1.

7.2.10. Description of storm water ~~[control measures]~~controls

7.2.10.1 Storm water ~~[control measures]~~controls to be used during construction activity.

The SWPPP must describe all storm water ~~[control measures]~~controls that are or will be installed and maintained at the site to meet the requirements of section 5. For each storm water ~~[control measure]~~, control, the permittee must document:

- a. Information on the type of storm water control ~~[measure]~~to be installed and maintained, including design information;*
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of the site to meet the requirement of section 5.1.2.2.1.;*
- c. If contaminated soil exists on-site, the ~~[control measures]~~controls to either prevent the contact of storm water with the contaminated soil, including any contaminated soil stockpiles, or prevent the discharge of any storm water runoff which has contacted contaminated soil or any contaminated soil stockpiles;*
- d. For exit points on the site, document stabilization techniques the permittee will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with section 5.1.2.3.; and*
- e. For linear projects, where the permittee has determined that the use of perimeter controls in portions of the site is impracticable, document why the permittee believes this to be the case (see section 5.1.2.2.1.).*

7.2.10.2. Stabilization practices.

The SWPPP must describe the specific vegetative and/or non-vegetative practices that will be used to comply with the requirements in section 5.2., including if the permittee will be complying with the stabilization deadlines specified in section 5.2.1.3.2. The permittee shall document the circumstances that prevent the permittee from meeting the deadlines specified in sections 5.2.1.1. and/or 5.2.1.2.

7.2.10.3. Post construction measures.

Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.

7.2.11. Pollution prevention procedures.

7.2.11.1. Spill prevention and response procedures.

The SWPPP must describe procedures that the permittee will follow to prevent and respond to spills and leaks consistent with section 5.3., including:

- a. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and*
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with section 5.3.4. and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available.*

The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES

permit for the construction activity, provided that the permittee keeps a copy of that other plan onsite.

Note: Even if the permittee already has an SPCC or other spill prevention plan in existence, the plans will only be considered adequate if they meet all of the requirements of this section, either as part of the existing plan or supplemented as part of the SWPPP.

7.2.11.2. Waste management procedures.

The SWPPP must describe procedures for how the permittee will handle and dispose of all wastes generated at the site, including, but not limited to, clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

7.2.12. Procedures for inspection, maintenance, and corrective action.

*The SWPPP must describe the procedures the permittee will follow for maintaining the storm water ~~[control measures,]~~controls, conducting site inspections, and, where necessary, taking corrective actions, in accordance with section 5.1.1.4., section 5.3.2., section 9, and section 10 of the permit~~[-]~~l.
accordingly. The following information must also be included in the SWPPP:*

- a. Personnel responsible for conducting inspections;*
- b. The inspection schedule the permittee will be following, which is based on whether the site is subject to section 9.1.2. or section 9.1.3., and whether the site qualifies for any of the allowances for reduced inspection frequencies in 9.1.4. If the permittee will be conducting inspections in accordance with the inspection schedule in section 9.1.2.a. or section 9.1.2.b., the location of the rain gauge on the site or the address of the weather station the permittee will be using to obtain rainfall data~~[-]~~l. If the permittee will be reducing the inspection frequency in accordance with section 9.1.4.2., the beginning and ending dates of frozen conditions on the site; and*
- c. Any inspection or maintenance checklists or other forms that will be used.*

7.2.13. Staff training.

The SWPPP must include documentation that the required personnel were trained in accordance with the following:

7.2.13.1.

Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, the permittee shall ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- a. *Personnel who are responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention ~~[measures];~~ controls);*
- b. *Personnel who are responsible for the application and storage of chemicals (if applicable);*
- c. *Personnel who are responsible for conducting inspections as required in ~~[Part 4.1.1.];~~ section 9.1.1.; and*
- d. *Personnel who are responsible for taking corrective actions as required in ~~[Part 5.];~~ section 10.*

Notes: (1) If the person requiring training is a new employee, who starts after the permittee commences earth-disturbing or pollutant-generating activities, the permittee shall ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. (2) For emergency-related construction activities, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply, however, such personnel must have the required training prior to NOI submission.

7.2.13.2.

The permittee is responsible for ensuring that all activities on the site comply with the requirements of this permit. The permittee is not required to provide or document formal training for subcontractors or other outside service providers, but must ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.

At a minimum, personnel must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):

- a. The location of all storm water controls on the site required by this permit, and how they are to be maintained;*
- b. The proper procedures to follow with respect to the permit's pollution prevention requirements; and*
- c. When and how to conduct inspections, record applicable findings, and take corrective actions.*

7.2.14. Documentation of compliance with Safe Drinking Water Act Underground Injection Control (UIC) requirements for certain subsurface storm water controls.

If using any of the following storm water controls at the site, as they are described below, the permittee must document any contact with the department's Safe Drinking Water Branch for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144 -147. Such controls would generally be considered Class V UIC wells:

- a. Infiltration trenches (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);*
- b. Commercially manufactured precast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate storm water flow; and*
- c. Drywells, seepage pits, or improved sinkholes (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).*

7.2.15. Information to be included in the SWPPP prior to the start of construction activities.

7.2.15.1. Contractor information.

The following contractor (general and subcontractors) information shall be included in the SWPPP: legal name, street address, contact person's name and position title, telephone number, and email address.

7.2.15.2. Other state, federal, or county permits.

The following are required to be included in the SWPPP prior to the start of construction activities, if applicable:

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;*
- b. Copy of the county-approved grading permit;*
- c. Copy of the department of the army permit and section 401 water quality certification; and*
- d. A list of other permits.*

7.2.16. Any other information as requested by the director.

7.2.17. SWPPP certification.

The certifying person or duly authorized representative must certify, sign, and date the SWPPP in accordance with section 15 of appendix A, chapter 11-55.

7.2.18. Post-authorization additions to the SWPPP.

After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:

- a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;*
- b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable).*

Rationale: Section 7 of the general permit establishes the overall requirement that permittees develop and maintain Storm Water Pollution Prevention Plans (SWPPPs), and section 7.2 specifies the information that must be included in a SWPPP. A SWPPP is intended to serve as a road map for how the permittee will comply with the effluent limitations and other conditions of the general permit, and it must be in place prior to discharging.

The department emphasizes that a SWPPP is an external tool, and it does not include effluent limitations. Permittees are therefore able to modify or retool their SWPPPs during the course of the general permit term, and to continually improve their compliance with the requirements of the general permit. Permittees must document all SWPPP modifications in accordance with section 7.4.3, and they must certify all SWPPP modifications in accordance with section 7.4.4 of the general permit.

Section 7.2.1 of the general permit requires permittees to provide in their SWPPPs information about the Storm Water Team, and to ensure that specific personnel are identified as responsible for overseeing its development, and for ensuring compliance with the general permit requirements. This revision is proposed to clarify that a member of the Storm Water Team must be identified by name and position.

Section 7.2.6 of the general permit requires permittees to provide in their SWPPPs a legible site map, or series of maps, showing where construction activities and construction support activities will occur in relation to the boundaries of the project site. This revision is proposed to clarify that permittees must identify the locations of any receiving state waters within the vicinity of the construction site and identify if any of these receiving state waters are impaired. Information about receiving state waters will assist permittees in their compliance with the erosion and sediment control requirements specified in section 5.1.2, the pollution prevention requirements specified in section 5.3.3, and the water quality-based conditions for impaired state waters specified in section 6.2 of the general permit.

Section 7.2.10 of the general permit requires permittees to list in their SWPPPs all storm water controls that are installed and maintained at the construction site in order to comply with the effluent limitations specified in section 5 of the general permit. Storm water controls include erosion controls, sediment controls, pollution prevention controls, and perimeter controls. Storm water controls are called “storm water control measures” in the current version of the general permit. It is proposed to appropriately replace all occurrences of “storm water control measures” in the general permit with “storm water controls.” This revision is proposed to maintain uniformity in the description of all controls as specified in the general permit, and to maintain conformity with the terminology used in the 2022 EPA CGP.

Section 7.2.12 of the general permit requires permittees to describe in their SWPPPs all procedures for inspections, maintenance activities, and corrective actions, and to demonstrate compliance with the requirements of the general

permit. As specified in section 9.1.2 of the general permit, permittees are required to conduct site inspections at least once every 7 calendar days, or once every 14 calendar days and within 24 hours of the occurrence of a storm event. This revision is proposed to list the correct references to the inspection frequency requirements that are specified in section 9.1.2 of the general permit. This revision is also proposed to specify the reporting requirements for permittees who are reducing their inspection frequency due to frozen conditions at their construction sites in accordance with section 9.1.4.2 of the general permit. Specifically, permittees must document the beginning and ending dates of frozen periods in their records.

Section 7.2.13 of the general permit specifies the staff training requirements to ensure that each member of the storm water team understands the requirements of the general permit and their specific responsibilities with respect to those requirements. This revision is proposed to list the correct reference to the requirements that are specified in section 9.1.1 for personnel who are responsible for conducting site inspections. This revision is also proposed to list the correct reference to the requirements that are specified in section 10 for personnel who are taking corrective actions.

This revision does not propose to include the additional training provisions, that are specified in the 2022 EPA CGP, for personnel conducting site inspections. The EPA added the 2022 training provisions to ensure that personnel who are responsible for conducting site inspections are competent and that their training is adequate. The 2022 training provisions specify that anyone carrying out inspections must either (1) complete the EPA construction inspection course and pass the exam developed for the 2022 EPA CGP, or (2) hold a current valid certification or license from an equivalent training program. The 2022 training provisions also specify an exception for members of the storm water team who are working under the supervision of a “qualified person.”

The department considers the 2022 training provisions to be essentially an extension of the existing general permit requirement that “the person conducting site inspections is a qualified person.” The “qualified person” requirements are found in section 9.1.1 of the general permit, and they specify that a “qualified person” must be “a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.” In many ways, the 2022 training provisions represent a different method of establishing the same core inspection requirements. The key difference is that the 2022 training provisions specify the mechanism by which personnel conducting site inspections must obtain their

necessary training. The department needs more time to evaluate the 2022 training provisions.

Revised Section 8.1

8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)

8.1.

*The permittee shall design, operate, implement, and maintain the SWPPP to ensure that storm water discharges associated with construction activities will ~~[not cause or contribute to a violation of]~~ **meet** applicable state water quality standards.*

8.2.

The permittee shall implement the SWPPP to improve the quality of storm water discharges or when instructed by the director.

Rationale: Section 8 of the general permit requires all permittees to design, operate, implement, and maintain the SWPPP to ensure discharges meet applicable water quality standards. This revision is proposed to maintain uniformity by removing references to the reasonable potential approach. For more details, see the rationale for the revised section 2.2 of the general permit.

Revised Section 9.1

9.1. Site Inspections

*The permittee shall inspect the receiving state waters, storm water runoff and ~~[control measures]~~ **all controls** and best management practices to detect violations of ~~[and conditions which may cause violations of the basic]~~ **applicable** water quality criteria as specified in section 11-54-4 ~~[in accordance with this section.]~~ (e.g., the permittee shall look at storm water discharges 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.]~~ **life**). The permittee must inspect the receiving state waters only when there is a discharge from the project site or there is a potential for downstream erosion. If the discharge enters an MS4 or separate drainage system prior to the receiving state water, then the permittee may inspect their discharge where it enters the drainage system rather than at the receiving water.*

When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water or separate drainage system, in lieu of inspecting the receiving water or where it enters the drainage system, the permittee may inspect the effluent at a location representative of the discharge quality prior to commingling. The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.

9.1.1. Person(s) responsible for ~~[inspecting site.]~~ conducting site inspection

The person(s) inspecting the site may be a person on staff or a third party hired to conduct such inspections. The permittee is responsible for ensuring that ~~[the person who conducts inspections is a "qualified person."]~~ any person conducting site inspections is a "qualified person."

Note: A "qualified person" is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact storm water quality, and the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.

9.1.2. Frequency of Inspections.

At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. for discharges to impaired waters or qualify for a section 9.1.4.[:] reduction in the inspection frequency. As specified in section 9.1., the permittee is not required to inspect areas that, at the time of inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.

- a. At least once every 7 calendar days; or*
- b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event ~~[of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~ as specified in section 9.1.2.1.1. or section 9.1.2.1.2.*

Note: Inspections are only required during the project's normal working hours.

Note: The permittee is required to specify in the SWPPP which schedule will be followed.

~~*[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]*~~

9.1.2.1. *Types of storm event*

9.1.2.1.1. *For rain*

A storm event that produces 0.25 inches or more of rain within a 24-hour period.

- a. If a storm event produces 0.25 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.25 inches but together produce 0.25 inches or more in 24 hours), the permittee is required to conduct one inspection within 24 hours of when 0.25 inches of rain or more has fallen.*
- b. If a storm event produces 0.25 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.25 inches or more of rain on subsequent days, the permittee must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain (i.e., only two inspections would be required for such a storm event).*

Note: For example, if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, the permittee is required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection is not required within 24 hours of the Day 3 rainfall.

9.1.2.1.2. *For snow*

A discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period.

Note: 3.25 inches of snow is equivalent to 0.25 inches of rain. This is based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain.

- a. The permittee is required to conduct one inspection once the discharge of snowmelt from a 3.25-inch or more snow accumulation occurs.*
- b. The permittee is required to conduct additional inspections if following the discharge from the first snowmelt, there is a discharge of snowmelt from a separate storm event that produces 3.25 inches or more of snow accumulation.*

9.1.2.2.

To determine whether a storm event meets either of the thresholds in section 9.1.2.1.1. or section 9.1.2.1.2.:

- a. For rain, the permittee must either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any 24-hour period during which there is 0.25 inches or more of rainfall, the permittee must record the total rainfall measured for that day in accordance with section 9.1.7.1d.*
- b. For snow, the permittee must either take measurements of snowfall at the site, or rely on similar information from a local weather forecasting provider that is representative of the location.*

Note: For snowfall measurements, the department suggests use of a piece of wood, about 16 inches by 16 inches in size, that is placed in an unobstructed part of the site on a hard surface.

9.1.3. Increase in inspection frequency [for sites discharging to impaired waters:]

[For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:]

- [a. Once every 7 calendar days; and]*

~~[b. Within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~

For any portion of the site that discharges to an impaired water (see section 6.2), the permittee shall conduct an inspection once every 7 calendar days and within 24 hours of the occurrence of a storm event that produces 0.25 inches or more of rain within a 24-hour period, or within 24 hours of the discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period. Refer to sections 9.1.2.2.a. and 9.1.2.2.b. for the requirements to determine if a storm event produces enough rain or snow to trigger the inspection requirement.

Note: The increased inspection frequencies established in this section take the place of the inspection frequencies specified in section 9.1.2 for the portion of the site affected.

Note: Inspections are only required during the project's normal working hours.

~~[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]~~

Note: If the permittee qualifies for any of the reduced inspection frequencies in section 9.1.4., the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water.

9.1.4. Reductions in inspection frequency.

~~[For stabilized areas.]~~ 9.1.4.1. For stabilized areas

The permittee may reduce the frequency of inspections to once per month until the permit coverage expires or is terminated in any area of the site where the

stabilization steps in sections 5.2.1.2.1. and 5.2.1.2.2. have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in sections 9.1.2. or 9.1.3., if applicable. The permittee shall document the beginning and ending dates of this period in the records.

9.1.4.2. For frozen conditions

9.1.4.2.1.

If construction activities are suspended due to frozen conditions, the permittee may temporarily suspend inspections on the site until thawing conditions begin to occur under the following conditions.

- a. If discharges are unlikely due to continuous frozen conditions that are likely to continue at the site for least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable;*

Note: The permittee must use data sets that include the most recent data available to account for recent precipitation patterns and trends.

- b. If earth disturbances have been suspended; and*
- c. If all disturbed areas of the site have been stabilized in accordance with section 5.2.1.*

9.1.4.2.2.

If construction activities are still conducted during frozen conditions, the permittee may reduce the inspection frequency to once per month under the following conditions.

- a. If discharges are unlikely due to continuous frozen conditions that are likely continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable; and*

- b. If the areas in which the construction activities are actively conducted, the disturbed areas of the site have been stabilized in accordance with section 5.2.1.*

9.1.4.2.3.

The permittee shall document the beginning and ending dates of this period in the records.

