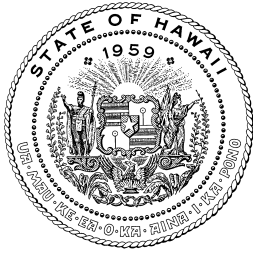


Small Business Regulatory Review Board Meeting

May 20, 2021

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.sbrb.info@hawaii.gov
Website: sbrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, May 20, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's May 7, 2021, Twentieth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/3082191379>

Copies of the Board Packet will be available on-line for review at: <https://sbrb.hawaii.gov/meetings/agendas-minutes?yr=2021>. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, May 19, 2021.

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 April 15, 2021 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 11 Chapter 219, **Parking for Persons with Disabilities**, promulgated by Department of Health (DOH) – **Discussion Leader – Harris Nakamoto**

- B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 56 **Nonpoint Source Pollution Control**, promulgated by DOH – **Discussion Leader – Harris Nakamoto**

IV. New Business - Before Public Hearing

- A. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by DOH – **Discussion Leader – Harris Nakamoto**
 - a. Appendix B, Multi-Sector General Permit (MSGP)
 - b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
 - c. Appendix F, Authorizing Discharges of Hydrotesting Water
 - d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
 - e. Appendix K, Small Municipal Separate Storm Sewer Systems

V. Legislative Matters

- A. Discussion on the following Legislative Matters:
 - a. Senate Bill 1034, SD1, HD2, CD1, "Relating to Sunshine Law Boards" – Authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law; amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology

VI. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Administrative Rules
 - a. Discussion of a proposed digital orientation manual for the Board

VII. Next Meeting: Thursday, June 17, 2021 at 10:00 a.m.

VIII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of April 15, 2021 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT**

April 15, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF March 18, 2021 MINUTES**

Mr. Ritchie made a motion to accept the March 18, 2021 meeting minutes, as presented. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 892.1 and Adoption of Chapter 892.2, Licensing of Group Day Care Centers and Group Child Care Homes, promulgated by DHS

Discussion leader Mr. Nakamoto explained that the proposed rules will be presented in a different order than the order on the agenda in order to present the rules in a more logical format. He has asked that DHS explain the reason behind the June 2020 date on the impact statements.

Ms. Dana Balansag, Child Care Program Administrator from DHS's Benefit, Employment & Support Service Division, explained that she and Ms. Dayna Luka at DHS's Child Care Program oversee the statewide child care facilities licensed by the state.

DHS has been working on several different sets of chapters within the child care facilities; three of the chapters were reviewed by this Board in September 2020. However, due to the COVID response, DHS was dealing with other matters along with drafting the seven

rules, which is why the small business impact statements were not submitted to this Board until recently.

In November 2014, the federal grant law was enacted which entitles the State of Hawaii to approximately \$30 million; DHS has been working hard at becoming compliant with this law. The four chapters presented today are the complement to the prior three chapters this Board previously approved for public hearings. While child care providers are already required to have minimum health and safety standards, the proposals are adding the federal standards, which are required for DHS to continue to receive federal funds.

Changes to Chapter 892.2 will allow Hawaii to be compliant with the federal Child Care and Development Block Grant (CCDBG) Act. The \$30 million funds from this grant are needed to help support the state's childcare program and staff that regulate 850 child care facilities and homes statewide as well as the child care subsidy program that annually provides over 3,300 low-income families access to child care options and additional support of services to promote and ensure child care for families and children.

Overall, the federal changes will strengthen the requirements to help protect the health and safety of children in child care and to help parents make informed choices and gain access to information for child development.

Regarding the potential impact on small business, DHS established annual training requirements for all caregivers, substitutes, and volunteers in licensed and registered homes and child care centers. These providers are required to create policies for suspension and expulsion of children from the facilities or home. This is because providers of licensed and registered homes and centers are required to have written procedures and plans for emergency preparedness and responses for relocations, sheltered place, lockdown, training and practice skills for staff, communication and reunification with family continuity of operations, and accommodations for infants and toddlers, and children with chronic medical conditions.

In addition, DHS established requirements for maximum group sizes of children which were not previously established. All of these changes will allow DHS and the State of Hawaii to follow federal requirements of the CCDBG. The requirement of completing the initial ongoing training for caregivers, substitutes, volunteers, and licensed and registered homes and centers is expected to help improve the ability to provide the children physical well-being, health, safety, supervision and guidance of children in care.

By expanding the existing requirements for licensed and registered providers to have written procedures and plans for emergency preparedness, it will provide the needs of children with disabilities and special needs as well as when an emergency or disaster occurs. Also, having written policies on suspension and expulsion of children from licensed care homes and centers ensures that parents and providers understand what the suspension and expulsion policies are. It encourages child care providers to have prevention policies and strategies to reduce the number of suspensions and expulsions that are due to the behavior of children.

Lastly, establishing group-size limits in accordance with the ages of children will ensure they are adequately being supervised at all times and it creates a safe environment for them.

Having group-size limits also will assist in meeting children developmental needs as limiting group sizes may strengthen the relationship between caregivers and their children.

For possible financial impacts to small business, Ms. Luka explained that licensed and registered child care providers may experience additional operating costs in order to comply with the extra health and safety training requirements. Thus, if the provider decides to pay for the training hours of their staff, it may cost roughly \$160 per individual (16 hours of training x salary of \$10.00 per hour). However, some employee policies incorporate staff training as part of their contract without additional compensation.

There could also be added costs for reporting of staff training certificates to DHS's contractor who handles the recordkeeping of staff training certificates. Additional expenses may include \$20 to \$40 for a multi-purpose fire extinguisher in the child care area and between \$50 and \$60 for a smoke detector.

Ms. Luka stated that from 2015 through 2019, there have been many discussions and concerns with the stakeholders about the training requirements; one concern involved the required training hours for substitutes. The recommendation that substitutes not be required to complete on-going training hours annually was taken into consideration by DHS. As a result, the number of on-going training hours for substitutes to complete on an annual basis was reduced from 16 hours, which is the requirement for regular staff members, to 10 hours. Training requirements were also reduced to 8 hours for volunteers.

Ms. Luka further stated that the requirement for a substitute to complete an annual on-going health and safety training is to comply with CCDBG. Since the substitute is a replacement of the primary caregiver and he/she is left alone with children in care, completion of ongoing health and safety training hours increases the health and safety of children and the quality of care. In addition, for maximum group-size limits, the requirement to allow more children to be grouped together during specific events or times, i.e., performances, assemblies, and meal and snack times, was incorporated into the rules.

Mr. Nakamoto made a motion to move the proposed chapter to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 895 and Adoption of Chapter 895.1, Licensing of Infant and Toddler Child Care Centers, promulgated by DHS

Chair Cundiff indicated that specific information on these rules is reflected in the previous discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; Ms. Luka stated that there are no other differences than those already discussed.

Mr. Ritchie made a motion to move the proposed chapter to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 896 and Adoption of Chapter 896.1, Licensing of Before and After School Child Care Facilities, promulgated by DHS

Chair Cundiff, again, indicated that specific information on these rules is reflected in the discussion of HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes; no further comments were noted.

Mr. Nakamoto made a motion to move the proposed chapter to public hearing. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Repeal of HAR Title 17 Chapter 891.1 and Adoption of Chapter 891.2, Registration of Family Child Care Homes, promulgated by Department of Human Services (DHS)

Ms. Luka stated that in addition to the specific information discussed in HAR Chapter 17-892.2, Licensing of Group Day Care Centers and Group Child Care Homes, under the training requirement for Chapter 891.2, the feedback from the registered child care providers was that it would be very difficult to find a substitute provider.

Therefore, DHS removed the requirement of two substitutes and changed it to when a substitute is called in an emergency, the substitute would only have to comply with the health and safety training. Further, there would be a timeframe in which to complete the training, i.e., within 45 days of being contracted for the specific service.

Overall, both Chair Cundiff and Mr. Nakamoto expressed appreciation for DHS's preparation work on these new chapters. The work performed provided this Board with a much clearer understanding and efficiency of the process. Above all, the great work performed by DHS is key in terms of small business advocacy by listening to the stakeholders and understanding their needs and compassion to the key services provided to the community.

Vice Chair Albitz made a motion to move the proposed chapter to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Discussion and Update on the following:

- a. Update on Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Chair Cundiff explained that due to scheduling issues and a shortened legislative session this year, the Board's two nominations will most likely not make it to the Senate floor. However, an interim session is expected to take place where House Speaker's nominations for this board and other boards will be addressed.

Through the interim session, it is anticipated that nominations will be submitted back to the Governor to be deferred until next session. The Governor will then be asked to issue a Directive that will give Messrs. Nakamoto and Lee the authority to continue on as members until their nominations are considered in next year's legislative session.

Chair Cundiff added that he spoke with House Speaker's staff recently for clarification, and given the difficulty of the legislative session this year regarding COVID-19 and the resulting budget crisis, this Board should not take the fact that its members were not scheduled for nomination as a negative or an offense, as it has affected many boards and commissions.

Mr. Ritchie acknowledged that members of other boards and commissions have experienced the same situation. Staff member Ms. Palcovich and Mr. Ritchie will keep the Board members abreast of this situation.

- b. Update on Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024

See Section IV. A. a.

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

Chair Cundiff noted that administratively there is nothing new to report. Regarding the Board's budget, we are still waiting to hear until the final budget figures come in from the legislature.

Chair Cundiff announced that on behalf of this Board and its members he wanted to recognize and thank Deputy Attorney General Margaret Ahn for her outstanding service. As a result of reassignments within the Department of the Attorney General, a new deputy attorney general, Ms. Alison Kato, has been assigned to work with this Board. This will be Ms. Ahn's last meeting with us; however, she has asked to attend next month's meeting to introduce Ms. Kato.

VI. NEXT MEETING - Thursday, May 20, 2021 at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 11:00 a.m.

III. Old Business – After Public Hearing

A. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 219, Parking for Persons with Disabilities, promulgated by DOH

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

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ **Date:** _____

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

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

Yes **No**

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

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

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

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

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

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

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

Yes **No**

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

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

Yes **No**

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

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

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

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

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

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

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

4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
 Yes **No**
 - (i) If "Yes," was the change adopted? **Yes** **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:

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

IV. NEW BUSINESS – Before Public Hearing Meeting Minutes - February 18, 2021

A. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 219, Parking for Persons with Disabilities, promulgated by Department of Health (DOH)

Discussion leader, Mr. Nakamoto, thanked Mr. Kirby Shaw, Executive Director, and Mr. Bryan Mick, Program and Policy Development Unit Coordinator from DOH's Disability and Communication Access Board for attending today's meeting.

Mr. Mick explained that this proposal represents a comprehensive, overhaul of the rules largely due to changes in the statute made by the State legislature. Four of the rule changes would likely have small business impact.

The first proposed change exempts parking spaces reserved for people with disabilities in employee parking facilities from the signage requirements where such parking spaces are assigned to specific employees with disabilities. This would, in essence, be a benefit to the employee and the businesses.

The second change will exempt temporary parking spaces reserved for persons with disabilities or temporary access aisles from the "striping" requirements of the rules. This often comes up in construction cases where a portion of a parking lot is corded off for construction sites.

The third change requires the posting of a "No Parking in Access Aisle" sign to identify the access aisle in parking lots with four or less parking spaces. The access aisles are those parking spaces with the diagonal striping; it is very important that these aisles remain clear. However, this would likely require a small expense to a business - approximately \$200 for a sign and installation if a sign is needed.

The final change, with potential business impact, is the creation of a new parking permit due to the possibility of less revenue from the loss of parking expenses and the installation of signage if there are currently no signs in the parking area. Presently, there are three types of disability parking permits issued to qualified applicants: longer term placards, temporary placards, and special license plates. All three confer the privilege to park in any metered parking space without payment of metered parking fees for a maximum of 2.5 hours or the maximum amount of time the meter allows, whichever is longer.

However, effective July 1, 2022, the three existing permits will confer only the privilege to park in a parking space reserved for persons with disabilities, and only the fourth permit - the disabled paid parking exemption permit, will confer the privilege to parking in a parking space reserved for persons with disabilities and/or to park in any parking area where payment is required. This would be via parking meter or an unattended pay station without payment of parking fees for the first 2.5 hours or the maximum amount of time the meter allows, whichever is longer.

Chair Cundiff recognized that DOH had been reaching out to the impacted stakeholders since 2018, and Mr. Mick stated that there was very little specific feedback from small businesses.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129

AMENDMENTS TO HAWAII ADMINISTRATIVE RULES, CHAPTER 11-219, PARKING FOR PERSONS WITH DISABILITIES

General Description of Amendments

The amendments include four specific changes that may affect small businesses that provide parking.

1. **EMPLOYEE PARKING.** If an accessible parking space is assigned to a specific employee, the parking space and access aisle are not required to post disability signage.
2. **TEMPORARY PARKING.** If a parking lot creates temporary accessible parking spaces, defined as in use for seven consecutive days or less, the temporary spaces are not required to be striped.
3. **ACCESS AISLE SIGNAGE.** The Americans with Disabilities Act Accessibility Guidelines require parking facilities that have four or fewer parking spaces to provide a minimum of one parking space with an adjacent eight foot (8') wide access aisle. The amendment to the rules requires such parking facilities to post a "No Parking – Access Aisle" sign at the access aisle. The current rules do not require such parking facilities to post this signage.
4. **NEW DISABILITY PARKING PERMIT** (For notification purposes only. A statutory amendment required the addition of issuance procedures to the rules.). A new disability parking permit, called the "disabled paid parking exemption permit" or "DPPEP" (green placard), will be introduced on July 1, 2021 (required per Act 87, SLH 2019). This placard provides a parking fee exemption at parking meters and unattended pay stations for the first 2.5 hours, or the maximum time a meter allows, whichever is longer. The existing three types of disability parking permits, temporary (red) placards, long term (blue) placards, and special license plates, will no longer provide a parking fee exemption. However, all four permits may be used to park in a reserved accessible parking space. If a fee is currently charged for parking and payment is made via a parking meter or unattended pay station, signage may need to be updated.

There are currently about 100,000 individuals in Hawaii that have existing parking placards, which will continue to stay in place. With the new permit, which provides for free parking, approximately 3,000 to 5,000 of the existing permittees would qualify.

Mr. Shaw stated that it would behoove DOH, as the disabled parking permit issuer, to make the effort to ensure that small businesses are provided with all the information they need to follow the proposed rules. Mr. Ritchie added that the rule changes would allow small businesses to adequately serve their customers with physical impairments.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Discussion and Action on the following Legislative Matters

a. House Bill 636 “Relating to the Small Business Regulatory Review Board”

This measure provides appropriation for staffing, commissioner interisland travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism. It was introduced by House Representative Gene Ward.

As of today, it has not been scheduled for a hearing; therefore, it will likely not be moving forward. Thus, the Board will operate with whatever funds DBEDT will provide. He noted, however, that DBEDT has been completely supportive of this Board and has paid for all its expenses.

Mr. Ritchie made a motion to approve that Chair Robert Cundiff, the Board’s staff member, Ms. Dori Palcovich, and DBEDT employee/Board member Mr. Mark Ritchie represent this Board in a meeting with DBEDT director and/or deputy director to discuss this Board’s operating budget/funding for the upcoming fiscal year as well as the status of House Bill 636. Mr. Shick seconded the motion, and the Board members unanimously agreed.

b. Upcoming Governor’s Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Mr. Harris Nakamoto to this Board when the Legislature schedules a hearing for this measure. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-219
Hawaii Administrative Rules

1. Chapter 11-219, Hawaii Administrative Rules, entitled "Parking for Persons with Disabilities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 219

PARKING FOR PERSONS WITH DISABILITIES

§11-219-1	Purpose and scope
§11-219-2	Interpretation
§11-219-3	Severability
§11-219-4	Definitions
§11-219-4.5	Agreement with counties to issue permits
§11-219-5	Person with a disability parking application
§11-219-6	Issuance of removable windshield placards, and temporary removable windshield placards, and special license plates
§11-219-6.25	Issuance of disabled paid parking exemption permits

§11-219-6.5	Issuance of identification cards
§11-219-7	Replacement of lost, stolen, mutilated, or confiscated removable windshield placards, temporary removable windshield placards, special license plates, and identification cards
§11-219-7.25	Replacement of lost, stolen, mutilated, or confiscated disabled paid parking exemption permits
§11-219-7.5	Renewal of removable windshield placards, temporary removable windshield placards, and special license plates
§11-219-7.75	Renewal of disabled paid parking exemption permits
§11-219-8	Return of disability parking permits and identification cards
§11-219-9	Repealed
§11-219-10	Display of permit and presentation of identification card
§11-219-10.5	Repealed
§11-219-11	Nontransferability
§11-219-12	Penalties
§11-219-13	Reciprocity
§11-219-14	Signage and marking of parking space and access aisle

Historical Note: This chapter 11-219 is based substantially upon chapter 19-150. [Eff 12/31/84; am and comp 4/18/94]

The 4/18/94 compilation repealed §19-150-15.

§11-219-1 Purpose and scope. The purpose of these rules is to establish a uniform parking system to enhance access and the safety of persons with disabilities [~~which~~] that limit or impair their ability to walk, and to conform to 23 CFR Part 1235, and chapter 291, part III, HRS. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-1, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/15; comp] (Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

§11-219-2 Interpretation. These rules shall be construed liberally and consistent with the purpose stated in section 11-219-1. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-2, am and comp 12/15/00; comp 12/24/01; comp 1/23/03; comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/2015; comp] (Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

§11-219-3 Severability. These rules are declared to be severable and if any portion or the application thereof to any person, circumstance, or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons, circumstances, or property shall not be affected. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-3, am and comp 12/15/00; comp 12/24/01; comp 1/23/03; comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/15; comp] (Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

§11-219-4 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Access aisle" means an accessible route adjacent to a parking space [~~reserved~~] designed for persons with disabilities that provides for clearances appropriate for the loading and unloading of mobility devices and qualified persons with disabilities from a vehicle parked in a parking space [~~reserved~~] designed for persons with disabilities.

"Advanced practice registered nurse" means a registered nurse who has met the qualifications for advanced practice registered nurse set forth in accordance with chapter 457, HRS.

"Certificate of disability" means a medical statement on the person with a disability parking application form signed by a licensed practicing physician or an advanced practice registered nurse who certifies that the person is a person with a disability as defined in this section.

"Disability parking permit" means a removable windshield placard, special license plates, temporary removable windshield placard, or disabled paid parking exemption permit.

"Disabled paid parking exemption permit" means a permit to be displayed on a dashboard or contained elsewhere on the vehicle, a code, or a two-sided, hanger style placard that indicates that the individual to whom the permit, code, or placard is issued pursuant to this chapter is licensed to drive a motor vehicle and not able to reach or operate a parking meter or unattended pay station because of a physical disability. Any placard issued under section 291-6.25 shall include on each side:

- (1) The International Symbol of Access, which is at least two and one-half inches in height and is white on a green shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The words "State of Hawaii".

"Enforcement officer" means a police officer of the county, a commissioned volunteer enforcement officer of the county law enforcement agency, a state officer of a parking enforcement agency or a private security agent.

"International Symbol of Access" means the symbol adopted by the Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

"Invalid disability parking permit" means an expired or voided removable windshield placard, temporary removable windshield placard, special license plates, or disabled paid parking exemption permit.

"Issuing agency" means the disability and communication access board.

"Licensed practicing physician" means a doctor of medicine, naturopathy, osteopathy, or podiatry duly licensed and authorized to practice in the State of Hawaii in accordance with chapters 453, 455, 460, and 463E, HRS[~~7~~], or a commissioned medical officer in the United States armed forces.

"Parking meter" means a device located in the vicinity of a parking space for the purposes of extending parking privileges to persons for a certain number of minutes or hours upon the payment of the required change by a method allowed by the parking meter. The device shall record a certain number of minutes or hours determining the period of time for which parking privileges have been extended. The term "parking meter" shall include a multi-space parking meter device located in the vicinity of the parking spaces it regulates.

"Parking meter space" means any space ~~[which]~~ that is within a parking meter zone regulated by a parking meter, and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street or public parking area.

"Parking meter zone" means a street, portion of a street, or other public parking area established by

ordinance as a zone in which the parking of vehicles upon such street or other public parking area shall be regulated by parking meters.

~~["Parking permit" means the removable windshield placard, temporary removable windshield placard, or special license plates.]~~

"Parking space reserved for persons with disabilities" means a public or private parking space, including the access aisle, designated for the use of a person with a disability that is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines; and that is marked with a sign designating the parking space as reserved for persons with disabilities.

~~["Person with a disability" means a person who is limited or impaired in the ability to walk, and who, as determined by a licensed practicing physician or an advanced practice registered nurse:~~

- ~~(1) Cannot walk two hundred feet without stopping to rest due to a diagnosed arthritic, neurological, orthopedic, renal, oncological, or vascular condition;~~
- ~~(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;~~
- ~~(3) Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;~~
- ~~(4) Uses portable oxygen; or~~
- ~~(5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.]~~

"Person with a disability" means a person with a disability that limits or impairs the ability to walk, and who, as determined by a licensed practicing physician, or an advanced practice registered nurse:

- (1) Cannot walk two hundred feet without stopping to rest, and who has been diagnosed with:
 - (A) An arthritic, neurological, orthopedic, renal, vascular, or oncological condition;
 - (B) Lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or
 - (C) A cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association; and
- (2) Because of a condition identified in paragraph (1):
 - (A) Cannot walk two hundred feet under the person's own power without stopping to rest;
 - (B) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or
 - (C) Uses portable oxygen.

"Person with a disability parking application" means a state form provided by the issuing agency that contains the certificate of disability and other necessary information required of all applicants for parking permits under section 11-219-5.

"Placard" means the removable windshield placard, [~~or~~] temporary removable windshield placard[~~or~~] or disabled paid parking exemption permit.

"Private entity" means a private owner or lessee of a parking facility or site where invitation to the general public is expressed or implied, except where a private entity is also a religious entity.

"Public entity" means the State or any of its counties.

"Removable windshield placard" means a two-sided, hanger-style placard issued to a person who has been certified with a disability [~~which~~] that is expected to last six years in accordance with section 291-51, HRS, and [~~which~~] that includes on each side:

- (1) The International Symbol of Access, which is at least two and one-half inches in height and is white on a blue shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The words "State of Hawaii".

"Sign designating the parking space as reserved for persons with disabilities" means a sign [~~which~~] that contains:

- (1) The words, "Reserved Parking";
- (2) The International Symbol of Access;
- (3) Words indicating that the space is reserved for parking by persons with disabilities who have a valid parking permit; and
- (4) The maximum fine for parking illegally in the space.

"Special license plates" means license plates issued to a person whose disability is expected to last for at least six years as certified by a licensed practicing physician or an advanced practice registered nurse. The license plates shall display the International Symbol of Access in a color that contrasts to the background, and in the same size as the letters and numbers on the plates.

"Temporary removable windshield placard" means a two-sided, hanger-style placard, issued to a person who has been certified with a temporary disability up to a period of six months and includes on each side:

- (1) The International Symbol of Access, which is at least two and one-half inches in height and is white on a red shield;
- (2) An identification number;
- (3) A date of expiration;
- (4) The words "State of Hawaii"; and
- (5) The word "TEMPORARY".

"Transaction fee" means those moneys collected by the counties for issuance of all temporary and replacement placards. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-4, am and comp 12/15/00; am and comp 12/24/01; am and comp 1/23/03; am and comp 7/26/04; comp 8/19/06; am and comp 7/2/12; am and comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §291-51; 23 CFR part 655, subpart F; 23 CFR part 1235)

§11-219-4.5 Agreement with counties to issue permits. (a) The counties are authorized to issue removable windshield placards, temporary removable windshield placards, and replacement placards on behalf of the issuing agency. The counties may retain any transaction fees collected.

(b) The issuing agency shall enter into agreement with the counties to reimburse the counties at a rate of \$12 per placard for the issuance of any removable windshield placards for which a transaction fee is not collected. [Eff 7/2/12; comp 9/25/15; comp] (Auth: HRS §291-56) (Imp: HRS §291-51; 23 CFR part 655, subpart F; 23 CFR part 1235)

§11-219-5 Person with a disability parking application. (a) In order to be considered for a disability parking permit and identification card, the applicant shall complete a person with a disability parking application form. The certificate of disability section of the form shall be completed by a

licensed practicing physician or an advanced practice registered nurse and shall be valid for no more than sixty days prior to ~~[expiration of the permit.]~~ submission of the form.

(b) Reasons for which a person with a disability parking application may be rejected shall include, but not be limited to the following:

- (1) Any portion of the person with a disability parking application is illegible or incomplete, or
- (2) There are discrepancies within any portion of the person with a disability parking application that may indicate fraudulent tampering.

(c) Individuals who belong to any of the following classes do not qualify for a parking permit based solely on that status:

- (1) Persons who have a visual impairment;
- (2) Persons who have a ~~[mental illness;]~~ behavioral, learning, intellectual, or developmental disability;
- (3) Persons who are old; or
- (4) Persons who are infants.

(d) The applicant shall present proof of being the person named on the person with a disability parking application form.

(e) The applicant shall submit the person with a disability parking application form in person unless specifically exempted for medical reasons by the certifying physician or an advanced practice registered nurse, in which case the applicant may authorize another person to submit the application in the applicant's stead. Proof that the applicant is the person named on the application form shall also be presented at the time of issuance. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-5, am and comp 12/15/00; am and comp 12/24/01; am and comp 1/23/03; comp 7/26/04; comp 8/19/06; am and comp 7/2/12; am and comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §§291-51.5, 291-51.6, 291-52, 291-56; 23 CFR part 1235)

**§11-219-6 Issuance of [~~parking permits.~~]
removable windshield placards, temporary removable
windshield placards and special license plates. (a)**

For the applicant whose disability is expected to last for at least six years, as certified by a licensed practicing physician or an advanced practice registered nurse, the county shall:

- (1) Issue one removable windshield placard and one identification card;
- (2) Upon assurance that the vehicle is registered in the applicant's name and that the vehicle will be used primarily to transport the applicant, and upon payment by the applicant of an appropriate fee for the special license plates, and completion of any required forms as may be required by the county, shall issue special license plates and an identification card. The fee for the special license plates shall not be more than the regular license plates for the same vehicle class; and
- (3) Not issue more than one removable windshield placard to the applicant who also applies for, or already has, special license plates. At no time shall more than one set of valid special license plates be issued to a qualified person with a disability.

(b) For the applicant whose disability is temporary, as certified by a licensed practicing physician, the county shall:

- (1) Upon payment of a \$12 fee, issue a temporary removable windshield placard, and one identification card. The expiration date of this permit shall be based on the period of disability specified in the certificate of disability, and shall not exceed six months after date of issuance;
- (2) Upon request and payment of a \$12 fee, issue a second temporary removable windshield placard that shall have the same expiration

- date as the first temporary removable windshield placard; and
- (3) At no time issue more than two valid temporary removable windshield placards to a qualified person with a disability. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-6, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; comp 7/26/04; am and comp 8/19/06; am and comp 7/2/12; am and comp 9/25/15; am and comp]
(Auth: HRS §291-56) (Imp: HRS §§291-51.5, 291-51.6, 291-52; 23 CFR part 1235)

- §11-219-6.25 Issuance of disabled paid parking exemption permits.** (a) The issuing agency shall issue one disabled paid parking exemption permit and identification card to each applicant who mails to the issuing agency a copy of the applicant's valid driver's license and a disabled paid parking exemption permit application form signed by a licensed practicing physician or advanced practice registered nurse which verifies that the applicant is a qualified person with a disability and cannot reach or operate parking meters or unattended pay stations because:
- (1) The applicant cannot reach above the applicant's head to a height of forty-two inches from the ground due to a lack of finger, hand, or upper extremity strength or mobility;
 - (2) The applicant cannot approach a parking meter due to the use of a wheelchair or other mobility device; or
 - (3) The applicant cannot manage, manipulate, and insert coins, bills, or cards in a parking meter or pay station due to a lack of fine motor control in both hands.
- (b) The disabled paid parking exemption permit shall have the same expiration as the removable

windshield placard, temporary removable windshield placard, or special license plates for which the applicant is eligible.

(c) Upon issuance of the disabled paid parking exemption permit, all removable windshield placard or temporary removable windshield placard(s) shall be invalidated and returned to the issuing agency pursuant to section 11-219-8. Special license plates shall remain valid or may be issued pursuant to 11-219-6(a)(2). Not more than one disabled paid parking exemption permit shall be issued to an applicant.

[Eff and comp _____] (Auth: HRS §291-55)
(Imp: HRS §291-51)

§11-219-6.5 Issuance of identification cards.

(a) The identification card shall indicate the applicable serial number of the disability parking permit, and shall have the same date of expiration as the disability parking permit issued to the person with a disability.

(b) A new identification card shall be issued with the second temporary removable windshield placard. The new identification card shall have the same expiration date as the first temporary removable windshield placard, and shall indicate the serial number of the second temporary removable windshield placard. [Eff and comp 12/24/01; am and comp 1/23/03; comp 7/26/04; comp 8/19/06; am and comp 7/2/12; comp 9/25/15; am and comp _____] (Auth: HRS §291-56) (Imp: SLH 2001, Act 297, §1)

§11-219-7 Replacement of lost, stolen, mutilated, or confiscated [~~parking permits~~] removable windshield placards, temporary removable windshield placards, special license plates, and identification cards. The replacement permit(s) and identification card(s) shall have the same expiration date as the

permit(s) and identification card(s) that was lost, stolen, mutilated or confiscated. To replace a ~~[parking permit]~~ removable windshield placard, temporary removable windshield placards, special license plates, or an identification card that has been lost, stolen, mutilated, or confiscated, the person with a disability shall:

- (1) Submit to the county a new completed person with a disability parking application form that shall indicate whether the permit or identification card was lost, stolen, mutilated or confiscated. A new certificate of disability is not required if the permit is still valid;
- (2) Surrender any remaining items relating to the current parking permit, including the identification card, portion(s) of the mutilated placard, and remaining special license plate, to the issuing agency;
- (3) Complete all applicable forms, and pay the fees as required to the county, for special license plates, pay the fees as required by the county, in an amount not to exceed the fee for regular license plates for the same vehicle class; and
- (4) Pay \$12 to the county for a lost, stolen, or confiscated placard; or
- (5) Obtain from the county a replacement removable windshield placard or temporary removable placard in exchange for a mutilated removable windshield placard or temporary removable placard, at no cost.
[Eff 12/31/84; am and comp 4/18/94; ren from §19-150-7, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; am and comp 7/26/04; am and comp 8/19/06; am and comp 7/12/12; comp 9/25/15; am and comp]
(Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

§11-219-7.25 Replacement of lost, stolen, mutilated, or confiscated disabled paid parking exemption permits. (a) To replace a lost, stolen, mutilated, or confiscated disabled paid parking exemption permit or identification card, the person with a disability shall:

- (1) Submit to the issuing agency a new completed disabled paid parking exemption permit application form that shall indicate whether the permit or identification card was lost, stolen, mutilated, or confiscated. A new certificate of disability is not required if the permit is still valid;
- (2) Surrender any remaining items relating to the disabled paid parking exempt permit, including the identification card or portion(s) of the mutilated placard, to the issuing agency; and
- (3) Pay \$30 to the issuing agency for a lost, stolen, or confiscated disabled paid parking exemption permit. If an application is for a replacement of a lost, stolen, or confiscated disabled paid parking exemption permit for a second time, pay to the issuing agency \$60. If an application is for a replacement of a lost, stolen, or confiscated disabled paid parking exemption permit for a third time, pay to the issuing agency \$90. If an application is for a replacement of a lost, stolen, or confiscated disabled paid parking exemption permit for any subsequent time, pay to the issuing agency \$120; or
- (4) Obtain from the issuing agency a replacement disabled paid parking exemption permit in exchange for a mutilated disabled paid parking exemption permit at no cost. [Eff and comp] (Auth: HRS §291-56) (Imp: HRS §291-5)

**§11-219-7.5 Renewal of [~~parking permits.~~]
removable windshield placards, temporary removable
windshield placards, and special license plates.** (a)

Permits may be renewed up to sixty days prior to the expiration of the permit.