9.1.5. Areas that need to be inspected.

The permittee shall at a minimum inspect the following areas of the site:

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with section 5.2.;*
- b. All storm water controls (including pollution prevention ~~[measures]~~controls) installed at the site to comply with this permit;*

Note: This includes the requirement to inspect sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with section 5.1.2.3.

- c. Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;*
- d. All areas where storm water typically flows within the site, including ~~[drainageways]~~constructed or natural site drainage features designed to divert, convey, and/or treat storm water;*
- e. All points of discharge from the site; and*
- f. All locations where stabilization measures have been implemented.*

~~[The]~~ As specified in section 9.1., the permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection ~~[personnel.]~~ personnel, if the unsafe conditions have been documented.

9.1.6. Requirements for inspections.

During ~~[the]~~each site inspection, the permittee shall at a minimum:

9.1.6.1.

Check whether all erosion and sediment controls and pollution prevention controls are installed, appear to be operational, and are working as intended to minimize pollutant discharges. Determine if any controls need to be replaced, repaired, or maintained in accordance with sections 5.1.1.4. and 5.3.2.;

9.1.6.2.

Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;

9.1.6.3.

Identify any locations where new or modified storm water controls are necessary to meet the requirements of sections 5 and/or 6;

9.1.6.4.

At points of discharge and, if applicable, on the banks of any receiving state waters flowing within the property boundaries or immediately adjacent to the property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge;[~~and~~]

9.1.6.5.

Check for signs of sediment deposition that are visible from the site and attributable to the discharge (e.g., sand bars with no vegetation growing on top in receiving state waters or in other constructed or natural site drainage features, or the buildup of sediment deposits on nearby streets, curbs, or open conveyance channels); and

9.1.6.6

Identify any and all incidents of noncompliance observed.

[~~9.1.6.6.~~]9.1.6.7.

If a discharge is occurring during the inspection, the permittee is required to:

- a. *Identify all points of the property from which there is a discharge[:]; and*

- b. *Observe and document the visual quality of the discharge, and take note of the characteristics of the storm water discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of storm water pollutants[;]. Check also for signs of these same pollutant characteristics that are visible from the site and attributable to the discharge in receiving state waters or in other constructed or natural site drainage features; and*
- c. *Document whether the storm water controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.*

~~[9.1.6.7.]~~9.1.6.8.

Based on the results of the inspection[; ~~initiate corrective action under section 10.~~];

- a. *Initiate any necessary maintenance repairs or replacements under section 10; and*
- b. *Modify the SWPPP site map in accordance with section 7.4.1. to reflect changes to the storm water controls that are no longer accurately reflected on the current site map.*

9.1.7. Inspection report.

9.1.7.1.

Requirement to Complete Inspection Report. The permittee must complete an inspection report within 48 hours of completing any site inspection. Each inspection report must include the following:

- a. *The inspection date;*
- b. *Names and titles of personnel making the inspection;*
- c. *A summary of the inspection findings, covering at a minimum the observations made in accordance with section 9.1.6.[;], including any problems found during the inspection that make it necessary to perform routine maintenance pursuant to section 5.1.1.4.2.1.1 or corrective actions pursuant to section 10.*

- d. *If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and ~~[have]~~the permittee conducted an inspection because of a storm event that produced rainfall measuring 0.25 inches or ~~[greater,]~~more within a 24-hour period, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection[;]. Similarly, if the permittee conducted an inspection because of a snowmelt discharge from a storm event that produced 3.25 inches or more of snow within a 24-hour period, the permittee must include any measurements taken of snowfall at the site, or weather station information that triggered the inspection; and*
- e. *If determined that it is unsafe to inspect a portion of the site, the permittee shall describe the reason to be unsafe and specify the locations that this condition applied to.*

9.1.7.2. *Signature Requirements.*

Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

9.1.7.3. *Recordkeeping Requirements.*

The permittee is required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department or EPA.

Note: Inspection reports may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

- a. In a format that can be read in a similar manner as a paper record;*
- b. Legally dependable with no less evidentiary value than their paper equivalent; and*
- c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.*

All inspection reports completed for this section must be retained for at least three years from the date that the permit coverage expires or is terminated.

Rationale: Section 9.1 of the general permit requires permittees to inspect the receiving state waters, storm water runoff and all controls and best management practices to detect violations of applicable state water quality standards. It is vital that permittees conduct site inspections within a day of the occurrence of a storm event to identify storm water controls that have been compromised and no longer functioning properly, and to avoid any potential discharges of pollutants that are caused by storm water or snowmelt runoff. Specifically, permittees are required to conduct a site inspection either on a weekly frequency, or biweekly frequency and within 24 hours of the occurrence of a storm event. This revision is proposed to include additional site inspection requirements that are necessary to account for runoff due the discharge of snowmelt after a storm event. The proposed site inspection requirements are as stringent as the equivalent site inspection provisions specified in the 2022 EPA CGP.

The proposed revision specifies threshold requirements for triggering the need for site inspections after the occurrence of a qualifying storm event that produces either 0.25 inches or more of rain, or 3.25 inches or more of snow accumulation within a 24-hour period. The EPA relied on published data from the National Oceanic and Atmospheric Administration (NOAA) to derive a numeric equivalent for snowfall to the 0.25-inch rain event. On average, data from NOAA indicates that 13 inches of snow is equivalent to 1 inch of rain (i.e., 3.25 inches of snow to 0.25 inches of rain). Permittees are required to conduct a site inspection after a 3.25-inch snow accumulation only if there is sufficient snowmelt to cause a discharge. This revision also clarifies that permittees are not required to inspect areas that are considered unsafe to inspection personnel at the time of the inspection, in accordance with section 9.1.

This revision is proposed to also clarify the inspection frequency for discharges to state waters that are identified as impaired, and to specify the reduction in inspection frequency due to frozen conditions.

Revised Section 10.4

10.4. Corrective action [~~report~~]log

For each corrective action taken in accordance with this section, the permittee shall ~~[complete a corrective action report, which includes the applicable information in sections 10.4.1. and 10.4.2. Note that these reports must be maintained in the permittee's records but do not need to be provided to the department except upon request.]~~ record the following information in a corrective action log.

10.4.1.

Within 24 hours of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~document the following information:

- a. *~~[Which condition was]~~The condition identified at the site;*
- b. *The nature of the condition identified; and*
- c. *The date and time of the condition identified and how it was identified.*

10.4.2.

Within 7 calendar days of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~document the following information:

- a. *Any follow-up actions taken to review the design, installation, and maintenance of storm water controls, including the dates such actions occurred;*
- b. *A summary of storm water control modifications taken or to be taken, including a schedule of activities necessary to implement changes, and the date the modifications are completed or expected to be completed; and*
- c. *Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.*

10.4.3.

~~[Each corrective action report]~~Each entry into the corrective action log, consisting of the information required by both sections 10.4.1. and 10.4.2., must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

Note: The corrective action log may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

- a. In a format that can be read in a similar manner as a paper record;*

b. Legally dependable with no less evidentiary value than their paper equivalent; and

c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

10.4.4.

The permittee shall keep a current copy of ~~[all corrective action reports]~~the corrective action log at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department.

~~[All corrective action reports completed for this Part must be retained]~~The permittee shall retain the corrective action log for at least three years from the date that the permit coverage expires or is terminated.

Rationale: Section 10.4 of the general permit requires permittees to document on corrective action reports the problems found on the construction site, the corresponding corrective actions taken, and the applicable implementation dates. In practice, there are situations where permittees find it difficult to differentiate between corrective action reports and inspection reports. The scope of both reports is similar in the sense that they both require documentation of the problems found and the actions taken by the permittees to fix or correct them. To make clear the distinction between the two reports and to improve compliance with the general permit, the department intends to streamline the documentation required for corrective actions.

This revision is proposing to replace the current requirements for completing a corrective action report with new requirements for documenting the same information as an entry into a “corrective action log.” Specifically, the proposed revision requires permittees to document the following information on corrective action logs:

- Within 24 hours of identifying the corrective action condition, document the specific condition, and the date and time when it was identified;
- Within 7 calendar days of identifying the corrective action condition, document any follow-up actions, and the dates when the actions were taken;
- Within 7 calendar days of identifying the corrective action condition, document any modifications made or to be made to storm water controls,

and the dates when the modifications were completed or expected to be completed; and

- Within 7 calendar days of identifying the corrective action condition, document if any corrective actions taken would require updating the SWPPP.*

The proposed revision also establishes requirements to ensure the certification, format, availability, and retention of corrective action logs:

- Each corrective action log entry can be certified and signed in accordance with either 11-54-07(a) or 11-54-07(b);*
- Each corrective action log entry may be entered, certified, signed, and kept electronically;*
- Corrective action logs must be immediately available at the time of an onsite inspection; and*
- Corrective action logs must be retained for at least 3 years from the date when the general permit coverage expires or is terminated.*

Revised Section 11

11. Notice of Intent (NOI) requirements

11.1.

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

11.2.

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

11.2.1.

Information required in section 34 of appendix A of chapter 11-55;

11.2.2.

That coverage is being requested as a result of an emergency and meets the eligibility ~~[requirements]~~ conditions under this permit and information required in section 7.2.3.

11.2.3.

That coverage is being requested for discharge to an impaired water, if applicable;

11.2.4.

Preparation of a SWPPP in accordance with section 7 prior to submitting the NOI;

11.2.5.

Information required in section 7.2.2 – Nature of construction activities.

11.2.6.

Information required in section 7.2.5. – Sequence and estimated dates of construction activities.

11.2.7.

*Information required in section 7.2.6. – Site map, except for sections 7.2.6.6. [–
through 7.2.6.8.*

11.2.8.

If applicable, army corps of engineers' jurisdictional determination and section 401 water quality certification best management practices plan.

11.2.9.

Agreement to the terms, conditions, and requirements in this general permit and all other applicable State, County, and Federal regulations.

11.3.

The director may require additional information to be submitted.

11.4.

The owner or ~~[its duly authorized representative]~~ operator shall submit a notice of intent form or forms specified by the CWB.

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

11.4.1.

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

11.4.2.

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
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

Rationale: Section 11 of the general permit specifies the requirements for the submission of NOIs.

It is specified that the owner or its authorized representative must submit a NOI no later than thirty days before the proposed discharge date for new dischargers or thirty days before the expiration date of an applicable NGPC for existing dischargers. An operator who is authorized by the owner can be designated as the duly authorized representative in accordance with section 11-55-07(b). In practice, either the owner or the duly authorized representative (including the authorized operator) can sign a NOI. The signatory requirements of a NOI are separate from the requirements to provide information in a NOI that are applicable to the either owner or the operator (i.e., the authorized operator). This revision is proposed to clearly identify the permittees who are responsible for providing information in a NOI by replacing "its duly authorized representative"

with “operator.” This revision is also proposed to clearly identify the permittees who can sign an initial NOI or a revised NOI.

It is specified in section 1.3 of the general permit that discharges of storm water from construction activities are automatically covered by the general permit in response to public emergencies under certain conditions. However, it is specified in section 11.2.2 that a NOI requesting coverage as a result of a public emergency must meet the eligibility requirements of the general permit. This revision is proposed to maintain uniformity by specifying that there are eligibility conditions for NOIs requesting coverage due to public emergencies.

Lastly, it is proposed to include the Post Office box of the Clean Water Branch for the submission of NOIs by postal mail.

Revised Section 12

12. Reporting Requirements

12.1.

*The permittee shall immediately notify the director of the incident and identify the ~~[pollutant(s) source(s)]~~ **pollutant sources** and the proposed and implemented ~~[control]~~ **controls** or mitigative measures as required in section 16 of appendix A of chapter 11-55.*

12.2.

The permittee shall notify the director of the construction start date through the e-Permitting portal within seven (7) calendar days before the start of construction activities. All communication with the department shall include the file number and the certification statement. The notification will only be accepted from the person qualified in accordance with section 11-55-34.08(f).

Rationale: *This revision is proposed to avoid the ambiguous use of parenthetical plurals in section 12.1 of the general permit. Specifically, it is proposed to replace “pollutant(s) source(s)” with “pollutant sources.” It is also proposed to replace the singular form of “control” with the plural form.*

Revised Section 13

13. Submittal Requirements

13.1.

The ~~[owner]~~ permittee or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department.

13.2.

When all construction activities have ceased, the ~~[owner]~~ permittee shall submit to the department a completed Notice of Cessation. The department shall receive this information within 7 calendar days after the end of the month.

13.3.

The ~~[owner]~~ permittee or its duly authorized representative shall submit signed copies of all 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*

13.4.

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

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

13.5.

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

Rationale: Section 13 of the general permit requires permittees to prepare and submit a monthly compliance report that documents any incidences of non-compliance and corrective actions. Currently, the term “owner” is used interchangeably with the term “permittee,” which can potentially cause confusion since the owner is not always the permittee. There are NGPCs with the operator of the project/facility identified as the permittee. This revision is proposed to avoid confusion and to provide clarity by replacing the term “owner” with the term “permittee.”

New Section 17

17. Administrative Extension

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

17.1.

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

17.2.

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

Rationale: Prior to the expiration date of the current general permit, permittees do not know the requirements of the new general permit, and therefore, permittees cannot request for a renewal when they do not know if compliance with the new general permit is possible. To avoid this situation, the renewal process has been revised and the administrative extension process of a NGPC issued under the general permit has been clarified. This revision is proposed to specify the requirements of the administrative extension process. For more details, see the rationale for the revised section 3.3 of the general permit.

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

Not applicable.

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

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

Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix C within HAR Chapter 11-55, Water Pollution Control.

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

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

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

Refer to 40 CFR 450 (Construction and Development Effluent Guidelines).

Rational for Proposed Revisions to HAR Chapter 11-55, Appendix C
February 2023

- (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 ASSOCIATED WITH CONSTRUCTION ACTIVITY

This General Permit is effective on

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

1. Coverage under this General Permit

1.1.

This general permit covers [~~discharges composed entirely of storm water runoff~~] storm water discharges, including storm water runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Construction support activities include, but are not limited to, concrete or asphalt batch plants, rock crushing plants, equipment staging yards/areas, material storage areas, excavated material disposal areas, borrow areas, etc. Coverage under this general permit for construction support activities is allowed provided that the support activity is directly related to the construction [~~site~~] project required to have permit coverage for storm water discharges; is not a commercial operation, nor does it serve multiple unrelated construction projects; does not continue to

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operate beyond the completion of the construction activity at the project site it supports; and storm water controls are implemented in accordance with ~~[this section]~~section 5 and if applicable, section 6, for storm water discharges from the support activity areas.

1.2.

This general permit covers all areas of the State except natural freshwater lakes, saline lakes, and anchialine pools.

1.3.

This general permit shall automatically cover discharges of storm water from construction activities in response to a public emergency proclaimed by the President of the United States or State Governor if all of the following conditions are met:

1.3.1.

The earth-disturbing activities are in response to a public emergency (e.g., natural disaster, widespread disruption in essential public services); and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment, or to reestablish essential public services; and

1.3.2.

Provide documentation to substantiate the issuance of the public emergency proclamation by the President of the United States or State Governor.

1.4.

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"Disturbance of land" refers to the penetration, turning, or moving of soil or resurfacing of pavement with exposure of the base course or the exposure of bare soil or ground surface, including the land surface exposed by construction roads, baseyards, staging areas, demolition, headquarters, and parking areas. It does not include grass or weed cutting, bush or tree trimming or felling that leaves soil or ground intact. It includes "grubbing" in its normal meaning of the use of equipment to knock down and push vegetation out of the way, typically uprooting vegetation and disturbing the ground surface.

1.5.

A "larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. "Common plan" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Note: Projects within a common plan of development must submit separate Notice of Intent (NOIs). For the purpose of this permit, a "project" means separate and distinct construction activities.

1.6.

A "SWPPP" (Storm Water Pollution Prevention Plan) is a site-specific, written document that, among other things: (1) identifies potential sources of storm water pollution at the construction site; (2)

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describes storm water [~~control measures~~]controls to reduce or eliminate pollutants in storm water discharges from the construction site; and (3) identifies procedures the permittee will implement to comply with the terms and conditions of this general permit.

1.7.

"Infeasible" means not technologically possible, or cost prohibitive and not achievable in light of best industry practices.

2. Limitations on Coverage under this General Permit

2.1.

This general permit does not cover the following:

2.1.1.

Storm water discharges associated with construction activity which flow into a sanitary sewer system;

2.1.2.

Storm water discharges from construction activities using polymers, flocculants, or other treatment chemicals;

2.1.3.

Storm water discharges associated with construction activities that are regulated by existing individual permits;

2.1.4.

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Storm water discharges from a construction activity 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;

2.1.5.

Storm water discharges from construction approved under a CWA Section 404 permit or;

2.1.6.

Storm water discharges from the clearing of lands specifically for agricultural purposes in accordance with 40 CFR 122.3(e);

2.1.7.

Storm water discharges for which the director has issued a notice of general permit coverage under another general permit specific to that type of construction or industrial activity; and

2.1.8.

Storm water discharges that the director finds more appropriately regulated under an individual permit.

2.2.

Discharges of storm water from new sources that ~~[have the reasonable potential to cause, or contribute to an excursion above any]~~do not meet applicable water quality standard are not eligible for coverage under this permit, except if the permittee has included appropriate controls and implementation procedures

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designed to bring the discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, the department expects that compliance with the storm water control requirements in this permit, including the requirements applicable to such discharges in section 6.2., will result in discharges that ~~[will not cause, have the reasonable potential to cause, or contribute to an excursion above any]~~meet applicable water quality ~~[standard.]~~standards.

For this permit "new sources" means projects which occur after this general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor.

2.3.

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 11-55-34.11.

3. Term of ~~[the]~~this General Permit and the Notice of General Permit Coverage

3.1. Term of ~~[the]~~this General Permit

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

3.2. Term of the Notice of General Permit Coverage

~~[A notice of general permit coverage under this general permit expires, the earlier of the following, unless the notice of general permit coverage is automatically terminated in accordance with section~~

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~~2.3 or administratively extended under section 11-55-34.09(d):]~~

~~[3.2.1.~~

~~As specified on Page 55-C-1; or]~~

~~[3.2.2.~~

~~When the notice of general permit coverage specifies.]~~
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 3.3 of this general permit.

3.3. Administrative Extension of the Notice of General Permit Coverage

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:

3.3.1.

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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3.3.2.

An application for a NPDES individual 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 NPDES individual permit authorizing the existing discharge; or

3.3.3.

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

4. Standard Conditions

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

5. Effluent [~~Limitation~~]Limitations Applicable To All Discharges From Construction Sites

The permittee is required to comply with the following effluent limitations in this section for authorized discharges from the site and/or from construction support activities.

~~[Note: If the project is an "existing project" meaning that an administrative extension of the NGPC was granted or the NGPC was renewed under this general permit; or if the permittee is new because of a transfer of ownership and/or operation replaces the permittee of an already issued NGPC, and it is infeasible for the permittee to comply with a specific~~

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~~requirement in this section because (1) the requirement was not part of the 2007 Appendix C, and (2) because the permittee is prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 6, 2013, or because the permittee is unable to comply with the requirement due to the manner in which storm water controls have already been installed or were already designed prior to December 6, 2013, the permittee is required to document this fact in the SWPPP, refer to section 7, and are waived from complying with that requirement. This flexibility applies only to the requirements in sections 5.1 and 5.3.3. through 5.3.5. (except for sections 5.3.3.1., 5.3.3.2.2., 5.3.3.3.3.a., and 5.3.3.4.). This only applies to those portions of the site that have already commenced earth-disturbing activities or where storm water controls implemented in compliance with the previous permit have already been installed.]~~

5.1. Erosion and sediment control requirements

The permittee shall design, install, and maintain erosion and sediment controls that discharge of discharge of pollutants from earth-disturbing activities. For purposes of this general permit, "Minimize" means to reduce and/or eliminate to the extent achievable using storm water controls that are technologically available and economically practicable and achievable in light of best industry practices. To meet this requirement, the permittee shall comply with the following provisions.

5.1.1. General requirements applicable to all construction sites.

5.1.1.1. Area of disturbance.

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The permittee is required to minimize the amount of soil exposed during construction activities. The permittee is also subject to the deadlines for temporarily and/or permanently stabilizing exposed portions of the site pursuant to section 5.2.

5.1.1.2. Design requirements.

5.1.1.2.1.

The permittee shall account for the following factors in designing storm water ~~[controls:]~~controls.

Note: Storm water controls must be designed using the most recent data available to account for recent precipitation patterns and trends.

Note: If the site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, the permittee should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient storm water controls, and other mitigation measures may help minimize impacts from storm water discharges from such major storm events.

5.1.1.2.1.1.

The expected amount, frequency, intensity, and duration of precipitation;

5.1.1.2.1.2.

The nature of storm water runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design

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storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and

5.1.1.2.1.3.

The range of soil particle sizes expected to be present on the site.

5.1.1.2.2.

The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize ~~[stormwater]~~storm water infiltration to reduce pollutant discharges, unless ~~[infeasible. Use]~~infiltration would be inadvisable due to the underlying geology and ground water contamination concerns, or infeasible due to site conditions. The permittee shall use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.

5.1.1.3. Installation requirements.

5.1.1.3.1.

Complete installation of storm water controls prior to earth-disturbance. Prior to earth-disturbing activities in any given portion of the site have begun the permittee shall install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other ~~[land-]~~earth-disturbing activities.

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Note: The requirement to install storm water controls prior to earth-disturbance of the project does not apply to the earth disturbance associated with the actual installation of these controls.

5.1.1.3.2.

Use good engineering practices and follow manufacturer's specifications. The permittee shall install all storm water controls in accordance with good engineering practices, including applicable design specifications.

Note: Design specifications may be found in manufacturer specifications and/or in applicable erosion and sediment control manuals or ordinances. Any departures from such specifications must reflect good engineering practice and must be explained in the SWPPP.

5.1.1.4. Maintenance Requirements

5.1.1.4.1.

The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

5.1.1.4.2.

The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the

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permittee shall make the necessary repairs or modifications in accordance with the following schedule:

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If it is infeasible to complete the routine maintenance by the close of the next work day, the permittee shall document in its records why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance and complete such work by no later than 7 calendar days from the time of discovery.

Note: Routine maintenance means minor repairs or other upkeep performed to ensure the site's storm water controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day

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timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.1.2.

Erosion and sediment control requirements applicable to all sites.

5.1.2.1. Provide natural buffer and sediment controls

~~[Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).]~~

Note: These requirements only apply when there are receiving state waters located within 50 feet of the project's earth disturbances.

Note: The department does not consider all storm water ~~[control features]~~ controls (e.g., ~~[storm water conveyance channels,]~~ constructed or natural site drainage features, storm drain inlets, sediment basins) to be state waters.

Note: Written documentation allowing use is required from the owner of areas that are not owned by the permittee or that are otherwise outside the operational control to be considered areas of undisturbed natural buffer for purposes of compliance with this section.

~~[The permittee shall ensure that any discharges to state waters through the area between the disturbed portions of the property and any state waters located within 50 feet of the site are treated by an area of undisturbed natural buffer and sediment controls.]~~ The

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permittee shall provide and maintain an area of undisturbed natural buffer and sediments controls between the disturbed portions of the site and any receiving state waters that are located within 50 feet of the project's earth disturbances.

Note: If the boundary of the disturbance area is within 50 feet of ~~[the State]~~any receiving state water, triggering this requirement, then the installation of the project's perimeter control may be considered equivalent to the installation of sediment control.

5.1.2.1.1. Compliance Alternatives.

The permittee can comply with this requirement in one of the following ways:

5.1.2.1.1.1.

Provide and maintain a 50-foot undisturbed natural buffer and sediment control; or

Note: If the earth disturbances are located 50 feet or further from a receiving state water and have installed sediment control, then the permittee has complied with this alternative.

5.1.2.1.1.2.

Provide and maintain an undisturbed natural buffer that is less than 50 feet and double sediment control (e.g., double perimeter control) spaced a minimum of 5 feet apart; or

5.1.2.1.1.3.

If it is infeasible to provide and maintain an undisturbed natural buffer of any size, the permittee

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shall provide and maintain double sediment control (e.g., perimeter control) spaced a minimum of 5 feet apart and complete stabilization within 7 calendar days of the temporary or permanent cessation of earth-disturbing activities.

Note: For the compliance alternatives in sections 5.1.2.1.1.1. and 5.1.2.1.1.2., the permittee is not required to enhance the quality of the vegetation that already exists in the buffer, or provide vegetation if none exists. The permittee only need to retain and protect from disturbance the natural buffer that existed prior to the commencement of construction. Any preexisting structures or impervious surfaces are allowed in the natural buffer provided the permittee retain and protect from disturbance the natural buffer area outside the preexisting disturbance.

The permittee shall document the selected compliance alternative in the SWPPP, and comply with the applicable additional requirements described in section 5.1.2.1.2. and 5.1.2.1.3. below.

The compliance alternative selected above must be maintained throughout the duration of permit coverage, or until construction in that portion of the project is complete, and the area is restored and stabilized (as applicable), except that the permittee may select a different compliance alternative during the period of permit coverage, in which case the permittee shall modify the SWPPP to reflect this change.

5.1.2.1.2.

Additional Requirements for the Compliance Alternatives in section 5.1.2.1.1.1. and 5.1.2.1.1.2. If either of the compliance alternatives in section 5.1.2.1.1.1. or 5.1.2.1.1.2. is chosen above, throughout the period of coverage under this permit,

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the permittee shall comply with the following additional requirements:

5.1.2.1.2.1.

Ensure that all discharges from the area of earth disturbance to the natural buffer are first treated by the site's erosion and sediment controls, and use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges caused by storm water within the buffer;

5.1.2.1.2.2.

Document in the SWPPP the natural buffer width retained on the property, and show the buffer boundary on the site plan; and

5.1.2.1.2.3.

Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas.

5.1.2.1.3.

Additional Requirement for the Compliance Alternative in section 5.1.2.1.1.3. If the compliance alternative in section 5.1.2.1.1.3. is chosen, the permittee shall also include in the SWPPP a description of why it is infeasible to provide and maintain an undisturbed natural buffer of any size.

5.1.2.1.4. Exceptions.

5.1.2.1.4.1.

If there is no discharge of storm water to receiving state waters through the area between the site and any receiving state waters located within 50 feet of the

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site, the permittee is not required to comply with the requirements in this section. This includes situations where ~~[control measures]~~controls have been implemented, such as a berm or other barrier, that will prevent such discharges.

5.1.2.1.4.2.

For "linear construction projects" where "linear construction projects" means the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area, the permittee is not required to comply with the requirements in this section if site constraints (e.g., limited right-of-way) prevent the permittee from meeting any of the compliance alternatives in section 5.1.2.1.1., provided that, to the extent practicable, the permittee limit disturbances within 50 feet of receiving state waters and/or the permittee provide erosion and sediment controls to treat storm water discharges from earth disturbances within 50 feet of the receiving state water. The permittee shall also document in the SWPPP the rationale as to why it is infeasible to comply with the requirements in section 5.1.2.1.1., and describe any buffer width retained and/or erosion and sediment controls installed.

5.1.2.1.4.3.

The following disturbances within 50 feet of a receiving state water are exempt from the requirements in this Part: construction approved under a CWA 404 permit; or construction of a water-dependent structure or water access area (e.g., pier, boat ramp, trail).

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The permittee shall document in the SWPPP if any of the above disturbances will occur within the buffer area on the site.

5.1.2.2. Install perimeter controls.

5.1.2.2.1.

Installation requirements: The permittee shall install sediment controls along those perimeter areas of the site that will receive storm water from earth-disturbing activities.

For linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, the permittee shall maximize the use of these controls where practicable and document in the SWPPP why it is impracticable in other areas of the project.

5.1.2.2.2.

Maintenance Requirements: The permittee shall remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

5.1.2.3. Minimize sediment track-out.

The permittee shall minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting the construction site. To comply with this requirement, the permittee shall:

5.1.2.3.1.

Restrict vehicle use to properly designated exit points;

5.1.2.3.2.

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Use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit;

5.1.2.3.3.

Where necessary, use additional controls to remove sediment from vehicle tires prior to exit; and

5.1.2.3.4.

Where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee shall remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs during non-working hours. The permittee shall remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. The permittee is prohibited from hosing or sweeping tracked-out sediment into any [~~storm water conveyance~~] constructed or natural site drainage feature (unless it is connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or receiving state water.

Note: The department recognizes that some fine grains may remain visible on the surfaces of off-site streets, other paved areas, and sidewalks even after the implementation of sediment removal practices. Such "staining" is not a violation of this section.

5.1.2.4. Control discharges from stockpiled sediment or soil.

For any stockpiles or land clearing debris composed, in whole or in part, of sediment or soil, the

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permittee shall comply with the following requirements:

Note: For the purposes of this permit, sediment or soil stockpiles are defined as the storage for multiple days of soil or other sediment material to be used in the construction project or transported for disposal.

5.1.2.4.1.

Locate the piles outside of any natural buffers established under section 5.1.2.1.1. and physically separated from other storm water controls implemented in accordance with section 5.1.;

5.1.2.4.2.

Protect from contact with storm water (including run-on) using a temporary perimeter sediment barrier;

5.1.2.4.3.

Where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge;

5.1.2.4.4.

Do not hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any ~~[storm water conveyance]~~ constructed or natural site drainage feature (unless connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or receiving state water; and

5.1.2.4.5.

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Unless infeasible, contain and securely protect from wind.

5.1.2.5. Minimize dust.

In order to avoid pollutants from being discharged into state waters, to the extent feasible, the permittee shall minimize the generation of dust through the appropriate application of water or other dust suppression techniques.

5.1.2.6. Minimize the disturbance of steep slopes.

The permittee shall minimize the disturbance of "steep slopes." For this permit, "steeps slopes" means those that are 15 percent or greater in grade.

Note: The permit does not prevent or prohibit disturbance on steep slopes. For some projects, disturbance on steep slopes may be necessary for construction (e.g., a road cut in mountainous terrain). If a disturbance to steep slopes is required for the project, the department would recognize that it is not economically achievable to avoid the disturbance to steep slopes. However, in cases where steep slope disturbances are required, minimizing the disturbances to steep slopes consistent with this requirement can be accomplished through the implementation of a number of standard erosion and sediment control practices, such as by phasing disturbances to these areas and using stabilization practices designed to be used on steep grades.

5.1.2.7. Preserve topsoil.

The permittee shall preserve native topsoil on the site, unless infeasible. Preserving topsoil is not required where the intended function of a specific

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area of the site dictates that the topsoil be disturbed or removed.

Note: Some projects may be designed to be highly impervious after construction, and therefore little or no vegetation is intended to remain. In these cases, preserving topsoil at the site would not be feasible. Some sites may not have space to stockpile topsoil on site for later use, in which case, it may also not be feasible to preserve topsoil.

Note: Stockpiling of topsoil at off-site locations, or transfer of topsoil to other locations, is an example of a practice that is consistent with the requirements in this section.

5.1.2.8. Minimize soil compaction.

In areas of the site where final vegetative stabilization will occur or where infiltration practices will be installed, the permittee shall either:

5.1.2.8.1. Restrict vehicle/equipment use.

Restrict vehicle and equipment use in these locations to avoid soil compaction; or

5.1.2.8.2. Use soil conditioning techniques.

Prior to seeding or planting areas of exposed soil that have been compacted, use techniques that condition the soils to support vegetative growth, if necessary and feasible.

5.1.2.9. Protect storm drain inlets.

If discharging to any storm drain inlet that carries storm water flow from the site directly to a state

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water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), and the permittee has authority to access the storm drain inlet, the permittee shall:

5.1.2.9.1. Installation requirements.

Install inlet protection measures that remove sediment from the discharge prior to entry into the storm drain inlet.

Note: Inlet protection measures can be removed in the event of flood conditions where safety or loss of property is of concern or to prevent erosion, but must be reinstalled once safety, property loss, or erosion are no longer a risk.

5.1.2.9.2. Maintenance requirements.

Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, the permittee shall remove the deposited sediment by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible.

5.1.2.10. Contaminated soil and contaminated soil stockpiles.

The permittee shall either:

5.1.2.10.1.

Prevent storm water from contacting contaminated soil and contaminated soil stockpiles; or

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5.1.2.10.2.

Prevent the discharge of storm water runoff from contaminated soil and contaminated soil stockpiles.

5.1.3.

Requirements applicable only to sites using these specific storm water controls.