(b) Proof that the applicant is the person named on the person with a disability parking application form is not required.

(c) To renew a removable windshield placard a completed person with a disability parking application form shall be submitted to the issuing agency by mail. The issuing agency [~~will~~] shall process the person with a disability parking application form and issue a new removable windshield placard and identification card to the applicant by mail. The certificate of disability section of the form shall be completed by a licensed practicing physician or an advanced practice registered nurse and shall be valid for no more than one-hundred eighty days from the date of certification.

(d) To renew a temporary removable windshield placard a completed person with a disability application form shall be submitted to the county in person. The county [~~will~~] shall process the person with a disability parking application form, collect applicable fees, and issue a new temporary removable windshield placard and identification card to the applicant. The certificate of disability section of the form shall be completed by a licensed practicing physician or an advanced practice registered nurse and shall be valid for no more than sixty days from the date of certification.

(e) Special license plates require recertification of disability every six years to retain the use of the special license plates.

(1) If the person with a disability has also been issued a removable windshield placard[~~r~~] or disabled paid parking exemption permit, the renewal of removable windshield placard or disabled paid parking

exemption permit [~~will~~] shall also extend the ability to use the special license plates.

- (2) If a person with a disability does not have a removable windshield placard, a completed person with a disability application form shall be submitted to the county. The county [~~will~~] shall provide the applicant a new identification card indicating the special license plate number and expiration date.
- (3) If a person with a disability has been issued one set of special license plates and one six year removable windshield placard, both expire at the same time. [Eff and comp 12/24/01; comp 1/23/03; comp 7/26/04; am and comp 8/19/06; am and comp 7/2/12; comp 9/25/15; am and comp]
(Auth: HRS §291-56) (Imp: HRS §291-56; SLH 2001, Act 297, §1; 23 CFR part 1235)

§11-219-7.75 Renewal of disabled paid parking exemption permits. (a) A disabled paid parking exemption permit may be renewed up to sixty days prior to the expiration of the permit.

(b) To renew a disabled paid parking exemption permit, a completed renewal application form and a legible copy of a valid driver's license shall be submitted to the issuing agency by mail. The issuing agency shall process the form and issue a new disabled paid parking exemption permit and identification card to the applicant by mail. The certificate of disability section of the form shall be completed by a licensed practicing physician or an advanced practice registered nurse and shall be valid for no more than one-hundred eighty days from the date of certification.

(c) If a person with a disability has been issued one set of special license plates and one disabled paid parking exemption permit, both expire at the same time. [Eff and comp] (Auth: HRS §291-56) (Imp: HRS §291-5)

§11-219-8 Return of disability parking permits and identification cards.

(a) The removable windshield placards, temporary removable windshield placards, disabled paid parking exemption permits, and identification cards are the property of the issuing agency and shall be returned to the issuing agency:

- (1) Upon the death of the person with a disability; or
- (2) When the person is no longer qualified per section 291-51, HRS; or
- (3) When the removable windshield placard [~~and~~], temporary removable windshield placards, or disabled paid parking exemption permit [~~are expired~~] expire.

(b) Special license plates shall be returned to the county:

- (1) Before the transfer of ownership of a vehicle to another party. The transfer of ownership for a vehicle shall not be recorded until the special license plates assigned to that vehicle have been replaced or returned to the county;
- (2) When the special license plates expire;
- (3) When the person no longer meets section 291-51, HRS requirements; or
- (4) Upon death of the permittee. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-8, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; comp 7/26/04; comp 8/19/06; am and comp 7/12/12; comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

§11-219-9 REPEALED. [R 7/26/04]

§11-219-10 Display of permit and presentation of identification card. (a) The [~~removable windshield placard [or] temporary removable windshield placard~~] disability parking permit shall be displayed in a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror at all times when parking. When a placard cannot be hung securely from the rearview mirror, the placard shall be displayed on the dashboard.

(b) The person with a disability operating or being transported in the vehicle being parked or left standing shall carry a current identification card and present it to any enforcement officer upon request. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-10, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; am and comp 7/26/04; comp 8/19/06; am and comp 7/2/12; comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §291-54; 23 CFR part 1235)

~~[§11-219-10.5 Metered parking privileges. Any vehicle displaying special license plates, a removable windshield placard, or a temporary removable windshield placard issued under this part shall be permitted to park, without payment of metered parking fees, in any parking metered space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer.] [Eff 7/2/12; comp 9/25/15; R] (Auth: HRS §291-56) (Imp: HRS §291-55; 23 CFR part 1235)~~

§11-219-11 Nontransferability. [~~The removable windshield placard, temporary removable windshield placard, special license plates,~~] Disability parking permits and identification [~~card~~] cards are nontransferable. (a) No person other than the person with a disability shall park or cause to stand a motor vehicle displaying a placard or special license plates[~~+~~

(1) ~~In~~ in a parking space reserved for persons with disabilities, as defined in section 11-219-4[~~, or~~].

[~~(2) In order to otherwise receive parking privileges under section 291-55, HRS, except when it is used in connection with the transport of the person with a disability.]~~

(b) A [~~removable windshield placard, temporary removable windshield placard, or special license plates~~] disability parking permit may be confiscated by a law enforcement officer or commissioned volunteer enforcement officer of the county law enforcement agency for any unauthorized use. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-11, am and comp 12/15/00; am and comp 12/24/01; am and comp 1/23/03; am and comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §291-53; 23 CFR part 1235)

§11-219-12 Penalties. Any person who knowingly falsifies an application for a [~~removable windshield placard, temporary removable windshield placard, special license plates,~~] disability parking permit and identification card, or any renewal or replacement thereof, shall be subject to suspension or revocation of the [~~placard, special license plates~~] disability parking permit or identification card. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-12, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; am and comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/15; am and comp] (Auth: HRS §291-56)

(Imp: HRS §291-53; HRS §291-57; SLH 2001, Act 297 §1; 23 CFR part 1235)

§11-219-13 Reciprocity. The State of Hawaii, counties, and private property owners shall recognize valid [~~removable windshield placards, temporary removable windshield placards, and special license plates~~] disability parking permits which have been issued by authorities of other states and countries, for the purpose of identifying persons permitted to:

- (1) Utilize parking spaces reserved for persons with disabilities[~~7~~]; or
- (2) Exercise other parking privileges afforded by the State, counties, or private property owners for the benefit of persons with disabilities. [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-13, am and comp 12/15/00; am and comp 12/24/01; comp 1/23/03; comp 7/26/04; comp 8/19/06; comp 7/2/12; comp 9/25/15; am and comp] (Auth: HRS §291-56)

(Imp: HRS §291-51.7; 23 CFR part 1235)

§11-219-14 Signage and marking of parking space and access aisle. (a) Parking spaces designated as reserved for persons with disabilities shall be identified as follows:

- (1) The parking space shall [~~not~~] be posted with the following notice signs:
 - (A) A reserved parking sign as shown on the "Typical Reserved Parking Sign for Persons with Disabilities" (Exhibit 1) and "Typical Reserved Parking Sign for Van Accessible Stall" (Exhibit 2), dated 10/1/11 at the end of this chapter and made a part of this section. The reserved parking sign

shall be located at the front of each parking space reserved for persons with disabilities, except for parallel spaces, where the sign may be posted on the curb side of the access aisle. The reserved parking sign shall be mounted at minimum [~~60~~] sixty inches above the finished floor to the bottom of the reserved parking sign. The reserved parking sign shall be mounted on a free-standing pole, on a wall, or suspended overhead. The reserved parking sign shall not be mounted so as to obstruct ingress to, or egress from, a vehicle parked in the access aisle or parking space.

- (B) A parking space designed to accommodate a passenger van, shall have a van-accessible sign as shown on Exhibit 2 at the end of this chapter. The van-accessible sign shall be mounted immediately below the reserved parking sign at minimum [~~60~~] sixty inches above the finished floor to the bottom of the van-accessible sign, unless technically infeasible because of low ceiling height, in which case the van-accessible sign shall be mounted at the highest point above the finished floor.
- (C) In residential facilities, where parking spaces are assigned to specific residential dwelling units, or to individuals, identification of accessible parking spaces and access aisles shall not be required.
- (D) In employee parking facilities, where parking spaces are assigned to specific employees, identification of accessible parking spaces and access aisles shall not be required.

- (2) Beyond the requirements imposed by the Americans with Disabilities Act Accessibility Guidelines with respect to dimensions, location, and slope, the parking space shall be striped on two sides of the parking space. The striping is not required at the curbside of the space. The striping shall be four [~~4~~] inches in width and shall be clearly visible in contrast to the parking surface.

(b) Access aisles shall be identified as follows:

- (1) Van access aisle shall be posted with a no parking sign as shown on the "Typical Access Aisle Sign" (Exhibit 3) dated 10/1/11, at the end of this chapter and made a part of this section. The no parking in access aisle sign shall be mounted at minimum [~~60~~] sixty inches above the finished floor to the bottom of the no parking sign, unless technically infeasible because of low ceiling height, in which case the sign shall be mounted at the highest point above the finished floor. The no parking in access aisle sign shall be on a free-standing pole, on a wall, or suspended overhead. The sign shall not be mounted so as to obstruct ingress to, or egress from, a vehicle parked in the parking space. The no parking in access aisle sign shall be located at the front of each access aisle, except for parallel parking spaces, where the sign may be posted on the curbside of the access aisle. The no parking in access aisle sign shall not be placed in the access aisle or parking space. Access aisles, other than van access aisles, shall not require additional signage.
- (2) Beyond the requirements imposed by the Americans with Disabilities Act Accessibility Guidelines with respect to

dimensions, location, and slope, access aisles shall be outlined except on the curb side of the space and shall be diagonally striped within the outline. The outline and diagonal striping shall be four inches in width. The diagonal striping shall be at a [45] forty-five degree angle to the outline and shall be clearly visible in contrast to the parking surface. The phrase "No Parking" may be painted in the access aisle using letters not less than twelve inches in height, in the portion of the access aisle farthest away from the side where a vehicle would approach the access aisle and shall be clearly visible in contrast to the parking surface.

(c) A temporary parking space reserved for persons with disabilities or a temporary access aisle, defined as being used as such for seven consecutive days or less, shall comply with all requirements under the Americans with Disabilities Act, but shall not be subject to the striping requirements of this section.

~~[(e)]~~ (d) If a private or public entity provides for the towing of illegally parked vehicles, the signage shall comply with the requirements of section 290-11, HRS." [Eff 12/31/84; am and comp 4/18/94; ren from §19-150-14, am and comp 12/15/00; am and comp 12/24/01; am and comp 1/23/03; comp 7/26/04; am and comp 8/19/06; am and comp 7/2/12; comp 9/25/15; am and comp] (Auth: HRS §291-56) (Imp: HRS §291-56; 23 CFR part 1235)

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

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

4. These amendments to and compilation of chapter 11-219, 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.

ELIZABETH A. CHAR, M.D.
Director of Health

APPROVED AS TO FORM:

Deputy Attorney General

EXHIBIT 1

TYPICAL RESERVED PARKING SIGN FOR PERSONS WITH DISABILITIES
(10/1/11)



EXHIBIT 2

TYPICAL PARKING SIGN FOR VAN ACCESSIBLE STALL
(10/1/11)



EXHIBIT 3

**TYPICAL ACCESS AISLE SIGN
(10/1/11)**



III. Old Business – After Public Hearing

B. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 56, Nonpoint Source Pollution Control, promulgated by DOH

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

State Department of Health
Department or Agency: _____
Administrative Rule Title and Chapter: Nonpoint Source Pollution Control, HAR 11-56
Chapter Name: Nonpoint Source Pollution Control
Contact Person/Title: Matthew Kurano/Env. Health Specialist
Phone Number: 808-586-4309
E-mail Address: matthew.kurano@doh.hawaii.gov **Date:** May 3, 2021

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

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

Yes No

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

I. Rule Description: New Repeal Amendment Compilation

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

Yes No (If “No,” no need to submit this form.)

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

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

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

Yes No

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

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

Yes No

(If “Yes” no need to submit this form.)

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

The rules were provided to the Small Business Regulatory Review Board. Public notices were given and a public comment period and public hearing were held. Notice was also posted on the Clean Water Branch website, and Government Agencies (e.g. Dept. of Ag. Agribusiness Development Corp, Dept. of Land and Natural Resources, etc.), through which there could potentially be small business impacts, were directly consulted in rule development.

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

Yes. Following public comment, two recommendations clarifying when the rules applied were added. No substantive changes were made.

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

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

Opinions and comments were not directly solicited as the rule primarily impacts government agencies.

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

Eight (8) sets of comments were received. All in support.

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

Two (2) changes were made to clarify applicability. No substantive changes were made.

4. The number of persons who:

(i) Attended the public hearing: 44

(ii) Testified at the hearing: 8

(iii) Submitted written comments: 8

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

Yes No

(i) If "Yes," was the change adopted? Yes No

(ii) If No, please explain the reason the change was not adopted and the No request made at the hearing that would affect small businesses.

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

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

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

4. New HAR Chapter 56, Nonpoint Source Pollution Control

Mr. Wong explained that Chapter 56 is new although the state law governing these rules Chapter 342E, HRS, has been in existence for several years. The rules' purpose is to ensure that Hawaii's waters are adequately protected from all sources of water pollution, including NPS (nonpoint source) pollution.

Specifically, Chapter 342 provides the framework for the prevention, abatement and control of new and existing NPS pollution from activities conducted by State agencies; i.e., the departments of land and natural resources and agriculture. It also identifies known NPS water pollution and requires registration, development of a water pollution prevention plan, and implementation of management measures to be used to prevent or abate NPS pollution.

Mr. Lum provided some history to these rules and explained that while NPS is largely from industrial sources, which has been regulated by the federal and state governments since the 1970's, the Clean Water Act expressly requires states and not the federal government to regulate everything else that may be a pollutant that falls outside of NPS. Thus, Chapter 342E requires DOH to comply with the federal mandates and to have adequate authority to deal with water pollution issues that are not standard industrial practices.

Recently, there has been much concern because the major pollutant sources in Hawaii are not necessarily the same pollutants that have been dealt with in the past. For example, every time it rains, brown water advisories are given; this is run-off from some of Hawaii's major landowners. While a lot of good practices have been involuntary, from forestries to marinas and even department of agriculture, there is a need to have some form of formality and standards that all can follow for DOH to feel comfortable with.

The rules are expected to have a minimal direct impact on small businesses because the requirements target major landowners (not lessors of land) and government agencies, all of whom have been approached by DOH. It is recognized that a major effort is required for outreach purposes, particularly on the neighbor islands as many of the larger government agencies own marinas who are required to comply with the rules.

Chair Cundiff and Mr. Nakamoto appreciated all the work that was involved in preparing the proposed rules as well as being proactive in terms of the environment and the community's welfare. Chair Cundiff thanked DOH for its review and thoroughness of the rules and added that while he is confident that DOH will be reaching out to stakeholders he would like to reinforce the proactive outreach via emails, etc.

Mr. Nakamoto made a motion to move the proposed amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

**Response to Public Comments on Proposed
Hawaii Administrative Rules (HAR),
Chapter 11-56
Docket No. CWB-1-21**

The Department of Health (DOH), Clean Water Branch (CWB) solicited public comments from December 16, 2020 through February 1, 2021, on proposed new HAR, Chapter 11-56 (Nonpoint Source Pollution Control). A virtual public hearing was held at 9:00 a.m. on February 1, 2021. The DOH-CWB published notices of the comment period and public hearing on December 16, 2020 in the Honolulu Star Advertiser, The Garden Island, Maui News, West Hawaii Today, and Hawaii Tribune-Herald. Below is a summary of the comments received and the DOH-CWB responses.

HAR 11-56 (NONPOINT SOURCE POLLUTION CONTROL)

The DOH received eight (8) sets of comments on the proposed rule, HAR, Title 11, Chapter 11-56. All comments were in support. No comments were in opposition. However, multiple commentors proposed to expand the scope of the proposed rule or provided suggestions on how the rule could be strengthened. The Hawaii Legislative Resources Bureau provided input regarding formatting for conformance with State standards. The responses below are the DOH's formal responses to the testimony received.

EarthJustice Written Testimony, February 1, 2021

Summary: As stated in the first page of comments, "Earthjustice commends the Clean Water Branch for undertaking the work to develop and propose regulations to reduce nonpoint source pollution from agriculture, forestry, and marina operations which together generate a significant portion of runoff pollution in our State waters." However, Earthjustice provided comments to address its stated belief that, "... the proposed regulatory regime is severely limited in applicability because the private property is not subject to regulation, except at the discretion of the Director, or where it can be shown affirmatively that the privately-owned entity is contributing to nonpoint source pollution. HAR 11-56-03(a), (b) Additionally, agricultural parcels smaller than 1,000 acres are not regulated under the proposed rules, creating significant regulatory gaps."

In reviewing Earthjustice's written testimony, the DOH identified three (3) comments and a set of suggestions which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Appendix A

On page 3 of the written testimony provided by Earthjustice, under Section II, titled "The Regulatory Gaps Undermine the Effectiveness of the entire Program," Earthjustice states that, "First, and most significantly, a large percentage of agricultural lands in Hawai'i are privately owned. Statewide figures summarizing fee ownership of agricultural lands are not readily available. However, the GIS data referenced by the

Clean Water Branch in its NPS Program Proposal illustrate the problem with a piecemeal approach to regulation.”

DOH Response to General Comment No. 1.

The DOH concurs that a large amount of agricultural land in Hawaii is privately owned and operated. While the DOH concurs that all agricultural operations (i.e., publicly owned or privately owned) may present risk of water pollution, this first set of nonpoint sources rules target the large agricultural parcels/activities owned by State agencies as those properties are the ones most likely to cause water pollution for the following reasons.

The DOH recognizes that owners of large agricultural parcels, some of which may have only recently come into possession by a public entity, often lease smaller portions of these parcels to impermanent agricultural interests. As such, the variable nature of agricultural activities as well as a lack of permanent occupancy reduces the likelihood of implementation and maintenance of effective management practices due to a lack of long-term economic interest. In contrast, large privately held agricultural parcels in Hawaii have historically been operated by a limited number of owners who had/have long-term vested interests in implementing management practices which preserve soil and reduce the potential for water pollution. Because of this dichotomy, the proposed rules do not treat public and private potential nonpoint source polluting generating activities equally. As drafted, the proposed rules categorically require publicly-owned entities to become subject to nonpoint source pollution prevention requirements, but relies instead on a targeted approach for private entities.

In sections 11-56-03(a)(2) and 11-56-03(b) of the proposed rule, privately-owned entities who cause or contribute to nonpoint source pollution, either from conducting activities similar to those which have categorial requirements or other, may be required to register and implement pollution preventing management measures. This approach does not create a “piecemeal approach” but rather an initially conservative approach based on pollution risk. The proposed rule establishes that the DOH may obligate both public and private entities to prevent nonpoint source pollution, while not categorically obligating those privately-owned entities which have voluntarily implemented successful pollution control, to register and become subject of the proposed rules.

DOH’s proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Appendix A

On page 5 of the written testimony provided by Earthjustice, under Section II, titled “The Regulatory Gaps Undermine the Effectiveness of the entire Program,” Earthjustice states that, “Second, requiring that public parcels be both contiguous and under common ownership to meet the 1,000-acre threshold for agricultural lands creates regulatory gaps that fail to take advantage of economies of scale and other efficiencies. Under the proposed regulatory framework, a 500-acre parcel owned by the Agricultural Development Corporation (“ADC”) and leased to a large multi-national seed corporation

is not subject to regulation. This would remain true even if an adjacent 1,000-acre parcel owned by the Department of Land and Natural Resources (“DLNR”) were leased to the same seed corporation for identical agricultural use, and the two parcels were in fact “farmed as a single unit” by the corporate lessee. Not requiring an operator to apply for an approved Water Pollution Plan to lands that are “farmed as a single unit” lacks any rational basis and fails to maximize the benefits of developing a pollution control plan in the first place.”

DOH Response to Comment No. 2.

The DOH does not intend to craft a “loophole” in terms of applicability of the program. It was the intent of HAR Chapter 11-56, Appendix A, to obligate responsible persons who own or operate publicly-owned parcels or facilities which span a total of 1,000 acres to register and participate in the nonpoint source pollution control program. In the example provided in the comment above, the DOH concurs that a clarification of both the definition of “Facility” in HAR section 11-56-1, and to the general applicability section of HAR Chapter 11-56, Appendix A, is required. The proposed amendments clarify the intent of the originally proposed rule and address the comment above.

The DOH is proposing amending the definition for “Facility” in HAR section 11-56-1 from:

“Facility” means any facility (including land or appurtenances thereto) that is subject to regulation under this chapter.”

To:

“Facility” means any facility, physical operation, collection of buildings, parcel(s), or farm operated as a single unit, (including land or appurtenances thereto) that is subject to regulation under this chapter.

The DOH is proposing amending the HAR 11-56, Appendix A, Section 1(a)(1) from:

- (1) The requirements of this Appendix apply to all publicly-owned agricultural lands comprising 1,000 or more contiguous acres under common ownership and with operations identified in the specific applicability paragraphs in section 3.

To:

- (1) The requirements of this Appendix apply to all publicly-owned agricultural lands or facilities comprising 1,000 or more contiguous acres under common ownership or purpose and with operations identified in the specific applicability paragraphs in section 3.

DOH’s proposed action: These proposed changes are non-substantive but are clarifications of the proposed rule made in response to the comment above.

Comment No. 3. Proposed HAR, Title 11, Chapter 56, Appendix A

On page 5 of the written testimony provided by Earthjustice, under Section II, titled “The Regulatory Gaps Undermine the Effectiveness of the entire Program,” Earthjustice states that, “Finally, the 1,000-acre threshold for agricultural lands is arbitrary and does not meet the program’s stated goal of reducing the financial burden on “small farms.” As an initial matter, acreage is not an accurate proxy for the financial viability of agricultural operations in Hawai’i. Of the 77 parcels listed in seed production in the 2015 Agricultural Baseline dataset, all but six are less than 1,000 acres in size. See Hawai’i Statewide GIS Program data: Agricultural Land Use Baseline (2015). Yet the Hawai’i seed industry is known to be lucrative, with a cash value of \$120,800,000 in 2017. Furthermore, the management measures to be implemented through the Water Pollution Control Plans are largely based on CNPCP management measures, which have already been identified as “economically achievable.”¹³ Accordingly, while economic hardship may be a valid policy consideration, a variance type procedure would more effectively address this concern, rather than a one-size-fits all cut-off which alone (without the additional limitations based on ownership) exempts 98.3% of Hawai’i’s farms from the obligation to implement economically feasible conservation measures to protect our state’s waters.”

DOH Response to Comment No. 3.

The DOH determined that for the initial proposed nonpoint source rules, the public-entity owned or operated 1,000 acre threshold for categorically requiring registration (HAR Chapter 11-56, Appendix A) was based on the analysis described in the proposed rules’ fact sheet dated March 2020 (Fact Sheet, Appendix A: Nonpoint Source Pollution Control Requirements for Agriculture, page 19). While having a large acreage trigger does omit smaller agricultural parcels or facilities from categorial registration requirements, it does not exempt smaller agricultural parcels or facilities from being required to register and implement water pollution prevention plans should the smaller parcel or facility be found to be causing or contributing to nonpoint source pollution. If the DOH were to reduce the categorical acreage trigger, the universe of required registrants would increase outside of the DOH’s allotted resources to effectively manage the initial implementation of the proposed rules. Should there be future findings that suggest a lower acreage trigger is needed to effectively address nonpoint source pollution from agricultural parcels or facilities, the DOH will propose the reduction in a future rule proposal.

DOH’s proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Suggestions made by Earthjustice in Testimony: Three (3) Suggestions made to Strengthen the Proposed Rules

Beginning on page 6 of the written testimony, Earthjustice provided three (3) suggestions to strengthen the proposed HAR Chapter 11-56. The suggestions included: A) Amending the proposed rules to apply equally to both publicly and privately owned properties; B) Amend the proposed rules so that all farms, regardless of size, are

required to implement Best Management Practices; and, C) Other suggestions to improve program effectiveness, including considering practices from other states.

DOH Response to Suggestions

The DOH appreciates both the critical input as well as the suggestions provided in the written testimony.

Regarding amending the proposed rule to apply equally to both public and private entities, the DOH sought to apply new requirements equitably. As stated in previous responses, the DOH believes there to be a difference between the level of pollution risk from a publicly-owned versus private entity, with respect to nonpoint source pollution. Should the proposed rules be put into effect and the State's nonpoint source pollution control program be established, the DOH will be able to gain a better understanding of whether equal application of regulatory requirements are required for public and private entities.

Similarly, the DOH's approach to management measure implementation for agricultural parcels reflects differences between pollution risks from small farms and larger facilities. While implementation of management measures should be conducted at all farms, larger landowners are expected to have the resources necessary to formally develop Water Pollution Prevention Plans and complete the monitoring and reporting required under the registry program. Smaller farms, unless identified as requiring registration, are encouraged to implement management practices. As part of the DOH nonpoint source pollution program, smaller farms can receive technical assistance even when registration is not required.

Lastly, while not directly addressed in the proposed rules, the DOH is in the process (subject to Legislative funding) of establishing positions to continue to evaluate technical approaches and strategies to expand nonpoint source pollution control. This includes technical positions to explore other strategies such as protection of riparian ecosystems, standards for hydromodifications, and other potential nonpoint sources of pollution. When the positions are authorized/funded, the DOH will be conducting the types of activities suggested.

Lauren Blickley on Behalf of Surfrider Foundation, January 25, 2021

Summary: As stated in the first page of comments, "...Surfrider Foundation and its four Hawaii Chapters support the proposed new HAR Chapter 11-56." Surfrider Foundation's written testimony included comments to address its stated belief that, "While we welcome DOH's efforts to move forward on implementing regulations to reduce nonpoint source pollution, there are a few concerning loopholes in the applicability of the proposed regulations."

In reviewing Surfrider Foundation's written testimony, the DOH identified two (2) comments which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Appendix A, Section 1(a)(1) On page 2 of the written testimony provided by L. Blickley, Surfrider Foundation commented that, “Appendix A, Section 1. (a)1 states that the requirements of Appendix A apply to “all publicly-owned agricultural lands comprising 1,000 or more contiguous acres...” As read, the requirements of this section only apply to 1,000 acre parcels under common ownership. This provision excludes many state and county lands that are smaller or are a patchwork of contiguous parcels under the control of different agencies. There are also concerns that current 1,000 acre agricultural parcels may be purposely split into smaller parcels in an attempt to circumvent new nonpoint source rules. We therefore request that the DOH carefully review and consider strengthening this provision to ensure that large parcels of publicly and privately-owned agricultural lands adhere to proposed nonpoint source rules.”

DOH Response to Comment No. 1.

As stated in the DOH’s response to Earthjustice’s Comment No. 2, the DOH did not intend to create a potential “loophole” in the regulations that would allow a required registrant to evade mandatory participation in the nonpoint source pollution control program when circumstances such as those described in the Surfrider Foundation’s comments exist.

The DOH is clarifying “generally applicability” in HAR Chapter 11-56, Appendix A, and providing an amended definition of “Facility” in HAR section 11-56-1, as stated in the DOH’s response Earthjustice’s Comment No. 2, above.

DOH’s proposed action: These proposed changes are non-substantive but are clarifications of the proposed rule made in response to the comment above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Appendix A, Section 1(a)(2) On page 2 of the written testimony provided by L. Blickley, Surfrider Foundation commented that, “Appendix A, Section 1. (a) 2 provides absolute discretion to the Director as to whether or not to regulate run-off from private lands. The largest polluters on most of Hawaii’s islands, however, are private landowners. We are concerned that this provision represents a significant loophole in addressing the primary sources of nonpoint source water pollution in Hawai’i. West Moloka’i and Lana’i, for example, both have obvious nonpoint source pollution issues stemming from private landowners. On Maui, over 30,000 acres are owned and controlled by the private company Mahi Pono, in addition to thousands of acres still held by Alexander and Baldwin. Nonpoint source pollution rules should therefore be strengthened to ensure that privately owned agricultural lands, particularly well known problem areas for nonpoint source pollution stemming from private lands, are prioritized and more specifically addressed.”

DOH Response to Comment No. 2.

The DOH recognizes that in the proposed rule, publicly-owned and privately-owned agricultural activities are treated differently in that large publicly owned parcels are categorically required to register whereas privately-owned activities are required only

subject to a determination by the Director. While this difference excludes privately-owned agricultural activities for categorical requirements, it does not create a loophole; privately-owned agricultural entities may still be subject to both nonpoint source pollution prevention program requirements as well as enforcement actions. As discussed in the DOH's response to Earthjustice's Comment No. 1, the DOH believes this initial approach is supported by the nature of land use and ownership in Hawaii. Should the DOH find that privately-owned agricultural parcels or facilities should be categorically subject to HAR Chapter 11-56, the DOH will consider amending the general applicability of the rule in the future.

Of note, as part of the DOH's approach to reducing nonpoint source pollution, the DOH has proposed technical positions (subject to Legislative authorization/funding) that would reach out to both public and private agricultural landowners to inform and encourage implementation of management measures even when these landowners are not required to register with the DOH under the proposed rule. Should these outreach efforts be found to be inadequate, the DOH will have a better understanding of which types of potential nonpoint sources of pollution must be included in mandatory requirements (i.e., expansion of general applicability sections of appendices).

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Tova Callender on Behalf of West Maui Ridge to Reef Initiative, January 26, 2021

Summary: As stated in the first page of comments, Ms. Callender, "wrote to provide support for and comments on the proposed nonpoint source rules HAR 11-56."

In reviewing West Maui Ridge to Reef Initiative's written testimony, the DOH identified four (4) comments which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Appendix A, General Applicability

On page 1 of the written testimony provided by T. Callender, West Maui Ridge to Reef Initiative asked/commented that, "Was data used to determine the pollution threshold warranting inclusion in the program at 1000 acres for agricultural uses and 5 acres for silviculture? Observations based on farmland in West Maui would suggest a lower threshold for inclusion of agriculture would be appropriate, and it seems unlikely forestry is 200x more polluting."