The permittee is required to comply with the following requirements if installing any of the following storm water controls at the site:

5.1.3.1. Constructed [~~storm water conveyance channels.~~] site drainage features.

Design [~~storm water conveyance channels~~] site drainage features to avoid unstabilized areas on the site and to reduce erosion, unless infeasible. Minimize erosion of channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters during discharge conditions through the use of erosion controls and velocity dissipation devices within and along the length of any constructed [~~storm water conveyance channel,~~] site drainage feature, and at any outlet to provide a non-erosive flow velocity.

5.1.3.2. Sediment Basins.

If installing a sediment basin, the permittee shall comply with the following:

5.1.3.2.1. Design requirements.

5.1.3.2.1.1.

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Provide storage for either (1) the calculated volume of runoff from a minimum 2-year, 24-hour storm, or (2) 3,600 cubic feet per acre drained;

5.1.3.2.1.2.

When discharging from the sediment basin, utilize outlet structures that withdraw water from the surface in order to minimize the discharge of pollutants, unless infeasible;

Note: The department believes that the circumstances in which it is infeasible to design outlet structures in this manner are rare. If determined by the permittee that it is infeasible to meet this requirement, the permittee shall provide documentation in the SWPPP to support the determination.

5.1.3.2.1.3.

Prevent erosion of (1) the sediment basin using stabilization controls (e.g., erosion control blankets), and (2) the inlet and outlet using erosion controls and velocity dissipation devices; and

5.1.3.2.1.4.

Sediment basins must be situated outside of state waters and any natural buffers established under section 5.1.2.1.1., and must be designed to avoid collecting water from wetlands.

5.1.3.2.2. Maintenance requirements.

Keep in effective operating condition and remove accumulated sediment to maintain at least $\frac{1}{2}$ of the design capacity of the sediment basin at all times.

5.1.3.3. Dewatering practices.

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The permittee is prohibited from discharging ground water or accumulated storm water that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.

5.2. Stabilization Requirements

The permittee is required to stabilize exposed portions of the site in accordance with the requirements of this section.

Note: For the purposes of this permit, "exposed portions of the site" means areas of exposed soil that are required to be stabilized. Note that the department does not expect that temporary or permanent stabilization measures to be applied to areas that are intended to be left unvegetated or unstabilized following construction (e.g., dirt access roads, utility pole pads, areas being used for storage of vehicles, equipment, or materials). Otherwise, permanent stabilization is required for disturbed areas.

5.2.1. Deadlines for initiating and completing stabilization.

5.2.1.1. Deadline to initiate stabilization.

The permittee shall initiate soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site. In limited circumstances, stabilization may not be required immediately (or, in even more limited circumstances, permanently) if the intended function of a specific area of the site necessitates that it remain disturbed.

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Note: The Department can envision only limited cases where a disturbed area would not require stabilization because it should remain disturbed. Permittees must still minimize discharges from disturbed areas.

Note: Earth-disturbing activities have permanently ceased when clearing and excavation within any area of the construction site that will not include permanent structures has been completed.

Note: Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not resume (i.e., the land will be idle) for a period of 14 or more calendar days, but such activities will resume in the future.

The 14 calendar day timeframe above begins counting as soon as the permittee knows that construction work on a portion of the site will be temporarily ceased. In circumstances where the permittee experiences unplanned or unanticipated delays in construction due to circumstances beyond the permittee's control (e.g., sudden work stoppage due to unanticipated problems associated with construction labor, funding, or other issues related to the ability to work on the site; weather conditions rendering the site unsuitable for the continuation of construction work) and it is not known at first how long the work stoppage will continue, the permittee's requirement to immediately initiate stabilization is triggered as soon as it is known with reasonable certainty that work will be stopped for 14 or more additional calendar days. At that point, the permittee shall comply with sections 5.2.1.1. and 5.2.1.2.

Note: For the purposes of this permit, the department will consider any of the following types of activities to constitute the initiation of stabilization:

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- a. prepping the soil for vegetative or non-vegetative stabilization;
- b. applying mulch or other non-vegetative product to the exposed area;
- c. seeding or planting the exposed area;
- d. starting any of the activities in a - c on a portion of the area to be stabilized, but not on the entire area; and
- e. finalizing arrangements to have stabilization product fully installed in compliance with the applicable deadline for completing stabilization in sections 5.2.1.2. and 5.2.1.3.

This list of examples is not exhaustive.

Note: The term "immediately" is used to define the deadline for initiating stabilization measures. In the context of this provision, "immediately" means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased.

5.2.1.2. Deadline to complete stabilization activities.

As soon as practicable, but no later than 14 calendar days after the initiation of soil stabilization measures consistent with section 5.2.1.1., the permittee is required to have completed:

5.2.1.2.1.

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For vegetative stabilization, all activities necessary to initially seed or plant the area to be stabilized; and/or

5.2.1.2.2.

For non-vegetative stabilization, the installation or application of all such non-vegetative [~~measures.~~] stabilization measures.

5.2.1.3. Exceptions to the deadlines for initiating and completing stabilization.

5.2.1.3.1.

Deadlines for projects that are affected by circumstances beyond the control of the permittee that delay the initiation and/or completion of vegetative stabilization as required in sections 5.2.1.1. and/or 5.2.1.2. If the permittee is unable to meet the deadlines in sections 5.2.1.1. and/or 5.2.1.2. due to circumstances beyond the permittee's control (e.g. problems with the supply of seed stock or with the availability of specialized equipment, unsuitability of soil conditions due to excessive precipitation and/or flooding), and the permittee is using vegetative cover for temporary or permanent stabilization, the permittee may comply with the following stabilization deadlines instead:

5.2.1.3.1.1.

Immediately initiate, and within 14 calendar days complete, the installation of temporary non-vegetative stabilization measures to prevent erosion;

5.2.1.3.1.2.

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Complete all soil conditioning, seeding, watering or irrigation installation, mulching, and other required activities related to the planting and initial establishment of vegetation as soon as conditions or circumstances allow it on the site; and

Note: The permittee is required to have stabilized the exposed portions of the site consistent with section 5.2.2. prior to terminating permit coverage.

5.2.1.3.1.3.

Document the circumstances that prevent the permittee from meeting the deadlines required in sections 5.2.1.1. and/or 5.2.1.2. and the schedule the permittee will follow for initiating and completing stabilization.

5.2.1.3.2.

Deadlines for sites discharging to impaired waters. For any portion of the site that discharges to a sediment or nutrient-impaired water (see section 6.2.), the permittee is required to complete the stabilization activities specified in sections 5.2.1.2.1. and/or 5.2.1.2.2. within 7 calendar days after the temporary or permanent cessation of earth-disturbing activities.

Note: If the permittee qualifies for the deadlines for initiating and completing stabilization in section 5.2.1.3.1. or 5.2.1.3.2., the permittee may comply with the stabilization deadlines in section 5.2.1.3.1. or 5.2.1.3.2. for any portion of the site that discharges to an impaired water.

5.2.2. Criteria for stabilization.

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To be considered adequately stabilized, the permittee shall meet the criteria below depending on the type of cover the permittee is using, either vegetative or non-vegetative.

5.2.2.1. Vegetative stabilization.

5.2.2.1.1.

For all sites, except those located on agricultural lands.

5.2.2.1.1.1.

If the permittee is vegetatively stabilizing any exposed portion of the site through the use of seed or planted vegetation, the permittee shall provide established uniform vegetation (e.g., evenly distributed without large bare areas), which provides 70 percent or more of the density of coverage that was provided by vegetation prior to commencing earth-disturbing activities. The permittee should avoid the use of invasive species;

5.2.2.1.1.2.

For final stabilization, vegetative cover must be perennial; and

5.2.2.1.1.3.

Immediately after seeding or planting the area to be vegetatively stabilized, to the extent necessary to prevent erosion on the seeded or planted area, the permittee shall select, design, and install non-vegetative erosion controls that provide cover (e.g., mulch, rolled erosion control products) to the area while vegetation is becoming established.

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5.2.2.1.2.

For sites located on land used for agriculture. Disturbed areas on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction) that are restored to their pre-construction agricultural use are not subject to these final stabilization criteria. Areas disturbed that were not previously used for agricultural activities, and areas that are not being returned to preconstruction agricultural use, must meet the conditions for stabilization in this section.

5.2.2.2. Non-Vegetative Stabilization.

If the permittee is using non-vegetative controls to stabilize exposed portions of the site, or if the permittee is using such controls to temporarily protect areas that are being vegetatively stabilized, the permittee shall provide effective non-vegetative cover to stabilize any such exposed portions of the site.

5.3. Pollution prevention requirements

The permittee is required to design, install, and maintain effective pollution prevention [~~measures~~] controls in order to prevent the discharge of pollutants. Consistent with this requirement, the permittee shall:

- a. Eliminate certain pollutant discharges from the site (see section 5.3.1.);
- b. Properly maintain all pollution prevention controls (see section 5.3.2.); and

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- c. Comply with pollution prevention standards for pollutant-generating activities that occur at the site (see section 5.3.3.).

These requirements apply to all areas of the construction site and any and all support activities covered by this permit consistent with section 5.

5.3.1. Prohibited Discharges.

The permittee is prohibited from discharging the following from the construction site:

- 5.3.1.1. Wastewater from washout of concrete;
- 5.3.1.2. Wastewater from washout [~~and~~and/or] cleanout of stucco, paint, form release oils, curing compounds and other construction materials[~~7~~];
- 5.3.1.3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- 5.3.1.4. Soaps, solvents, or detergents used in vehicle and equipment washing; and
- 5.3.1.5. Toxic or hazardous substances from a spill or other release.

5.3.2. General Maintenance Requirements.

The permittee shall ensure that all pollution prevention controls installed in accordance with this section remain in effective operating condition and are protected from activities that would reduce their effectiveness. The permittee shall inspect all pollutant-generating activities and pollution prevention controls in accordance with the inspection

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frequency requirements in sections 9.1.2 or 6.2.2.1. to avoid situations that may result in leaks, spills, and other releases of pollutants in storm water discharges to receiving waters, and must document the findings in accordance with section 9.1.7. If the permittee finds that controls need to be replaced, repaired, or maintained, the permittee shall make the necessary repairs or modifications in accordance with the following:

5.3.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

5.3.2.2.

When installation of a new pollution prevention control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7 calendar day timeframe. Where these actions result in changes to any of the pollution prevention controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.

5.3.3. Pollution prevention standards.

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The permittee is required to comply with the pollution prevention standards in this section if the permittee conducts any of the following activities at the site or at any construction support activity areas covered by this permit (see section 5):

- a. Fueling and maintenance of equipment or vehicles;
- b. Washing of equipment and vehicles;
- c. Storage, handling, and disposal of construction materials, products, and wastes; and
- d. Washing of applicators and containers used for paint, concrete, or other materials.

The pollution prevention standards are as follows:

5.3.3.1. Fueling and maintenance of equipment or vehicles.

If the permittee conducts fueling and/or maintenance of equipment or vehicles at the site, the permittee shall provide an effective means of eliminating the discharge of spilled or leaked chemicals, including fuel, from the area where these activities will take place.

To comply with the prohibition in section 5.3.1.3., the permittee shall:

5.3.3.1.1.

If applicable, comply with the Spill Prevention Control and Countermeasures (SPCC) requirements in 40 CFR 112 and section 311 of the CWA;

5.3.3.1.2.

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Ensure adequate supplies are available at all times to handle spills, leaks, and disposal of used liquids;

5.3.3.1.3.

Use drip pans and absorbents under or around leaky vehicles and equipment;

5.3.3.1.4.

Dispose of or recycle oil and oily wastes in accordance with other federal, state, and local requirements;

5.3.3.1.5.

Clean up spills or contaminated surfaces immediately, using dry clean up measures where possible, and eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge; and

5.3.3.1.6.

Do not clean surfaces by hosing the area down.

5.3.3.2. Washing of equipment and vehicles.

5.3.3.2.1.

The permittee shall provide an effective means to prevent the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of washing; and

5.3.3.2.2.

To comply with the prohibition in section 5.3.1.4., for storage of soaps, detergents, or solvents, the

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permittee shall provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these detergents from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these storage areas.

5.3.3.3. Storage, Handling, and Disposal of Construction Products, Materials, and Wastes.

The permittee shall minimize the exposure to storm water of any of the products, materials, or wastes specified below that are present at the site by complying with the requirements in this section.

Note: These requirements do not apply to those products, materials, or wastes that are not a source of storm water contamination or that are designed to be exposed to storm water.

Note: Compliance with the requirements of this permit does not relieve compliance with respect to federal, state or local requirements for the storage, handling, and disposal of solid, hazardous, or toxic wastes and materials.

To ensure meeting this requirement, the permittee shall:

5.3.3.3.1.

For building products: In storage areas, provide either:

- a. Cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or

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- b. A similarly effective means designed to prevent the discharge of pollutants from these areas.

5.3.3.3.2.

For pesticides, herbicides, insecticides, fertilizers, and landscape materials:

- a. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals and materials from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and
- b. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.

5.3.3.3.3.

For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:

- ~~[a. To comply with the prohibition in section 5.3.1.3., store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and]~~

The following requirements apply to the storage and handling of chemicals on the site. If the permittee is already implementing controls as part of an SPCC or

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other spill prevention plan that meet or exceed the requirements of this section, the permittee may continue to do so and be considered in compliance with these requirements provided the permittee reference the applicable sections of the SPCC or other plans in the SWPP as required in section 7.2.11.1.

5.3.3.3.3.1.

If any chemical container has a storage capacity of less than 55 gallons:

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. If stored outside, use a spill containment pallet or similar device to capture small leaks or spills; and
- c. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

5.3.3.3.3.2.

If any chemical container has a storage capacity of 55 gallons or more:

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. Store containers a minimum of 50 feet from receiving state waters, constructed or natural site drainage features, and storm drain inlets. If infeasible due to site constraints, store containers as far away from these features as the site permits.

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If site constraints prevent storing containers 50 feet away from receiving state waters or the other features identified, the permittee must document in the SWPPP the specific reasons why the 50-foot setback is infeasible, and how the permittee will store containers as far away as the site permits;

c. Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to storm water, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets, double-wall, above-ground storage tank); and

d. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

[b-]5.3.3.3.3.

Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.

5.3.3.3.4.

For hazardous or toxic ~~[waste:]~~wastes:

Separate hazardous or toxic waste from construction and domestic waste;

a. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation

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and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements;

- b. Store all containers that will be stored outside away from [~~surface waters~~] receiving state waters, storm drain inlets, and constructed or natural site drainage features, and within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);
- c. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements; and
- d. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.

5.3.3.3.5.

For construction and domestic [~~waste~~]wastes:

Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, the permittee shall:

- a. For waste containers with lids, keep waste container lids closed when not in use, and close

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lids at the end of the business day and during storm events;

b. For waste containers without lids, provide either cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or a similarly effective means (e.g., secondary containment) designed to minimize the discharge of pollutants;

[a-]c. On work days, clean up and dispose of waste in designated waste containers; and

[b-]d. Clean up immediately if containers overflow[-], and if there is litter elsewhere on the site from escaped trash.

Note: Examples of construction and domestic wastes include packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, demolition debris; and other trash or discarded materials.

5.3.3.3.6.

For sanitary waste:

Position portable toilets so that they are secure and will not be tipped or knocked over[-], and are located away from receiving state waters, storm drain inlets, and constructed or natural site drainage features.

5.3.3.4. Washing of applicators and containers used for paint, concrete, or other materials.

The permittee shall provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release

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oils, curing compounds, and other construction materials. To comply with this requirement, the permittee shall:

5.3.3.4.1.

Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;

5.3.3.4.2.

Handle washout or cleanout wastes as follows:

5.3.3.4.2.1. For liquid wastes

- a. Do not dump liquid wastes [~~in storm sewers,~~] or allow them to enter into constructed or natural site drainage features, storm drain inlets, or receiving state waters;
- b. [~~Dispose of liquid wastes in accordance with applicable requirements in section 5.3.3.3.;~~ and Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground;
- c. Comply with applicable state or local requirements for the disposal of liquid wastes; and

5.3.3.4.2.2. For solid wastes

[~~e.~~] Remove and dispose of hardened concrete waste consistent with the handling of other construction wastes in section 5.3.3.3.; and

5.3.3.4.3.

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Locate any washout or cleanout activities as far away as possible from receiving state waters [~~and storm water inlets or conveyances,~~], constructed or natural site drainage features, and storm drain inlets, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

5.3.4. Emergency spill notification.

The permittee is prohibited from discharging toxic or hazardous substances from a spill or other release, consistent with section 5.3.1.5. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period, the permittee shall notify the National Response Center (NRC) at (800) 424-8802 , the Clean Water Branch during regular business hours at (808) 586-4309, and the Hawaii State Hospital Operator at 247-2191 and the Clean Water Branch via email at cleanwaterbranch@doh.hawaii.gov during non-business hours as soon as the permittee has knowledge of the discharge. The permittee shall also, within 7 calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release. State and local requirements may necessitate additional reporting of spills or discharges to local emergency response, public health, or drinking water supply agencies.

5.3.5. Fertilizer discharge restrictions.

The permittee is required to minimize discharges of fertilizers containing nitrogen or phosphorus. To

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meet this requirement, the permittee shall comply with the following requirements:

- 5.3.5.1. Apply at a rate and in amounts consistent with manufacturer's specifications, or document departures from the manufacturer specifications where appropriate in section 7.2.7.2. of the SWPPP;
- 5.3.5.2. Apply at the appropriate time of year for the location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth;
- 5.3.5.3. Avoid applying before heavy rains that could cause excess nutrients to be discharged;
- 5.3.5.4. Never apply to [~~storm water conveyance channels~~]constructed or natural site drainage features with flowing water; and
- 5.3.5.5. Follow all other federal, state, and local requirements regarding fertilizer application.

6. Water Quality-Based Effluent Limitations

6.1. General Effluent limitation to meet applicable water quality standards

~~[The permittee shall not cause or contribute to a violation of the basic water quality criteria]~~
Discharges shall be controlled as necessary to meet applicable water quality standards as specified in section 11-54-4.

In the absence of information demonstrating otherwise, the department expects that compliance with the

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conditions in this permit will result in storm water discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the department determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in section 10.2.1., and document the corrective actions as required in section 10.2.1. and section 10.4.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information in the NOI, or from other sources indicates that the discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in a state-established and EPA-approved Total Maximum Daily Load (TMDL).

6.2. ~~[Discharge limitations for]~~ Water quality-based conditions for sites discharging to impaired state waters

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or phosphorus, the permittee is required to comply with the requirements in section 6.2.2.

Note: For the purposes of this section, "impaired waters" are waters identified as impaired on the State CWA section 303(d) list, and waters with a state-established and EPA-approved TMDL. The construction site will be considered to discharge to an impaired water if the first state water to which the discharge

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enters is to a water on the section 303(d) list or one with a state established and EPA-approved TMDL. For discharges that enter a storm water drainage system prior to discharge, the first state water to which discharge is the water body that receives the storm water discharge from the storm water drainage system.

If discharge is to ~~[an impaired]~~ a state water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards~~[, including for it]~~. These controls might include those necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL[, or if coverage under an individual permit is necessary]. In addition, the department may require the permittee to apply for or obtain coverage under a NPDES individual permit.

If during the coverage under a previous permit, the permittee was required to install and maintain storm water controls specifically to meet the assumptions and requirements of a state-established and EPA-approved TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the permittee shall continue to implement such controls as part of this permit.

6.2.1. Identify ~~[if you]~~ discharge to an impaired water.

If discharge is to an impaired water, the permittee shall provide the following information in the NOI:

- a. A list of all impaired waters to which discharge enters;

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- b. The pollutant(s) for which the state water is impaired; and

6.2.2. Requirements for discharges to sediment or nutrient-impaired waters.

If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter (e.g., total suspended solids (TSS) or turbidity) and/or (2) nutrients (e.g., nitrogen and/or phosphorus), including impaired waters for which a TMDL has been approved or established for the impairment, the permittee is required to comply with the following storm water control requirements in sections 6.2.2.1. and 6.2.2.2., which supplement the requirements applicable to the site in other corresponding sections of the permit.

The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if it is determined that the controls will not be sufficient to control discharges consistent with the assumptions and requirements of an applicable wasteload allocation of an approved or established TMDL or to prevent the site from contributing to the impairment.

6.2.2.1. Frequency of site inspection.

The permittee shall conduct inspections at the frequency specified in section 9.1.3.

6.2.2.2. Deadline to complete stabilization.

The permittee shall comply with the deadlines for completing site stabilization as specified in section 5.2.1.3.2.

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7. Storm Water Pollution Prevention Plan (SWPPP)

7.1. Requirement to develop a SWPPP prior to submitting an NOI

All permittees and their contractors associated with a construction project to be covered under this permit must develop a SWPPP.

The Permittee is required to develop the site's SWPPP prior to submitting the NOI. The SWPPP must include at a minimum the information required in section 7.2. and as specified in other sections of this general permit and any other information as requested by the director. The permittee shall also update the SWPPP as required in section 7.4.

If a Site Specific Construction Best Management Practices (SSCBMP) Plan was previously developed for coverage under a previous version of this general permit, the permittee shall review and update the SSCBMP Plan to ensure that the SWPPP requirements of [~~this permit's SWPPP~~]this permit are addressed prior to submitting the NOI.

7.2. SWPPP Contents

The SWPPP must include the following information, at a minimum.

7.2.1. Storm water team.

The permittee shall assemble and oversee a "storm water team," which is responsible for the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.

The SWPPP must identify the personnel (by name [~~or~~]and position) that [~~are~~]the permittee made part of the

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storm water team, as well as their individual responsibilities. Each member of the storm water team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.

7.2.2. Nature of construction activities.

The SWPPP must describe the nature of the construction activities, including the size of the project site (in acres) and the total area expected to be disturbed by the construction activities (in acres), construction support activity areas covered by this permit (see section 5), and the maximum area expected to be disturbed at any one time.

7.2.3. Emergency-related projects.

If conducting earth-disturbing activities in response to a public emergency (see section 1.3.), the permittee shall document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., state emergency proclamation or similar state proclamation), and a description of the construction necessary to reestablish effected public services. The proclamation of a civil defense emergency or similar proclamation is required to be from the President of the United States or State Governor.

7.2.4. Identification of other site contractors.

The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.

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Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities.

7.2.5. Sequence and estimated dates of construction activities.

The SWPPP must include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity, for the following activities:

7.2.5.1.

Installation of storm water [~~control measures~~, controls], and when they will be made operational, including an explanation of how the sequence and schedule for installation of storm water [~~control measures~~]controls complies with section 5.1.1.3.1. and of any departures from manufacturer specifications pursuant to section 5.1.1.3.2., including removal procedures of the storm water [~~control measures~~]controls after construction has ceased;

7.2.5.2.

Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;

7.2.5.3.

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Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site;

7.2.5.4.

Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which the permittee is subject to in section 5.2.1.; and

7.2.5.5.

Removal of temporary [~~storm water conveyances/ channels~~] site drainage features and other storm water [~~control measures,~~] controls, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the permittee or contractor to meeting these projections. When departures from initial projections are necessary, this should be documented in the SWPPP itself or in associated records, as appropriate.

7.2.6. Site map.

The SWPPP must include a legible site map, or series of maps, showing the following features of the project:

Note: Included in the project site are any construction support activities covered by this permit (see section 5).

7.2.6.1.

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Boundaries of the property and of the locations where construction activities will occur, including:

- a. Locations where earth-disturbing activities will occur, noting any sequencing of construction activities;
- b. Approximate slopes before and after major grading activities and drainage patterns with flow arrows. Note areas of steep slopes, as defined in section 5.1.2.6.;
- c. Locations where sediment, soil, or other construction materials will be stockpiled;
- d. Locations of any contaminated soil or contaminated soil stockpiles;
- e. Locations of any crossings of receiving state waters;
- f. Designated points on the site where vehicles will exit onto paved roads;
- g. Locations of structures and other impervious surfaces upon completion of construction; and
- h. Locations of construction support activity areas covered by this permit (see section 5).

7.2.6.2.

Locations of ~~[all]~~any receiving state waters, including wetlands, that exist within or in the immediate vicinity of the site and indicate which ~~[waterbodies]~~of these receiving state waters are listed as impaired;

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7.2.6.3.

The boundary lines of any natural buffers provided consistent with section 5.1.2.1.1.;

7.2.6.4.

Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of storm water onto, over, and from the site property before and after major grading activities;

7.2.6.5.

Storm water discharge locations, including:

- a. Locations of any storm drain inlets on the site and in the immediate vicinity of the site to receive storm water runoff from the [~~project,~~]
project site; [and]
- b. Locations where storm water will be discharged to receiving state waters (including wetlands); and
- c. Locations where storm water will exit the site.

7.2.6.6.

Locations of all potential pollutant-generating activities identified in section 7.2.7.;

7.2.6.7.

Locations of storm water [~~control measures,~~]controls;
and

7.2.6.8.

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Locations where chemicals will be used and stored.

7.2.7. Construction site pollutants.

The SWPPP must include the following:

- a. A list and description of all the pollutant-generating activities on the site.
- b. For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall and could be discharged from the construction site. The permittee shall take into account where potential spills and leaks could occur that contribute pollutants to storm water discharges. The permittee shall also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in section 5.3.5.1.

7.2.8. Sources of non-storm water.

The SWPPP must also identify all sources of non-storm water and information, including, but not limited to, the design, installation, and maintenance of the ~~[control-measures]~~controls to prevent its discharge.

7.2.9. Buffer documentation.

If the permittee is required to comply with section 5.1.2.1. because a receiving state water is located within 50 feet of the project's earth disturbances, the permittee shall describe which compliance alternative the permittee has selected for the site, and comply with any additional requirements to provide documentation in section 5.1.2.1.

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7.2.10. Description of storm water [~~control measures.~~]controls

7.2.10.1 Storm water [~~control measures~~]controls to be used during construction activity.

The SWPPP must describe all storm water [~~control measures~~]controls that are or will be installed and maintained at the site to meet the requirements of section 5. For each storm water [~~control measure,~~ control, the permittee must document:

- a. Information on the type of storm water control [~~measure~~]to be installed and maintained, including design information;
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of the site to meet the requirement of section 5.1.2.2.1.;
- c. If contaminated soil exists on-site, the [~~control measures~~]controls to either prevent the contact of storm water with the contaminated soil, including any contaminated soil stockpiles, or prevent the discharge of any storm water runoff which has contacted contaminated soil or any contaminated soil stockpiles;
- d. For exit points on the site, document stabilization techniques the permittee will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with section 5.1.2.3.; and
- e. For linear projects, where the permittee has determined that the use of perimeter controls in

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portions of the site is impracticable, document why the permittee believes this to be the case (see section 5.1.2.2.1.).

7.2.10.2. Stabilization practices.

The SWPPP must describe the specific vegetative and/or non-vegetative practices that will be used to comply with the requirements in section 5.2., including if the permittee will be complying with the stabilization deadlines specified in section 5.2.1.3.2. The permittee shall document the circumstances that prevent the permittee from meeting the deadlines specified in sections 5.2.1.1. and/or 5.2.1.2.

7.2.10.3. Post construction measures.

Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.

7.2.11. Pollution prevention procedures.

7.2.11.1. Spill prevention and response procedures.

The SWPPP must describe procedures that the permittee will follow to prevent and respond to spills and leaks consistent with section 5.3., including:

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- a. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with section 5.3.4. and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available.

The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that the permittee keeps a copy of that other plan onsite.

Note: Even if the permittee already has an SPCC or other spill prevention plan in existence, the plans will only be considered adequate if they meet all of the requirements of this section, either as part of the existing plan or supplemented as part of the SWPPP.

7.2.11.2. Waste management procedures.

The SWPPP must describe procedures for how the permittee will handle and dispose of all wastes generated at the site, including, but not limited to, clearing and demolition debris, sediment removed from

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the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.

7.2.12. Procedures for inspection, maintenance, and corrective action.

The SWPPP must describe the procedures the permittee will follow for maintaining the storm water [~~control measures,~~]controls, conducting site inspections, and, where necessary, taking corrective actions, in accordance with section 5.1.1.4., section 5.3.2., section 9, and section 10 of the permit~~[+]~~, accordingly. The following information must also be included in the SWPPP:

- a. Personnel responsible for conducting inspections;
- b. The inspection schedule the permittee will be following, which is based on whether the site is subject to section 9.1.2. or section 9.1.3., and whether the site qualifies for any of the allowances for reduced inspection frequencies in 9.1.4. If the permittee will be conducting inspections in accordance with the inspection schedule in section 9.1.2.a. or section 9.1.2.b., the location of the rain gauge on the site or the address of the weather station the permittee will be using to obtain rainfall data~~[+]~~. If the permittee will be reducing the inspection frequency in accordance with section 9.1.4.2., the beginning and ending dates of frozen conditions on the site; and
- c. Any inspection or maintenance checklists or other forms that will be used.

7.2.13. Staff training.

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The SWPPP must include documentation that the required personnel were trained in accordance with the following:

7.2.13.1.

Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, the permittee shall ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- a. Personnel who are responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention ~~[measures)]~~ controls);
- b. Personnel who are responsible for the application and storage of chemicals (if applicable);
- c. Personnel who are responsible for conducting inspections as required in ~~[Part 4.1.1.]~~ section 9.1.1.; and
- d. Personnel who are responsible for taking corrective actions as required in ~~[Part 5.]~~ section 10.

Notes: (1) If the person requiring training is a new employee, who starts after the permittee commences earth-disturbing or pollutant-generating activities, the permittee shall ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. (2) For emergency-related construction activities, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply, however, such

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personnel must have the required training prior to NOI submission.

7.2.13.2.

The permittee is responsible for ensuring that all activities on the site comply with the requirements of this permit. The permittee is not required to provide or document formal training for subcontractors or other outside service providers, but must ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.

At a minimum, personnel must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):

- a. The location of all storm water controls on the site required by this permit, and how they are to be maintained;
- b. The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- c. When and how to conduct inspections, record applicable findings, and take corrective actions.

7.2.14. Documentation of compliance with Safe Drinking Water Act Underground Injection Control (UIC) requirements for certain subsurface storm water controls.

If using any of the following storm water controls at the site, as they are described below, the permittee must document any contact with the department's Safe

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Drinking Water Branch for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144 -147. Such controls would generally be considered Class V UIC wells:

- a. Infiltration trenches (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);
- b. Commercially manufactured precast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate storm water flow; and
- c. Drywells, seepage pits, or improved sinkholes (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).

7.2.15. Information to be included in the SWPPP prior to the start of construction activities.

7.2.15.1. Contractor information.

The following contractor (general and subcontractors) information shall be included in the SWPPP: legal name, street address, contact person's name and position title, telephone number, and email address.

7.2.15.2. Other state, federal, or county permits.

The following are required to be included in the SWPPP prior to the start of construction activities, if applicable:

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- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;
- b. Copy of the county-approved grading permit;
- c. Copy of the department of the army permit and section 401 water quality certification; and
- d. A list of other permits.

7.2.16. Any other information as requested by the director.

7.2.17. SWPPP certification.

The certifying person or duly authorized representative must certify, sign, and date the SWPPP in accordance with section 15 of appendix A, chapter 11-55.

7.2.18. Post-authorization additions to the SWPPP.

After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:

- a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;
- b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable).

7.3. On-site availability of the SWPPP

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The permittee is required to keep a current hard or electronic copy of the SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by the department; EPA; or local agency approving storm water management plans; the operator of a storm water drainage system receiving discharges from the site; or representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS).

The department may provide access to portions of the SWPPP to a member of the public upon request. Confidential Business Information (CBI) will be withheld from the public, but may not be withheld from EPA, USFWS, or NMFS.

Note: Information covered by a claim of confidentiality will be disclosed by the department only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the CWA. The authorized representatives, including employees of other executive branch agencies, may review CBI during the course of reviewing draft regulations.

If an onsite location is unavailable to keep the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance of the construction site.

7.4. Required SWPPP modifications

7.4.1. List of conditions requiring SWPPP modification.

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The permittee shall modify the SWPPP, including the site map(s), in response to any of the following conditions:

7.4.1.1.

Whenever new contractors become active in construction activities on the site, or changes are made to the construction plans, storm water [~~control measures,~~ controls, pollution prevention [~~measures,~~ controls, or other activities at the site that are no longer accurately reflected in the SWPPP. This includes changes made in response to corrective actions triggered under section 10;

7.4.1.2.

To reflect areas on the site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;

7.4.1.3.

If inspections or investigations by site staff, or by local, state, or federal officials determine that SWPPP modifications are necessary for compliance with this permit;

7.4.1.4.