DOH Response to General Comment No. 1.

Data regarding the 1000 acre and 5 acre triggers for agriculture and forestry, respectively, were provided in the HAR Chapter 11-56 Fact Sheet included in the public notice package. The DOH agrees that it is unlikely forestry is 200x more polluting than agricultural activity; however, silviculture in Hawaii is far less common than agricultural activity. As such, the DOH was able to lower the regulatory size trigger for silviculture without dramatically increasing the number of likely registrants beyond what is able to

be effectively managed by the DOH. Further, the 5 acre trigger is consistent with the Coastal Zone Act Reauthorization Amendments of 1990, Section 6217(g) forestry management measure requirements.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Section 5

On page 1 of the written testimony provided by T. Callender, West Maui Ridge to Reef Initiative asked, "Might a lower registration fee and higher penalties for infractions create more incentive for participation and compliance?"

DOH Response to General Comment No. 2.

The DOH believes that a \$500 registration fee, which is good for up to five (5) years, is acceptable and should not pose an economic disincentive for registration. Penalties of up to \$10,000 per day per violation are authorized under HRS 342E. Given that participation in the registration program is not voluntary, the DOH does not foresee a need for incentives for participation and compliance. However, while not included in this rule, part of the existing DOH nonpoint source pollution control strategy is to offer Federal Clean Water Act grants to entities with a DOH approved watershed-based plan. Those persons who voluntarily implement management measures consistent with this proposed rule (and are associated with a DOH approved watershed-based plan) may receive grant funding as an incentive to implement nonpoint source pollution control practices.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 3. Proposed HAR, Title 11, Chapter 56, Appendix A and B

On page 1 of the written testimony provided by T. Callender, West Maui Ridge to Reef Initiative asked/commented that, "It was good to see the linkages in the appendix to agricultural guidance materials for BMPs from NRCS and CTAHR. Might there be more opportunity for partnership and leveraging NRCS and the Soil and Water Conservation Districts Conservation planning processes since this is their focus and they are arguably the experts in this area? Increasingly, NRCS has added programs to explicitly address water quality concerns."

DOH Response to General Comment No. 3.

At present, the DOH is partnering with the NRCS to implement the National Water Quality Initiative and will continue to partner and include SWCDs in the management of nonpoint source pollution going forward. The DOH hopes to continue to both partner and leverage the NRCS and Soil and Water Conservation Districts in future planning processes. In fact, as proposed in multiple locations within the proposed rule, the DOH recognizes conservation plans approved by the local Soil and Water Conservation Districts as meeting the requirements of the proposed rule if certain conditions are met.

The DOH concurs that the NRCS and Soil and Water Conservation Districts have significant expertise in this area and fully intends to coordinate efforts to reduce any potential water quality protecting requirements.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 4. Proposed HAR, Title 11, Chapter 56, Appendix A and B

On page 1 of the written testimony provided by T. Callender, West Maui Ridge to Reef Initiative commented that, "Thank you for including streamside management zones (SMZs) in the guidance for silviculture. Observations during field work on Maui suggest that creating buffers along streams and gulches for agriculture would also be beneficial for protecting water quality. The historic practice of building earthen farm roads along the gulch edge and using road BMPs as a mechanism for shedding sediment-laden water into waterways has left a legacy of very turbid coastal waters following rain events. Adding more specific language to include the need for gulch-edge buffers (not just stream buffers) would be helpful."

DOH Response to General Comment No. 4.

The DOH concurs that having streamside management zones are best practices for the reduction of polluted discharges to State waters. When DOH begins to review Water Pollution Prevention Plans pursuant to the proposed rule, the DOH will consider adding specific language to include the need for gulch-edge buffers where appropriate.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Denise Antolini on Behalf of Malama Pupukeya-Waimea (MPW), January 31, 2021

Summary: As stated in the first page of comments, Ms. Antolini wrote to, "express our strong support for the proposed amendments by the Clean Water Branch to Hawai'i Administrative Rules (HAR) Chapters 11-53, 11-54, 11-55, and particularly 11-56. In many areas, the proposed rules promise to strengthen protection for nearshore water quality while maintaining strong monitoring requirements, transparency, and opportunities for public participation. We do have a few comments and suggestions."

In reviewing Malama Pupukeya-Waimea's written testimony, the DOH identified three (3) comments which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Sections 06 and 07

On page 4 of the written testimony provided by D. Antolini, MPW commented that, "MPW recommends that DOH ensure public web access to these materials broadly and 24/7 without a specific request, in order to (a) increase transparency, (b) increase compliance by other applicants who can view the files of other applicants, and (c) avoid

the need for in-person inspection, particularly given that such documents are likely to be submitted and maintained electronically, and the risks of in-person contact that we learned from COVID. This may also save agency staff time in the longrun.”

DOH Response to Comment No. 1.

The DOH fully agrees with the comment and intends to provide electronic access to all non-Confidential Business Information. While not addressed in the proposed rule, in preliminary budget proposals (subject to Legislative authorization/funding), the DOH requested resources to create an online document management system similar to what is maintained by other programs in the DOH, Environmental Health Administration (e.g., the Water Pollution Control viewer).

DOH’s proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Section 12

On page 4 of the written testimony provided by D. Antolini, MPW commented that, “MPW recommends that DOH add a provision for enhanced penalties for entities who are repeat violators or for egregious situations.”

DOH Response to Comment No. 2.

The DOH agrees that there should be escalating penalties for repeat or egregious violators. HRS 342E authorizes non-criminal penalties of up to \$10,000 per day per violation. Prior to the issuance of enforcement actions which include monetary penalties exercising authority to seek penalties of up to \$10,000 per day, the DOH intends to develop a penalty guidance. This approach is similar to what is used with the point source regulatory program. The DOH expects the nonpoint source penalty guidance to follow a similar logic as the point source penalty guidance in that the culpability of the violator is considered in penalty development. Aspects of culpability include egregiousness of the situation and whether the violation is a repeat offense.

DOH’s proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 3. HAR Proposed HAR, Title 11, Chapter 56, Section 16

On page 4 of the written testimony provided by D. Antolini, MPW commented that, “MPW recommends that settlement of field citations not be allowed for less than 30% of the daily penalty amount. Too much discretion for the field inspectors combined with in-person pressures from the landowner naturally leads to weaker enforcement and reduces transparency and public accountability.”

DOH Response to Comment No. 3.

Field Citations are unto themselves rule-based offers for settlement and as such are not allowed to be reduced further. Field citations may be withdrawn when additional facts

are provided such that the basis of the violation is no longer valid, but such circumstance is expected to be rare. In practice, field citations will not be issued in the "field," as the authorization to issue field citations will not be delegated to field personnel but to the Branch/program manager.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Kasamoto on Behalf of Hawaii Department of Transportation, Highways Division, Design Branch, February 1, 2021

Summary: K. Kasamoto provided a table of specific comments and questions regarding HAR Chapter 11-56.

In reviewing K. Kasamoto's written testimony, the DOH identified four (4) comments which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Section 3

On page 2 of the written testimony provided by K. Kasamoto, HDOT commented that, "Oahu and Maui District currently have MS4 Permits. Does this regulation affect the other Districts? The enforcement of non-point source stormwater discharge does not have a density or population requirement."

DOH Response to Comment No. 1.

The proposed rule applies statewide and is not triggered by population or density. However, as the proposed rule principally address nonpoint source pollution associated with agriculture, forestry, and marinas, it is unlikely that HDOT, Hawaii Division will be impacted by the proposed rule. As noted in the comment, if an area that would be subject to the proposed rule is instead regulated under an NPDES permit, no further action by the NPDES permittee would be necessary to fulfill the requirements of the proposed rule.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Section 05(b)

On page 3 of the written testimony provided by K. Kasamoto, HDOT asked, "If it is the responsibility of the owner with non-point discharge to register with the department, how does the owner know if they meet the definition of whom should be applying?"

DOH Response to Comment No. 2.

The final rule will be posted on a DOH website. Potential registrants should monitor if new rules/laws are put into effect. If a potential registrant is uncertain if HAR Chapter 11-56 requires them to register, the potential registrant should contact the DOH. Due to the new nature of the rule, the DOH plans to reach out to those public entities who are most likely to be impacted (required to register) once the final rule is in effect.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 3. Proposed HAR, Title 11, Chapter 56, Section 05(e)
On page 3 of the written testimony provided by K. Kasamoto, HDOT asked, "How will existing and new facilities become aware of the requirement to register in these timeframes?"

DOH Response to Comment No. 3.
Please see response to Comment No. 2 (above).

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Comment No. 4. Proposed HAR, Title 11, Chapter 56, Section 05(h)(1)(B)
On page 3 of the written testimony provided by K. Kasamoto, HDOT asked, "What is a facility identification number and does DOH assign this number?"

DOH Response to Comment No. 4.
Facility Identification Numbers are being proposed as a record keeping method for facility registrations. The DOH will not be issuing "permits" for registered nonpoint sources and will instead issue Facility Identification Numbers to track the status of the registered nonpoint source.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Klayton Kubo on Behalf of himself, February 1, 2021

Summary: K. Kubo testified in support of HAR 11-56.

In reviewing K. Kubo's written testimony, the DOH did not identify comments which require responses, but does thank Mr. Kubo for the support and participation in the rule making process.

Janice Marsters on Behalf of Hart Crowser, February 1, 2021

Summary: J. Marsters provided two (2) comments regarding HAR 11-56.

In reviewing Hart Crowser's written testimony, the DOH identified two (2) comments which require responses.

Comment No. 1. Proposed HAR, Title 11, Chapter 56, Section 3
On page 1-2 of the written testimony, J. Marsters commented that, "We recommend clarification that the applicability statement in item (a). As currently written, it indicates

that any publicly-owned entities that own land (not restricted to the activities identified in Appendices A through C) could be subject to the chapter. The language of Appendices A through C is clearer and indicates the intent.

Recommend revising to: (1) Publicly-owned entities owning land [or] and conducting the activities below, as identified in Appendices A through C of this chapter

We also note that, as written, the rules require privately-owned entities that cause or contribute to nonpoint source pollution due to operation or management of lands used for the activities identified, as determined by the Director, to comply with the provisions of this chapter [11-56-03(a)(2), 11-56-03(b)]. It is unclear how the Director will determine a cause or contribution to nonpoint source pollution. Recommend revising to indicate specific parameters for how the Director will make the determination of a cause or contribution to nonpoint source pollution.”

DOH Response to Comment No. 1.

Regarding the deletion of “or” and the replacement with “and” in HAR 11-56-03(a)(1), the DOH concurs that it was the intent for only public lands with the specific applicability requirements detailed in Appendices A-C to be categorically required to register. As such, “or” will be deleted and “and” will be substituted.

Regarding the second part of Comment No. 1, while parameters for how the Director will make determinations of whether a nonpoint source of pollution requires registration would be useful, given the case-by-case nature of this determination, specific parameters cannot be set forth at this time. Any final decision made by the Director may be appealed per HAR section 11-56-13. As such, no additional language will be added per the second part of Comment No. 1.

DOH’s proposed action: The DOH will clarify the intent of the proposed rule made in response to the first part of the comment above.

Comment No. 2. Proposed HAR, Title 11, Chapter 56, Section 6

On page 1-2 of the written testimony provided by J. Marsters, commented that, “Item (2) Requires a monitoring strategy to be included in the Water Pollution Control Plan (WPCP). However, (2)(D) requires “Water quality monitoring of State water affected by the nonpoint source pollution from the facility.” Due to mixing that may occur from a variety of discharges, only the discharges from the facility can be used to judge whether the facility is meeting its WPCP requirements. We recommend deleting Item (2)(D). Item (2)(E) provides for “other monitoring methods and activities” that could cover monitoring of State waters if it is scientifically justifiable. However, the “as deemed necessary” in (2)(E) should be clarified. Does it mean as deemed necessary by the Director?

DOH Response to Comment No. 2.

The DOH expects that effectively implemented Water Pollution Prevention Plans (WPPPs) will result in minimal impacts to receiving or adjacent State waters. To verify that WPPPs are effective, monitoring of the most effected receiving waters need to be

conducted. Monitoring of the receiving waters may be conducted in many ways including through visual or other means. Depending on the nature of the pollutants that the Director identifies as present, either through registration disclosures or through inspection, additional monitoring methods such as water quality sampling and chemical analyses may be warranted. When the Director determines that specific types of monitoring, in excess of what is proposed in the WPPPs are deemed necessary, the registrant may appeal the decision per HAR section 11-56-13. The DOH anticipates that the primary modes of monitoring will be visual inspections of both the management measures included in the WPPPs and visual monitoring of receiving waters.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

Randall Wakumoto on Behalf of the City and County of Honolulu, Department of Facilities Maintenance, February 1, 2021

Summary: The Director of Facilities Maintenance of the City and County of Honolulu provided support for HAR 11-56.

In reviewing the City and County of Honolulu's written testimony, the DOH identified one (1) comment which requires a response.

Comment No. 1. Proposed HAR, Title 11, Chapter 56

On page 1 of the written testimony, R. Wakumoto commented that, "The DFM further encourages the State of Hawaii's DOH to consider adopting and creating a formal regulatory process, as well as, facilitating and providing technical guidance that would allow for coordinated efforts to develop market-based programs, including water quality trading. Water quality trading can provide flexibility for permitted entities in meeting its regulatory obligations along with substantial cost savings by promoting increased investment in other nonpoint source pollutant reductions while still attaining its water quality goals."

DOH Response to Comment No. 1.

The DOH concurs with the comments from DFM. Should the DOH successfully adopt the proposed rules HAR Chapter 11-56, and be provided adequate resources to develop a nonpoint source pollution control program, the DOH could begin to explore the development of a water quality trading program that allows for flexibility for permitted entities in meeting regulatory obligations.

DOH's proposed action: The DOH does not plan to make changes to the proposed rule based on the comment and response above.

DEPARTMENT OF HEALTH

Adoption of Chapter 11-56
Hawaii Administrative Rules

SUMMARY

Chapter 11-56, Hawaii Administrative Rules, entitled "Nonpoint Source Pollution Control", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-56

NONPOINT SOURCE POLLUTION CONTROL

§11-56-1	Definitions
§11-56-2	General policy for nonpoint source pollution control
§11-56-3	Applicability
§11-56-4	Exemptions
§11-56-5	Registry requirements
§11-56-6	Water pollution prevention plans
§11-56-7	Reporting requirements
§11-56-8	Recordkeeping requirements
§11-56-9	Compliance with requirements
§11-56-10	Public access to information
§11-56-11	Right to inspect
§11-56-12	Enforcement and penalties
§11-56-13	Hearings and appeals
§11-56-14	No effect on enforcement of other law
§11-56-15	Severability clause
§11-56-16	Field citations; noncompliance with nonpoint source pollution control requirements
§11-56-17	Public hearings
§11-56-18	Signatories
Appendix A	Nonpoint Source Pollution Control Requirements for Agriculture
Appendix B	Nonpoint Source Pollution Control Requirements for Forestry

Appendix C Nonpoint Source Pollution Control
 Requirements for Marinas and
 Recreational Boating

§11-56-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

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

“Activity” means the performance of functions, assumptions of risks, or use by a party of tangible or intangible property or other resources to create a result.

“Agriculture” means the science or practice of farming, including growing crops and raising animals for the production of food, fiber, fuel, and/or other products.

“Agricultural activity” means an activity primarily involved with agriculture.

“Agricultural land” means land that is used principally for agricultural activities.

“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 forty-five days or more in any twelve-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.

Animal feeding operations include the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards,

medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Included in the definition is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities. Two or more animal facilities under common ownership are considered, for the purposes of Appendix A, to be a single animal facility for 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.

"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.

"BLNR" means the board of land and natural resources.

"Buffer area" or "buffer strip" means a designated area around a stream or waterbody, or a strip between a stream or waterbody and an area of disturbance, of sufficient width to control sediment and/or minimize entrance of forestry chemicals (fertilizers, pesticides, and fire retardants) into the waterbody.

"Cable yarding" means a system of transporting logs from stump to landing by means of steel cables and winch.

"Channel" means a natural or constructed waterway that continuously or periodically passes water.

"Commercial forestry" means forestry conducted for a commercial purpose.

"Commercial harvesting" means harvesting conducted for a commercial purpose.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services, or commerce in general. The use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Commercial species" means tree species grown for a commercial purpose.

"Contaminated runoff" means runoff which comes into contact with any raw materials, products, waste, or byproducts such that pollutants are transported within the storm water.

"Department" means the department of health unless explicitly qualified as another state or federal department.

"Developed/Urban" means those areas where the presence of man-made impervious surfaces results in increased peak runoff volumes and pollutant loadings that permanently alter one or more of the following: stream channels, natural drainageways, and in-stream and adjacent riparian habitat, so that predevelopment aquatic flora and fauna are eliminated or reduced to unsustainable levels and predevelopment water quality has been degraded. Increased bank cutting, streambed scouring, siltation damaging to aquatic flora and fauna, increases in water temperature, decreases in dissolved oxygen, changes to the natural structure and flow of the stream or river, and the presence of anthropogenic pollutants that are not generated from agricultural activities, in general, are indications of development and/or urbanization.

"Developed/Urban activity" means an activity located in a developed or urban area or primarily involved with a developed or urban area.

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

"Discharge" when used without qualification, means the "discharge of a water pollutant" including, but not limited to, causing or contributing to water pollution of State waters by way of runoff, drainage, seepage, escape, disposal, spilling, leaking, pumping, emitting, emptying, precipitation, atmospheric deposition, or hydrologic modification.

"Disturbed areas" means localized areas within harvest units or road systems where mineral soil is exposed or agitated. Disturbed areas include, but are not limited to, road cuts, fill slopes, landing surfaces, cable corridors, or skid trail ruts.

"DLNR" means the state department of land and natural resources.

"DOFAW" means the DLNR division of forestry and wildlife.

"Drainage ditch" means a manmade structure designed to carry storm water runoff only, not sanitary sewage.

"Dump station" means a type of pumpout facility which receives vessel sewage from portable marine sanitation devices and from which sewage is delivered or transferred to an approved sewage disposal facility.

"eFOTG" means the electronic Field Office Technical Guide published by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), Pacific Islands Area Field Office.

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

"Erosion" means wearing away of the land surface by water, ice, wind, gravity, or other natural or anthropogenic agents.

"Existing activity" means an activity subject to regulation under this chapter that was in operation as of [].

"Existing animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that was in operation as of [].

"Facility" means any facility, physical operation, collection of buildings, parcel or parcels, of farm operated as a single unit (including land or appurtenances thereto), that is subject to regulation under this chapter.

"Felling" means the process of cutting down standing trees.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin that is added to a soil to supply elements essential to plant growth.

"Fireline" means a barrier used to stop the spread of fire constructed by removing fuel or rendering fuel inflammable by use of fire retardants.

"Fish waste" means organic materials resulting from commercial or recreational fish cleaning or processing operations. Fish waste may include, but is not limited to, particles of flesh, skin, bones, entrails, or liquid stick water.

"Floodplain" means the area of land flooded at measurable recurrence intervals of ten, fifty, one hundred, or five hundred years or the area of land that is periodically inundated (often annually) by the overflow of rivers or streams.

"Forest" or "forest land" means land at least one hundred twenty feet (thirty-seven meters) wide and at least one acre (0.4 hectare) in size that contains at least ten per cent tree crown cover, or that formerly contained such cover and will be naturally or artificially restored. Forest land does not include land that is predominantly used for agricultural activities or predominantly under urban land use; tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

"Forest product" means any saleable item made from wood that is taken and/or harvested from forest trees.

"Forestry" means the art, science, and practice of managing forests.

"Forestry activity" means an activity primarily involved with forestry.

"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.

"Groundskidding" means trailing or dragging trees along the ground.

"Habitat" means the place where an organism naturally lives or grows.

"HAR" means Hawaii Administrative Rules.

"Harvesting" means the felling, skidding, processing, loading, and transporting of forest products.

"Harvest unit" means an area of forest vegetation that has been harvested as a cohesive unit and generally has uniform distribution of retained vegetation.

"HRS" means Hawaii Revised Statutes.

"Hull" means the frame or body of a vessel, including its deck, but exclusive of the masts, sails, yards, and rigging.

"Hull maintenance area" means areas whose primary function is to provide a place for boats during the scraping, sanding, and painting of their bottoms.

"Hydromodification" means alteration of the hydrologic characteristics of coastal and non-coastal waters, which in turn could cause degradation of water resources. Any alteration to a stream or coastal waters, whether a diversion, channel, dam, or levee is considered a hydromodification.

"Hydromodification activity" means an activity primarily involved with hydromodification.

"Integrated pest management" or "IPM" means a pest population management system that anticipates and prevents pests from reaching damaging levels by using all suitable tactics including natural enemies, pest-resistant plants, cultural management, and the judicious use of pesticides, leading to an economically and environmentally safe agriculture.

"Intermittent stream" means a stream that carries water most of the time but ceases to flow occasionally

because evaporation or seepage into its bed and banks exceed the available streamflow. Intermittent streams may also include ephemeral streams that carry water only after rains and interrupted streams that carry water generally through their length but may have sections with dry streambeds.

"Landing" means a place in or near the forest where logs are gathered for further processing, sorting, or transport. Also known as a log deck.

"Load allocation" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

"Management measures" means economically achievable measures for control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

"Marinas" means facilities and their associated shore-based services that support recreational boats and boats for hire.

"Marine sanitation device" means any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

"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 Clean Water Act.

"New activity" means an activity subject to regulation under this chapter which commenced regulated activities after [].

"New animal feeding operation" means a facility that meets the definition of "animal feeding operation" in this chapter and that began operation after [].

"Nonpoint source pollution" means water pollution that does not originate from a point source. Nonpoint source pollution may include pollution from sources exempt from regulation as point sources, including but not limited to facilities or activities related to agriculture, forestry, developed areas, marinas and recreational boating, hydromodification, and wetlands, riparian areas, and vegetated treatment systems. Nonpoint source pollution may be delivered to State waters through processes including but not limited to discharges, land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"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 (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.

"Party" means each person or agency named as a party or properly entitled to be a party in any agency or court proceeding.

"Pasture" means lands that are primarily used for the production of forage plants for livestock. Pasture includes lands that have been seeded with forage plants for livestock and lands that are intensively managed using agronomy practices for the production or control of livestock.

"Perennial stream" means a stream that carries water all the time.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions including the several counties and any public agencies thereof and any legally organized districts therein, trust, estate, or any other legal entity. "Person" includes the plural where appropriate and needed.

"Pesticide" means any substance or mixture of substances used for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant.

"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, or vessel or any other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollution" means water pollution.

"Precommercial thinning" means cutting trees from a young stand so that the remaining trees will have more room to grow to marketable size. Trees cut in a precommercial thinning have no commercial value and normally none of the felled trees are removed for utilization. The primary intent is to improve growth potential for the trees left after thinning.

"Privately-owned agricultural land" means agricultural land owned by an individual or non-governmental, private party.

"Privately-owned entity" means an entity owned by an individual or non-governmental, private party.

"Privately-owned forest land" means land owned by an individual or non-governmental, private party, which is used principally for silvicultural activities.

"Publicly-owned agricultural land" means agricultural land owned by a federal, state, or local government agency, authority, or subdivision.

"Publicly-owned entity" means an entity that is owned by a federal, state or local government including government agencies or departments.

"Publicly-owned forest land" means land owned by a federal, state, or local government agency, authority, or subdivision, which is used principally for silvicultural activities.

"Pumpout" means a mechanical device which is temporarily connected to a vessel for the purpose of removing vessel sewage from its holding tank or head to an approved sewage disposal facility.

"Range" means land that support a cover of herbaceous or shrubby vegetation suitable for grazing or browsing by livestock.

"Regeneration" means the process of replacing older trees removed by harvest or disaster with young trees.

"Riparian areas" means vegetated ecosystems along a waterbody through which energy, materials, and water pass. Riparian areas characteristically have a high water table and are subject to periodic flooding and influence from the adjacent waterbody. These systems encompass wetlands, uplands, or some combination of these two land forms; they will not in all cases have all of the characteristics necessary for them to be classified as wetlands.

"Runoff" means the portion of rainfall, snow melt, or irrigation water that drains off the land into State waters.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Shoreline erosion" means erosion that occurs at the shoreline in in the State's domain.

"Silviculture" means the art and science of controlling the establishment, growth, composition, health, and quality of forests to meet the diverse needs and values of landowners and society on a sustainable basis. Silviculture includes the theory

and practice of planting, thinning, pruning, growing, and harvesting of trees.

"Skid trail" means a temporary, nonstructural pathway over forest soils used to drag felled trees or logs to the landing.

"Solid waste" means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved material in domestic sewage, irrigation return flows, or industrial discharges which are subject to permit under chapter 342D.

"State waters" means all waters, fresh, brackish, or salt, around and within the State including, but not limited to, coastal waters, wetlands, streams, rivers, drainage ditches, ponds, reservoirs, canals, groundwaters, lakes, and Hawaiian fishponds (*loko i'a*; as defined in §183B-1, HRS); provided that drainage ditches, canals, ponds, wetlands, and reservoirs required as a part of a water pollution control system or an irrigation system are excluded.

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

"Stream" means any natural water course in which water usually flows in a defined bed or channel. The flow can be constant, uniform, or uninterrupted, regardless of whether the stream has been altered or channelized.

"Streamside Management Zone" or "SMZ" means a designated area that consists of the stream itself and an adjacent area of varying width that mitigates the movement of sediment, nutrients, and other chemicals generated from forestry activities into streams. The SMZ is not an area of exclusion, but an area of closely managed activity.

"Timber land" means forest land that is capable of producing crops of industrial wood and not

withdrawn from timber utilization by statute or administrative regulation.

"Total maximum daily load" or "TMDL" 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.

"Total suspended solids" or "TSS" means the very fine soil particles that remain in suspension in water for a considerable period of time.

"Tree" means a woody plant having a more or less erect perennial stem capable of achieving at least 3 inches (in) (7.6 centimeters [cm]) in diameter at breast height, or 5 in (12.7 cm) diameter at root collar, and a height of 16.4 ft (5 m) at maturity in situ.

"Tree farm" means any publicly-owned or privately-owned forest land that is capable of sustaining commercial tree species.

"Vessel" means every description of watercraft or other artificial contrivance being used as a means of transportation on waters of the U.S.

"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.

"Wastewater" means any liquid waste, including waste-contaminated storm water runoff, whether treated or not, and whether animal, mineral, or vegetable, including agricultural, industrial, and thermal wastes. Specific to Appendix A of this chapter (Nonpoint Source Pollution Control Requirements for Agriculture), "wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure

pits, or other associated facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Water pollutant" or "pollutant" means, but is not limited to, dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, and industrial, municipal, and agricultural waste.

"Water pollution" means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any State waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such addition of any liquid, gaseous, solid, radioactive, or other substances into any State waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

"Water pollution control system" means a system designed and constructed specifically for the purpose of collecting, handling, storing, treating, or disposing of domestic wastewater and industrial wastewater, to prevent water pollution.

"Watershed" means a geographically defined land area that drains to a common waterbody, such as a stream, lake, estuary, wetland, or the ocean.

"Watershed plan" means a document developed to guide the implementation of practices and activities in a watershed to protect, maintain, and restore the quality of State waters. A watershed plan provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to development and implementation of the plan.

"Wetland" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes:

- (1) At least periodically, the land supports predominantly hydrophytic vegetation;
- (2) The substratum is predominantly undrained hydric soil; or
- (3) The substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains.

"Yarding" means a method of transport of felled trees from harvest area to storage landing. [Eff
] (Auth: HRS §§342E-1, 342E-2, 342E-3)
3) (Imp: HRS §§342E-1, 342E-2, 342E-3)

§11-56-2 General policy for nonpoint source pollution control. It is the department's policy:

- (1) To conserve State waters;
- (2) To protect, maintain, and restore the quality of State waters:
 - (A) For recreational uses;
 - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of aquatic life;

- (C) For marine, estuarine and fresh water research;
 - (D) For the conservation of natural aquatic ecosystems such as coral reefs and streams; and
 - (E) For domestic, agricultural, industrial, and other legitimate uses.
- (3) To provide for the prevention, abatement, and control of new and existing nonpoint sources of pollution;
 - (4) To cooperate with county, state, and federal agencies in carrying out these objectives;
 - (5) To encourage and facilitate implementation of holistic water quality improving management measures and best management practices for the benefit of Hawaii; and
 - (6) To consider compliance with plans or requirements developed or implemented pursuant to this chapter, as compliance with Hawaii water pollution control programs.
[Eff _____] (Auth: HRS §§205A-2, 342D-1, 342D-4, 342D-50, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-3 Applicability. (a) This chapter applies to person(s) as identified below:

- (1) Publicly-owned entities owning land and conducting the activities below, as identified in Appendices A through C of this chapter:
 - (A) Agriculture (Appendix A);
 - (B) Forestry (Silviculture) (Appendix B);
and
 - (C) Marinas and recreational boating (Appendix C).
- (2) Privately-owned entities that cause or contribute to nonpoint source pollution due to operation or management of lands used for the activities identified in section 11-56-

3(a)(1) are subject to this chapter and applicable requirements set forth in Appendices A through C of this chapter upon written notification by the director.

(b) At the discretion of the director, specific provisions of this chapter, additional management measures, or other remedies, may be applied to any persons who are found to be causing or contributing to nonpoint source pollution. In these cases, the director shall issue a Nonpoint Source Order to affected persons that includes:

- (1) A notice of findings specifying the source of nonpoint source pollution involved and the conduct that is causing or caused it;
- (2) A requirement to register under section 11-56-5;
- (3) A requirement to develop and implement a Water Pollution Prevention Plan under section 11-56-6(a)(1);
- (4) A time schedule for compliance with provisions of this chapter; and
- (5) Any other specific requirements for controlling the nonpoint source pollution deemed necessary by the director.

It is at the sole discretion of the director to determine whether this chapter shall apply to persons not identified in subsections (a) and (b) based on risk of harm to human or environmental health.

(c) Affected persons may appeal the decision of the director to require compliance with the provisions of this chapter in accordance with section 11-56-13.

[Eff _____] (Auth: HRS §§205A-2, 342D-4, 342D-5, 342E-2, 342E-3; 16 U.S.C. §§1455b et seq.; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-4 Exemptions. If any discharge of a pollutant to State waters subject to this chapter is otherwise subject to regulation as a point source under an NPDES permit, the requirements in this

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chapter shall not apply to that discharge. [Eff
] (Auth: HRS §§342D-4, 342D-5, 342E-
2, 342E-3; 33 U.S.C. §§1251, 1329, 1342, 1370) (Imp:
HRS §§342E-2, 342E-3)

§11-56-5 Registry requirements. (a) All persons subject to this chapter, as specified in section 11-56-3(a) through (c), shall register with the department. The purpose of the registration is to notify the department of person(s) subject to this regulation and that a Water Pollution Prevention Plan under section 11-56-6 is required for the activity responsible for causing or contributing to nonpoint source pollution.