Where the department determines it is necessary to impose additional requirements on the discharge, the following must be included in the SWPPP:

- a. A copy of any correspondence describing such requirements; and

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- b. A description of the storm water [~~control measures~~]controls that will be used to meet such requirements.

7.4.1.5.

To reflect any revisions to applicable federal, state, and local requirements that affect the storm water [~~control measures~~]controls implemented at the site.

7.4.2. Deadlines for SWPPP modifications.

The permittee shall complete required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in section 7.4.1.

7.4.3. SWPPP modification records.

The permittee shall maintain records showing the dates of all SWPPP modifications. The records must include a signature of the person authorizing each change (see section 7.2.17. above), date, and a brief summary of all changes.

7.4.4. Certification requirements.

All modifications made to the SWPPP consistent with section 7.4. must be certified, signed, and dated by the Certifying Person that meets the requirements in section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

7.4.5. Required notice to other contractors.

Upon determining that a modification to the SWPPP is required, if there are multiple contractors covered under this permit, the permittee shall immediately

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notify any contractors who may be impacted by the change to the SWPPP.

8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)

8.1.

The permittee shall design, operate, implement, and maintain the SWPPP to ensure that storm water discharges associated with construction activities will ~~[not cause or contribute to a violation of]~~ meet applicable state water quality standards.

8.2.

The permittee shall implement the SWPPP to improve the quality of storm water discharges or when instructed by the director.

9. Inspections

9.1. Site Inspections

The permittee shall inspect the receiving state waters, storm water runoff and ~~[control measures]~~ all controls and best management practices to detect violations of ~~[and conditions which may cause violations of the basic]~~ applicable water quality criteria as specified in section 11-54-4 ~~[in accordance with this section.]~~ (e.g., the permittee shall look at storm water discharges 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.]~~ life). The permittee must inspect the receiving state waters only when there is a discharge

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from the project site or there is a potential for downstream erosion. If the discharge enters an MS4 or separate drainage system prior to the receiving state water, then the permittee may inspect their discharge where it enters the drainage system rather than at the receiving water. When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water or separate drainage system, in lieu of inspecting the receiving water or where it enters the drainage system, the permittee may inspect the effluent at a location representative of the discharge quality prior to commingling. The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.

9.1.1. Person(s) responsible for ~~[inspecting site.]~~ conducting site inspection

The person(s) inspecting the site may be a person on staff or a third party hired to conduct such inspections. The permittee is responsible for ensuring that ~~[the person who conducts inspections is a "qualified person."]~~ any person conducting site inspections is a "qualified person."

Note: A "qualified person" is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact storm water quality, and the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.

9.1.2. Frequency of Inspections.

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At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. for discharges to impaired waters or qualify for a section 9.1.4.[÷] reduction in the inspection frequency. As specified in section 9.1., the permittee is not required to inspect areas that, at the time of inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.

- a. At least once every 7 calendar days; or
- b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event ~~[of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~ as specified in section 9.1.2.1.1. or section 9.1.2.1.2.

Note: Inspections are only required during the project's normal working hours.

Note: The permittee is required to specify in the SWPPP which schedule will be followed.

~~[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if the permittee has elected to~~

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~~inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]~~

9.1.2.1. Types of storm event

9.1.2.1.1. For rain

A storm event that produces 0.25 inches or more of rain within a 24-hour period.

a. If a storm event produces 0.25 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.25 inches but together produce 0.25 inches or more in 24 hours), the permittee is required to conduct one inspection within 24 hours of when 0.25 inches of rain or more has fallen.

b. If a storm event produces 0.25 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.25 inches or more of rain on subsequent days, the permittee must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain (i.e., only two inspections would be required for such a storm event).

Note: For example, if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, the permittee is required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within

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24 hours of the Day 2 rainfall, but a third inspection is not required within 24 hours of the Day 3 rainfall.

9.1.2.1.2. For snow

A discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period.

Note: 3.25 inches of snow is equivalent to 0.25 inches of rain. This is based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain.

a. The permittee is required to conduct one inspection once the discharge of snowmelt from a 3.25-inch or more snow accumulation occurs.

b. The permittee is required to conduct additional inspections if following the discharge from the first snowmelt, there is a discharge of snowmelt from a separate storm event that produces 3.25 inches or more of snow accumulation.

9.1.2.2.

To determine whether a storm event meets either of the thresholds in section 9.1.2.1.1. or section 9.1.2.1.2.:

a. For rain, the permittee must either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any 24-hour period during which there is 0.25 inches or more of rainfall, the permittee must record the total rainfall measured for that day in accordance with section 9.1.7.1.d.

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b. For snow, the permittee must either take measurements of snowfall at the site, or rely on similar information from a local weather forecasting provider that is representative of the location.

Note: For snowfall measurements, the department suggests use of a piece of wood, about 16 inches by 16 inches in size, that is placed in an unobstructed part of the site on a hard surface.

9.1.3. Increase in inspection frequency [~~for sites discharging to impaired waters.~~]

~~[For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:]~~

~~[a. Once every 7 calendar days; and]~~

~~[b. Within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~

For any portion of the site that discharges to an impaired water (see section 6.2), the permittee shall conduct an inspection once every 7 calendar days and within 24 hours of the occurrence of a storm event that produces 0.25 inches or more of rain within a 24-

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hour period, or within 24 hours of the discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period. Refer to sections 9.1.2.2.a. and 9.1.2.2.b. for the requirements to determine if a storm event produces enough rain or snow to trigger the inspection requirement.

Note: The increased inspection frequencies established in this section take the place of the inspection frequencies specified in section 9.1.2 for the portion of the site affected.

Note: Inspections are only required during the project's normal working hours.

~~[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]~~

Note: If the permittee qualifies for any of the reduced inspection frequencies in section 9.1.4., the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water.

9.1.4. Reductions in inspection frequency.

~~[For stabilized areas.]~~ 9.1.4.1. For stabilized areas

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The permittee may reduce the frequency of inspections to once per month until the permit coverage expires or is terminated in any area of the site where the stabilization steps in sections 5.2.1.2.1. and 5.2.1.2.2. have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in sections 9.1.2. or 9.1.3., if applicable. The permittee shall document the beginning and ending dates of this period in the records.

9.1.4.2. For frozen conditions

9.1.4.2.1.

If construction activities are suspended due to frozen conditions, the permittee may temporarily suspend inspections on the site until thawing conditions begin to occur under the following conditions.

a. If discharges are unlikely due to continuous frozen conditions that are likely to continue at the site for least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable;

Note: The permittee must use data sets that include the most recent data available to account for recent precipitation patterns and trends.

b. If earth disturbances have been suspended; and

c. If all disturbed areas of the site have been stabilized in accordance with section 5.2.1.

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9.1.4.2.2.

If construction activities are still conducted during frozen conditions, the permittee may reduce the inspection frequency to once per month under the following conditions.

a. If discharges are unlikely due to continuous frozen conditions that are likely continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable; and

b. If the areas in which the construction activities are actively conducted, the disturbed areas of the site have been stabilized in accordance with section 5.2.1.

9.1.4.2.3.

The permittee shall document the beginning and ending dates of this period in the records.

9.1.5. Areas that need to be inspected.

The permittee shall at a minimum inspect the following areas of the site:

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with section 5.2.;
- b. All storm water controls (including pollution prevention ~~[measures]~~ controls) installed at the site to comply with this permit;

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Note: This includes the requirement to inspect sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with section 5.1.2.3.

- c. Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;
- d. All areas where storm water typically flows within the site, including [~~drainageways~~ constructed or natural site drainage features designed to divert, convey, and/or treat storm water;
- e. All points of discharge from the site; and
- f. All locations where stabilization measures have been implemented.

[~~The~~] As specified in section 9.1., the permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection [~~personnel.~~] personnel, if the unsafe conditions have been documented.

9.1.6. Requirements for inspections.

During [~~the~~] each site inspection, the permittee shall at a minimum:

9.1.6.1.

Check whether all erosion and sediment controls and pollution prevention controls are installed, appear to be operational, and are working as intended to minimize pollutant discharges. Determine if any controls need to be replaced, repaired, or maintained in accordance with sections 5.1.1.4. and 5.3.2.;

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9.1.6.2.

Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;

9.1.6.3.

Identify any locations where new or modified storm water controls are necessary to meet the requirements of sections 5 and/or 6;

9.1.6.4.

At points of discharge and, if applicable, on the banks of any receiving state waters flowing within the property boundaries or immediately adjacent to the property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge; ~~and~~

9.1.6.5.

Check for signs of sediment deposition that are visible from the site and attributable to the discharge (e.g., sand bars with no vegetation growing on top in receiving state waters or in other constructed or natural site drainage features, or the buildup of sediment deposits on nearby streets, curbs, or open conveyance channels); and

9.1.6.6

Identify any and all incidents of noncompliance observed.

~~[9.1.6.6.]~~ 9.1.6.7.

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If a discharge is occurring during the inspection, the permittee is required to:

- a. Identify all points of the property from which there is a discharge~~[7]~~; and
- b. Observe and document the visual quality of the discharge, and take note of the characteristics of the storm water discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of storm water pollutants~~[7]~~. Check also for signs of these same pollutant characteristics that are visible from the site and attributable to the discharge in receiving state waters or in other constructed or natural site drainage features; and
- c. Document whether the storm water controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.

~~[9.1.6.7.]~~ 9.1.6.8.

Based on the results of the inspection~~[7, initiate corrective action under section 10.]~~:

- a. Initiate any necessary maintenance repairs or replacements under section 10; and
- b. Modify the SWPPP site map in accordance with section 7.4.1. to reflect changes to the storm water controls that are no longer accurately reflected on the current site map.

9.1.7. Inspection report.

9.1.7.1.

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Requirement to Complete Inspection Report. The permittee must complete an inspection report within 48 hours of completing any site inspection. Each inspection report must include the following:

- a. The inspection date;
- b. Names and titles of personnel making the inspection;
- c. A summary of the inspection findings, covering at a minimum the observations made in accordance with section 9.1.6.~~[7]~~, including any problems found during the inspection that make it necessary to perform routine maintenance pursuant to section 5.1.1.4.2.1.1 or corrective actions pursuant to section 10.
- d. If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and ~~[have]~~ the permittee conducted an inspection because of a storm event that produced rainfall measuring 0.25 inches or ~~[greater,]~~ more within a 24-hour period, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection~~[7]~~. Similarly, if the permittee conducted an inspection because of a snowmelt discharge from a storm event that produced 3.25 inches or more of snow within a 24-hour period, the permittee must include any measurements taken of snowfall at the site, or weather station information that triggered the inspection; and
- e. If determined that it is unsafe to inspect a portion of the site, the permittee shall describe the reason to be unsafe and specify the locations that this condition applied to.

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9.1.7.2. Signature Requirements.

Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

9.1.7.3. Recordkeeping Requirements.

The permittee is required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department or EPA.

Note: Inspection reports may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

- a. In a format that can be read in a similar manner as a paper record;
- b. Legally dependable with no less evidentiary value than their paper equivalent; and
- c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

All inspection reports completed for this section must be retained for at least three years from the date that the permit coverage expires or is terminated.

9.2. Inspection by the department or EPA

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The permittee shall allow the department, EPA, or an authorized representative of the EPA, to conduct the following activities at reasonable times:

- a. Enter onto areas of the site, including any construction support activity areas covered by this permit (see Section 5), and onto locations where records are kept under the conditions of this permit;
- b. Access and copy any records that must be kept under the conditions of this permit;
- c. Inspect the construction site, including any construction support activity areas covered by this permit (see section 5) and any storm water controls installed and maintained at the site; and
- d. Sample or monitor for the purpose of ensuring compliance.

10. Corrective [~~Action~~]Actions

The permittee shall immediately stop, reduce, or modify construction, or implement new or revised best management practices as needed to stop or prevent a violation of [~~the basic~~] applicable water quality criteria as specified in section 11-54-4.

10.1. "Corrective actions" defined

Corrective actions are actions taken in compliance with this section to:

- a. Repair, modify, or replace any storm water control used at the site;

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- b. Clean up and properly dispose of spills, releases, or other deposits; or
- c. Remedy a permit violation.

10.2. Requirements for taking corrective actions

The permittee shall complete the following corrective actions in accordance with the deadlines specified in this section. In all circumstances, the permittee shall immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational, including cleaning up any contaminated surfaces so that the material will not discharge in subsequent storm events.

Note: In this context, the term "immediately" requires construction contractors to, on the same day a condition requiring corrective action is found, take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational. However, if the problem is identified at a time in the work day when it is too late to initiate corrective action, the initiation of corrective action must begin on the following work day.

10.2.1. Corrective action deadlines

For any of the following conditions on the site, the permittee shall install a new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in the records why it is infeasible to complete the installation or repair within the 7 calendar day timeframe and document a schedule for

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installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe.

- a. A required storm water control was never installed, was installed incorrectly, or not in accordance with the requirements in [~~sections 5 and/or 6,~~] section 5 and/or section 6; or
- b. The permittee becomes aware that the storm water controls installed and being maintained are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in section 6.1. In this case, the permittee shall notify the department by the end of the next work day; or
- c. One of the prohibited discharges in section 5.3.1. is occurring or has occurred.

10.2.2.

Where corrective actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing corrective action work.

10.3. Corrective actions required by the department

The permittee shall comply with any corrective actions required by the department as a result of permit violations found during an inspection carried out under section 9.2.

10.4. Corrective action [~~report~~] log

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For each corrective action taken in accordance with this section, the permittee shall ~~[complete a corrective action report, which includes the applicable information in sections 10.4.1. and 10.4.2. Note that these reports must be maintained in the permittee's records but do not need to be provided to the department except upon request.]~~ record the following information in a corrective action log.

10.4.1.

Within 24 hours of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~ document the following information:

- a. ~~[Which condition was]~~ The condition identified at the site;
- b. The nature of the condition identified; and
- c. The date and time of the condition identified and how it was identified.

10.4.2.

Within 7 calendar days of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~ document the following information:

- a. Any follow-up actions taken to review the design, installation, and maintenance of storm water controls, including the dates such actions occurred;
- b. A summary of storm water control modifications taken or to be taken, including a schedule of activities necessary to implement changes, and

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the date the modifications are completed or expected to be completed; and

- c. Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.

10.4.3.

~~[Each corrective action report]~~Each entry into the corrective action log, consisting of the information required by both sections 10.4.1. and 10.4.2., must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b) .

Note: The corrective action log may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

- a. In a format that can be read in a similar manner as a paper record;
- b. Legally dependable with no less evidentiary value than their paper equivalent; and
- c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

10.4.4.

The permittee shall keep a current copy of ~~[all corrective action reports]~~the corrective action log at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department.

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~~[All corrective action reports completed for this Part must be retained]~~ The permittee shall retain the corrective action log for at least three years from the date that the permit coverage expires or is terminated.

11. Notice of Intent (NOI) requirements

11.1.

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

11.2.

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

11.2.1.

Information required in section 34 of appendix A of chapter 11-55;

11.2.2.

That coverage is being requested as a result of an emergency and meets the eligibility ~~[requirements]~~ conditions under this permit and information required in section 7.2.3.

11.2.3.

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That coverage is being requested for discharge to an impaired water, if applicable;

11.2.4.

Preparation of a SWPPP in accordance with section 7 prior to submitting the NOI;

11.2.5.

Information required in section 7.2.2 - Nature of construction activities.

11.2.6.

Information required in section 7.2.5. - Sequence and estimated dates of construction activities.

11.2.7.

Information required in section 7.2.6. - Site map, except for sections 7.2.6.6. [-]through 7.2.6.8.

11.2.8.

If applicable, army corps of engineers' jurisdictional determination and section 401 water quality certification best management practices plan.

11.2.9.

Agreement to the terms, conditions, and requirements in this general permit and all other applicable State, County, and Federal regulations.

11.3.

The director may require additional information to be submitted.

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11.4.

The owner or [~~its duly authorized representative~~] operator shall submit a notice of intent form or forms specified by the CWB.

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

11.4.1.

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

11.4.2.

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
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378

12. Reporting Requirements

12.1.

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The permittee shall immediately notify the director of the incident and identify the [~~pollutant(s) source(s)~~] pollutant sources and the proposed and implemented [~~control~~] controls or mitigative measures as required in section 16 of appendix A of chapter 11-55.

12.2.

The permittee shall notify the director of the construction start date through the e-Permitting portal within seven (7) calendar days before the start of construction activities. All communication with the department shall include the file number and the certification statement. The notification will only be accepted from the person qualified in accordance with section 11-55-34.08(f).