(b) It is the responsibility of the owner of the parcel or operator of the activity associated with the nonpoint source discharge to register with the department.

(c) At a minimum, registration shall include the following:

- (1) Legal name, street address, contact person's name and position title, telephone number and email address for the land owner;
- (2) Ownership status as federal, state, private, public or other entity;
- (3) Name, street address, and tax map key number for the location of the property or activity subject to this chapter, and the contact person's name and position title, telephone number and email address;
- (4) As applicable, a listing of all entities, other than the land owner, who are responsible for the activity associated with a nonpoint source discharge;
- (5) General description of the activity associated with a nonpoint source discharge; and
- (6) The following certification, signed in accordance with section 11-56-18:
"I certify that this registration was

prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

(d) A registration is not complete until the necessary information and requirements under section 11-56-5(c) have been satisfied. If a submitted registration is found to be incomplete or otherwise deficient, the director will require additional information. Submission of missing information or information to correct identified deficiencies shall be in accordance with the schedule specified by the director. Delays in completing the registration do not relieve entities from enforcement and penalties specified in section 11-56-12 for violations of this chapter.

(e) Deadlines for registration with the department are as follows:

- (1) For existing facilities, within one hundred twenty days from date of publication of this chapter; and
- (2) For new facilities, within thirty days prior to initiation of operations.

(f) A person submitting a registration shall submit a filing fee of \$500. This filing fee shall be submitted with the registration and shall not be refunded. 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.

(g) The owner or their duly authorized representative shall submit a complete registration to the director at the following address or as otherwise specified:

Director of Health
Surface Water Protection Branch
Environmental Management Division
State Department of Health
P.O. Box 3378

Honolulu, Hawaii 96801-3378

(h) Registrations submitted in accordance with this chapter expire five years from the date of submission to the department. Prior to registration expiration, all persons subject to this chapter, as specified in section 11-56-3(a) through (c), shall renew their registration with the department no later than thirty days prior to the expiration of their existing registration. The submittal date is the date the department receives the registration. The thirty-day period includes weekends and holidays.

- (1) Where the information submitted with the previous registration in accordance with section 11-56-5(c), as well as the associated Water Pollution Prevention Plan developed in accordance with section 11-56-6(a)(1), has not changed, the registration renewal shall include the following:
 - (A) Legal name, street address, contact person's name and position title, telephone number and email address for the land owner;
 - (B) Facility identification number;
 - (C) Certification that previous registration information and the associated Water Pollution Prevention Plan have not changed; and
 - (D) The following certification, signed in accordance with section 11-56-18:
"I certify that this renewal registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."
- (2) Where the information submitted with the previous registration in accordance with section 11-56-5(c), as well as the associated Water Pollution Prevention Plan

developed in accordance with section 11-56-6(a)(1), has changed, the registration renewal shall include the following:

- (A) Legal name, street address, contact person's name and position title, telephone number and email address for the land owner;
- (B) Facility identification number;
- (C) As applicable, updated section 11-56-5(c) registration information and an updated copy of the existing Water Pollution Prevention Plan, including any amendments, required under section 11-56-6; and
- (D) The following certification, signed in accordance with section 11-56-18:
"I certify that this registration was prepared under my direction or supervision. I am familiar with the content of this registration and am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."; and

- (3) A person submitting a registration renewal shall submit a filing fee in accordance with section 11-56-5(f).

- (i) Persons that wish to terminate their registration must notify the director in writing within thirty days following the cessation of activity associated with the nonpoint source discharge. The notification of termination shall describe the steps taken to ensure that the discharge of pollutants from the activity associated with the nonpoint source is eliminated and that any further discharges from the site will not pose an unacceptable threat to human health, the quality of State waters, and the environment. If the director determines that the steps taken are not adequate, the director may take enforcement action, including imposition of penalties.

(j) A registration submitted in accordance with this chapter may be transferred to a new owner. The current owner shall notify the department in writing at least thirty days in advance of the proposed transfer date. The notice of transfer shall include the following:

- (1) The legal name of the new land owner, and the new owner contact person's name, telephone number and email address for the land owner;
- (2) Facility identification number; and
- (3) A written agreement between the current owner and the new owner of the facility or operator of the activity associated with the nonpoint source discharge; the agreement shall specify the date for the transfer of the Water Pollution Prevention Plan implementation responsibility and liability from the current owner to the new owner.

The director shall notify the current owner and the proposed new owner of the intent to deny the transfer. If a transfer is denied, then the new owner of the parcel associated with the nonpoint source discharge shall register with the department in accordance with section 11-56-5(a) through (g) of this chapter.

(k) The director shall make available to the public for inspection copies of registrations submitted in accordance with this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-6 Water pollution prevention plans.

(a) Any person subject to this chapter as defined in section 11-56-3(a) through (c) must develop, submit, and implement a Water Pollution Prevention Plan, in writing, and in accordance with the requirements

contained in this section and in Appendices A through C of this chapter:

(1) The Water Pollution Prevention Plan shall be developed and implemented to effectively control nonpoint source pollution from the subject property or activity. Each Water Pollution Prevention Plan must, at a minimum, include:

- (A) Legal name, street address, contact person's name and position title, telephone number, and email address for the land owner;
- (B) Ownership status as federal, state, private, public, or other entity;
- (C) Name, street address, and tax map key number for the location of the activity subject to this chapter, and the contact person's name and position title, telephone number, and email address;
- (D) As applicable, a listing of all entities other than the land owner or prime operator responsible for the activity associated with a nonpoint source discharge;
- (E) Brief facility description, including area at the location that generate or transport nonpoint source pollution;
- (F) Identification of the watershed name and location of State waters which may receive nonpoint source pollution within or from the facility;
- (G) Description of the type of specific activities that generate the nonpoint source discharge;
- (H) Description of the authorized management measure identified in chapter 11-56, Appendices A through C, that will be implemented to control nonpoint source pollution at the location;

- (I) Description of the authorized management practice identified in chapter 11-56, Appendices A through C, that will be implemented to meet each management measure's requirements. For each management practice to be implemented, the following information shall be provided:
 - (i) Name of the practice;
 - (ii) Issuing entity of the practice;
 - (iii) Location (internet address or other) where the practice can be retrieved;
 - (iv) Code number or standard number of the practice, if applicable;
 - (v) Description of the practice;
 - (vi) Location the practice will be implemented; and
 - (vii) Description of how the practice meets the requirements of the management measure.
- (J) Implementation schedule of the applicable management measures and management practice;
- (K) Long-term operation and maintenance schedule that provides for inspection of management practices, including the repair, replacement, or other routine maintenance of the management practices to ensure proper function and operation;
- (L) A monitoring strategy consistent with section 11-56-6(a) (2);
- (M) Description of any other plan required by federal, State, or local regulatory agencies that is being implemented to control nonpoint source pollution; and
- (N) The following certification signed in accordance with section 11-56-18:
"I certify that this Water Pollution Prevention Plan and all attachments were prepared under my direction or

supervision in accordance with a system designed to assure that qualified personnel properly developed this Water Pollution Prevention Plan in accordance with the requirements of chapter 11-56. I am familiar with the content of this Water Pollution Prevention Plan and agree to implement it as developed and submitted to the department. I will maintain a copy of this Water Pollution Prevention Plan on-site or at a nearby office so as to be available at all times to operations personnel. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

- (2) A monitoring strategy shall be included as a component of the Water Pollution Prevention Plan to determine whether the required management measures are being properly implemented and maintained, and whether the management measures are effective in reducing and controlling nonpoint source pollution at the location specified in the Water Pollution Prevention Plan. A monitoring strategy shall include the following, as applicable:
- (A) Routine periodic visual monitoring and inspection of management measures;
 - (B) Routine periodic visual monitoring and inspection of State waters affected by the nonpoint source pollution from the facility;
 - (C) Water quality monitoring of nonpoint source discharges from the facility;
 - (D) Water quality monitoring of State waters affected by the nonpoint source pollution from the facility; or
 - (E) Other monitoring methods and activities, as deemed necessary.

- (3) If the monitoring strategy is found to be inadequate for determining whether the required management measures are being properly implemented and maintained and whether the management measures are effective in reducing and controlling nonpoint source pollution at the location specified in the Water Pollution Prevention Plan, the director may specify monitoring requirements that shall be implemented. Inadequate or ineffective monitoring strategies cannot be used as a defense in any enforcement action specified in section 11-56-12 for violations of this chapter.
- (4) If a submitted Water Pollution Prevention Plan is found to be incomplete or otherwise deficient, the director may require additional information. Submission of missing information or information to correct identified deficiencies shall be in accordance with the schedule specified by the director. Delays in Water Pollution Prevention Plan implementation due to incomplete or deficient Water Pollution Prevention Plans does not relieve entities from enforcement and penalties specified in section 11-56-12 for violations of this chapter.
- (5) As necessary, the director may require persons to revise a Water Pollution Prevention Plan to include additional management measures or controls to ensure protection of State waters from nonpoint source pollution, including consistency with:
 - (A) Department-approved watershed plans;
 - (B) Approved TMDLs and associated load allocations;
 - (C) Watershed restoration and protection projects funded under Clean Water Act Section 319(h);
 - (D) Approved water quality trades;

- (E) Supplemental environmental projects;
 - (F) Approved Spill Prevention, Control, and Countermeasure Plans under 40 CFR Part 112; or
 - (G) Other requirements needed to protect or restore State waters.
- (6) Persons may submit an existing management plan to the department in lieu of a Water Pollution Prevention Plan, subject to the following provisions:
- (A) A plan submitted in lieu of a Water Pollution Prevention Plan shall be considered equivalent to a Water Pollution Prevention Plan, provided the submitted and implemented plan meets the objective of a Water Pollution Prevention Plan detailed in this chapter; and
 - (B) A plan submitted in lieu of a Water Pollution Prevention Plan is not considered equivalent to a Water Pollution Prevention Plan unless reviewed and accepted by the director in accordance with section 11-56-6.
- (7) Water Pollution Prevention Plans shall be developed, submitted to the department, and implemented within the following timeframes:
- (A) For existing facilities, within 12 months from the date of publication of this chapter; and
 - (B) For new facilities, within thirty days prior to initiation of operations or commencing activities.
- (8) The director may authorize an extension of time for the development and implementation of a Water Pollution Prevention Plan beyond the time permitted for the development and implementation of the Water Pollution Prevention Plan under this section, when persons cannot fully comply with the requirements. Persons seeking an extension of time must submit a written extension

request to the director on or before the deadline for developing and implementing a Water Pollution Prevention Plan for the regulated facility. The extension request must include:

- (A) A full explanation of the cause for any such delay and the specific aspects of the Water Pollution Prevention Plan affected by the delay;
- (B) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;
- (C) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for procurement, installation and operation of any necessary equipment, or other management measures;
- (D) Additional information to support evaluation of an extension request, if requested by the director; and
- (E) Additional written statements in support of the extension request are recommended.

Subsequent to review of an extension request, the director will notify the requester in writing of a decision to authorize or deny the request for extension. If authorized, the director's written authorization will specify the specific extension of time granted. If denied, the notification will indicate the basis for the denial.

- (9) Water Pollution Prevention Plans shall be amended when there is a substantial change in activity, facility design, construction, operation, or maintenance that materially affects a regulated facility's potential for causing or contributing to nonpoint source pollution. An amendment made under this subsection must be prepared and submitted to

the department within thirty days after the change that compels the amendment. The amended Water Pollution Prevention Plan shall be implemented as soon as possible, but not later than thirty days following the submission of the amendment to the department.

(b) The director shall make available to the public for inspection copies of Water Pollution Prevention Plans, Nonpoint Source Orders, and associated documents submitted in accordance with the requirements of this chapter. Release of information to the public under this subsection shall be done in accordance with the provisions in section 11-56-10. [Eff] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-7 Reporting requirements. (a) Persons required to develop and implement a Water Pollution Prevention Plan under section 11-56-6 shall submit an annual report to the director documenting on-going compliance with their Water Pollution Prevention Plans. At a minimum, annual reports shall include the following, as applicable:

- (1) Summary of monitoring and inspection activities undertaken in accordance with the monitoring strategy developed pursuant to section 11-56-6, including:
 - (A) Date on which monitoring and inspections were conducted;
 - (B) Monitoring and inspection findings; and
 - (C) Corrective actions taken, if any;
- (2) Summary of water quality monitoring activities undertaken in accordance with the monitoring strategy developed pursuant to section 11-56-6, including:
 - (A) Date on which water quality monitoring was conducted;
 - (B) Parameters monitored for;

- (C) Monitoring results; and
- (D) Corrective actions taken, if any.
- (3) Assessment of the overall effectiveness of the Water Pollution Prevention Plan, and of the effectiveness of each management measure implemented, in reducing and controlling nonpoint source pollution;
- (4) A summary of Water Pollution Prevention Plan amendments made during the previous year; and
- (5) The following certification signed in accordance with section 11-56-18:
"I certify that this annual report and all attachments were prepared under my direction or supervision. I am familiar with the content of this annual report and agree to implement it as developed and submitted to the department. I will maintain a copy of this annual report on-site or at a nearby office. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations."

(b) As necessary, and at the discretion of the director, more frequent Water Pollution Prevention Plan reports may be required.

(c) The director shall make available to the public for inspection copies of Water Pollution Prevention Plan annual reports and associated documents submitted in accordance of this chapter. Release of information to the public under this subsection shall be done in accordance the provisions in section 11-56-10. [Eff _____] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-8 Recordkeeping requirements. (a)

Persons for which a Water Pollution Prevention Plan is required under this chapter must:

- (1) Maintain a complete copy of the Water Pollution Prevention Plan, including any amendments to the Water Pollution Prevention Plan, on-site or at a nearby office;
- (2) Have the Water Pollution Prevention Plan available to the director for on-site review during normal business hours; and
- (3) Provide, at the request of the director, the Water Pollution Prevention Plan and any associated documentation deemed necessary to determine compliance with this chapter.

(b) In accordance with section 11-56-6(a)(9), persons shall review and update the Water Pollution Prevention Plan as often as needed to control nonpoint source pollution, or as required by the director. Persons shall document any changes made to the Water Pollution Prevention Plan when the changes arise. Persons shall retain the Water Pollution Prevention Plan and all accompanying records, reports, and changes, for a period of five years.

(c) Records documenting all monitoring activities shall be kept on-site or at a nearby office and made available for review and inspection by the director. [Eff] (Auth: HRS §§342D-4, 342D-5, 342D-55, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-9 Compliance with requirements. (a)

Compliance with this chapter shall be based on development and implementation of Water Pollution Prevention Plans that minimize negative impacts on water quality to the maximum extent practicable. In determining whether a person subject to this chapter is minimizing negative impacts to water quality to the maximum extent practicable, the department shall consider:

- (1) The classification and allowable uses of the State water (waterbody) to be protected;
- (2) The impact on the State water by the discharge;
- (3) Background water quality, including during high intensity weather events;
- (4) Consistency with the State's policy of water quality antidegradation;
- (5) The financial impact of minimizing negative impacts to water quality on the discharger; and
- (6) The public interest.

(b) Persons who demonstrate no significant measurable impact on the receiving water shall be considered in compliance with management measure implementation requirements within this chapter.

(c) Monitoring strategies required by this chapter shall be designed to assess compliance with the requirements in this section. [Eff]

(Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

§11-56-10 Public access to information. (a) In accordance with chapter 92F, HRS, the director shall ensure that any Water Pollution Prevention Plan developed under section 11-56-6 or information required, kept, or submitted under this chapter 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 department.

(b) The director shall protect any information (other than environmental 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 by the director and subject to a claim of confidentiality

shall be treated in accordance with the regulations in chapter 92F, HRS.

(c) The director shall provide facilities for the inspection of information submitted in accordance with this chapter 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] (Auth: HRS §§92F, 342D-4, 342-5, 342D-14, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, HRS 342E-3)

§11-56-11 Right to inspect. (a) A person regulated under this chapter shall allow the director to:

- (1) Enter and inspect any area to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter or any Nonpoint Source Order issued pursuant to this chapter;
- (2) Inspect any records kept in accordance with the terms and conditions of this chapter; and
- (3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms. If the department determines that the effects of the pollution

would make it hazardous to consume the water and aquatic or other life forms, the director shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed.

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action. [Eff]
(Auth: HRS §§342D-4, 342D-8, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3, 342E-4)

§11-56-12 Enforcement and penalties. (a) If the director determines that any person has violated or is violating this chapter, any requirement of this chapter, or any Nonpoint Source Order issued pursuant to this chapter, the director:

(1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and to give periodic progress reports. If all attempts of service of process upon the alleged violator or violators are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign

conspicuously posted on the property, if appropriate;

- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and
- (3) May impose penalties as provided in section 342E-4(a), HRS, by sending written notice, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.

(b) If the director determines that any person is continuing to violate this chapter or any Nonpoint Source Order issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter or any Nonpoint Source Order issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter or any Nonpoint Source Order issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until the director accepts the written schedule; and

(4) May impose penalties as provided in section 342E-4(a), HRS, by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators, describing the violation.

(c) If the director determines that any person has violated an accepted schedule or an order issued under this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Penalties imposed under this section shall be in accordance with section 342E-4(a), HRS.

(e) Any order issued under this chapter shall become final, unless not later than 20 days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable thirty days after an order becomes final unless the person or persons named therein requested in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Any hearing requested under this section shall be conducted as a contested case under chapter 91, HRS, pursuant to the department's Rules of Practice and Procedure, chapter 11-1, HAR.

(f) If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind

the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(g) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(h) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

[Eff] (Auth: HRS Ch. 91, §§342D-4, 342D-9, 342E-2, 342E-3, 342E-4; 33 U.S.C. §§1251, 1329, 1370; HAR §11-1) (Imp: HRS §§342E-2, 342E-3, 342E-4)

§11-56-13 Hearings and appeals. (a) Hearings before the director on any violations of this chapter and appeals from any of the director's decisions at the hearings shall comply with chapter 91, HRS, the department's rules of practice and procedure, and this chapter.

(b) If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91, HRS, to the circuit environmental court of the circuit in which the party resides, in which the party's principal place of business is located, or in which the action in question occurred. The operation of a Nonpoint Source

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Order will not be stayed on appeal unless specifically ordered by the director or an environmental court of competent jurisdiction. [Eff] (Auth: HRS Ch. 91, §§342D-4, 342D-12, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

§11-56-14 No effect on enforcement of other law.

(a) This chapter does not limit the director's or department's authority to enforce any other statute, rule, or other law that the director or department administers.

(b) This chapter does not limit the authority of any federal, other state, or county agency. [Eff] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §342E-3)

§11-56-15 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] (Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

§11-56-16 Field citations; noncompliance with nonpoint source pollution control requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342E, HRS, and this chapter.

(1) Offer to settle; penalties.

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and

finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who causes or allows a discharge of pollutants into State waters from a nonpoint source;
 - (ii) Any person required to register under section 11-56-5, who fails to register as required;
 - (iii) Any person who fails to correctly install, implement, maintain, or repair management measures as called for in their Water Pollution Prevention Plan, including implementation of the associated monitoring plan; and
 - (iv) Any person who fails to retain a copy of the Water Pollution Prevention Plan and associated monitoring plan on-site or at a nearby office.
- (B) A field citation shall assess the following penalties for violations:
- (i) Any person who violates paragraph (1)(A)(i) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
 - (ii) Any person who violates paragraph (1)(A)(ii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation;
 - (iii) Any person who violates paragraph (1)(A)(iii) shall be fined \$500 for first violation and \$1,000 for a subsequent violation; and
 - (iv) Any person who violates paragraph (1)(A)(iv) shall be fined \$100 for first violation and \$200 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 assessed by 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 department 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 as otherwise specified on the field citation, of any violation of this chapter;
 - (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, HRS, or otherwise challenge the field citation;
 - (ii) Pay the penalty assessed; and
 - (iii) Correct the violation.
- (3) 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 or any other law. For all other violations the director retains authority to seek any available remedies.

- (4) Form of citation. The department shall prescribe a field citation form. [Eff _____] (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5, 342E-2, 342E-3, 342E-4) (Imp: HRS §§342E-2, 342E-3, 342E-4)

§11-56-17 Public hearings. (a) The owner or operator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to the determinations of persons subject to this chapter. Any request or petition for public hearing shall be submitted within thirty days of registration pursuant to section 11-56-5.

(b) The director shall hold a hearing if the director determines that there is a significant public interest in holding the hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this paragraph shall be held in the geographical area of the proposed facility or other appropriate area, at the director's discretion.

(c) Any person may submit oral or written statements and data concerning the issue being heard.

(d) Public notice for hearings shall be published at least once in a newspaper of general circulation within the geographical area of the facility.

(e) The public notice for hearings shall include: the name and address of the agency holding the public hearing; name and address of the facility being considered; a brief description of the facility and activities conducted; information regarding the date, time, and location of the hearing; the purpose of the hearing; a brief description of the nature of the hearing, including the rules and procedures to be followed; name, address, and telephone number of the person at the State from whom interested persons may obtain further information.

(f) All publication and mailing costs associated with the public notice of the hearing shall be paid by the owner or operator of the facility being

considered. 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 the public notification, as deemed appropriate by the director, is basis to delay authorization of discharges or may be considered a violation of this chapter. [Eff] (Auth: HRS §§342D-4, 342E-2, 342E-3) (Imp: HRS §§342E-2, 342E-3)

§11-56-18 Signatories. (a) Any certifications associated with submissions to the director under this chapter 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

- registration 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;
 - (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 under this chapter 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 registrations to be signed by an authorized representative. [Eff _____]

(Auth: HRS §§342D-4, 342D-5, 342E-2, 342E-3; 33 U.S.C. §§1251, 1329, 1370) (Imp: HRS §§342E-2, 342E-3)

DEPARTMENT OF HEALTH

Chapter 11-56, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following a public hearing held on February 1, 2021, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on December 16, 2020.

The adoption of chapter 11-56 shall take effect ten days after filing with the Office of the Lieutenant Governor.

ELIZABETH A. CHAR, M.D.
Director
Department of Health

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:



Deputy Attorney General

Filed

CHAPTER 11-56 APPENDIX A

NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR
AGRICULTURE

1. General Applicability

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03, as follows:

- (1) The requirements of this Appendix apply to all publicly-owned agricultural lands or facilities comprising 1,000 or more contiguous acres under common ownership or purpose and with operations identified in the specific applicability paragraphs in section 3.
- (2) Other agricultural lands or activities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Other agricultural lands or activities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For all other agricultural lands not required to implement the best management practices or management measures identified in this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

2. Incorporation of Management Measures into Water Pollution Prevention Plans

(a) The owner or operator of an agricultural activity or facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.

(b) The owner or operator of an agricultural activity or facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure.

(e) For an owner or operator of an agricultural activity or facility subject to this Appendix who develops and implements a soil conservation plan approved by the local soil and water conservation district, the soil conservation plan shall be considered an equivalent of a Water Pollution Prevention Plan developed to address sediment control

under subsection 3(a) if the soil conservation plan requires implementation of sediment control management measures identified in subsection 3(a), and effectively controls discharges of sediment to State waters. To the extent that such a soil conservation plan approved by the local soil and water conservation district also effectively addresses activities subject to management measures for other potential pollutants identified in subsections 3(b) - 3(e), the soil conservation plan shall be considered an equivalent Water Pollution Prevention Plan for those management measures. Applicable management measures not addressed in the soil conservation plan must be addressed in a Water Pollution Prevention Plan, which shall be submitted to the department following the procedures in section 11-56-06.

3. Management Measures Required for Specific Sources of Pollution

(a) Erosion and Sediment Control Management Measure

- (1) Specific Applicability. This management measure applies to agricultural activities that may cause erosion, including, but not limited to:
 - (A) Crop production, including specialty crops and nursery crops;
 - (B) Agricultural irrigation;
 - (C) Grazing and pasturing;
 - (D) Developing and/or maintaining orchards;
 - (E) Permanent hayland maintenance; and
 - (F) Agroforestry.

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Roads, drainage systems, and other infrastructure operated and maintained in support of the above agricultural activities and potentially affecting nearby streams, wetlands, or coastal areas are subject to the requirements of this management measure.

- (2) Purpose. The purpose of this management measure is to preserve soil and reduce the mass of sediment reaching a water body, protecting both agricultural land and water quality.
- (3) General Requirements
 - (A) Design and implement any combination of management practices in paragraph (4) to minimize the mobilization of sediment to surface waters, or
 - (B) Design and install a combination of management and structural practices to settle the settleable solids and associated pollutants in runoff delivered from the contributing area for storms of up to and including a 10-year, 24-hour frequency.
 - (C) All sources of sediment and other water pollutants associated with activities identified in paragraph 3(a)(1) (Specific Applicability) shall be accounted for and mitigated through identification and implementation of appropriate authorized management practices to prevent and abate water pollution to the maximum extent practicable.
- (4) Authorized Management Practices

- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
- (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to erosion and sediment control as described in the eFOTG; and
 - (ii) Erosion and sediment control practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003).

(b) Animal Feeding Operations Wastewater and Runoff Management Measure

(1) Specific Applicability

- (A) This management measure applies to all new animal feeding operations subject to this regulation regardless of size and to all existing animal feeding operations that contain the following number of head or more:

Animal Type	Head
Beef Feedlots	50
Stables (horses)	100
Dairies	20
Layers	5,000
Broilers	5,000
Turkeys	5,000

Animal Type	Head
Swine	100

Existing facilities containing fewer than the number of head listed above are not subject to the requirements of this management measure unless otherwise notified by the director.

- (B) Facilities that are required by Federal regulation 40 CFR 122.23 to apply for and receive discharge permits are excluded. That section applies to "concentrated animal feeding operations," which are defined in 40 CFR 122.23(b). In addition, 40 CFR 122.23(c) provides that the Director of a National Pollutant Discharge Elimination System (NPDES) discharge permit program may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of water pollution. This has the effect of subjecting the operation to the NPDES permit program requirements. If an animal feeding operation has an NPDES permit, then the facility covered by the NPDES permit is exempt from this management measure.
- (2) Purpose. The goal of this management measure is to prevent the discharge of wastewater and contaminated runoff to State waters from animal feeding operations.
- (3) General Requirements
 - (A) Contain both the wastewater and contaminated runoff from animal feeding operations that is caused by storms up to and including an acute 25-year, 24-

hour frequency storm event. Storage structures must be of adequate capacity to allow for proper wastewater utilization and constructed so that they are impervious and prevent seepage to groundwater.

- (B) Provide for storage, treatment, and/or application methods such that the monthly volume of wastewater and contaminated runoff produced and stored is, at a minimum, 10% less than the monthly rate of wastewater and contaminated runoff use or disposal. The storage volume necessary to meet this requirement shall be determined using a technical evaluation that addresses the following elements:
 - (i) Information to be used in the design of the open manure storage structure including, but not limited to, the following: minimum storage periods for rainy seasons, additional minimum capacity for chronic/prevaling rainfalls, applicable technical standards that prohibit or otherwise limit land application during unsuitable soil conditions (e.g., saturated ground), planned emptying and dewatering schedules, additional storage capacity for manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.
 - (ii) Climate data for the past 10 years at the area local to the regulated animal feeding operation,

including average monthly precipitation and evaporation rates.

(iii) The number and types of animals, anticipated animal sizes or weights, any added water and bedding, any other process wastewater, and the size and condition of outside areas exposed to rainfall and contributing runoff to the manure storage structure.

(C) Manage stored wastewater, contaminated runoff, and accumulated solids from the facility through an appropriate waste utilization system that is operated and maintained to prevent discharges of wastewater, contaminated runoff, and accumulated solids to State waters.

(4) Authorized Management Practices

(A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.

(B) Authorized management practices include but are not limited to:

(i) Conservation practice standards pertaining to AFOs as described in the eFOTG; and

(ii) Animal Feeding Operation management practices identified in *National Management Measures to Control Nonpoint Source Pollution*

from Agriculture (EPA, EPA-841-B-03-004, July 2003).

(c) Nutrient Management Measure

(1) Specific Applicability

(A) This management measure applies to activities associated with the application of nutrients to agricultural lands, including manure, wastewater, contaminated runoff, and commercial fertilizers.

(B) Lands that receive manure, wastewater, or contaminated runoff and are subject to the requirements of an NPDES permit for concentrated animal feeding operations are excluded from this management measure.

(2) Purpose. The goal of this management measure is to reduce water pollution caused by nutrients (primarily nitrogen and phosphorous) by minimizing nutrient losses and waste from agricultural lands and activities.

(3) General Requirements

(A) Prevent the discharge of excess nutrients and contaminated storm water to State waters through:

(i) Containment of wastewater and waste products;

(ii) Isolation of wastewater, waste products, or materials from contact with storm water; and

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- (iii) Recycling of nutrients through environmentally beneficial methods.
- (B) Nutrient management plans. A site-specific nutrient management plan shall be developed, implemented, and updated as often as necessary to reflect current operational conditions to:
 - (i) Apply nutrients at rates necessary to achieve realistic crop yields;
 - (ii) Improve the timing of nutrient application; and
 - (iii) Use agronomic crop production technology to increase nutrient use efficiency.
- (C) Nutrient management plans must contain the following core components:
 - (i) Farm and field maps showing acreage, crops, soils, and waterbodies.
 - (ii) Realistic yield expectations for the crop to be grown, based on achievable yields for the crop. Individual producer constraints and yield records for nearby operations may be considered in determining achievable yields.
 - (iii) A summary of the nutrient resources available to the producer, which at a minimum must include: soil test results for pH, phosphorous, nitrogen, and potassium; an appropriate mix of soil (pH, nitrogen, phosphorous,

potassium) and/or plant tissue testing or historic yield response data for a particular crop; nutrient analysis, including the nutrient value and the rate of availability, of fertilizer, manure, sludge, mortality compost, effluent (if applicable), or other source of nutrients; and other significant nutrient sources, such as irrigation water.

- (iv) An evaluation of field limitations based on environmental hazards or concerns, such as lava tubes, shallow soils over fractured bedrock, soils with high leaching or runoff potential, lands near surface water, highly erodible soils, and shallow aquifers.
- (v) Land application setbacks appropriate to prevent the discharge of nutrients based on identified field limitations and other site specific conditions, including practices such as field diversions or other structures that intercept and direct runoff to State waters.
- (vi) Best available information must be used to establish the appropriate mix of nutrient sources and requirements for the crop. The limiting nutrient concept may be used to establish the mix of nutrient sources and requirements for the crop based on a realistic yield expectation.

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- (vii) Identification of timing and application methods for nutrients to provide nutrients at rates necessary to achieve realistic crop yields, to reduce nutrient losses to the environment, and to avoid nutrient applications as much as possible during periods of leaching or runoff.
 - (viii) Provisions for the proper calibration and operation of nutrient application equipment.
 - (ix) Schedule for soil testing and/or plant tissue testing to estimate phosphorous, nitrogen, and potassium concentrations.
- (4) Authorized Management Practices
- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
 - (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to nutrient management as described in the eFOTG;
 - (ii) Nutrient management practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003); and

- (iii) Nutrient management methods and practices identified in *Plant Nutrient Management in Hawaii's Soils: Approaches for Tropical and Subtropical Agriculture* (James A. Silva and Raymond S. Uchida (Eds.), University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources, 2000).

- (d) Grazing Management Measure
 - (1) Specific Applicability. The management measure applies to activities on range, irrigated and non-irrigated pasture, and other grazing lands used by domestic livestock. Other grazing lands include woodlands, native pastures, and croplands producing forages.

 - (2) Purpose. The purpose of this management measure is to prevent improper livestock grazing and equipment use that may damage streambanks and shores, riparian vegetation, channels, and the water column. Application of this management measure will reduce the physical disturbance to sensitive areas and reduce the discharge of sediment, animal waste, nutrients, and chemicals to surface waters.

 - (3) General Requirements
 - (A) Implement one or more of the following, as necessary to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, near coastal waters/shorelines, and riparian zones):

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- (i) Exclude livestock, including exclusion from diversion ditches, grassed waterways, swales, and similar structures that concentrate and direct runoff from agricultural lands to sensitive areas;
 - (ii) Provide stream crossings or hardened watering access for drinking;
 - (iii) Provide alternative drinking water locations;
 - (iv) Locate salt and additional shade, if needed, away from sensitive areas; and/or
 - (v) Use improved grazing management (e.g., herding) to reduce the physical disturbance and reduce direct loading of animal waste and sediment caused by livestock.
- (B) Achieve either of the following on all range, pasture, and other grazing lands not addressed under subparagraph (A):
- (i) Range and pasture conservation and management practices that apply the progressive planning approach of USDA-NRCS following the standards and specifications contained in the eFOTG that achieve an acceptable level of treatment to reduce erosion; or
 - (ii) Maintenance of the range, pasture, and other grazing lands in accordance with activity plans

established by the Land Division of DLNR, federal agencies managing grazing land, or other designated land management agencies.

- (4) Authorized Management Practices
 - (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
 - (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to grazing as described in the eFOTG; and
 - (ii) Grazing management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).
- (e) Irrigation Water Management Measure
 - (1) Specific Applicability. This management measure applies to activities on irrigated agricultural land, including agricultural crop and pasture land (except for isolated fields of less than 10 acres in size that are not contiguous to other irrigated lands), orchard land, specialty cropland, and nursery cropland.
 - (2) Purpose
 - (A) The goal of this management measure is to reduce nonpoint source pollution of

surface waters caused by irrigation. Application of this management measure will reduce the waste of irrigation water, improve the water use efficiency, and reduce the total pollutant discharge from an irrigation system.

- (B) It is not the intent of this management measure to require the replacement of major components of an irrigation system. Instead, the expectation is that components to manage the timing and amount of water applied will be provided where needed, and that special precautions will be taken to reduce the potential for pollutant transport and discharge.

(3) General Requirements

- (A) To minimize runoff and excessive leaching, operate the irrigation system so that the timing and amount of irrigation water applied match crop water needs. This will require, as a minimum:
 - (i) The measurement of soil-water depletion volume and the volume of irrigation water applied; and
 - (ii) Uniform application of water.
- (B) When chemigation is used, include backflow preventers for wells, prevent chemigated waters from discharging from the edge of the field, and control deep percolation. In cases where chemigation is performed with furrow irrigation systems, Tailwater discharges are prohibited.

- (C) Where limitations or special conditions apply, they must be clearly identified in the facility's Water Pollution Prevention Plan.
- (4) Authorized Management Practices
 - (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
 - (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to irrigation as described in the eFOTG; and
 - (ii) Irrigation water management practices identified in *National Management Measures to Control Nonpoint Source Pollution from Agriculture* (EPA, EPA-841-B-03-004, July 2003).
- (f) Pesticide Management Measure
 - (1) Specific Applicability
 - (A) This management measure applies to activities associated with the application of pesticides to publicly-owned agricultural lands, including lands subject to the requirements of an NPDES permit for concentrated animal feeding operations, to the extent that such permit requirements do not address pesticide application.

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- (B) Pesticide applications subject to the requirements of an NPDES permit for application of pesticides, including chapter 11-55, Appendix M, are excluded.
- (2) Purpose. The goal of this management measure is to reduce contamination of surface water and groundwater from pesticides and to foster effective and safe use of pesticides without causing degradation to the environment.
- (3) General Requirements
- (A) Use alternative methods for pest control, to the extent practicable.
 - (B) Apply pesticides only when an economic benefit to the producer will be achieved (i.e., applications based on economic thresholds);
 - (C) Apply pesticides efficiently and at times when runoff losses are unlikely;
 - (D) When pesticide application is necessary and a choice of registered materials exists, consider the persistence, toxicity, runoff potential, and leaching potential of products in making a selection;
 - (E) Use appropriate pesticides for the given situation and environment; and
 - (F) Minimize the movement of pesticides from the target area.
- (4) Authorized Management Practices

- (A) Authorized management practices shall be implemented to meet management measure requirements and shall be identified in the Water Pollution Prevention Plan.
- (B) Authorized management practices include but are not limited to:
 - (i) Conservation practice standards pertaining to pest management as described in the eFOTG; and
 - (ii) Pesticide management practices identified in National Management Measures to Control Nonpoint Source Pollution from Agriculture (EPA, EPA-841-B-03-004, July 2003).

CHAPTER 11-56 APPENDIX B

NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR
FORESTRY

1. General Applicability

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-3, as follows:

- (1) The requirements of this Appendix apply to all publicly-owned forest lands comprising more than 5 contiguous acres where silvicultural or commercial forestry operations are planned or conducted or, regardless of acreage, any road construction or reconstruction conducted as part of silvicultural or forestry activities, any road maintenance conducted as part of silvicultural or forestry activities, any revegetation of areas disturbed by harvesting operations or road construction as part of silvicultural or forestry activities, any streamside management zone within lands where silvicultural operations are planned or conducted, or any area where chemicals (fertilizers and pesticides) are used as part of silvicultural or commercial forestry operations.
- (2) Other forest lands where silvicultural or commercial forestry operations are planned or conducted may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Forest lands determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For forest lands that do not fall under the applicability of this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to facilitate the implementation of the management measures contained in this Appendix.

2. Incorporation of Management Measures into Water Pollution Prevention Plans

(a) The owner or operator of a silvicultural or commercial forestry operation subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in Section 4 of this Appendix.

(b) The owner or operator of a silvicultural or commercial forestry operation subject to this Appendix shall identify which management measures in Section 4 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-3 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 4 of this Appendix, the Water Pollution Prevention Plan may include a

reference to the alternative regulatory mechanism in lieu of the specified management measure.

(e) The following documents may be submitted in lieu of a Water Pollution Prevention Plan provided that they address all applicable management measures in section 4:

- (1) Any BLNR- or DLNR-approved plan or permit which adopts, incorporates, or requires implementation of relevant BMPs from DOFAW's "Best Management Practices for Maintaining Water Quality in Hawaii" (February 1996); or
- (2) A forest management plan developed by a certified United States Department of Agriculture Natural Resources and Conservation Service (NRCS) Technical Service Provider and approved by the NRCS.

3. Water Pollution Prevention Plan Exemptions. Water Pollution Prevention Plans for publicly-owned forest lands managed by DOFAW are not required for as long as DOFAW's policy to implement relevant BMPs from DOFAW's *Best Management Practices for Maintaining Water Quality in Hawaii* (February 1996) on publicly-owned, DOFAW-managed lands is in effect.

4. Management Measures Required for Specific Sources of Pollution

- (a) Preharvest Planning Management Measure
 - (1) Specific Applicability
 - (A) This management measure applies to commercial harvesting on areas greater

than five (5) acres and any associated road system construction or reconstruction conducted as part of normal silvicultural activities.

- (B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.
- (2) Purpose. The objective of this management measure is to ensure that silvicultural activities, including timber harvesting, site preparation, and associated road construction, are conducted without significant nonpoint source pollutant delivery to streams and coastal areas.
- (3) General Requirements
- (A) Perform advance planning for forest harvesting that includes the following elements, where appropriate:
 - (i) Identify the area to be harvested including location of waterbodies and sensitive areas such as wetlands, threatened or endangered aquatic species habitats, or high erosion hazard areas (landslide-prone areas) within the harvest unit.
 - (ii) Time the activity for the season or moisture conditions when the least impact occurs.
 - (iii) Consider potential water quality impacts and erosion and sedimentation control in the selection of silvicultural and regeneration systems, especially

for harvesting and site preparation.

- (iv) Reduce the risk of occurrence of landslides and severe erosion by identifying high erosion-hazard areas and avoiding harvesting in such areas to the extent practicable.
 - (v) Consider additional contributions from harvesting or roads to any known existing water quality impairments or problems in watersheds of concern.
- (B) Perform advance planning for forest road systems that includes the following elements, where appropriate:
- (i) Locate and design road systems to minimize, to the extent practicable, potential sediment generation and delivery to surface waters. Key components are: locate roads, landings, and skid trails to avoid, to the extent practicable, steep grades and steep hillslope areas, and to decrease the number of stream crossings; avoid, to the extent practicable, locating new roads and landings in Streamside Management Zones; and determine road usage and select the appropriate road standard.
 - (ii) Locate and design temporary and permanent stream crossings to prevent failure and control impacts from the road system. Key components are: size and site crossing structures to prevent

failure and, for fish-bearing streams, design crossings to facilitate fish passage.

(iii) Ensure that the design of road prism and the road surface drainage are appropriate to the terrain and that road surface design is consistent with the road drainage structures.

(iv) Use suitable materials to surface roads planned for all-weather use to support intended vehicle use.

(v) Design road systems to avoid high erosion or landslide hazard areas. Identify these areas and consult a qualified specialist for design of any roads that must be constructed through these areas.

(4) Authorized Management Practices. Authorized management practices include but are not limited to:

(A) Best management practices for pre-harvest planning and forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and

(B) Best management practices for preharvest planning identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(b) Streamside Management Zones (SMZs) Management Measure

(1) Specific Applicability

- (A) This management measure applies to surface waters bordering or within the area of the silvicultural or commercial forestry operation.
 - (B) Manmade structures that may function as streams and other natural waterbodies, such as livestock ponds, swales, and water distribution systems, are not considered perennial waterbodies or streams.
- (2) Purpose. This management measure is intended to preserve SMZ integrity to protect water quality.
- (3) General Requirements
- (A) Establish and maintain a SMZ along surface waters that is sufficiently wide and includes a sufficient number of canopy species to buffer against detrimental changes in the temperature regime of the waterbody, to provide bank stability, and to withstand wind damage.
 - (B) Protect against soil disturbance in the SMZ and against delivery to the stream of sediments and nutrients generated by silvicultural or forestry activities, including harvesting.
 - (C) Manage the SMZ canopy species to provide a sustainable source of large woody debris needed for instream channel structure and aquatic species habitat.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:

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- (A) Streamside management zone BMPs identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for streamside management areas identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (c) Road Construction/Reconstruction Management Measure
- (1) Specific Applicability. This management measure applies to road construction and reconstruction operations for silvicultural purposes, including:
 - (A) The clearing phase: clearing to remove trees and woody vegetation from the road right-of-way;
 - (B) The pioneering phase: excavating and filling the slope to establish the road centerline and approximate grade;
 - (C) The construction phase: final grade and road prism construction and bridge, culvert, and road drainage installation; and
 - (D) The surfacing phase: placement and compaction of roadbed, road fill compaction, and surface placement and compaction (if applicable).
 - (2) Purpose. The goal of this management measure is to minimize delivery of sediment to surface waters during road construction and road reconstruction on forest lands.

- (3) General Requirements
 - (A) Follow preharvest planning requirements as described in subsection 0(a) of this Appendix when constructing or reconstructing the roadway.
 - (B) Follow design requirements for road surfacing and shaping as described in subsection 0(a) of this Appendix.
 - (C) Install road drainage structures according to designs planned under subsection 0(a) of this Appendix and regional storm return period and installation specifications. Match these drainage structures with terrain features and with road surface and prism designs.
 - (D) Guard against the production of sediment when installing stream crossings.
 - (E) Protect surface waters from slash and debris material from roadway clearing.
 - (F) Use straw bales, silt fences, mulching, or other favorable practices on disturbed soils on unstable cuts and fills.
 - (G) Avoid constructing new roads in SMZs, to the extent practicable.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
 - (A) Best management practices for forest roads identified in *Best Management*

Practices for Maintaining Water Quality in Hawaii (DOFAW, February 1996); and

- (B) Best management practices for road construction/reconstruction identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

- (d) Road Maintenance Management Measure
 - (1) Specific Applicability. This management measure applies to active and inactive roads constructed or used for silvicultural activities.
 - (2) Purpose. The objective of this management measure is to manage existing roads to maintain stability and utility and to minimize sedimentation and pollution from runoff-transported materials.
 - (3) General Requirements
 - (A) Avoid using roads, where possible, for timber hauling or heavy traffic during wet periods on roads not designed and constructed for these conditions.
 - (B) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.
 - (C) Remove drainage crossings and culverts if there is a reasonable risk of plugging or failure from lack of maintenance.

- (D) Following completion of harvesting, close and stabilize temporary spur roads and seasonal roads to control and direct water away from the roadway. Remove all temporary stream crossings.
 - (E) Inspect roads to determine the need for structural maintenance. Conduct maintenance practices, when conditions warrant, including cleaning and replacement of deteriorated structures and erosion controls, grading or seeding of road surfaces, and, in extreme cases, slope stabilization or removal of road fills, where necessary to maintain structural integrity.
 - (F) Conduct maintenance activities, such as dust abatement, so that chemical contaminants or pollutants are not introduced into surface waters, to the extent practicable.
 - (G) Properly maintain permanent stream crossings and associated fills and approaches to reduce the likelihood that stream overflow will divert onto roads and that fill erosion will occur if the drainage structures become obstructed.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for forest roads identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for road management identified in *National*

*Management Measures to Control Nonpoint
Source Pollution from Forestry* (EPA,
EPA-841-B-05-001, April 2005).

- (e) Timber Harvesting Management Measure
 - (1) Specific Applicability
 - (A) This management measure applies to all harvesting, yarding, and hauling conducted as part of normal silvicultural activities on harvest units larger than five (5) acres.
 - (B) This management measure does not apply to harvesting conducted for precommercial thinnings or noncommercial firewood cutting.
 - (2) Purpose. The purpose of this management measure is to minimize sedimentation resulting from the siting and operation of timber harvesting, and to manage petroleum products properly.
 - (3) General Requirements
 - (A) The timber harvesting management measure consists of implementing the following:
 - (i) Timber harvesting operations with skid trails or cable yarding shall follow layouts determined under subsection 0(a) of this Appendix.
 - (ii) Install landing drainage structures to avoid sedimentation, to the extent practicable. Disperse landing drainage over side slopes.

- (iii) Construct landings away from steep slopes and reduce the likelihood of fill slope failures. Protect landing surfaces used during wet periods. Locate landings outside of SMZs. Minimize the size of landing areas.
 - (iv) Protect stream channels and significant ephemeral drainages from logging debris and slash material.
 - (v) Use appropriate areas for petroleum storage, draining, and dispensing. Establish procedures to contain and treat spills. Recycle or properly dispose of all waste materials in accordance with State law.
- (B) For cable yarding:
- (i) Limit yarding corridor gouge or soil plowing by properly locating cable yarding landings.
 - (ii) Locate corridors for SMZs in accordance with subsection 0(b) of this Appendix.
 - (iii) Cable yarding shall not be done across perennial or intermittent streams, except at improved stream crossings.
- (C) For groundskidding:
- (i) Within SMZs, operate groundskidding equipment only at stream crossings, to the extent practicable. In SMZs, fell and

endline trees to avoid sedimentation.

- (ii) Use improved stream crossings for skid trails which cross flowing drainages. Construct skid trails with adequate drainage structures to disperse runoff.
 - (iii) On steep slopes, use cable systems rather than groundskidding where groundskidding may cause excessive sedimentation.
 - (iv) Groundskidding shall not be done across perennial or intermittent streams, except at improved stream crossings.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for timber harvesting and forest roads (temporary access roads and landings) identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for timber harvesting identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

(f) Site Preparation and Forest Regeneration Management Measure

- (1) Specific Applicability. This management measure applies to all site preparation and regeneration activities conducted as part of

normal silvicultural activities on harvested units larger than five (5) acres.

- (2) Purpose. This management measure is intended to confine on-site potential nonpoint source pollution and erosion resulting from site preparation and the regeneration of forest stands.
- (3) General Requirements
 - (A) Select a method of site preparation and regeneration suitable for the site conditions.
 - (B) Conduct mechanical tree planting and ground-disturbing site preparation activities on the contour of erodible terrain.
 - (C) Do not conduct mechanical site preparation and mechanical tree planting in SMZs.
 - (D) Protect surface waters from logging debris and slash material.
 - (E) Suspend operations during wet periods if equipment used begins to cause excessive soil disturbance that will increase erosion.
 - (F) Locate windrows at a safe distance from drainages and SMZs to control movement of the material during high runoff conditions.
 - (G) Conduct bedding operations in high water-table areas during dry periods of the year. Conduct bedding in erodible areas on the contour.

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- (H) Protect small ephemeral drainages when conducting mechanical tree planting.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
 - (A) Best management practices for reforestation and timber harvesting (mechanical site preparation) identified in "Best Management Practices for Maintaining Water Quality in Hawaii" (DOFAW, February 1996); and
 - (B) Best management practices for site preparation and forest regeneration identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (g) Fire Management Measure
 - (1) Specific Applicability. This management measure applies to all prescribed burning conducted as part of normal silvicultural activities on all harvested units larger than five (5) acres for wildfire suppression and rehabilitation on forest lands.
 - (2) Purpose. The purpose of this management measure is to minimize potential nonpoint source pollution and erosion resulting from prescribed fire for site preparation and from the methods used for wildfire control or suppression on forest lands.
 - (3) General Requirements. Prescribe fire or suppress wildfire in a manner which reduces potential nonpoint source pollution of surface waters:

- (A) Prescribed fire shall not cause excessive sedimentation due to the combined effect of removal of canopy species and the loss of soil-binding ability of subcanopy and herbaceous vegetation roots.
 - (B) Prescriptions for fire shall protect against excessive erosion or sedimentation, to the extent practicable.
 - (C) All bladed firelines, for prescribed fire and wildfire, shall be plowed on contour or stabilized with water bars and/or other appropriate techniques if needed to control excessive sedimentation or erosion of the fireline.
 - (D) Wildfire suppression and rehabilitation shall consider possible nonpoint source pollution of watercourses, while recognizing the safety and operational priorities of fighting wildfires.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for wildfire damage control and reclamation/prescribed burn, fireline construction and maintenance, and prescribed burn identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for fire management identified in *National Management Measures to Control Nonpoint*

Source Pollution from Forestry (EPA, EPA-841-B-05-001, April 2005).

(h) Revegetation of Disturbed Areas Management Measure

- (1) Specific Applicability. This management measure applies to all disturbed areas resulting from harvesting, road building, and site preparation conducted as part of normal silvicultural activities. Disturbed areas are those localized areas within harvest units or road systems where mineral soil is exposed or agitated (e.g., road cuts, fill slopes, landing surfaces, cable corridors, or skid trail ruts).
- (2) Purpose. The purpose of this management measure is to prevent sediment and other pollutants from harvested, burned, or other disturbed areas from entering State waters. Revegetating disturbed areas stabilizes the soil in these areas, reduces erosion, and helps to prevent sediment and pollutants associated with sediment from entering nearby surface waters.
- (3) General Requirements
 - (A) Using seeding or planting, revegetate areas disturbed by harvesting operations or road construction promptly after completion of the earth-disturbing activity. Local growing conditions should dictate the timing for establishment of vegetative cover.
 - (B) Use mixes of species and treatments developed and tailored for successful vegetation establishment for the region or area.

- (C) Prioritize initial revegetation efforts in disturbed areas in SMZs or the steepest areas of disturbance near drainages.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
 - (A) Best management practices for reforestation, wildfire damage control and reclamation/prescribed burn, and timber harvesting (skidding) in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for revegetation of disturbed areas identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).
- (i) Forest Chemical Management Measure
- (1) Specific Applicability
 - (A) This management measure applies to all fertilizer and pesticide applications (including biological agents) conducted as part of normal silvicultural or commercial forestry activities.
 - (B) This management measure applies to the transportation, storage, mixing, loading, application, cleanup, and disposal of chemicals used in silvicultural and commercial forestry operations.

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- (2) Purpose. The purpose of this management measure is to prevent pesticides and fertilizers used in forest management from entering State waters.
- (3) General Requirements. Use chemicals only when necessary for forest management and in accordance with the following activities to reduce the movement of forest chemicals off-site during and after application:
 - (A) Conduct applications by skilled and, where required, licensed applicators according to the registered use, with special consideration given to impacts to nearby surface waters and groundwater.
 - (B) Carefully prescribe the type and amount of pesticides appropriate for the insect, fungus, or herbaceous species.
 - (C) Establish and identify buffer areas for surface waters for applications, including aerial applications.
 - (D) Prior to applications of pesticides and fertilizers, inspect the mixing and loading process and the calibration of equipment and identify the appropriate weather conditions, the spray area, and buffer areas for surface waters.
 - (E) Immediately report accidental spills of pesticides or fertilizers into surface waters to the appropriate State and local agencies. Develop an effective spill contingency plan to contain spills.

- (4) Authorized Management Practices. Authorized management practices include but are not limited to:
- (A) Best management practices for silvicultural chemical management identified in *Best Management Practices for Maintaining Water Quality in Hawaii* (DOFAW, February 1996); and
 - (B) Best management practices for forest chemical management identified in *National Management Measures to Control Nonpoint Source Pollution from Forestry* (EPA, EPA-841-B-05-001, April 2005).

CHAPTER 11-56 APPENDIX C

NONPOINT SOURCE POLLUTION CONTROL REQUIREMENTS FOR
MARINAS AND RECREATIONAL BOATING

1. General Applicability

(a) Requirements defined in this chapter shall be implemented by persons identified in section 11-56-03 who own or operate a publicly-owned marina or recreational boating facility that has any of the following:

- (1) Ten or more slips;
- (2) A pier where ten or more boats may tie up;
- (3) A facility where a boat for hire is docked;
- (4) A boat maintenance or repair yard that is adjacent to the water; or
- (5) A mooring field where ten or more boats are moored.
- (6) Other marinas or recreational boating facilities may be subject to the requirements of this Appendix at the discretion of the director based on risk of harm to human or environmental health, as determined by the director. Marinas and recreational boating facilities determined by the director to be subject to the requirements of this Appendix will be provided written notice by the director.

(b) For marinas and recreational boating facilities that do not fall under the applicability of this Appendix, the director encourages voluntary development of a Water Pollution Prevention Plan to

facilitate the implementation of the management measures contained in this Appendix.

2. Incorporation of Management Measures into Water Pollution Prevention Plans

(a) The owner or operator of a marina or recreational boating facility subject to regulation shall incorporate water pollution reducing management measures into a Water Pollution Prevention Plan. At a minimum, Water Pollution Prevention Plans shall incorporate all appropriate management measures to prevent and control the specific sources of pollution identified in section 3 of this Appendix.

(b) The owner or operator of a marina or recreational boating facility subject to this Appendix shall identify which management measures in section 3 are required based upon the specific applicability of each management measure and its subparts. Each management measure identified as being applicable shall be implemented as detailed in the Water Pollution Prevention Plan developed pursuant to this chapter.

(c) Authorized management practices that satisfy management measure requirements shall be identified in the Water Pollution Prevention Plan.

(d) For discharges identified in section 11-56-03 that result from activities identified in this Appendix, where such discharges or activities are subject to an alternative regulatory mechanism that accomplishes the objectives of one or more of the management measures in section 3 of this Appendix, the Water Pollution Prevention Plan may include a reference to the alternative regulatory mechanism in lieu of the specified management measure.

(e) All publicly-owned facilities or operations managed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation are not required to incorporate the following management measures in a Water Pollution Prevention Plan, provided that those facilities or operations are subject to and in compliance with section 13-232-43, HAR (4/22/04): shoreline stabilization (section 3(d)(d)), storm water runoff (section 3(e)), fueling station design (section 3(f)), sewage facility (section 3(g)), maintenance of sewage facilities (section 3(h)), solid waste (section 3(i)), and liquid material (section 3(k)).

3. Management Measures Required for Specific Sources of Pollution

- (a) Marina Flushing Management Measure
 - (1) Specific Applicability. This management measure applies to new and expanding marinas.
 - (2) Purpose. The purpose of this management measure is to ensure proper siting and design of marinas and recreational boating facilities such that water quality will be maintained through proper flushing.
 - (3) General Requirements. Site and design marinas such that tides and/or currents will aid in flushing of the site or renew its water regularly.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to marina flushing BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA

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841-B-01-005, November 2001, or as subsequently amended).

- (b) Water Quality Assessment Management Measure
 - (1) Specific Applicability. This management measure applies to new and expanding marinas.
 - (2) Purpose. This management measure is intended to establish criteria for assessments of water quality that may be used to determine whether a proposed marina design will result in poor water quality.
 - (3) General Requirements. Assess water quality as part of marina siting and design.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to water quality assessment BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (c) Habitat Assessment Management Measure
 - (1) Specific Applicability. This management measure applies to new and expanding marinas where site changes may have an impact on important marine species, coral reefs, wetlands, or other important habitats. The habitats of non-indigenous nuisance species are not considered important habitats.
 - (2) Purpose. This management measure is intended to establish biological siting and design provisions for marinas based on the premise that marinas should not destroy important aquatic habitat, should not

diminish the harvestability of organisms in adjacent habitats, and should accommodate the same biological uses (e.g., reproduction, migration) for which the source waters have been classified.

- (3) General Requirements. Site and design marinas to protect against adverse effects on coral reefs, shellfish resources, wetlands, submerged aquatic vegetation, or other important riparian and aquatic habitat areas as designated by local, State, or federal governments.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to habitat assessment BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (d) Shoreline Stabilization Management Measure
- (1) Specific Applicability. This management measure applies to new and expanding marinas where site changes may result in shoreline erosion.
 - (2) Purpose. This management measure is intended to encourage the use of vegetative methods for shoreline stabilization to prevent or reduce the delivery of pollutants to water resources.
 - (3) General Requirements. Stabilize shorelines where shoreline erosion is a serious nonpoint source pollution problem.
 - (4) Authorized Management Practices

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- (A) Authorized management practices include but are not limited to shoreline and streambank stabilization BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
 - (B) Authorized management practices that employ vegetative methods to stabilize shorelines should be used. Structural methods to stabilize shorelines may be necessary where vegetative methods cannot work and where they do not interfere with natural beach processes or harm other sensitive ecological areas.
- (e) Storm Water Runoff Management Measure
- (1) Specific Applicability
 - (A) This management measure applies to all marinas, with vessel maintenance areas and any other areas where vessel maintenance, boat bottom scraping, sanding, and/or painting is done.
 - (B) This management measure does not apply to storm water runoff that enters the marina property from upland sources.
 - (2) Purpose. The purpose of this management measure is to control pollutants in runoff from vessel maintenance areas. The proper design and operation of these areas can significantly prevent the entry of pollutants from marina property into surface waters.

- (3) General Requirements
 - (A) Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of vessel maintenance areas to minimize storm water contact with water pollutants.
 - (B) Reduce the average annual loadings of total suspended solids and other water pollutants in runoff from vessel maintenance areas to the maximum extent practicable.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to storm water runoff BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (f) Fueling Station Design Management Measure
 - (1) Specific Applicability. This management measure applies to all marinas where fueling stations are to be added or moved.
 - (2) Purpose. The purpose of this management measure is to prevent and control petroleum and other chemicals associated with fuel spillage.
 - (3) General Requirements
 - (A) Design fueling stations to allow for ease in cleanup of spills.
 - (B) Maintain adequate spill containment and mitigation measures.

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- (C) Eliminate storm water contact with fueling appurtenances.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to fueling station design BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (g) Sewage Facility Management Measure
- (1) Specific Applicability
 - (A) This management measure applies to new and expanding marinas in areas where adequate marine sewage collection facilities do not exist.
 - (B) This measure does not apply to direct discharges from vessels covered under Section 312 of the Clean Water Act.
- (2) Purpose. This management measure is intended to prevent and control pollution by ensuring proper siting and design of sewage facilities associated with marinas and recreational boating activities.
- (3) General Requirements
 - (A) Install pumpout, dump station, and restroom facilities where needed at new and expanding marinas to reduce the release of sewage into surface waters. Design these facilities to allow ease of access and post signage to promote use by the boating public.

- (B) Marinas that do not provide services for vessels that have marine sanitation devices (MSDs) do not need to have pumpouts, although dump stations for portable toilets and restrooms shall be available.

- (4) Authorized Management Practices. Authorized management practices include but are not limited to sewage facility BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

- (h) Maintenance of Sewage Facilities Management Measure
 - (1) Specific Applicability. This management measure applies to marinas where marine sewage disposal facilities exist.

 - (2) Purpose. The purpose of this measure is to eliminate the release of untreated sewage into marina and surface waters.

 - (3) General Requirements. Ensure that sewage pumpout facilities are maintained in operational condition and encourage their use.

 - (4) Authorized Management Practices. Authorized management practices include but are not limited to maintenance of sewage facilities BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).

- (i) Solid Waste Management Measure

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- (1) Specific Applicability. This management measure applies to the operation and maintenance of all marinas.
 - (2) Purpose. This management measure is intended to ensure proper disposal of solid waste materials generated at marinas and recreational boating facilities.
 - (3) General Requirements. Properly dispose of solid wastes produced by the operation, cleaning, maintenance, and repair of boats to limit entry of solid wastes into surface waters.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to solid waste BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (j) Fish Waste Management Measure
- (1) Specific Applicability. This management measure applies to marinas where fish waste is generated.
 - (2) Purpose. The purpose of this management measure is to control fish waste pollution, which can result in water quality problems and odor problems at marinas with large numbers of fish landings or at marinas that have limited fish landings but poor flushing.
 - (3) General Requirements
 - (A) Promote sound fish waste management through a combination of fish-cleaning

restrictions and proper disposal of fish waste.

- (B) Prohibit discarding fish waste into State waters.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to fish waste BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (k) Liquid Material Management Measure
 - (1) Specific Applicability. This management measure applies to the operation and maintenance of marinas where liquid materials used in the maintenance, repair, or operation of boats are stored.
 - (2) Purpose. This management measure is intended to minimize the discharge of potentially harmful liquid materials into marina and surface waters through proper storage and disposal.
 - (3) General Requirements. Provide and maintain appropriate storage, transfer, containment, and disposal facilities for liquid material, such as oil, harmful solvents, antifreeze, and paints, and encourage recycling of these materials.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to liquid material BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA

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841-B-01-005, November 2001, or as subsequently amended).