13. Submittal Requirements

13.1.

The [~~owner~~] permittee or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department.

13.2.

When all construction activities have ceased, the [~~owner~~] permittee shall submit to the department a completed Notice of Cessation. The department shall receive this information within 7 calendar days after the end of the month.

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13.3.

The [~~owner~~] permittee or its duly authorized representative shall submit signed copies of all 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

13.4.

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

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

13.5.

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

14. Additional Conditions

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

15. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit for a minimum of three 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. Administrative Extension

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

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17.1.

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

17.2.

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

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix J
Authorizing Unintentional Discharges
from Recycled Water Systems

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

This general permit covers occasional or unintentional discharges composed entirely of R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.

Currently, no general permit coverages are issued for occasional or unintentional discharges from recycled water systems covered under HAR 11-55, Appendix J.

- (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.

Recycled R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation. R-1 water is defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in HAR Chapter 11-62.

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

Not applicable.

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

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Implementations of Best Management Practices

7. *Effluent Limitations and Monitoring Requirements*
8. *Corrective Action*
9. *Reporting Requirements*
10. *Submittal Requirements [Revised]*
11. *Additional Conditions*
12. *Record Retention*
13. *Falsifying Report*
14. *Administrative Extension [Revised]*
15. *Forms*

Sections 1 through 5 and 8 through 15 are basic requirements necessary to the General Permit. Sections 6 and 7 detail the implementation of Best Management Practices and effluent limitations and monitoring requirements for discharges of R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.

Basis for Discharge Limitations and Monitoring Requirements

The basis for the proposed effluent limitations and monitoring requirements are the HAR Chapter 11-54, Water Quality Standards and Chapter 11-62, Wastewater Systems.

Discharges to Class 1 or Class AA Waters

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

Chapter 11-55, Appendix J Revisions

Title

Original: NPDES GENERAL PERMIT AUTHORIZING OCCASIONAL OR UNINTENTIONAL DISCHARGES FROM RECYCLED WATER SYSTEMS

Revised: NPDES GENERAL PERMIT AUTHORIZING UNINTENTIONAL DISCHARGES FROM RECYCLED WATER SYSTEMS

Rationale: This general permit was intended to cover unintentional discharges from recycled water systems. CWB believes a facility that knowingly has “occasional” discharges should be covered under an NPDES permit for wastewater discharges. The proposed revision to remove “occasional” discharges from this general permit is more protective of water quality standards.

Section 1(a)

Original: This general permit covers occasional or unintentional discharges composed entirely of: (1) R-1 water, or (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation, where the R-1 water is supplied from a treatment works and is conveyed or used by a recycled water system.

Revised: This general permit covers unintentional discharges composed entirely of: (1) R-1 water, or (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation, where the R-1 water, defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62, is supplied from a treatment works and is conveyed or used by a recycled water system. Occasional or unintentional discharges are waters that are discharged rarely and was never planned to be discharged to State waters.

Rationale: This revision provides definition to R-1 waters and occasional or unintentional discharges. This general permit covers only R-1 water that meets the standards set in HAR 11-62.

Section 2(a)(5)

Original: (NEW)

Revised: Recycled water system discharges with toxic parameter concentrations above the applicable water quality criteria in Chapter 11-54;

Rationale: This limitation was added to prevent R-1 water discharges that contain toxic constituents in exceedance of the water quality standards listed in HAR Chapter 11-54, Appendix E.

Section 2(a)(7)

Original: Treatment works discharges that are not from an approved recycled water system.

Revised: Treatment works discharges that are not from a recycled water system approved by the department pursuant to chapter 11-62.

Rationale: Section revised to clarify who approves the recycled water system.

Section 2(c)(1) – (4) [New]

Original: (NEW)

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

- (1) Treat recycled water system discharges with controls to minimize discharges of pollutants, including appropriate controls to minimize erosion;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) To the extent feasible, use vegetated, upland areas to infiltrate recycled water before discharge. State waters are prohibited from being used as part of the treatment area;
- (4) At all points where recycled water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to

slow down the discharge. These devices shall not be placed within the receiving waters.

Rationale: Discharges authorized by this permit are often episodic. As this permit only authorizes the discharge of R-1 waters, facilities discharging under this permit are occasional or unintentional.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards. To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards.
- Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.

Section 3(a)

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

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

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

Section 3(b)

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

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

- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(9) 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 Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the 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 sixty days after the effective date of the new general permit unless:

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

- (2) An application for an individual NPDES permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

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

Section 4(a) and (b)

Original: The owner or its duly authorized representative shall;

Revised: The owner or operator shall;

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

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

Section 4(b)(2)

Original: Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed

Revised: A brief description of the recycled water system and the amount in gallons per day of R-1 water;

Rationale: This revision is to provide the Clean Water Branch more detailed information about the recycled water treatment system.

Section 4(b)(4)

Original: Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and

Revised: Documentation showing that the recycled water system has been approved pursuant to Chapter 11-62 by the department.

Rationale: Applicants seeking coverage under this general permit previously submitted their notice of intent to Wastewater Branch for review and approval. The proposed revisions to this general permit designates Clean Water Branch to review and approve general permit coverage for this permit. As part of the notice of intent, Clean Water Branch requires the permittee to show the R-1 water system has been approved pursuant to HAR Chapter 11-62.

Section 4(d)

Original: (New)

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

Rationale: The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions

on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e)

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

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

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

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

Rationale: The address was revised to submit the complete NOI, discharge monitoring reports, and all other reports required by the general permit to Clean Water Branch.

Section 4(d) and 10(a)

Original: *Director of Health
Wastewater Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378*

Revised: *Director of Health*

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

Rationale: The address was revised to submit the complete NOI, discharge monitoring reports, and all other reports required by the general permit to Clean Water Branch.

Section 7(b)(5)

Original: [NEW]

Revised: Color photographs shall be taken during the unintentional discharges of the Recycled Water effluent. Copies of the color photographs shall contain the date and time the photos were taken and a written narrative description of what is being depicted in the photograph. A photograph orientation map shall also be submitted.

All photographs shall be submitted to the DOH-CWB via the DOH e-Permitting Portal Compliance Submittal Form for Individual NPDES Permits and NGPCs. Photographs taken after the completion of the unintended discharges shall be submitted to the DOH-CWB within thirty (30) days after the completion of the discharges.

Rationale: Photo documentation added as a compliance requirement of the Basic Water Quality Criteria.

Section 10(a) – (c)

Original: The owner or its duly authorized representative shall...

Revised: The permittee or its duly authorized representative shall...

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

Section 14

Original: Renewal

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

Revised: Administrative Extension

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

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

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

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

1. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

2. A description of the procedures for reaching a final decision on the draft permit including:

Rational for Proposed Revision to HAR Chapter 11-55, Appendix J
January 2023

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

Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix J within HAR Chapter 11-55, Water Pollution Control.

3. Name and telephone number of a person to contact for additional information.

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

4. For NPDES permits, provisions satisfying the requirements of § 124.56.

Refer to 40 CFR 450.

5. 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 [~~OCCASIONAL-OR~~] UNINTENTIONAL DISCHARGES FROM RECYCLED WATER SYSTEMS

This General Permit is effective on

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

1. Coverage under this General Permit

- (a) This general permit covers [~~occasional-or~~] unintentional discharges composed entirely of:

- (1) R-1 water, or
- (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation,

where the R-1 water, defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62, is supplied from a treatment works and is conveyed or used by a recycled water system. Unintentional discharges are waters that are discharged rarely and were never planned to be discharged to State waters.

- (b) This general permit covers all areas of the State except for natural freshwater lakes, saline lakes, and anchialine pools.

2. Limitations on Coverage under this General Permit

- (a) This general permit does not cover the following:

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- (1) Recycled water system discharges into a sanitary sewer system;
- (2) Recycled water system discharges 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) Recycled water system discharges which are regulated by an existing individual permit;
- (4) Recycled water systems which the director finds to have violated, be violating, or contributing to a violation of chapter 11-62;
- ~~[(5) Recycled water system discharges that the director finds more appropriately should be regulated under an individual permit; and]~~
- (5) Recycled water system discharges with toxic parameter concentrations above the applicable water quality criteria in Chapter 11-54;
- (6) Recycled water system discharges that the director finds more appropriately should be regulated under an individual permit; and
- ~~[(6)]~~ (7) Treatment works discharges that are not from [an approved] a recycled

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water system[-] approved by the department pursuant to chapter 11-62.

- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.

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

- (1) Treat recycled water system discharges with controls to minimize discharges of pollutants, including appropriate controls to minimize erosion;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) To the extent feasible, use vegetated, upland areas to infiltrate recycled water before discharge. State waters are prohibited from being used as part of the treatment area;
- (4) At all points where recycled water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices

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shall not be placed within the
receiving waters.

3. Term of General Permit

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

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

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

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

~~(3) When amendments to section 11-55-34.02(b)(9) 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,

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unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;
- (2) An application for an individual NPDES permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or
- (3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

4. Notice of Intent (NOI) Requirements

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

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- (a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.
- (b) The owner or [~~its duly authorized representative~~] operator shall include the following information in the notice of intent:
 - (1) Information required in section 34 of appendix A of chapter 11-55;
 - (2) [~~Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed~~] A brief description of the recycled water system and the amount in gallons per day of R-1 water;
 - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
 - (4) [~~Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and~~] Documentation showing that the recycled water system has been approved pursuant to Chapter 11-62 by the department.
 - (5) Quantitative data of the R-1 water in the recycled water system.

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

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

~~Director of Health
Wastewater Branch
Environmental Management Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801-3378]~~

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

- (e) 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

5. Standard Conditions

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

6. Implementation of Best Management Practices

(a) The permittee shall:

- (1) Implement the best management practices approved by the director under chapter 11-62 before and during the use or conveyance of recycled water;
- (2) Minimize discharges to state waters to the maximum extent practicable; and

(b) The permittee shall implement or supplement the best management practices as needed to improve the quality of discharges to state waters, reduce the risk of discharges to state waters, reduce contamination of R-1 water after it is produced, or when instructed by the director.

7. Effluent Limitations and Monitoring Requirements

- (a) The discharges shall be limited and monitored [~~by the permittee's supplier~~] as specified under chapter 11-62. (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.)
- (b) Basic Water Quality Criteria and Inspections

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- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall inspect the receiving state waters, the recycled water, and the implementation of 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 prevent and detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4.

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.

- (3) During each discharge or as soon afterwards as possible, the permittee shall inspect the discharge area 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.
- (4) Discharge and receiving water quality may also be monitored by grab samples or other means, and it shall be

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monitored by any means and at times specified by the director.

- (5) Color photographs shall be taken during the unintentional discharges of the Recycled Water effluent. Copies of the color photographs shall contain the date and time the photos were taken and a written narrative description of what is being depicted in the photograph. A photograph orientation map shall also be submitted.

All photographs shall be submitted to the DOH-CWB via the DOH e-Permitting Portal Compliance Submittal Form for Individual NPDES Permits and NGPCs. Photographs taken after the completion of the unintended discharges shall be submitted to the DOH-CWB within thirty (30) days after the completion of the discharges.

8. Corrective Action

- (a) If the permittee notices any item(s) which adversely affects receiving water quality, the permittee shall immediately stop, reduce, or modify operations, 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.
- (b) If the discharge is not of R-1 quality or the best management practices as approved by the director were not being implemented, then the permittee shall immediately stop, reduce, or modify operations, or implement new or revised best management practices as

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needed to stop or prevent a violation of the basic water quality criteria as specified in section 11-54-4.

9. Reporting Requirements

- (a) If the discharge is of R-1 quality water and the best management practices as approved by the director were implemented, then the permittee shall orally report within twenty-four hours information regarding the discharge and the best management practices implemented. A summary of all discharges shall be tabulated quarterly and submitted to the [~~wastewater~~]clean water branch within thirty days after the quarters ending March, June, September, and December.
- (b) If the discharge is not of R-1 quality, best management practices approved by the director were not being implemented, or water quality is adversely affected, then the permittee shall immediately notify the director of any discharge to state waters, corrective measures taken, and shall report in writing all of a month's discharges and corrective measures within five days after that month.
- (c) The permittee shall make oral reports by telephone to the [~~Wastewater~~]Clean Water Branch at (808) [~~586-4294~~]586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.

10. Submittal Requirements

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

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

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

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

- (c) The [~~owner~~]permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned

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notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

11. Additional Conditions

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

12. Record Retention

The permittee shall retain all records and information resulting from the activities required by this general permit including all records of analyses performed and calibration and maintenance of instrumentation for a minimum of five years. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator.

13. Falsifying Report

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

14. [~~Renewal~~

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

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Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

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

15. Forms

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

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

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

Authorizing Discharges of Circulation Water From Decorative Ponds or Tanks

- (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 circulation water from decorative ponds or tanks containing or not containing fish or other aquatic species, not including mammals.

Currently, there are three (3) general permit coverages issued for circulation water from decorative ponds or tanks covered under HAR 11-55, Appendix L.

- (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 circulation water from decorative ponds or tanks that have been treated such that, prior to discharge, any pollutant in the effluent is at or below Hawaii's waterbody-specific water quality standard for that pollutant.

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

Not applicable.

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

The General Permit is divided into the following sections:

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions

11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Revised]*
14. *Forms*

Table 34.8 *Effluent Limitations and Monitoring Requirements for Circulation Water from Decorative Ponds and Tanks [Revised]*

Sections 1 through 5 and 7 through 13 are basic requirements necessary to the General Permit. Section 6 and Table 34.8 detail the effluent limitations and monitoring requirements for discharge of circulation water from decorative ponds and tanks.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges of circulation water from decorative ponds and tanks.

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

Discharges of circulation water from decorative ponds and tanks do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are HAR Chapter 11-54, Water Quality Standards.

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

Total Nitrogen, Ammonia Nitrogen, Total Phosphorus, Turbidity, and pH: *The total nitrogen, ammonia nitrogen, total phosphorus, turbidity and pH limitations are based on the specific criteria for each parameter listed in HAR Chapter 11-54 for the classification of the receiving water.*

Fecal Coliform or Enterococcus: *The fecal coliform or enterococcus limit is based on the statistical threshold value listed in HAR 11-54-8(c).*

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

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

Requirements for Discharge into Class 1 or Class AA Waters

Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters. For discharges to Class 1 and Class AA waters, the treatment system plan shall be submitted with the notice of intent.

Chapter 11-55, Appendix L Revisions

Section 2(a)(3) [New]

Original: (NEW)

Revised: Discharges of decorative ponds with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54.

Rationale:

This limitation was added to prevent decorative pond water discharges that contain toxic constituents in exceedance of the water quality standards listed in HAR Chapter 11-54, Appendix E.

Section 2(c)(1) – (5) [New]

Original: (NEW)

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

(1) Treat decorative pond discharges with controls to minimize discharges of pollutants. Appropriate controls to use downstream of decorative pond controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.

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

(3) To the extent feasible, use vegetated, upland areas to infiltrate decorative pond water before discharge. State waters are prohibited from being used as part of the treatment area.

(4) At all points where decorative pond water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply

with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.

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

Rationale:

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

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

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

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

Section 3(a)

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

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

Rationale:

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

Section 3(b)

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

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

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

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date.

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

Section 3(c) [New]

Original: (NEW)

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

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

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

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

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet,

and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

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

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

Rationale:

The previous text specified that the owner or its authorized representative shall submit the NOI no later than thirty days prior to discharge for new dischargers. The added language requires dischargers intending to be covered under the general permit to also submit their NOI thirty days before the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. The thirty-day deadline is the same timeframe as that for a new proposed discharge.

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

Section 4(b)

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

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

Rationale:

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

Section 4(d)

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

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

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

Rationale:

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

Section 4(e) [New]

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

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

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

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

Rationale:

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

Section 6(a)(3)(B)

Original: “Composite sample” means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

Revised: “Composite sample” means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

Rationale:

The paragraph was modified to correct grammatical errors.

Section 6(a)(4)(C)

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

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

Rationale:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Section 8(a)(3) was added to describe the reporting of the method detection limit (MDL), minimum level (ML), and reporting of results below the MDL.

Section 6(b)(2)

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

Revised: *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.)*

Rationale:

The [timely-] is an edit from the previous Ramseyer version that was not removed in the final standard version of the current general permit. It is being noted here as to not confuse that the word “timely” is being removed from the general permit.