- (1) Petroleum Control Management Measure
 - (1) Specific Applicability. This management measure applies to boats that have inboard fuel tanks and marinas that harbor such boats.
 - (2) Purpose. This management measure is intended to control pollution from fuel and oil associated with marina boat operation and maintenance.
 - (3) General Requirements. Reduce the amount of fuel and oil from boat bilges and fuel tank air vents entering marina and surface waters.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to petroleum control BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (m) Boat Cleaning Management Measure
 - (1) Specific Applicability. This management measure applies to marinas where boat topsides are cleaned and marinas where hull scrubbing in the water may result in water or sediment quality problems.
 - (2) Purpose. This management measure is intended to minimize the use and release of potentially harmful cleaners and bottom paints to marina and surface waters.

- (3) General Requirements. For boats that are in the water, perform cleaning operations to minimize, to the extent practicable, the release to surface waters of harmful cleaners, solvents, and paint from in-water hull cleaning.
- (4) Authorized Management Practices. Authorized management practices include but are not limited to boat cleaning BMPs identified in the *National Management Measures to Control Nonpoint Source Pollution from Marinas and Recreational Boating* (EPA, EPA 841-B-01-005, November 2001, or as subsequently amended).
- (n) Public Education Management Measure
 - (1) Specific Applicability. This management measure applies to all environmental control authorities in areas where marinas are located.
 - (2) Purpose. This management measure is intended to prevent pollution from marinas and boating activities by educating the public and facility operators about the causes and effects of pollution and the methods to prevent pollution.
 - (3) General Requirements. Education, outreach, and/or training programs shall be instituted for boaters and marina owners and operators to prevent improper disposal of polluting material, including, but not limited to, solid waste, fish waste, liquid materials, fuel and oil, sewage, and boat cleaner and paints.
 - (4) Authorized Management Practices. Authorized management practices include but are not limited to public education BMPs identified in the *National Management Measures to*

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*Control Nonpoint Source Pollution from
Marinas and Recreational Boating* (EPA, EPA
841-B-01-005, November 2001, or as
subsequently amended).

IV. New Business - Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, as follows, promulgated by DOH

- a. Appendix B, Multi-Sector General Permit (MSGP)**
- b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day**
- c. Appendix F, Authorizing Discharges of Hydrotesting Water**
- d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering**
- e. Appendix K, Small Municipal Separate Storm Sewer Systems**

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.)

* * *

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 B of HAR Chapter 11-55 authorizes the discharge of stormwater associated with industrial activities. There are many small businesses that apply for coverage under Appendix B, however the rules are mandated by the Federal Clean Water Act

and are consistent with the EPA's own industrial storm water permit (i.e., EPA's 2015 Multi Sector General Permit).

Appendix E of HAR Chapter 11-55 authorizes discharges of once through cooling water if the discharge is less than one million gallons per day to a State receiving water. The purpose of the cooling water is commonly used for larger air conditioning systems.

Appendix F of HAR Chapter 11-55 authorizes discharges of hydrotesting waters to State receiving waters. Hydrotesting waters are used for hydrostatic testing (testing for strength and leaks) of items, not limited to pressure vessels, pipes, plumbing, gas cylinders, boilers, and fuel tanks. If the pressure vessel or pipes are to be used for drinking water, chlorine may be added to the hydrotesting waters for disinfection.

Appendix G of HAR Chapter 11-55 authorizes discharges of dewatering effluent from construction activities to a State receiving water. Construction dewatering is the removal of water, usually groundwater, but may also include surface water (such as from a stream) or storm water.

Appendix K of HAR Chapter 11-55 authorizes the discharge of stormwater and certain non-storm waters from Small Municipal (e.g., City and County of Honolulu MS4, State Department's MS4s, and United States Department's MS4s) Separate Storm Sewer Systems (MS4s) and hence does not affect small businesses.

Early Stakeholder Outreach on the general permits was conducted from February 1, 2021 through February 26, 2021. The CWB sent 650 emails to notify current permittees and organizations and to solicit comment. However, following subsequent internal and EPA review, revised draft Appendices F and G were created that differ substantially from the ones provided to stakeholders. Following the internal and EPA review, Appendices B, E, and K were also revised, but the revisions are not substantive. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

The only portion of the main body of HAR 11-55 that is proposed to be revised is HAR 11-55-34.02 to reflect the new expiration dates for the proposed General Permits in Appendices B, E, F, G, and K.

The CWB wants the SBRRB to be aware that other portions of HAR 11-55, unrelated to the revisions above, have already begun; and a public hearing of these proposed rules were held on February 1, 2021 after receiving approval from the SBRRB and Governor to hold the hearing. For your information, the CWB has attached the SBRRB approval for these revisions and the associated Small Business Impact Statement.

The CWB intends to public notice and hold a hearing for the proposed revisions to HAR 11-55-34.02 and Appendices B, E, F, G, and K if approval is granted by the SBRRB and Governor. Then the CWB plans on combining the proposed revisions to HAR 11-55-34.02; Appendices B, E, F, G, and K; and the HAR 11-55 revisions for which a hearing

was held on February 1, 2021. The combined revisions will then be presented to the SBRRB in the post hearing report.

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
MS4	Municipal Separate Storm Sewer 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.

Appendix B affects small business that are defined as Industrial by 40 CFR 122.26(b)(14) and are not expected to be adversely affected. Some examples of these businesses include those that produce concrete or asphalt, landfills, automobile salvage yards, scrap and recycling yards, transportation operations, and ship and boat building or repair facilities.

Appendix E affects businesses that use water for cooling and discharge that water to a State receiving water such as the ocean or a stream. Since these types of air cooling systems are larger systems, the businesses affected may be medium or larger sized businesses. There are only two permittees, BEI Hawaii and IES Downstream, so no small businesses will be affected currently.

Appendices F and G will primarily impact government agencies and municipalities. Although there may be contractors or sub-contractors that are small businesses that are hired for these projects, there should be no direct adverse impact to them. The proposed revisions to the general permit do add new explicit examples of control requirements for the discharge, however, these are requirements that would already have been implemented to comply with the previous permit. The new explicit control requirements are just clarifying specific considerations and control requirements that would already have been implemented as appropriate at these projects.

- (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 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 general permits was conducted from February 1, 2021 through February 26, 2021. However, following subsequent internal and EPA review, revised draft Appendices F and G were created that differ substantially from the ones provided to stakeholders. Following the internal and EPA review, Appendices B, E, and K were also revised, but the revisions are not substantive. The CWB does not expect the updated draft general permits to impose more stringent requirements than the drafts provided for stakeholder review.

- (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 reissue HAR 11-55, Appendices B (expired December 5, 2017), E (expires July 12, 2022), F (expires July 12, 2022), G (expires July 12, 2022), and K (expired December 5, 2016).

- What problem is the rule change meant to solve?

The rule change is primarily to reissue expired Appendices B and K and issue the Appendices E, F, and G before they expire. The rule change also updates the general permits to conform with current implementation practices.

- 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 reissue expired Appendices B and K and issue Appendices E, F, and G before they expire.

Without an effective Appendix B, industrial facilities that don't have permit coverage for their discharge of storm water would be required to apply for an Individual NPDES permit.

Without an effective Appendix K, municipalities that don't have permit coverage for their municipal separate storm sewer system would also be required to apply for an Individual NPDES permit.

Finally, failure to make this rule change will result in the expiration of Appendices E, F, and G on July 12, 2022.

- Who are the stakeholders? Positive and negative.

Appendix B affects businesses that are defined as Industrial by 40 CFR 122.26(b)(14) and are not expected to be adversely affected. Some examples of these businesses include those that produce concrete or asphalt, landfills, automobile salvage yards, scrap and recycling yards, transportation operations, and ship and boat building or repair facilities.

Appendix E affects businesses that use water for cooling and discharge that water to a State receiving water such as the ocean or a stream. Since these types of air cooling systems are larger systems, the businesses affected may be medium or larger sized businesses.

Appendices F and G will primarily impact government agencies and municipalities. Although there may be contractors or sub-contractors that are small businesses that are hired for these projects, there should be no direct adverse impact to them. The proposed revisions to the general permit do add new explicit examples of control requirements for the discharge, however, these are requirements that would already have been implemented to comply with the previous permit. The new explicit control requirements are just clarifying specific considerations and control requirements that would already have been implemented as appropriate at these projects.

Appendix K applies exclusively to municipalities.

- What are the potential problems with the rule change?

If these rule changes don't go through, 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.

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.

- 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.

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

As stated before, if these rule changes don't go through, 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.

HAR, Chapter 11-55, Appendix B, Multi-Sector General Permit (MSGP) Fact Sheet

In accordance with NPDES regulations at 40 CFR 124.8(a) and 124.8(b) the following information is provided for HAR, Chapter 11-55, Appendix B.

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

The proposed Appendix B, MSGP covers storm water discharges from industrial activities. Industrial activities regulated under 40 CFR 122.26(b)(14) that meet the eligibility provisions described in Part 1.1 of the permit are subject to the proposed HAR, Chapter 11-55, Appendix B, Multi-Sector General Permit (MSGP), except construction activities at 40 CFR 122.26(b)(14)(x).

The proposed Appendix B, MSGP is available for the following 29 sectors of industrial activities, as well as any discharges not covered under the 29 sectors (Sector AD) that has been identified by the Department of Health (DOH) as appropriate for coverage. The sector descriptions are based on Standard Industrial Classification (SIC) codes and Industrial Activity Codes consistent with the definition of storm water discharge associated with industrial activity at 40 CFR 122.26(b)(14)(i-ix, xi). The sectors are listed below:

Sector A – Timber Products	Sector P – Land Transportation
Sector B – Paper and Allied Products Manufacturing	Sector Q – Water Transportation
Sector C – Chemical and Allied Products Manufacturing	Sector R – Ship and Boat Building or Repairing Yards
Sector D – Asphalt Paving and Roofing Materials Manufactures and Lubricant	Sector S – Air Transportation Facilities
Sector E – Glass, Clay, Cement, Concrete, and Gypsum Product	Sector T – Treatment Works
Sector F – Primary Metals	Sector U – Food and Kindred Products
Sector G – Metal Mining (Ore Mining and Dressing)	Sector V – Textile Mills, Apparel, and other Fabric Products Manufacturing
Sector H – Coal Mines and Coal Mining-Related Facilities	Sector W – Furniture and Fixtures
Sector I – Oil and Gas Extraction and Refining	Sector X – Printing and Publishing
Sector J – Mineral Mining and Dressing	Sector Y – Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries
Sector K – Hazardous Waste Treatment Storage or Disposal	Sector Z – Leather Tanning and Finishing

Sector L – Landfills and Land Application Sites	Sector AA – Fabricated Metal Products
Sector M – Automobile Salvage Yards	Sector AB – Transportation Equipment, Industrial or Commercial Machinery
Sector N – Scrap Recycling Facilities	Sector AC – Electronic, Electrical, Photographic and Optical Goods
Sector O – Steam Electric Generating Facilities	Sector AD – Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director

Currently, an estimated 170 industrial facilities are authorized to discharge (or are “covered”) by the existing Appendix B.

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

Storm water discharge associated with industrial activity, including certain allowable non-storm water.

3. 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);

Basis for Draft Permit Conditions

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and... recreation in and on the water.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the CWA, which directed the Environmental Protection Agency (EPA) to develop a phased approach to regulate storm water discharges under the NPDES program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 47990. EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). In November of 1974, EPA authorized DOH to administer the

NPDES permit program in Hawaii. DOH's proposal is to issue Appendix B, MSGP under this statutory and regulatory authority.

In accordance with HAR 11-55-02(c), 11-55-19(a)(4)(B), and 40 CFR 123.25(a), the proposed revisions were meant to be consistent with the EPA's 2015 MSGP, which the DOH also believes is appropriate for Hawaii. Requirements from EPA's 2015 MSGP that were included in this proposed Appendix B, MSGP include eligibility requirements; allowable non-storm water discharges; control measures; non-numeric technology-based effluent limitations; Effluent Limitations Guidelines; benchmark and other monitoring requirements; requirements for discharges to impaired waters; inspection requirements; escalating actions for benchmark exceedances; Storm Water Pollution Prevention Plan requirements; reporting and record keeping requirements; and sector specific requirements.

The EPA's 2015 MSGP became effective on August 12, 2015 and all documents related to it, including the Fact Sheet are available at: <https://www.epa.gov/npdes/final-2015-msgp-documents>. DOH's intent was to develop a permit modelled after the EPA's 2015 MSGP. Thus, the DOH recommends those interested in this Fact Sheet to refer to the EPA's 2015 MSGP Fact Sheet as the primary resource. Please also refer to the previous versions of the EPA's MSGP available at: <https://www.epa.gov/npdes/previous-versions-epas-msgp-documents> for information about how the EPA's MSGP has evolved to the 2015 version.

A majority of the requirements within this proposed Appendix B are the same as in the EPA's 2015 MSGP, however, the proposed Appendix B, MSGP was revised in consideration of the State's Administrative Rules and for situations not applicable to Hawaii (e.g., deicing, salt storage, Tier waters, etc.). Additionally, the proposed Appendix B, MSGP was revised from the previous version to allow certain sectors (refer to Table 1-1 of the permit) with Effluent Limitation Guidelines (ELGs) to be covered under this general permit, allow discharges to all State waters, except for discharges in or to natural freshwater lakes, saline lakes, or anchialine pools, and implement benchmark monitoring (if applicable) in lieu of previously required compliance with water quality-based numeric effluent limitations. If a sector has both benchmark and ELGs, both shall apply, however only the exceedance of the ELG would be a violation of the permit. For an exceedance of a benchmark, a violation would occur upon the Permittee's failure to implement corrective actions, which includes escalating levels of corrective actions. The proposed revision aims to require Permittees to implement corrective actions by making the facility's failure to implement corrective actions a violation of the permit, unless a sector specific ELG has already been promulgated. For the development of ELGs, please refer to the Federal Notice and Fact Sheets for EPA's previous versions at the website address provided above.

In the previous permit, exceedance of a numeric effluent limitation was a violation of the permit. However, the permit wasn't clear if a facility's failure to implement corrective actions to address the exceedance was also a violation (which made enforcement difficult). The DOH believes that the implementation of corrective actions, and if necessary numerous escalating actions, by the Permittee to be more important and a more effective method of removing pollutants prior to discharge from the facility. This is conceptually consistent with the approach taken by EPA's 2015 MSGP. The intent is to place greater emphasis on having the Permittee implement corrective actions to minimize further pollutant discharges. The permit violation occurs upon the Permittee's failure to take corrective actions when an exceedance of a benchmark occurs, since the implementation of corrective actions serves as the mechanism for the reduction of the pollutants in regulated discharge.

Also, DOH is modifying the permit compliance evaluation to focus on the Permittee's failure to take corrective action as a response to comments received regarding whether it is reasonable to assign numeric effluent limits for industrial storm water discharges based on the State's Water Quality Standards. The DOH has held multiple stakeholder meetings with various Permittees, including Federal, State, and County government agencies, who have all expressed concerns about the practicality of numeric Water Quality-Based Effluent Limitation (WQBELs) for industrial storm water discharges. After considering the concerns of the Permittees and evaluating the previous permit, the DOH has determined that it is no longer feasible to establish numeric WQBELs for industrial storm water discharges; BMPs shall be utilized when numeric effluent limits are infeasible per 40 CFR 122.44(k); and the benchmark monitoring and BMPs in the proposed Appendix B MSGP are appropriate WQBELs. Below are the reasons why the DOH believes the numeric WQBELs from the previous permit are no longer practicable:

- Storm events are variable in nature and the pollutants in the storm water that may or may not originate from the facility.
- It is challenging to objectively determine if a facility is in compliance with its permit requirements. The DOH acknowledges that requiring industrial storm water Permittees to comply with numeric WQBELs is viewed as an easier way to measure compliance, but it is not as simple as selecting a number directly from our WQS due to the unique nature of storm events and storm water discharges.
- There are pollutants in storm water discharges that did not originate from the facility (e.g., neighbor facility's run on, atmospheric deposition, etc.) or the Permittee may not have the means to control the pollutant, and therefore, must be given special consideration.
- Monitoring for enforcement of numeric effluent limits is challenging. While spot checks can be made at some of the outfalls, there is a wide variation in storm water quality from area to area, facility to facility, and storm to storm. Geographical location and land use are important factors affecting

- storm water quality for most constituents. Since the storm-to-storm variation at any outfall can be high, it is unreasonable to expect all runoff levels to be below a numeric value. Also, there could be a number of storm events each year that are large in volume and/or intensity that can exceed the design capacity volume or flow rates of most BMPs. Assessing compliance during these larger events represents another challenge for DOH and the Permittee.
- There is no single protocol that enables an engineer to design with certainty a BMP that will produce a desired outflow concentration for a constituent of concern. Even if DOH uses % removal, it will vary directly with the inflow concentration. It will take substantial research to develop design criteria for the removal of pollutants with confidence intervals that enable DOH to make reliable estimates of the median and variance of the effluent concentrations expected from the various types of BMPs. Until this is done, it is infeasible and impracticable at this time to develop applicable numeric effluent limits for a particular type of BMP.
 - Many facilities rely on non-structural control measures, which have a high degree of variability and accordingly performance; thus, creating a challenge to set numeric effluent limits because little is known about performance levels of non-structural controls.
 - DOH considers the optimum balance between economic development of businesses subject to storm water regulations and environmental quality to satisfy public interest concerns.

The State has adopted its own WQS in HAR, Chapter 11-54, Water Quality Standards. The proposed Appendix B includes non-numeric WQBELs to ensure the authorized discharges will be controlled as necessary to meet applicable water quality standards. The provisions of Part 2.2 constitute the WQBELs of the proposed Appendix B, and supplement the permit's technology-based effluent limits in Part 2.1.

The WQBELs ensure that MSGP-authorized discharges will be controlled as necessary to meet applicable water quality standards, pursuant to CWA section 301(b)(1)(C) and 40 CFR 122.44(d)(1). The provisions of Part 2.2 constitute the WQBELs of the 2015 MSGP and supplement the permit's technology-based effluent limits in Part 2.1. The following is a list of the permit's WQBEL requirements:

- Use control measures to treat discharges as necessary to meet applicable water quality standards (i.e., discharges must not cause or contribute to a violation of applicable water quality standards) (See Part 2.2.1);
- Implement additional control measures that are necessary to be consistent with the assumptions and requirements of the applicable Total Maximum Daily Load (TMDL) and its Waste Load Allocation (WLA) [See Part 2.2.2.1]. For discharges to impaired waters without a TMDL, conduct impaired waters monitoring (See Part 2.2.2.2). Additionally, Permittees of new discharges to

impaired waters must implement any measures required per the Part 1.1.4.8 eligibility requirements;

Prior to or after initial discharge authorization, DOH may require Permittees to implement additional measures on a facility-specific basis (i.e. conduct additional monitoring for pollutants of concern), or require Permittees to obtain coverage under an individual permit, if information in the NOI, required reports, or other sources indicate that, after complying with the technology-based limits in Part 2.1 and the WQBELs in Part 2.2, discharges will not be controlled as necessary to meet water quality standards.

Facilities that achieve the permit's technology-based limits through the careful selection, design, installation, and implementation of effective control measures are likely to be controlling their storm water discharges to a degree that would make additional water quality-based measures unnecessary. However, to ensure that this is so, the permit contains additional provisions in Part 2.2, which, along with the BAT/BPT/BCT limits in the permit, are as stringent as necessary to achieve water quality standards.

The WQBELs included in the permit are non-numeric. DOH, consistent with the EPA's 2015 MSGP, relies on narrative water quality-based effluent limits to ensure discharges are controlled as necessary to meet applicable water quality standards, to ensure that additional measures are employed where necessary to meet the narrative WQBELs, and to be consistent with the assumptions and requirements of an applicable TMDL and its WLAs. This is a reasonable approach for the proposed Appendix B, MSGP, based on the following considerations:

- Receiving waterbody information is not available for individual Permittees. Receiving waterbody information is necessary for DOH to determine what, if any, special protections apply to that waterbody.
- The EPA, along with the DOH, realizes there are greater cost burdens associated with analytical monitoring in comparison to visual examinations.
- If the Permittee is unwilling or unable to implement the required control measures, then the facility is not eligible for MSGP coverage and must instead apply for an individual permit.

The proposed Appendix B, MSGP maintains its regulatory authority under the CWA even as it shifts from numeric to narrative based water quality-based requirements. Importantly, the permittee shall not cause or contribute to a violation of the basic water quality criteria specified in HAR 11-54-4(a) and (b) - refer to HAR 11-55, Appendix A, Department of Health Standard General Permit Conditions.

DOH has removed monitoring requirements for the parameters listed in the existing Appendix B, Table 34.1 (as discussed below), unless a parameter has been identified as having a benchmark or effluent limitation in the EPA's 2015 MSGP or if the discharge is to an impaired waterbody. In its place, the proposed Appendix B, MSGP has added detailed language to better describe the requirements necessary to meet the DOH expectations and thereby comply with the water quality-based permit conditions. Specifically, the language has been expanded within the Control Measures (Part 2), Inspections (Part 3), and Corrective Action (Part 4) parts of the proposed permit and as a result, DOH expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards in all receiving water classifications.

In addition, the proposed Appendix B, MSGP follows the EPA's 2015 MSGP in covering certain allowable sources of non-storm water which have been both the EPA's and DOH's long standing practice of allowing those discharges from Municipal Separate Storm Sewer Systems (MS4s).

Currently in the existing Appendix B, Table 34.1, monitoring is required for Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Total Phosphorus (TP), Total Nitrogen (TN), Nitrate+Nitrite Nitrogen, Oil and Grease, pH and toxic parameters. DOH has determined that since WQBELs do not exist for BOD and COD, this requirement would be removed, unless a benchmark or effluent limit exists in the EPA's 2015 MSGP, as it only increased the cost for permittees to comply without any reported direct benefit to water quality or enforcement action. For TSS, TP, Nitrate+Nitrite Nitrogen, Oil and Grease, and pH, monitoring was also removed because if a sector didn't already require that pollutant to be monitored in the EPA's 2015 MSGP, then the EPA had already ruled out that pollutant to be a pollutant of concern.

Toxics monitoring has been removed in the proposed Appendix B because, as discussed in the 2015 EPA's MSGP Fact Sheet, page 21 of 80: "EPA has determined that the technology-based numeric and non-numeric effluent limits in the 2015 MSGP, taken as a whole, constitute BPT for all pollutants, BCT for conventional pollutants, and BAT for toxic and nonconventional pollutants that may be discharged in industrial storm water." The DOH has incorporated the same technology-based numeric and non-numeric effluent limits in its proposed Appendix B. Besides those modifications to the EPA's 2015 MSGP required to make the permit appropriate for the State (e.g., formatting, revising references to the EPA/Agency, workflow, etc.), the only substantive changes to the concepts within EPA's 2015 MSGP were:

- 1) Deleting coverage to those facilities that use polymers and/or chemical treatments as part of their controls. Consistent with DOH's HAR Chapter 11-55 Appendix C, coverage is not eligible if polymers are used, and

- 2) Deleting those requirements found in the EPA's 2015 MSGP that are not currently applicable. Those not applicable to the State include requirements for: Endangered and Threatened Species and Critical Habitat as part of the Endangered Species Act Consultation or ESA Section 10 permit as required for the Federal Government; Historical Properties Preservation; Tribal areas; rail lines, salt storage piles or piles containing salt; areas subject to snow, snowmelt, and other requirements intended for other States/Regions.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l). The effluent limitations established in the proposed Appendix B, MSGP are consistent with State and federal anti-backsliding regulations because they are at least as stringent as those in the previous permit and are consistent with both State and federal anti-backsliding regulations [CWA Section 303(d)(4)(B) exception to the anti-backsliding provisions].

The previous permit contained monitoring requirements, numeric effluent limitations, inspection requirements, and requirements to comply with any applicable TMDL, WLA. The proposed Appendix B, MSGP is based on the EPA's 2015 MSGP and contains additional and more prescriptive monitoring and inspection requirements, and also requires compliance with any applicable TMDL WLA. Requirements from EPA's 2015 MSGP that were included in this proposed Appendix B, MSGP include eligibility requirements; allowable non-storm water discharges; control measures; non-numeric technology-based effluent limitations; Effluent Limitations Guidelines; benchmark and other monitoring requirements; requirements for discharges to impaired waters; inspections; escalating actions for benchmark exceedances; Storm Water Pollution Prevention Plan requirements; reporting and record keeping requirements; and sector specific requirements. The storm water requirements in the proposed Appendix B, MSGP, in lieu of numeric effluent limitations, establishes non-numeric effluent limitations for storm water, including control measures, inspections, benchmarks, corrective actions, etc.) which when used in combination, are as, or more stringent than the numeric limitations. Additionally, Part 4 of the proposed Appendix B, MSGP contains an escalating corrective action requirement for repeated or excessive storm water results above benchmark levels. These escalating actions provide additional requirements so that Permittees will be more attentive, thoughtful, and complete in their initial responses/actions to reduce storm water pollutants from discharging and entering receiving water bodies and degrading water quality.

Additional requirements were added to the proposed Appendix B, MSGP that makes it more stringent than the previous permit:

- Part 1.1.4.5 of the proposed Appendix B, MSGP - Specifies that discharges that fail to comply with the narrative and numeric permit requirements are not authorized and may be subject to enforcement and applicable penalties.
- Parts 2.1 and 2.11 of the proposed Appendix B, MSGP – Requires control measures to be selected, designed, installed, and implemented in accordance with good engineering practice, manufacturers specifications, and the DOH direction.

- Part 2.2.1 of the proposed Appendix B, MSGP – Contains a narrative WQBEL from HAR 11-54-4 and specifies that the DOH can require a Permittee to undertake additional control measures (to meet the narrative water quality-based effluent limit) on a site-specific basis.

Consistent with HAR 11-54-4, Basic Water Quality Criteria Applicable to All Waters, this permit establishes a narrative WQBEL that prohibits discharges which cause or contribute to a State water exceeding or otherwise not complying with basic water quality criteria. Discharges authorized by this permit shall not include: 1) materials or substances that will settle to form sludge or bottom deposits; 2) floating debris, grease, oil, scum or other floating materials; 3) substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters; 4) high or low temperature effluent, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water; 5) substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and, 6) soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

Storm water discharges authorized by this permit shall be of the quality necessary to comply with the basic water quality criteria identified above. Permittees shall achieve this by either isolating industrial activities from contact with industrial or other pollution generating activities or by treatment, implementation of best management practices, control measures, or other methods. Discharges which fail to meet the WQBEL above are in non-compliance with this permit and may be subject to enforcement actions as authorized by law.

- Parts 1.2.3 and 2.2.1 of the proposed Appendix B – Specifies that the DOH can require a Permittee under the proposed Appendix B to obtain coverage under an individual NPDES permit if there is information from any source indicating that the Permittee's discharge is not being controlled as necessary to meet applicable water quality standards.
- Parts 4.1 and 4.2 of the proposed Appendix B, MSGP – Specifies that SWPPP review and revision must be done when specified by the DOH and so that DOH has no further technical comments or requirements.

- Parts 6, 6.2, and 6.3 of the proposed Appendix B, MSGP - Requires the Permittee to provide and submit photo documentation of the control measures and SWPPP implementation.

As authorized by HRS 342d-55(d), this permit requires monitoring of storm water discharges as well as photographic documentation of control measure implementation. This permit relies on multiple methods of monitoring, including, visual inspections as well as discharge sampling. To correlate effectiveness and implementation of control measures with the quality of discharge when discharge sampling is required, this permit requires the Permittee to take and retain photographic documentation of control measure/SWPPP implementation when storm water discharge sampling is required. Photograph documentation of control measure/SWPPP implementation coupled with chemical analysis of discharge samples ensures Permittees and the DOH have adequate information to determine effectiveness of control measures/SWPPPs and whether the Permittee is complying with the terms of the permit. The photographic documentation is to be treated consistent with other data associated with analytical storm water monitoring and both maintained and submitted by the Permittee. Given that monitoring information is to be electronically submitted, along with the prevalence of digital cameras, requiring photographic documentation is not expected to be a significant compliance burden but provides a strong incentive to ensure control measures are in place and maintained prior to and during a storm even which results in storm water discharge.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed Appendix B, MSGP are no less stringent than in the previous permit. As explained above, the proposed Appendix B, MSGP is utilizing a different approach which follows EPA's 2015 MSGP and places greater emphasis on taking corrective actions to minimize further pollutant discharges than on exceeding a numeric limit DOH determined to be infeasible per 40 CFR 122.44(k). Therefore, the proposed Appendix B, MSGP is consistent with antidegradation provisions of 40 CFR 131.12 and HAR 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

Not applicable.

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

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

6. Name and telephone number of a person to contact for additional information.

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

7. For NPDES permits, provisions satisfying the requirements of 40 CFR 124.56. The CWA requires that discharges from existing facilities, at a minimum, meet technology-based effluent limitations considering, among other things, the technological capability of permittees to control pollutants in their discharges. WQBELs are required by CWA Section 301(b)(1)(C). Both technology-based and WQBELs are implemented through NPDES permits.

Both technology-based limits using the federally promulgated ELGs and State WQS have been applied.

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

Not applicable.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix E
Authorizing Discharges of Once Through Cooling Water
Less Than One (1) Million Gallons Per Day

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

This general permit covers facilities in the State of Hawaii that discharge once through cooling water of a total flow of less than one million gallons per day.

“Once through cooling water” means water passed through the main cooling condensers one or two times for the purpose of removing waste heat.

This general permit is not intended for use by facilities which discharge once through cooling water of a total flow of one million gallons per day or greater nor for facilities which recirculate and reuse cooling water in excess of the definition of “once through cooling water.”

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

The allowed discharge is of cooling water of a total flow of less than one million gallons per day which is not commingled with other process water.

The most notable pollutant in the discharge is heat, however, additional pollutants may be present in the discharge dependent upon the source of the cooling water.

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

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 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 [Removed]
14. Forms [Revised]

Table 34.3 Effluent Limitation and Monitoring Requirements for Discharge of Once Through Cooling Water Less Than One (1) Million Gallons Per Day [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.3 detail the effluent limitations and monitoring requirements for once through cooling water discharges.

Basis for Discharge Limitations and Monitoring Requirements

The effluent limitations and monitoring requirements are based on the determinations established for the individual NPDES permits that had been issued for once-through, non-contact cooling water discharges of flow less than one (1) million gallons per day. Accordingly, the bases for the proposed effluent limitations are the HAR Chapter 11-54, Water Quality Standards.

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

Temperature: The temperature effluent limitation is based on HAR 11-54. Temperature criteria for all waterbody classification types require that the temperature not vary more than one degree Celsius from ambient conditions. This water temperature limitation as a discharge effluent limitation protects aquatic communities from thermal impacts.

Total Residual Oxidants: The permits established an effluent limitation for chlorine expressed as TRO. The source for the cooling water associated with these types of facilities are generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Also, the application of chlorine may be performed for the operation and maintenance of the piping system in regards to biofouling. Therefore, the general permit includes TRO limitations based on HAR 11-54-4, freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges.