Section 8(a)(2)

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

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

Rationale:

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

Section 8(a)(3)

Original: The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent

flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

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

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

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

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

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

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

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

Rationale:

The original text has been moved to section 8(a)(4). This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Sections 8(a)(3) through (5)

Original: (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

(4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

Revised: *(4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.*

(5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

Rationale:

Sections renumbered due to the insertion of new section 8(a)(3).

Section 8(c)(2)

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

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

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

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

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

Rationale:

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

Section 9(a)

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

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

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

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

Rationale:

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

Section 9(b)

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~~and imprisonment for knowing violations."

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

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

Rationale:

Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion. The "~~or~~and" is an edit from the previous Ramseyer version that was not removed and corrected in the final standard version of the current general permit.

Section 9(c)

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

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

Rationale:

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

Section 13

Original: *Renewal*

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

Revised: *Administrative Extension*

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

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

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

Rationale:

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

Table 34.8

***Original: EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS***

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (GPD)	{2}	Once/Quarter {11}	Estimate
Total Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Nitrate + Nitrite Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Ammonia Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Total Phosphorus (mg/l)	{2}	Once/Quarter {11}	Grab
Chlorophyl a (µg/l)	{2}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	10	Once/Quarter {11}	Grab
Turbidity (NTU)	{3}	Once/Quarter {11}	Grab
pH (standard units)	{4}	Once/Quarter {11}	Grab {5}
Fecal coliform or Enterococcus (no./100 ml) {6}	{7}	Once/Quarter {11}	Grab
Toxic Pollutants {8}	{9}	Once/Quarter {11}	{10}

GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

no./100 ml = number per 100 milliliters

***Revised: EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS***

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

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency {2}	Type of Sample
Flow (GPD)	Report	Once/Quarter	Estimate
Total Nitrogen (µg/l)	{3}	Once/Quarter	Grab
Ammonia Nitrogen (µg/l)	{3}	Once/Quarter	Grab
Total Phosphorus (µg/l)	{3}	Once/Quarter	Grab
Total Suspended Solids (mg/l)	{3}	Once/Quarter	Grab
pH (standard units)	{4}	Once/Quarter	Grab {5}
Enterococcus (no./100 ml) {6}	130	Once/Quarter	Grab

GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

no./100 ml = number per 100 milliliters

Rationale:

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

Effluent limitations for total nitrogen, ammonia nitrogen, total phosphorus, and pH are based upon the specific criteria for the classification of the receiving water. The limit for total suspended solids is based on the lowest concentration listed in HAR Chapter 11-54.

The enterococcus limit is based on the statistical threshold value listed in HAR 11-54-8(c). It is the recreational area criterion for all State waters.

Table 34.8 Footnote 1

Original: Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which

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

Revised: *Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit*

Rationale:

The previous language did not specify the type of effluent limitation that was established for pollutants. To clarify, the term “single sample maximum” was added to footnote 1. As the permittee is required to sample once per quarter, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.8 Footnote 2

Original: *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then only monitoring and reporting is required.*

Revised: *The permittee shall take a minimum of one sample per quarter that is representative of the discharge. If the permittee collects more than one sample during the quarter, the maximum value for each pollutant parameter for the quarter shall be reported. For pH, only report the minimum and maximum for the quarter. Laboratory results of all sampling shall be included with the discharge monitoring report.*

Rationale:

The previous language only applied to flow, total nitrogen, ammonia nitrogen, and total phosphorus limits. For flow, the term “Report” was substituted for footnote 2.

The new language in footnote 2 provides directions and requirements for reporting when more than one sample is taken in a quarter. This language replaces the previous language in footnote 11.

Table 34.8 Footnote 3

Original: *Effluent limitation is the specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.*

Revised: *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If*

no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.

Rationale:

This language was previously footnote 2 and has been renumbered to footnote 3 due to the insertion of a new footnote 2.

Table 34.8 Footnote 3 [Removed]

Original: Effluent limitation is the specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.

Revised: (REMOVED)

Rationale:

The previous footnote 3 has been removed due to the removal of turbidity limits.

Table 34.8 Footnote 7 [Removed]

Original: Effluent limitation is the specific criteria established in section 11-54-8 for the classification of the receiving state waters, as applicable.

Revised: (REMOVED)

Rationale:

The footnote in the table has been replaced with the statistical threshold value of 130 colony forming units per 100 ml.

Table 34.8 Footnote 8 [Removed]

Original: The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitations have been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 8 was removed.

Table 34.8 Footnote 9 [Removed]

Original: Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific

criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitations have been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.8 Footnote 10 [Removed]

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

Revised: (REMOVED)

Rationale:

As the toxics effluent limitations have been removed in the proposed permit, language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.8 Footnote 11

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

Revised: (REMOVED)

Rationale:

As the effluent limitations in the proposed permit are single sample maximums, monthly minimums and monthly averages are not relevant (except monthly minimum for pH). Requirements for reporting results when there is additional sampling in the month are now in footnote 2. Therefore, footnote 11 was removed, with the remaining relevant language moved to footnote 2.

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

Not applicable.

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

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

Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix L within HAR Chapter 11-55, Water Pollution Control.

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

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

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

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

For this permit, the limits are based on Best Professional Judgement (BPJ) decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.

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

Not applicable.

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NPDES GENERAL PERMIT
AUTHORIZING DISCHARGES OF CIRCULATION WATER
FROM DECORATIVE PONDS OR TANKS

This General Permit is effective on

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

1. Coverage under this General Permit
 - (a) This general permit covers discharges of circulation water from decorative ponds or tanks containing fish or other aquatic species, not including mammals. This general permit also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with chapter 11-54 titled "Water Quality Standards."
 - (b) This general permit covers all areas of the State except for natural freshwater lakes, saline lakes, and anchialine pools.
2. Limitations on Coverage Under the General Permit
 - (a) This general permit does not cover the following:
 - (1) Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system; ~~and~~
 - (2) Discharges of circulation water from decorative ponds or tanks which initially enter separate storm water drainage systems, unless a permit,

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license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s) [+] except if the permittee is the owner of the drainage system~~[-]~~; and

- (3) Discharges of decorative ponds with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54.
- (b) The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11-55-34.10.
- (c) Permittees authorized by this general permit are required to comply with the following requirements.
 - (1) Treat decorative pond discharges with controls to minimize discharges of pollutants. Appropriate controls to use downstream of decorative pond controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.
 - (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
 - (3) To the extent feasible, use vegetated, upland areas to infiltrate decorative pond water before discharge. State waters are prohibited from being used as part of the treatment area.

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

3. Term of General Permit

- (a) This general permit becomes effective ten days after filing with the office of the lieutenant governor[-] and shall expire five years after the effective date, unless amended earlier.
- ~~[(b) A notice of general permit coverage under this general permit expires:-~~
 - ~~(1) Five years after the effective date of this general permit;~~
 - ~~(2) When the notice of general permit coverage specifies; or~~
 - ~~(3) When amendments to section 11-55-34.02(b)(11) are adopted,~~

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

- (b) Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.
- (c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:
 - (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;
 - (2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The

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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

~~{(a) The owner or its duly authorized
representative shall submit a complete
notice of intent no later than thirty days
before the proposed starting date of the
discharge.}~~

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

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

- (1) Information required in section 34 of
appendix A of chapter 11-55;
- (2) Description of the decorative fish pond
or tank and the type of aquatic species
being housed. The description should
include, but not be limited to:
material type of the pond or tank;
water volume contained; the type, size,
and number of aquatic species being

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housed; and, the type(s) and quantity of food utilized;

- (3) Description of 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. Provide the best estimate for new discharges;
- (4) Source(s) of the circulation water for the decorative fish pond or tank;
- (5) Quantitative data on [~~pollutant(s)~~] pollutant(s) that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
- (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); 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

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be submitted with the notice of intent. For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.

- (c) The director may require additional information to be submitted.
- (d) The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).
- ~~[(d)]~~ (e) 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

5. Standard Conditions

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

6. Effluent Limitations and Monitoring Requirements

- (a) The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.8.

(1) Sampling Points

The permittee shall collect representative discharge samples downstream from the decorative fish pond or tank circulation water discharge point(s) and prior to entering the receiving state water or separate storm water drainage systems or at a location that is approved by the department which is representative of the decorative fish pond or tank effluent water quality.

(2) Collection of Samples

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

(3) Types of Samples

- (A) "Grab sample" means an individual sample collected within the first fifteen minutes of a discharge.

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(B) "Composite sample" means a combination of ~~[a]~~ at least eight ~~[samples]~~ sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

(4) Test Procedures

- (A) The permittee shall use test procedures for the analysis of pollutants which conform with regulations published under Section 304(h) of the Act.
- (B) Unless otherwise noted in this general permit, the permittee shall measure all pollutant parameters in accordance with methods prescribed in 40 CFR Part 136, promulgated under Section 304(h) of the Act. The permittee may submit applications for the use of alternative test methods in accordance with 40 CFR §136.4.
- (C) The permittee shall use test methods with detection limits that reflect the applicable numerical

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

(5) Recording of Results

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

(b) Basic Water Quality Criteria and Inspections

- (1) The permittee shall not cause or contribute to a violation of the basic water quality criteria as specified in section 11-54-4.
- (2) The permittee shall ~~[timely]~~ inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and

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scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)

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

- (c) There shall be no floating solids, foam, or visible oil sheen in the effluent.
- (d) There shall be no discharge of pond or tank cleaning wastewaters that are generated during the cleaning of a pond or tank that has been drained of water below the normal operating level(s).
- (e) There shall be no discharge of filter backwash effluent.
- (f) There shall be no discharge of any water enhancement or treatment additives above applicable water quality standards or above detectable levels or quantities if no applicable water quality standard for such constituents exists.

7. Corrective Action

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

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8. Reporting Requirements

(a) Reporting of Monitoring Results

- (1) The permittee shall report monitoring results on a discharge monitoring report form (EPA No. 3320-1) or other form as specified by the director. The permittee shall submit results of all monitoring required by this general permit in a format that demonstrates compliance with the limitations in Table 34.8 and other requirements of this general permit.
- (2) The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).
- (3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory's method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

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- (A) The permittee shall report sample results and calculations at or above the laboratory's ML on DMRs as the measured concentration or calculation.
- (B) The permittee shall report sample results and calculations below the laboratory's MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.
- (C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.
- (D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.
- (E) For purposes of calculated geometric means, $0.25 \times \text{MDL}$ shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent

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limitation or the ML, whichever is greater, in assessing compliance.

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

~~[(3)]~~ (4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

~~[(4)]~~ (5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

~~[(5)]~~ (6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

(b) Monitoring Report

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

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- (c) Reporting of Noncompliance, Unanticipated Bypass, or Upset
 - (1) The permittee or its duly authorized representative shall orally report any of the following when the permittee or its duly authorized representative becomes aware of the circumstances:
 - (A) Violation of an effluent limitation specified in Table 34.8 or a basic water quality criteria specified in section 6(b) of this general permit;
 - (B) Discharge or noncompliance with effluent limitations which may endanger health or the environment; or
 - (C) Unanticipated bypass or upset.
 - (2) The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.
 - (3) The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:

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- (A) Description of the noncompliance, unanticipated bypass, or upset and its cause;
 - (B) Period of noncompliance, unanticipated bypass, or upset including exact dates and times;
 - (C) Estimated time the noncompliance, unanticipated bypass, or upset is expected to continue if it has not been corrected; and
 - (D) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance, unanticipated bypass, or upset.
- (4) The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.
- (d) Schedule of Maintenance

The permittee shall submit a schedule for approval by the director at least fourteen days prior to any maintenance of facilities which might result in exceedance of effluent limitations. For purposes of this general permit only, maintenance shall include, but not be limited to, the routine cleaning of the pond or tank while filled with water and otherwise still operated under normal conditions. The schedule shall include a description of the maintenance and its reason; the period of maintenance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent occurrence of noncompliance.

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9. Submittal Requirements

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

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

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

"I certify under penalty of law that this document and all attachments were prepared 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 [~~for~~ and] and imprisonment for knowing violations."

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

10. Additional Conditions

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

11. Record Retention

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

12. Falsifying Report

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

13. [~~Renewal~~] Administrative Extension

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~~[Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.]~~ Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

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

14. Forms

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

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TABLE 34.8

EFFLUENT LIMITATION AND MONITORING REQUIREMENTS
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency {2}	Type of Sample
Flow (GPD)	[+2+] <u>Report</u>	Once/Quarter [+11+]	Estimate
Total Nitrogen [(mg/l)] (µg/l)	[+2+] {3}	Once/Quarter [+11+]	Grab
[Nitrate + Nitrite Nitrogen (mg/l)]	[+2+]	[Once/Quarter +11+]	[Grab]
Ammonia Nitrogen [(mg/l)] (µg/l)	[+2+] {3}	Once/Quarter [+11+]	Grab
Total Phosphorus [(mg/l)] (µg/l)	[+2+] {3}	Once/Quarter [+11+]	Grab
[Chlorophyll a (µg/l)]	[+2+]	[Once/Quarter +11+]	[Grab]
Total Suspended Solids (mg/l)	10	Once/Quarter [+11+]	Grab
[Turbidity (NTU)]	[+3+]	[Once/Quarter +11+]	[Grab]
pH (standard units)	{4}	Once/Quarter [+11+]	Grab {5}
[Fecal coliform or Enterococcus ([no.] CFU/100 ml) {6}]	[+7+] <u>130</u>	Once/Quarter [+11+]	Grab
[Toxic Pollutants {8}]	[+9+]	[Once/Quarter +11+]	[+10+]

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GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

~~[no./100 ml = number per 100 milliliters]~~

CFU/100 ml = colony forming units per 100 milliliters

NOTES:

{1} Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.

{2} The permittee shall take a minimum of one sample per quarter that is representative of the discharge. If the permittee collects more than one sample during the quarter, the maximum value for each pollutant parameter for the quarter shall be reported. For pH, only report the minimum and maximum for the quarter. Laboratory results of all sampling shall be included with the discharge monitoring report.

~~[+2]~~ {3} The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.

~~[+3] Effluent limitation is the specific criteria established in sections 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.]~~

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- {4} The pH value shall not be outside the range as specified in chapter 11-54 for the applicable classification of the receiving state waters.
- {5} The pH shall be measured within fifteen minutes of obtaining the grab sample.
- {6} Applicable if potentially present in the discharge.
- ~~[{7} Effluent limitation is the specific criteria established in section 11-54-8 for the classification of the receiving state waters, as applicable.]~~
- ~~[{8} The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.]~~
- ~~[{9} Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.]~~
- ~~[{10} The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.]~~

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~~[(11) If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.]~~

IV. LEGISLATIVE MATTERS

- A. Review of House Bill 511, Related to the Small Business Regulatory Review Board
- B. Discussion and Action on the Upcoming Governor's Message Submitted for Consideration for the Gubernatorial Nomination of Sanford Morioka to the Small Business Regulatory Review Board for a term to expire June 30, 2027
- C. Discussion and Action on the Upcoming Governor's Message Submitted for Consideration for the Gubernatorial Nomination of Jennifer Salisbury to the Small Business Regulatory Review Board for a term to expire June 30, 2027



Measure Title:	RELATED TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.
Report Title:	Small business regulatory review board, department of business, economic development and tourism, appropriation (\$)
Description:	Appropriation for staffing, commissioner inter-island travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism.
Companion:	
Package:	Small Business Workgroup
Current Referral:	ECD, FIN
Introducer(s):	WARD, ALCOS, AMATO, GARCIA, MARTEN

<u>Sort by Date</u>		Status Text
1/27/2023	H	Referred to ECD, FIN, referral sheet 2
1/23/2023	H	Introduced and Pass First Reading.
1/20/2023	H	Pending introduction.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT


RELATED TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2023-2024 and the
4 same sum or so much thereof as may be necessary for fiscal year
5 2024-2025 for staffing, commissioner inter-island travel, and
6 other related operating expenses of the small business
7 regulatory review board.

8 The sums appropriated shall be expended by the department
9 of business, economic development and tourism for the purposes
10 of this Act.

11 SECTION 2. This Act shall take effect upon its approval.

12
13 INTRODUCED BY: 

JAN 20 2023



H.B. NO. 511

Report Title:

Small business regulatory review board, department of business, economic development and tourism, appropriation

Description:

Appropriation for staffing, commissioner inter-island travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



V. Administrative Matters

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