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

maintained in regards to oily discharges. In addition, the general permit includes a narrative prohibition that there shall be no visible oil sheen in the effluent. The limitation for suspended solids is to ensure that the operation and maintenance of the cooling water system does not result in excessive discharge of particulate material. In addition, the general permit includes a narrative prohibition that there shall be no discharge of wastes from the physical cleaning of the cooling systems.

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

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

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

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

Requirements for Discharge into Class 1 or Class AA Waters

For discharges to Class 1 and Class AA waters, the treatment system plan will be submitted with the NOI to allow for review of the plan.

Chapter 11-55, Appendix E Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is the maximum allowable term for NPDES permits for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(3) (NEW)

(3) Facilities with cooling water intake structures subject to the requirements of Section 316(b) of the Clean Water Act.

Rationale:

40 CFR 125, Subpart I contains requirements applicable to cooling water intake structures under Section 316(b) of the Clean Water Act for facilities that have at least one cooling water intake structure that uses at least 25 percent of the water it withdraws for cooling purposes and has a design intake flow greater than two (2) million gallons per day. The DOH has decided not to cover these types of facilities under this general permit. The requirements in 40 CFR 125, Subpart I can be substantial, and the DOH believes this is more appropriate for an individual permit.”

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

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

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would

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

Section 3(c) [New]

Original: (NEW)

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

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

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

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

Rationale:

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date.

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

Section 4(a)

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

Revised:

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

Rationale:

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

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

Section 4(b)

Original: *The owner or its authorized representative shall;*

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(d)

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

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

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

Rationale:

The original text has been moved to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent.

Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

Section 4(e) [New]

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

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

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

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

Rationale:

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

Section 6(a)(4)(C) [Removed]

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: (REMOVED)

Rationale:

The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Directions on current procedures are now provided in the revised section 8(a)(6).

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

Section 8(a)(6) (NEW)

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

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

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

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

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

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

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

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.3 in the proposed revision, and therefore, the previous

language has been added. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

Original: *The permittee shall;*

Revised: *The permittee or its duly authorized representative shall;*

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;*

Revised: *The permittee or its duly authorized representative shall;*

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), 9(b), and 9(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 13

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

Revised: (DELETED)

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for notices of general permit coverage has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. Section 13 was removed in accordance with this new process.

Section 14

Original: 14. Forms;

Revised: 13. Forms;

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.3

Original:

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (MGD)	{2}	Continuous	Recorder/ Totalizer
Temperature (°C)	±1 from ambient	Once/Quarter {11}	Grab
Total Residual Oxidants (mg/l) {3}	0.013{4} 0.019{5}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	5 {6}	Once/Quarter {11}	Grab {7}
Oil and Grease (mg/l)	15	Once/Quarter {11}	Grab {8}

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

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
pH (standard units)	{9}	Once/Quarter {11}	Grab {10}

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

Revised:

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (MGD)	{2}	Continuous	Recorder/ Totalizer
Temperature (°C)	±1 from ambient	Once/Quarter {11}	Grab
Total Residual Oxidants {3} (<u>µg/l</u>)	<u>13</u> {4} <u>19</u> {5}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	5 {6}	Once/Quarter {11}	Grab {7}
Oil and Grease (mg/l)	15	Once/Quarter {11}	Grab {8}
pH (standard units)	{9}	Once/Quarter {11}	Grab {10}

MGD = million gallons per day

°C = degrees celsius

mg/l = milligrams per liter

µg/l = micrograms per liter

Rationale:

Appendix E limits Total Residual Oxidants to 19 µg/L (0.019 mg/L) for discharges to freshwater and 13 µg/L (0.013 mg/L) for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Clarifies that units for Appendix E are consistent with Chlorine in HAR Chapter 11-54-4(c)(3), micrograms per liter.

Table 34.3 Footnote 3

Original: Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136.

Revised: Total residual oxidants (TRO) is obtained using the amperometric titration method for total residual chlorine described in 40 CFR Part 136. If total residual chlorine cannot be analyzed immediately (i.e., within the 15-minute holding time as required by 40 CFR Part 136), total residual chlorine field test kits that are compliant with 40 CFR 136 methods may be utilized for measurement of total residual oxidants for compliance determinations. A test kit with a method detection limit of 20 µg/l or lower must be used. A discharge monitoring result with a total residual chlorine concentration greater than or equal to 20 µg/l shall be deemed out of compliance with the TRO effluent limitation. If the permittee cannot analyze for total residual chlorine within the 15-minute holding time, the permittee shall document the reason(s) why and include this explanation with their DMR.

Rationale:

Appendix E limits Total Residual Oxidants to 19 µg/L (0.019 mg/L) for discharges to freshwater and 13 µg/L (0.013 mg/L) for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Chlorine- and bromine-based biocides (total residual oxidants or TROs) are widely used for microbiological control in cooling tower systems. These halogen compounds for strong oxidizing agents in water, which is how they kill bacteria and other microorganisms. Therefore, DOH has determined that a reasonable potential exists for non-contact cooling water effluent discharges to cause or contribute to an excursion of the chlorine water quality criteria. Since chlorine makes up a portion of the TRO concentration, DOH has conservatively applied the chlorine limit in 11-54-5(c)(3) to TRO. DOH has thus implemented a water quality-based effluent limit for TROs as required per 40 CFR 122.44(d). 40 CFR 136 requires Total Residual Chlorine to be analyzed within 15 minutes of sample collection. During the past permit term, permittees that operate facilities that use non-contact cooling water informed DOH that their facilities are often located away from laboratories making it difficult, if not infeasible, in certain situations to meet the 15-minute holding time requirement. The laboratory method is ideal for compliance sampling, as it has a method detection limit low enough to determine

compliance with HAR 11-54 water quality standards, as other methods have method detection limits higher than the chlorine water quality standard. This footnote has been revised to specify that field test kits for total residual chlorine are acceptable for compliance monitoring provided that the method detection limit is 20 µg/l or lower which should be achievable by Standard Method 4500-CL G-2011 compliant field colorimeters. The permittee must also document and submit with the DMR why they could not comply with the 15-minute holding time to ensure that the field test kit was only used when the holding time was found to be infeasible.

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

Not applicable.

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

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

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

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

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

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

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

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

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

Not applicable.

National Pollutant Discharge Elimination System
General Permit Fact Sheet for
Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix F
Authorizing Discharges of Hydrotesting Water

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

This general permit covers facilities or activities in the State of Hawaii that release or discharge hydrotesting waters to state waters.

"Hydrotesting Waters" means water used to test the integrity of a tank or pipeline, water used to flush a tank or pipeline, and effluent used to disinfect a tank or pipeline.

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

The allowed discharge is of hydrotesting waters which is not commingled with other process water or stormwater.

If potable water is used as the source water, the most notable pollutant in the discharge is residual chlorine used during the disinfection process. However, additional pollutants may be present in the discharge dependent upon a source water other than potable water.

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

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 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 for Transmission Line Testing [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]

9. *Submittal Requirements [Revised]*
10. *Additional Conditions*
11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Removed]*
14. *Forms [Revised]*

Table 34.4 Effluent Limitation and Monitoring Requirements for Hydrotesting Water Discharges [Revised]

Sections 1 through 5 and 7 through 14 are basic requirements necessary to the General Permit. Section 6 and Table 34.4 detail the effluent limitations and monitoring requirements for hydrotesting water discharges.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from hydrotesting. The general permit requirements are based on the HAR Chapter 11-54, Water Quality Standards and the determination that discharges are one-time or intermittent, of short duration, of relatively small volume, and result in de minimis impacts.

Water used for hydrotesting may either be from potable or non-potable sources. The general permit requires the hydrotesting water be monitored prior to discharge. The analytical results shall be submitted to the Director of Health for review and approval. The information provided in the Notice of Intent (NOI) will be used for evaluating compliance with applicable water quality standards. If any constituents submitted in the NOI exceed the applicable water quality standards, the Director of Health may require the owner or operator to apply for an individual permit or provide treatment as needed.

The effluent parameters in Table 34.4 are based on the pollutants of concern for the discharge of hydrotesting water. The source for the hydrotesting water is generally from, but not limited to, potable water systems or on-site ground water. The potable water source water may contain chlorine residuals for disinfection purposes. Therefore, the general permit includes total residual chlorine limitations per HAR Section 11-54-04(c)(3), and freshwater and saltwater acute toxicity criteria for chlorine. These limitations protect freshwater and saltwater organisms from acute toxicity chlorine discharges. Additional parameters that may require monitoring are based on the pollutants that may be present when non-potable water is used and/or when the vessel or lines being tested are not of new construction and residual substances may be present.

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

Requirements for Discharge into Class 1 or Class AA Waters

For discharges to Class 1 and Class AA waters, the hydrotesting best management practices plan shall be submitted with the NOI to allow for review of the plan.

Chapter 11-55, Appendix F Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(1)

Original: *Discharges of hydrotesting waters into a sanitary sewer system; and*

Revised: *Discharges of hydrotesting waters into a sanitary sewer system;*

Rationale:

The word “and” was removed to account for the new sections 2(a)(3) and 2(a)(4).

Section 2(a)(2)

Original: *Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system.*

Revised: *Discharges of hydrotesting waters which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s); except if the permittee is the owner of the drainage system;*

Rationale:

The period at the end of the sentence was replaced with a semi-colon to account for the new sections 2(a)(3) and 2(a)(4).

Section 2(a)(3) [New]

Original: (NEW)

Revised: Discharges of hydrotesting waters with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and

Rationale:

This limitation was added to prevent hydrotesting water discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(4) [New]

Original: (NEW)

Revised: Discharges of hydrotesting waters that the director finds more appropriately regulated under an individual permit.

Rationale:

This limitation was added to prevent hydrotesting water discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(c)(1) – (9) [New]

Original: (NEW)

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

(1) Treat hydrotesting waters with controls to minimize discharges of pollutants. Appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of hydrotesting controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets;

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

- (3) Use an oil-water separator or other suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if hydrotesting waters are expected to contain these materials after hydrotesting the tank or pipeline;
- (4) To the extent feasible, use vegetated, upland areas to infiltrate hydrotesting waters before discharge. State waters are prohibited from being used as part of the treatment area;
- (5) At all points where hydrotesting waters are discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters;
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process;
- (7) Replace or clean the filter media used in treatment devices when the pressure differential equals or exceeds the manufacturer's specifications;
- (8) Ensure that the tank or pipeline to be hydrotested is clear of debris or other pollutants that may be mobilized by hydrotesting waters or provide adequate treatment to treat and/or remove these pollutants prior to discharge; and
- (9) Properly dechlorinate hydrotesting waters prior to discharge in accordance with the effluent limitation for total residual chlorine in Table 34.4.

Rationale:

Discharges authorized by this permit are often episodic. As this permit only authorizes the discharge of hydrotesting waters, facilities discharging under this permit are not permanent, do not have long term treatment systems, and may not feasibly have continuous discharge monitoring equipment.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards. For potable waters, the most likely pollutant of concern is chlorine. For non-potable waters, there may be a wide variety of potential pollutants, depending on the non-potable source. Further, Permittees commonly chlorinate the water used to perform hydrotesting and flushing, especially for hydrotesting of water utility pipes.

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) Four years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(5) are adopted,*

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 or thirty days before the expiration date of the applicable notice of general permit coverage.*

Revised:

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

Rationale:

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

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

Section 4(b)

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

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

Rationale:

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

Section 4(d)

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

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

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

Rationale:

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

Section 4(e) [New]

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

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

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

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

Rationale:

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

Section 6(a)

Original: *The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4. (Effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

Revised: *The water quality of the hydrotesting water shall be limited and monitored by the permittee as specified in this section and in Table 34.4.*

Rationale:

As the proposed permit will not allow discharges of toxics above water quality standards, effluent limitations for toxics are not included in the proposed permit. The sentence in parentheses applied to effluent limitations for toxic constituents. Therefore, in accordance with the new restrictions and removal of toxic effluent limitations, the language in parentheses was removed. Further, applicability of limits based on discharges to fresh waters or saline waters are now exclusively identified in footnotes to Table 34.4 for clarity. Removal of toxic effluent limitations in the proposed permit are discussed later in this fact sheet.

Section 6(a)(4)(c) [Removed]

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, the permittee shall indicate that the test result is "less than #," where the # is the lowest detection limit of the test method used.*

Revised: (REMOVED)

Rationale:

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

Section 8(a)(2)

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

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

Rationale:

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

Section 8(a)(3)

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

Revised: *(3) For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL)*

and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

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

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

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

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

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

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

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.4 in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as

how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Section 8(c)(2)

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

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

Rationale:

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

Section 8(c)(3)

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

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

Rationale:

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

Section 8(d) [Removed]

Original: *The permittee shall notify the director of the start of the hydrotesting activities in writing within one week before the start of the hydrotesting activities.*

Revised: (REMOVED)

Rationale:

Previously, this requirement would be used to track when hydrotesting activities would begin for CWB's own records and use. In the past, this information has typically not been used to perform any compliance activities. Regulatorily, once the NGPC is effective, the permittee is required to comply with the terms of the general permit regardless of when discharge activities begin. Further, section 8(a)(2) has been revised to clarify that the reporting period begins on the effective date of the NGPC, with permittees reporting "no discharge" for calendar months with no discharge activities. Therefore, CWB would be able to determine when discharge activities begin based on what is reported in the DMR, should that information be necessary for regulatory actions. Ultimately, this requirement created additional reporting requirements on the permittee, and additional compliance submission processing time for CWB, for no real benefit to CWB's regulatory oversight and therefore has been removed.

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 and imprisonment for knowing violations.”

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

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

Rationale:

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

Section 9(c)

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 [Removed]

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

Revised: (REMOVED)

Rationale:

As discussed in the rationale for the revisions for section 3(c), the renewal process for an NGPC has been revised, and no longer requires permittees to submit renewal NOIs prior to the expiration of the general permit. Section 13 was removed in accordance with this new process.

Section 14

Original: 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/>

Revised: 13. Forms

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

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.4

Original:

TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (gallons)	{2}	Once/Discharge {12}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	Once/Discharge {12}	Grab {3}
Turbidity (NTU)	{2}	Once/Discharge {12}	Grab {3}
pH (standard units)	{4}	Once/Discharge {12}	Grab {3}, {5}
Total Residual Chlorine (µg/l) {6}	19{7} 13{8}	Once/Discharge {12}	Grab {3}
Toxic Pollutants {9}	{10}	Once/Discharge {12}	{3}, {11}

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = nephelometric turbidity units

Revised:

TABLE 34.4

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR HYDROTESTING WATER DISCHARGES

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
Quantity of Discharge (gallons)	<u>Report</u>	Once/Discharge	Calculated or Estimated
Total Suspended Solids (mg/l)	55	Once/Discharge	Grab {3}
pH (standard units)	<u>6.0 - 8.0</u>	Once/Discharge	Grab {3}, {4}
Total Residual Chlorine (µg/l) {5}	19{6} 13{7}	Once/Discharge	Grab {3}

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = nephelometric turbidity units

Rationale:

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

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

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was

added. 55 mg/l is the applicable dry season water quality criteria for intermittent discharges to inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As mentioned in the rationale for the proposed addition of 2(c) in the permit, discharges authorized by this permit are often episodic discharges of relatively low volumes (the average reported discharge over the past five years was 45,000 gallons). As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, and still prohibits discharge of extreme pH values from hydrotesting waters that may potentially have immediate impacts at the location of discharge.

In addition, Toxics were also removed based on analysis of five (5) years of discharge monitoring data from hydrotesting (Appendix F) general permitted facilities. Within the past five (5) years, the DOH issued approximately 108 NGPCs associated with HAR 11-55, Appendix F. Of the 108 NGPCs, only ten (10) permittees reported any discharges and of the ten (10), only two (2) dischargers reported discharges of total residual chlorine greater than the associated waterbody's water quality standards (NPDES permit HI0021902 and NGPC File No. HI18FF718). The other eight (8) permittees did not report exceedances of water quality standard based effluent limits for toxics. It should be noted that due to the common practice of chlorination and dechlorination of hydrotesting waters, the total residual chlorine effluent limitation shall be retained in the proposed revision. It is also common that potable water is used for hydrotesting, which is not expected to contain elevated levels of toxics, as potable water is treated to levels sufficient for human consumption. Given that no dischargers reported violations of toxic effluent limitations (except for total residual chlorine), the largely episodic nature of the discharges, and the newly required treatment requirements under section 2(c), numeric limits for TSS, and inclusion of the narrative prohibition of discharges which cause exceedances of basic water quality criteria, there is no reasonable potential for toxics to cause or contribute to an exceedance of water quality standards and as such, toxic effluent limitations (except for total residual chlorine) were removed from the table.

In addition, the DOH is also not establishing effluent limitations for nutrients (i.e., total nitrogen, ammonia nitrogen, nitrate plus nitrite nitrogen, and total phosphorus). Water quality criterion for total nitrogen, ammonia nitrogen, nitrate plus nitrite, and total phosphorus, are established as geometric means, and not to exceed percentiles. They are not based on potential toxicity to aquatic life or human health impacts and are instead based on natural background concentrations that would be expected without human influence on the environment and are developed from water quality observed at high quality reference stations.

Unlike toxics, nutrients are not conservative pollutants. Because of the biological and physical variables, there is a delay from when the parameter is discharged until impacts are observed. Additionally, some nutrient criteria, such as chlorophyll a and turbidity are reflective of response conditions and short-term exceedances are often not indicative of the long-term quality of the receiving water. Thus, it is long-term impacts resulting in the change of biota and eutrophication of the receiving waters that must be considered. These impacts result over extended periods of time, ranging from months to years. Biological responses in the receiving water from day-to-day variation in effluent pollutant concentrations are not significant, as chronic biological responses occur over months to years of continuous elevated nutrient loading. DOH-CWB evaluates consistency with these criteria based on a 1-year exposure duration to allow for seasonal fluctuations within the receiving water concentrations and acknowledging that the environmental response to nutrients typically occurs in the far-field and shows minimal response over short periods of time. As mentioned in the rationale for the proposed addition of 2(c) in the permit, discharges authorized by this permit are often episodic discharges of relatively low volumes (the average reported discharge over the past five years was 45,000 gallons). The DOH expects there will be no water quality impacts or degraded waterbody conditions by not establishing numeric effluent limits for nutrients. For this reason, the DOH has decided not to require limitations on nutrients in this permit.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l).

Revisions to the total suspended solids effluent limitation comply with anti-backsliding requirements, as the new limit now imposes effluent limitations on all waterbodies, when the numeric limit would previously only apply to discharges to streams. The limit was also based on the most stringent

applicable water quality standard for streams and is therefore more stringent than the previous permit.

Removal of the turbidity limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on visible plumes that result from the discharge and a new requirement to provide treatment and filtration to further eliminate discharges with high turbidity. Further, by limiting total suspended solids, it is expected that turbidity will be reduced as a result of lower total suspended solids values in the discharge.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, while still prohibiting discharge of extreme pH values from hydrotesting waters that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Removal of the toxic pollutant limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on discharges that exceed toxic parameter water quality standards in HAR 11-54. Based on this prohibition, discharges covered under this permit will not have reasonable potential to cause or contribute to exceedances of water quality standards for toxic parameters. Therefore, the removal of the numeric effluent limitation for toxic parameters and the addition of the new prohibition means that the requirements for toxic parameters are more stringent than the previous permit.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR, 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR, 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

As discussed in the satisfaction of anti-backsliding requirements section above, effluent limitations and requirements are at least as stringent or more stringent than the previous permit. Compliance with the limits and requirements requires permittees to provide the best treatment applicable to their discharge. Based on this, discharges authorized under this permit are expected to be protective of the receiving water body, and will not degrade water quality within these water bodies in accordance with antidegradation policy requirements.

Table 34.4 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 discharge, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.4 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: If the permittee collects more than one sample during the month, the maximum value for each pollutant parameter shall be reported. For pH, only report the minimum and maximum for the month. Laboratory results of all sampling shall be included with the discharge monitoring report.

Rationale:

The previous language only applied to flow, TSS, and turbidity limits. As the TSS limit changed to a single value applicable to all discharges and the turbidity limit was removed, the previous language was replaced. 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 month. This language replaces the previous language in footnote 12.

Table 34.4 Footnote 4 [Removed]

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

Revised: (REMOVED)

Rationale:

As the pH effluent limitation has been revised to have one pH range applicable to all discharges, this language is no longer applicable. Therefore, footnote 4 was removed.

Table 34.4 Footnote 5 [Removed]

Original: (5) *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Revised: (4) *The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Rationale:

Footnote 5 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 6

Original: {6} *The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged.*

Revised: {5} *The permittee shall measure for total residual chlorine immediately after obtaining a sample and only when effluent from disinfection operations is discharged. If total residual chlorine cannot be analyzed immediately (i.e., within the 15-minute hold time as required by 40 CFR Part 136), total residual chlorine field test kits that are compliant with 40 CFR Part 136 methods may be utilized for measurement of total residual chlorine for compliance determinations. A test kit with a method detection limit of 20 µg/l or lower must be used. A discharge monitoring result with a total residual chlorine concentration greater than or equal to 20 µg/l shall be deemed out of compliance with the chlorine effluent limitation. If the permittee cannot analyze for total residual chlorine within the 15-minute holding time, the permittee shall document the reason(s) why and include this explanation with their DMR.*

Rationale:

Appendix F limits Total Residual Chlorine to 19 µg/L for discharges to freshwater and 13 µg/L for discharges to saltwater. These limitations are derived from the Water Quality criteria in HAR 11-54. Chlorine is typically utilized in the hydrotesting activity and/or potable water containing chlorine is typically utilized. Therefore, DOH has determined that a reasonable potential exist for hydrotesting effluent discharges to cause or contribute to an excursion of the chlorine water quality criteria, and a water quality-based effluent limit for chlorine is required per 40 CFR 122.44(d). 40 CFR 136 requires Total Residual Chlorine to be analyzed within 15 minutes of sample

collection. During the past permit term, permittees informed DOH that their hydrotesting activities are often located away from laboratories, making it difficult if not infeasible in certain situations to meet the 15-minute hold time requirement. The laboratory method is ideal for compliance sampling, as it has a method detection limit low enough to determine compliance with HAR 11-54 water quality standards, as other methods have method detection limits higher than the chlorine water quality standard. This footnote has been revised to specify that field test kits for total residual chlorine are acceptable for compliance monitoring provided that the method detection limit is 20 µg/l or lower which should be achievable by Standard Method 4500-CL G-2011 compliant field colorimeters. The permittee must also document and submit with the DMR why the 15-minute hold time could not be complied with, to ensure that the field test kit was only used when the hold time was found to be infeasible.

Footnote 6 was also re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 7

Original: (7) This limitation applies when hydrotesting water is discharged into fresh waters.

Revised: (6) This limitation applies when hydrotesting water is discharged into fresh waters.

Rationale:

Footnote 7 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 8

Original: (8) This limitation applies when hydrotesting water is discharged into saline waters.

Revised: (7) This limitation applies when hydrotesting water is discharged into saline waters.

Rationale:

Footnote 8 was re-numbered to account for the deletion of footnote 4.

Table 34.4 Footnote 9 [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 or as identified by the director. The permittee shall measure for the total recoverable portion of all metals.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.4 Footnote 10 [Removed]

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

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.4 Footnote 11 [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 limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 11 was removed.

Table 34.4 Footnote 12 [Removed]

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

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 12 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 40 CFR §124.10 and the address where comments will be received;
 - (ii) Procedures for requesting a hearing and the nature of that hearing; and
 - (iii) Any other procedures by which the public may participate in the final decision.

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

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

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

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

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

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

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

Not applicable.

National Pollutant Discharge Elimination System

General Permit Fact Sheet for

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

Authorizing Discharges Associated with Construction Activity Dewatering

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

This general permit covers facilities or activities in the State of Hawaii that discharge waters from the construction dewatering process to state waters.

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

The allowed discharge is of waters from construction dewatering activities which is not commingled with other process water or stormwater.

This general permit is not intended for return flow or overflow from dredged material dewatering or discharges of construction dewatering effluent from leaking underground storage tank remediation activities.

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

Not applicable.

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 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 [Removed]
14. Forms [Revised]

*Table 34.5 Effluent Limitations and Monitoring Requirements for
Construction Dewatering Discharges [Revised]*

Sections 1 through 5 and 7 through 13 are basic requirements necessary to the General Permit. Section 6, Section 14, and Table 34.5 detail the effluent limitations and monitoring requirements for construction dewatering discharges.

Basis for Discharge Limitations and Monitoring Requirements

There are no effluent guidelines promulgated for discharges resulting from construction dewatering activities. The general permit discharge limitations and monitoring requirements are based on HAR Chapter 11-54, Water Quality Standards.

The Director of Health determined that:

- 1) The conditions and discharge limitations established in the proposed general permit ensure that the existing beneficial uses and quality of state waters will be maintained and protected;*
- 2) Discharges regulated in the general permit should not lower receiving water quality if the terms and conditions of the general permit are met; and*
- 3) Discharge to restricted “no discharge” areas is prohibited.*

The effluent parameters in Table 34.5 are based on the pollutants of concern for the discharges from construction dewatering activities.

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

Requirements for Discharge into Class 1 and Class AA Waters

For discharges to Class 1 and Class AA waters, the site-specific dewatering plan, dewatering system maintenance plan, and construction pollution prevention plan will be submitted with the Notice of Intent (NOI) to allow review of the plans.

Chapter 11-55, Appendix G Revisions

Main

Original: *This General Permit is effective on [date] and expires four years from this date, unless amended earlier.*

Revised: *This General Permit is effective on [date] and expires five years from this date, unless amended earlier.*

Rationale:

Following revision of these general permits, the term will be five years after the effective date of the rules change, which is equivalent to the maximum allowable term for NPDES permits per 40 CFR §122.46(a).

Section 2(a)(5)

Original: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; and*

Revised: *Discharges of construction dewatering effluent that is subject to the general permit specified in appendix D of chapter 11-55; [and]*

Rationale:

Removed “and” to insert proposed Section 2(a)(6).

Section 2(a)(6) [New]

Original: *(NEW)*

Revised: *Discharges of construction dewatering effluent with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54; and*

Rationale:

This limitation was added to prevent dewatering discharges containing toxic constituents in exceedance of the water quality standards listed in HAR §11-54-4(c)(3).

Section 2(a)(6)

Original: *(6) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Revised: *(7) Discharges of construction dewatering effluent that the director finds more appropriately regulated under an individual permit.*

Rationale: *Renumbered due to addition of proposed Section 2(a)(6).*

Section 2(c) [New]

Original: *(NEW)*

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

- (1) Treat dewatering discharges with controls to minimize discharges of pollutants. Appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, filtration systems (e.g., bag or sand filters), and passive treatment systems that are designed to remove sediment. Appropriate controls to use downstream of dewatering controls to minimize erosion include, but are not limited to, vegetated buffers, check dams, riprap, and grouted riprap at outlets.
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
- (3) Use an oil-water separator or suitable filtration device (such as a cartridge filter) that is designed to remove oil, grease, or other products if dewatering water is found to control these materials.
- (4) To the extent feasible, use vegetated, upland areas to infiltrate dewatering water before discharge. State waters are prohibited from being used as part of the treatment area.
- (5) At all points where dewatering 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.
- (6) Dispose backwash water offsite in accordance with all governmental regulations or return it to the beginning of the treatment process.
- (7) Replace or clean the filter media used in dewatering devices when the pressure differential equals or exceeds the manufacturer's specifications.

Rationale:

This permit authorizes the discharge of dewatering effluent associated with construction activity. This most often includes dewatering of storm water accumulated in excavated pits or groundwater infiltration during trenching, excavation, or other similar earth work activities. Discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity

vs. discharging during construction activity). As this permit only authorizes the discharge of dewatering effluent associated with construction activities, facilities discharging under this permit are not permanent, do not have long term treatment systems, and may not feasibly have continuous discharge monitoring equipment.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards due to the most likely pollutant (sediment) being present in the effluent. The current/previous permit authorizes discharges subject to numeric limits. However, the current/previous permit only requires the sampling and monitoring of effluent once per discharge. The current permit's discharge limitation and monitoring requirements fail to adequately protect receiving waters because the singular per discharge monitoring requirement doesn't reflect the variable nature of effluent quality.

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 optical 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 construction dewatering 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. This approach is similar to the one taken by the EPA in the national construction general permit.*
- *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 optically 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) Four years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(6) are adopted,*

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

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 three 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 sixty days after effective date of the reissued general permit, unless one of three actions are taken by the permittee. In the new process, permittees would have sixty days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

Section 4(a)

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

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

Rationale:

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

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

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

Section 4(b)

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

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

Rationale:

The previous text specified that the owner or its authorized representative shall provide information for the 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(b)(2)

Original: *Legal name, street address, telephone and fax numbers, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Revised: *Legal name, street address, telephone number, and contact person(s) for the designer(s) of the dewatering or treatment facility(ies) or both;*

Rationale:

The DOH no longer requires or uses fax numbers. The requirement to submit a fax number is proposed to be removed.

Section 4(d)

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

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

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

Rationale:

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

Section 4(e) [New]

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

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

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

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

Rationale:

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

Section 6(a)

Original: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5 (Daily maximum effluent limitations for saline water apply only when discharges to saline water occur and daily maximum effluent limitations for fresh water apply only when discharges to fresh water occur.)*

Revised: *The effluent shall be limited and monitored by the permittee as specified in this section and in Table 34.5.*

Rationale:

As the proposed permit will not allow discharges of toxics above water quality standards, effluent limitations for toxics are not included in the proposed permit. The sentence in parentheses applied to effluent limitations for toxic constituents. Therefore, in accordance with the new restrictions and removal of toxic effluent limitations, the language in parentheses was removed. Further, applicability of limits based on discharges to fresh waters or saline waters are now exclusively identified in footnotes to Table 34.5 for clarity.

Removal of toxic effluent limitations in the proposed permit are discussed later in this fact sheet.

Section 6(a)(4)(C)

Original: *If the test result is not detectable, indicate;*

Revised: *If the test result is not detectable, the permittee shall indicate that;*

Rationale:

The DOH is clarifying who shall provide the indication.

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 reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).*

Rationale:

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

Section 8(a)(3)

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

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

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

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

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

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

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

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

Rationale:

Requirements on reporting when collecting additional data are now solely identified in Table 34.5 Footnote {2} in the proposed revision, and therefore, the previous language has been replaced. To reduce the need for re-numbering sections, new language regarding reporting of monitoring results have been added to replace the previous section 8(a)(3) language. This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

Sections 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. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making oral reports to the DOH 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. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and specify that the permittee's duly authorized representative is also responsible for making written reports.

Section 8(d) [Removed]

Original: *The permittee shall notify the director of the start of the dewatering activities in writing within one week before the start of the dewatering activities.*

Revised: (REMOVED)

Rationale:

Previously, this requirement would be used to track when dewatering activities would begin for CWB's own records and use. In the past, this information has typically not been used to perform any compliance activities. Regulatorily, once the NGPC is effective, the permittee is required to comply with the terms of the general permit regardless of when discharge activities begin. Further, section 8(a)(2) has been revised to clarify that the reporting period begins on the effective date of the NGPC, with permittees reporting "no discharge" for calendar months with no discharge activities. Therefore, CWB would be able to determine when discharge activities begin based on what is reported in the DMR, should that information be necessary for regulatory actions. Ultimately, this requirement created additional reporting requirements on the permittee, and additional compliance submission processing time for CWB, for no real benefit to CWB's regulatory oversight and therefore has been removed.

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 and imprisonment for knowing violations.”

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

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the

information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Rationale:

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

Section 9(c)

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 [Removed]

Original: *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: (REMOVED)

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 sixty days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.

Section 14

Original: 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/>

Revised: 13. Forms

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

Rationale:

Section 14 was re-numbered to section 13 to account for the removal of the previous section 13.

Table 34.5

Original:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Quantity of Discharge (GPD or gpm)	{2}	{3} {11}	Calculated or Estimated
Total Suspended Solids (mg/l)	{2}	{4} {11}	Grab
Turbidity (NTU)	{2}	{4} {11}	Grab

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

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency	Type of Sample
Oil and Grease (mg/l)	15	{4} {11}	Grab {5}
pH (standard units)	{6}	{4} {11}	Grab {7}
Toxic Pollutants {8}	{9}	{4} {11}	{10}

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

NTU = nephelometric turbidity units

Revised:

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
Quantity of Discharge (GPD or gpm)	[+2+] <u>Report</u>	[+3+] [+11+] <u>Once/Month</u>	Calculated or Estimated
Total Suspended Solids (mg/l)	[+2+] <u>55</u>	[+4+] [+11+] <u>Once/Month</u>	Grab
[Turbidity (NTU)]	[+2+]	[+4+] [+11+]	[Grab]
Oil and Grease (mg/l)	15	[+4+] [+11+] <u>Once/Month</u>	Grab [+5+] {3}

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

Effluent Parameter	Effluent Limitations {1}	Minimum Monitoring Frequency {2}	Type of Sample
pH (standard units)	[6+] 6.0 - 8.0	[4+] [11+] Once/Month	Grab [7+] {4}
[Toxic Pollutants {8}]	[9+]]	[4+] [11+]]	[10+]]

GPD = gallons per day

gpm = gallons per minute

mg/l = milligrams per liter

~~[NTU = nephelometric turbidity units]~~

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.

Turbidity limits have been removed as the proposed imposition of treatment requirements under section 2(c)(1) and prohibition visible plumes in 2(c)(2) remove the potential for a compliant discharge to cause an exceedance of a water quality standard within a water body. A numeric Water Quality Based Effluent Limits (WQBEL) for Total Suspended Solids (TSS) for 55 mg/l was added. 55 mg/l is the dry season water quality criteria for inland streams, which are the only waterbody type for which there is a numeric TSS criteria. In establishing the numeric criteria for TSS at 55 mg/l, all waterbodies are afforded a minimum amount of treatment for the pollutants (solids) most likely to be present in discharges authorized by this permit. The numeric effluent becomes a minimum treatment design specification and also standardizes the limit set associated with TSS.

In addition, required numeric effluent limits for pollutants specified in HAR 11-54-4(c)(3) (referred to as "toxics") were also removed based on analysis of three years of discharge monitoring data from dewatering (Appendix G) general permitted facilities. Between 2018 and 2021 the DOH issued approximately 25 NGPCs associated with HAR 11-55, Appendix G. Of the 25 NGPCs, only six permittees reported any discharges and of the six, only one discharger reported discharges of toxic parameters greater than the

associated waterbody's water quality standards (NGPC, File No. HI19GF810). The other five of six permittees either did not report discharges or did not report exceedances of water quality standard based effluent limits for toxics. Given the small number of discharges who were subject to WQBELs for toxics, the largely episodic nature of the discharges, and the newly required treatment requirements under section 2(c)(1), numeric limits for TSS, and inclusion the narrative prohibition of discharges which cause exceedances of basic water quality criteria, there is no reasonable potential for the discharge to cause or contribute to an exceedance of water quality standards for toxics. Numeric limits must be established when a discharge may cause or contribute to an exceedance of water quality standards for any pollutant(s). The DOH has determined based on the reasons outlined above, that numeric limits for toxics are not necessary, and the new requirements in the proposed general permit such as treatment requirements and the narrative prohibition on discharges that exceed basic water quality criteria are stringent enough to prevent authorized discharges from degrading receiving water bodies.

In addition, the DOH is also not establishing effluent limitations for nutrients (i.e., total nitrogen, ammonia nitrogen, nitrate plus nitrite nitrogen, and total phosphorus). Water quality criterion for total nitrogen, ammonia nitrogen, nitrate plus nitrite, and total phosphorus, are established as geometric means and not to exceed percentiles. They are not based on potential toxicity to aquatic life or human health impacts and are instead based on natural background concentrations that would be expected without human influence on the environment and are developed from water quality observed at high quality reference stations.

Unlike toxics, nutrients are not conservative pollutants. Because of the biological and physical variables, there is a delay from when the parameter is discharged until impacts are observed. Additionally, some nutrient criteria, such as chlorophyll a and turbidity are reflective of response conditions and short-term exceedances are often not indicative of the long-term quality of the receiving water. Thus, it is long-term impacts resulting in the change of biota and eutrophication of the receiving waters that must be considered. These impacts result over extended periods of time, ranging from months to years. Biological responses in the receiving water from day-to-day variation in effluent pollutant concentrations are not significant, as chronic biological responses occur over months to years of continuous elevated nutrient loading. DOH-CWB evaluates consistency with these criteria based on a 1-year exposure duration to allow for seasonal fluctuations within the receiving water concentrations and acknowledging that the environmental response to nutrients typically occurs in the far-field and shows minimal response over short periods of time. As mentioned in the rationale for the proposed addition

of section 2(c) in the permit, discharges authorized by this permit are often episodic, low volume, and compositionally variable throughout the discharge period (i.e. discharging prior to construction activity vs. discharging during construction activity). The DOH expects there will be no water quality impacts or degraded waterbody conditions by not including numeric effluent limits for nutrients. For this reason, the DOH has decided not to require limitations on nutrients in this permit.

Satisfaction of Anti-Backsliding Requirements

The CWA specifies that a revised permit may not include effluent limitations that are less stringent than the current permit unless a less stringent limitation is justified based on exceptions to the anti-backsliding provisions contained in CWA Sections 402(o) or 303(d)(4), or, where applicable, 40 CFR 122.44(l).

The proposed construction dewatering effluent discharge requirements align with the EPA's issued NPDES permit that authorize similar discharges.

Effluent limitations for pH were revised to apply one standard pH range effluent limitation to all discharges. As discharges are infrequent, changes in pH in the waterbody are expected to be relatively short and localized. The proposed range is expected to be protective of all types of waterbodies for the reasons listed above, while still prohibiting discharge of extreme pH values from construction dewatering effluent that may potentially have immediate impacts at the location of discharge. Therefore, the limits are at least as stringent as the previous permit.

Removal of the toxic pollutant limit complies with anti-backsliding requirements, as there is now an explicit narrative prohibition on discharges that exceed toxic parameter water quality standards in HAR 11-54. Based on this prohibition, discharges covered under this permit will not have reasonable potential to cause or contribute to exceedances of water quality standards for toxic parameters. Therefore, the removal of the numeric effluent limitation for toxic parameters and the addition of the new prohibition means that the requirements for toxic parameters are more stringent than the previous permit.

Satisfaction of Antidegradation Policy Requirements

The DOH established the State antidegradation policy in HAR, 11-54-1.1, which incorporates the federal antidegradation policy at 40 CFR 131.12. HAR, 11-54-1.1 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings demonstrating that allowing lower water quality is necessary to accommodate economic or social development in the area in which the waters are located.

The conditions in the proposed permit, are no less stringent than in the current/previous permit. As explained above, the proposed permit is utilizing a different approach which follows EPA's NPDES permit and places greater emphasis on control measures and treatment to minimize further pollutant discharges than on exceeding a singular per discharge monitoring requirement that doesn't reflect the variable nature of effluent quality. The discharges are often episodic, low volume, and compositionally variable throughout the discharge period.

Therefore, the proposed Appendix G is consistent with antidegradation provisions of 40 CFR 131.12 and HAR 11-54-1.1. The impact on existing water quality will be insignificant and the level of water quality necessary to protect the existing uses will be maintained and protected.

Table 34.5 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 discharge, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).

Table 34.5 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 the permittee shall monitor and report the analytical result.*

Revised: *The permittee shall take a minimum of one sample for each month that is representative of the discharge. If the permittee collects more than*

one sample during the month, the maximum value for each pollutant parameter shall be reported. For pH, only report the minimum and maximum for the month. Laboratory results of all sampling shall be included with the discharge monitoring report.

Rationale:

The previous language only applied to flow, TSS, and turbidity limits. As the TSS limit changed to a single value applicable to all discharges and the turbidity limit was removed, the previous language was replaced. 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 month. This language replaces the previous language in footnote 11.

Table 34.5 Footnotes 3 and 4 [Removed]

Original: {3} For intermittent discharges, flow measurement shall be taken once for each discharge for the duration of the discharge. For continuous discharge, continuous flow measurement is required.

{4} For intermittent discharges, the sample shall be taken once for each discharge. For continuous discharge, the sample shall be taken at least once per week.

Revised: (REMOVED)

Rationale:

These footnotes are no longer applicable. The proposed general permit requires collection of a representative sample of the discharge and analysis once a month. It does not distinguish between intermittent and continuous discharges.

Table 34.5 Footnote 5

Original: {5} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Revised: {3} Oil and Grease shall be measured by EPA Method 1664, Revision A.

Rationale:

Renumbered due to the removal of footnotes 3 and 4.

Table 34.5 Footnote 6 [Removed]

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

Revised: (REMOVED)

Rationale:

As the pH effluent limitation has been revised to have one pH range applicable to all discharges, this language is no longer applicable. Therefore, footnote 6 was removed.

Table 34.5 Footnote 7

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

Revised: *{4} The pH shall be measured within fifteen minutes of obtaining the grab sample.*

Rationale:

Renumbered due to the removal of footnotes 3, 4, and 6.

Table 34.5 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 or as identified by the director. For dewatering processes involving only the treated storm water discharges, only those potential pollutants identified in the site characterization report need to be monitored. The permittee shall measure for the total recoverable portion of all metals.*

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 8 was removed.

Table 34.5 Footnote 9 [Removed]

Original: *Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters. For pollutants*

which do not have established acute water quality standards, the permittee shall report any detected concentration greater than 0.01 µg/l.

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.

Table 34.5 Footnote 10 [Removed]

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

Revised: (REMOVED)

Rationale:

As the toxics effluent limitation has been removed in the proposed permit, language is no longer applicable. Therefore, footnote 10 was removed.

Table 34.5 Footnote 11 [Removed]

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

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

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

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

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

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

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

For this permit, the limits are WQBELs because effluent limitation guidelines and TBELs do not apply.

The proposed HAR 11-55, Appendix G, Section 2(c) implements the 40 CFR 450.21(c) requirement that prohibits “discharges from dewatering activities, including discharges from dewatering of trenches and excavations” unless managed by “appropriate controls.” The specific restrictions in HAR 11-55, Appendix G, Section 2(c) provide the permit’s interpretation of what is meant by “appropriate controls” in 40 CFR 450.21(c).

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

Not applicable.

Fact Sheet for Appendix K

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

The subject of the draft National Pollutant Discharge Elimination System (NPDES) general permit is Small Municipal Separate Storm Sewer Systems (MS4s).

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

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;
- (2) 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 (the system must serve two (2) or more buildings).

The following is a list of Permittees that have applied for NPDES coverage:

1. Department of Transportation, Highways Division (DOT-HWYs) – Maui District, Kahului, Island of Maui, HI 15KE674
2. University of Hawaii, Maui College, HI 14KE369 (not yet issued)
3. University of Hawaii, West Oahu Campus, Kapolei, Island of Oahu, HI 14KE294
4. Department of Transportation, Airports Division (DOT-AIR), Kahului Airport, Kahului, Island of Maui, HI 14KE349
5. County of Maui, Kahului, Island of Maui, HI 14KE360
6. Department of Health, State Hospital, Kaneohe, Island of Oahu, HI 11KD929 (not yet issued)
7. Hawaii Community Development Authority, Kakaako Community Development District, Honolulu, Island of Oahu, HI 08KD270
8. University of Hawaii, Windward Community College, Kaneohe, Island of Oahu, HI 07KC937

9. University of Hawaii, Kapiolani Community College, Honolulu, Island of Oahu, HI 07KC926
10. University of Hawaii, Leeward Community College, Pearl City, Island of Oahu, HI 07KC817
11. Department of Business, Economic Development & Tourism, Hawaii Housing Finance and Development Corporation, Villages of Kapolei, Kapolei, Island of Oahu, HI 06KC738
12. University of Hawaii, Pearl City Urban Garden Center, Pearl City, Island of Oahu, HI 06KC682
13. Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility, Pearl Harbor, Island of Oahu, HI 06KC635
14. University of Hawaii, John A. Burns School of Medicine, Honolulu, Island of Oahu, HI 06KC589
15. Kaena Point Satellite Tracking Station, Waianae, Island of Oahu, HI 05KC128
16. University of Hawaii at Manoa, Honolulu, Island of Oahu, HI 03KB495
17. Department of Transportation, Harbors Division, Kalaeloa Barbers Point Harbor, Kapolei, Island of Oahu, HI 03KB488
18. Hawaii Community Development Authority, Kewalo Basin, Honolulu, Island of Oahu, HI 03KB487
19. Department of Transportation, Harbors Division, Honolulu Harbor, Honolulu, Island of Oahu, HI 03KB482
20. Department of Education, various locations, Island of Oahu, HI S000003
21. City and County of Honolulu, Board of Water Supply, various locations, Island of Oahu, HI S000062

Currently, all the above facilities are currently covered by the 2013 permit, except for #2 – University of Hawaii, Maui College, #6 – Department of Health (DOH), State Hospital, #20 Department of Education (DOE), and #21 Board of Water Supply (BWS). During the pendency of reissuing this general permit, the University of Hawaii, Maui College has submitted an Individual NPDES Permit application and is currently being processed. After issuance of this General Permit, Maui College may elect to seek coverage under the General Permit by submitting an NOI. The DOH, State Hospital has submitted an NOI to request coverage, however will be granted a waiver from the Phase II Permit requirements. The DOE is currently working under an Administrative Extension of their Individual NPDES Permit and the BWS has applied for an Individual NPDES permit. Both will be granted waivers from the Phase II Permit requirements, pursuant to authority in 40 CFR §122.32(d).

DOH expects that all of the above facilities that are currently covered would continue to be covered by the proposed permit, except for the Kaena Point Satellite Tracking Station and University of Hawaii, John A. Burns School of Medicine. The Kaena Point Satellite Tracking Station is not located within the urban area and the University of Hawaii, John A. Burns School of Medicine will be granted a waiver from the Phase II Permit requirements.

The Department of the Navy, Navy Region Hawaii has been issued an Individual NPDES permit for Joint Base Pearl Harbor-Hickam (JBPHH) Small MS4 and does not cover the Department of the Navy, Pearl Harbor Naval Shipyard & Intermediate Maintenance Facility (File No. HI 06KC635) as they are separate entities with separate controlling authorities. Both Department of Navy's facilities shall continue to obtain NPDES coverage for their Small MS4s.

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

Storm water discharge and certain allowable non-storm water from Small MS4s.

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

Not applicable.

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

DOH published notice of its proposed revised Appendix K for the discharges of storm water and certain non-storm water discharges from Small Municipal Separate Storm Sewer Systems on May 31, 2016 and again on August 1, 2016. Public hearings were held on July 1, 2016 and September 29, 2016. DOH received comments on the proposed 2016 Appendix K. However, on December 6, 2016, the EPA issued its Final Rule to address a partial remand of the Phase II stormwater regulations by the U.S. Court of Appeals for the Ninth Circuit. *Environmental Defense Center, et al. v. EPA*, 344 F.3d 832 (9th Cir. 2003). As a result of the Final Remand Rule and after considering the comments received on the 2016 Appendix K, the DOH has made significant changes to the previously proposed 2016 Appendix K. Because of the significant changes made from the previously proposed 2016 Appendix K, the DOH is proposing to offer the proposed 2017 Appendix K for public review and comment and opportunity to request a hearing rather than providing responses to 2016 Appendix K comments.

EPA selected proposed Option 3 (the "State Choice Approach") for the Final Remand Rule. The EPA renamed this option the "Permitting Authority Choice Approach". Under this approach, the NPDES permitting authority (i.e. DOH) may choose between two alternative means of establishing permit requirements in general permits for small MS4s. Whenever issuing a small MS4 general permit, 40 CFR 122.28(d) as amended by the final rule requires permitting authorities to choose either of these two types of general permits: the "Comprehensive General Permit" or "Two-Step General Permit." The DOH has chosen the Two-

Step approach for its General Permit. The Two-Step General Permit allows the DOH to establish some requirements in the general permit and others applicable to individual MS4s through a second proposal and public comment process. This allows the DOH the flexibility to address unique circumstances, such as different maturity levels of its MS4s and for non-traditional MS4s (e.g. state department of transportation, public universities, and military bases).

Polluted storm water runoff is often transported to municipal separate storm sewer systems (MS4s) and ultimately discharged into local rivers and streams without treatment. EPA's Stormwater Phase II Rule establishes an MS4 stormwater management program that is intended to improve the Nation's waterways by reducing the quantity of pollutants that stormwater picks up and carries into storm sewer systems during storm events. Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and carelessly discarded trash, such as cigarette butts, paper wrappers, and plastic bottles. When deposited into nearby waterways through MS4 discharges, these pollutants can impair the waterways, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with the habitat for fish, other aquatic organisms, and wildlife.

In 1990, EPA promulgated rules establishing Phase I of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The Phase I program for MS4s requires operators of "medium" and "large" MS4s, that is, those that generally serve populations of 100,000 or greater, to implement a stormwater management program as a means to control polluted discharges from these MS4s. The Stormwater Phase II Rule (64 FR 68722) extends coverage of the NPDES stormwater program to certain "small" MS4s but takes a slightly different approach to how the stormwater management program is developed and implemented.

A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II Rule automatically covers on a nationwide basis all small MS4s located in "urbanized areas" (UAs) as defined by the Bureau of the Census (unless waived by the NPDES permitting authority).

The General Permit is divided into the following sections:

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Storm Water Management Plan Requirements [Revised]
7. Basic Water Quality Criteria and Inspections [Revised]

8. TMDL Implementation and Monitoring [New]
9. Corrective Actions
10. Reporting Requirements [Revised]
11. Submittal Requirements [Revised]
12. Additional Conditions
13. Public Notice of Permit Actions and Public Comment Period [New]
14. Public Comments and Public Hearing [New]
15. Record Retention
16. Falsifying Report
17. Renewal [New]
18. Forms [New]

The General Permit currently in effect expired on December 6, 2016. The proposed General Permit will be effective for a term of 5 (five) years (revised from 3 years, refer to Section 3 of the General Permit).

Proposed Changes:

The draft 2017 Appendix K includes the following proposed changes (the sections referenced below are that of the General Permit):

1. A paragraph was added to the beginning of the permit to explain the revised Small MS4 General Permit approach pursuant to the MS4 Final Remand Rule. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016. Included is a definition of “40 CFR,” which is different than that in HAR, §11-55-01.

In accordance with 40 CFR 122.28(d), the Director has selected the Two-step general permit approach to regulate Small MS4s under the State’s NPDES Permit Program. See 40 CFR §122.28(d)(2). The DOH will follow the Two-Step General Permit Approach in accordance with FR Vol. 81, No. 237 pg. 89330, Section V.B.

2. Revised Section 1(a), 2nd paragraph to delete the word “include” because use of that word indicated a non-exclusive list.

Revised from:

Non-storm water discharges authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards, include:

to,

The following non-storm water discharges are authorized by this general permit, provided that they do not cause or contribute to any violation of water quality standards:

3. Added a paragraph to the end of Section 1(a) to allow in the MS4 additional non-storm waters that the Permittee does not expect to be significant sources of pollutants (e.g., charity vehicle wash water). The Permittee shall document in the Storm Water Management Plan the terms and conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing pollutants to the Permittee's MS4.
4. Section 1(b), extended coverage to all State waters, except for discharges to natural freshwater lakes, saline lakes, or anchialine pools (i.e., Hawaii's "no discharge" policy, refer to HAR, Chapter 11-54, §11-54-5.2(a)). The proposed revision allows the General Permit to cover discharges to Class 1, Inland Waters, and Class AA, Marine waters, instead of requiring coverage under an Individual NPDES Permit. The "two-step" general permit approach is the same as the DOH's individual NPDES approach for Small MS4s. The "two-step" approach allows the DOH to consider the receiving water classification and the need, if any, for additional BMPs during the processing of coverage and therefore, the traditional Individual NPDES process is no longer needed.
5. Sections 3(a) and 3(b), revised the expiration and effective dates from three (3) to five (5) years.
6. Section 4, 1st paragraph, added language from 40 CFR 122.33(b)(1)(ii) which describes the NOI requirements as a result of the Final Remand Rule.
7. In Section 4(a), added requirements for new and existing permittee NOI submittal deadlines.
8. Revised Section 4(b)(4) to clarify that the assessment of the effectiveness applies to "each control measure." Deleted redundant language which said "in reducing discharges of pollutants to the maximum extent practicable and protecting water quality." Added language to clarify that the assessment is only required for those MS4s covered under the previous general permit. Replaced the word "modifications" with "revisions" to prevent any confusion since modifications are not allowed after the Permittee is issued coverage.

9. Added in Section 4(b)(5) the acronym for Storm Water Management Plan (SWMP).
10. Deleted in Section 4(b)(5) language that allowed the NOI to be submitted without the SWMP. Following the “two-step” approach the SWMP must be submitted with the NOI. Also, deleted having to keep the SWMP and revisions at a nearby field office since that requirement is not applicable.
11. Added Section 4(b)(6) to address TMDL implementation and monitoring. An Implementation and Monitoring (I&M) Plan is required where the Permittee is subject to wasteload allocations (WLAs) and must be submitted with the NOI to be reviewed by the DOH and public noticed during the second step of the two-step Small MS4 approach. Also required is a proposed compliance schedule, if compliance is not expected within 1-year that meets the 40 CFR 122.47 requirements to comply as soon as possible.
12. Revised Section 6, 1st sentence to clarify that the SWMP is a written document and added the “MS4 permit standard” wording to mean, “reduce the discharge of pollutants from the permittee's small municipal separate storm sewer system to the maximum extent practicable in order to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act.”
13. Revised Section 6, 2nd sentence to clarify that the SWMP shall include “a description of the best management practices that the Permittee will implement for each of the minimum control measures...” Refer to 40 CFR 122.33(b)(2)(i) and FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338, 3rd Column, 2nd paragraph, where it states: “Likewise, an MS4 that is seeking an individual permit or coverage under a Two-Step General Permit, can propose BMPs or other management measures to the permitting authority that reflect its judgment about how and to what extent permit terms and conditions should change or stay the same.”

Added requiring the “timing and frequencies, as appropriate” and replaced “measure” with “BMP.” Refer to FR Vol. 81, No. 237/Friday, December 9, 2016, page 89323, 1st column, 1st paragraph. Also, revised to clarify that the SWMP must include the measurable goals, which is already an existing condition (refer to Section 6(b)) and frequencies.

14. Added information to Section 6 to comply with the Final Remand Rule. 40 CFR 122.34 states that the terms and conditions must be **clear, specific, and measurable**. DOH interprets this to mean that the BMPs as proposed by the Permittee must also be clear, specific, and measurable. DOH will review the information provided by the Permittee and determine the permit terms and conditions. As such, if the proposed BMPs are described by the Permittee in clear, specific and measurable terms, then the DOH is able to provide permit terms and conditions also expressed in clear, specific, and measurable terms. For clarity, DOH has provided reference to the EPA's "Municipal Separate Storm Sewer System Permits, Compendium of Clear, Specific & Measurable Permitting Examples," November 2016, EPA-830-S-16-002.

15. Added language to Section 6 to explain that the rationales provided by the Permittee must be to the satisfaction of the DOH because DOH is responsible for establishing permit requirements that meet the MS4 permit standard. The purpose of the language is to directly address the Ninth Circuit remand that the regulations need to preclude the small MS4 from determining on its own what actions are sufficient to meet the MS4 standard. DOH is the ultimate authority to determine what Small MS4s must do to meet the MS4 permit standard and the rationales provided by the Permittee are needed to make this decision because the BMPs as proposed by the Permittee reflect their rationales.

The DOH is required to issue permits that independently meet the MS4 permit standard based on an evaluation of, among other things, how well the past permit conditions worked and what more can be reasonably achieved in the next permit term. This evaluation involves factors that are necessarily unique to the permit jurisdiction, therefore, the DOH is not compelled to consider the terms and conditions of permits in other jurisdictions in determining the need to modify their own permits. Refer to FR Vol. 81, No. 237, Friday, December 9, 2016, Section VI.D., page 89338-89339.

16. Added language to Section 6 explaining that the contents of the SWMP document are enforceable under this permit since the DOH intends that the BMPs in the SWMP and measurable goals, including any revisions as required by the DOH (prior to public notice in the 2nd step), contain the supplemental terms and conditions of the general permit.

17. Section 6(a) was revised to reference the 40 CFR 122.34(b)(1) through (6) for the minimum control measures requirements for regulated small MS4 permits. Concurrently with these amendments, the definition of "40 CFR"

in Hawaii Administrative Rules (HAR), Chapter 11-55 is being revised to mean the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2017, unless otherwise specified.

18. Section 6(b) was revised to specify that the measurable goals apply to the Permittee's BMPs as described in the SWMP. A definition of "measurable" was added to mean "that the permit requirement has been articulated in such a way that compliance with it can be assessed in a straightforward manner. Refer to FR Vol. 81, No. 237 pg. 89336, 3rd column, 2nd paragraph."
19. Replaced the existing language in Section 6(c) with the following: "Any modifications to the BMPs and measurable goals will require submittal of a new NOI, unless clearly accounted for in its SWMP and that has been public noticed." The SWMP maybe written to provide for options based on the Permittee's evaluation of its program. For example, the Permittee may have begun educating its audience on housekeeping measures, however survey results indicated that their knowledge of housekeeping measures was already adequate. Therefore, the Permittee wanted to change their message to target pesticide use instead. If this option was already accounted for its SWMP then the change would not be considered a modification.
20. Section 7(b), replaced "timely" with "as indicated in its SWMP," since the word "timely" is not defined.
21. Section 8 – TMDL Implementation and Monitoring was added to comply with 40 CFR § 122.44(d)(1)(vii)(B).

DOH is directly implementing the TMDL WLAs applicable to Small MS4s as Water Quality-Based Effluent Limits (WQBELs).

Currently, there are eight (8) TMDLs that have been approved by the EPA and adopted by the Department:

- KANEOHE STREAM, OAHU
- UPPER KAUKONAHUA STREAM, OAHU
- NAWILIWILI, KAUAI
- HANAIEI, KAUAI
- KAPAA, OAHU
- KAWA, OAHU
- WAIMANALO, OAHU
- ALA WAI, OAHU

Of the eight (8) TMDLs, only Kaneohe Stream, Upper Kaukonahua Stream, and Kawa Stream, have Small MS4s that have been assigned a specific WLA. The Small MS4s located within these areas include, the State of Hawaii, Department of Defense; Department of Education, Department of Health, University of Hawaii, Windward Community College; and the Navy Region Hawaii, Department of the Navy. The State of Hawaii, Department of Defense has been identified as being assigned Wasteload Allocations (WLAs) in both Kaneohe and Kawa Stream TMDLs, but is not currently covered under an NPDES permit. The DOD areas are within the Veteran's Cemetery and the DOH does not intend to require coverage because, unless information becomes available to show otherwise, the facility does not meet the definition of a Small MS4.

WLAs have been assigned to the Department of Education for Kawa and Kaneohe Streams and to the Department of Health for Kawa Stream, but the Department is granting both facilities waivers from the Phase II Permit requirements.

The University of Hawaii, Windward Community College (WCC) is currently covered under an NGPC and under this proposed General Permit must comply with the assigned WLAs consistent with the assumption of the TMDL document within the timeframes as specified in its I&M Plan.

For all other Permittees, the proposed General Permit requires compliance with any assigned WLAs, as additional TMDLs are adopted by DOH and approved by the EPA, consistent with the TMDL document within the timeframes as specified in its I&M Plan, unless an I&M Plan has already been developed by the DOH. If an I&M Plan has been developed by the DOH, then the Permittee shall comply with those timeframes and requirements.

As additional TMDLs are adopted by the DOH and approved by the EPA, the Permittee for any assigned WLAs will, within two (2) years of the TMDL approval, prepare an I&M plan that will describe the Permittee's approach to proposed activities for compliance with the WLA reductions. The DOH expects the two-year timeframe to be sufficient because it is expected that stakeholders will participate in the development of the TMDL. If compliance is expected to take longer than 1-year after preparation of the Permittee's I&M Plan, a compliance schedule shall be submitted along with its I&M Plan that meet the requirements of 40 CFR 122.47. A new NOI shall be submitted to DOH upon submittal of the

Permittee's I&M Plan to provide opportunity for public comment and request for a public hearing.

22. Section 8(b) was added to specify the minimum requirement of the I&M Plan.

To ensure BMP effectiveness, the plan shall identify the activities to be implemented and explanation for selecting those activities based on an analysis of "actual or literature documentation of the estimated effectiveness." To determine the actual effectiveness after implementation, a baseline would first need to be determined, if not already determined in the TMDL document, and then compared to post activity monitoring results.

23. In Section 10, added: "Annual Reports shall be submitted in compliance with Federal eReporting Rule requirements starting no later than December 21, 2020."

24. Section 10(a)(1) was revised to add "the terms and" to be consistent with the Final Remand Rule. Also, EPA replaced the term "effluent limitations" with "terms and conditions" to be consistent with changes made to 40 CFR 122.34(a).

Refer to FR, Vol. 81, No. 237/ Friday, December 9, 2016, page 89337, 1st column, 3rd paragraph.

EPA has substituted the term "terms and conditions" for "effluent limitations" because stakeholders (in response to the Remand Rule) asserted the term effluent limitations connotes end-of-pipe numeric limits even though EPA is not insisting that these types of limitations be used. In sum, EPA intends that terms and conditions are a type of effluent limitations and that they are interchangeable and both mean permit requirements.

25. Section 10(a)(2) replaced "storm water management plan" with "effectiveness of each component in its SWMP" because the assessment is required of each component and not just the SWMP in its entirety. Also, replaced "progress towards implementing each minimum control measure" with "the status of achieving the measurable goals for each BMP" since compliance shall be met when meeting its measurable goals.
26. Deleted Sections 10(a)(3) and 10(a)(5) because modifications to the SWMP are no longer allowed. Modifications to the SWMP that have not

been accounted for (i.e., the SWMP may provide for BMP if/then options) and publicly noticed require submission of a new NOI and SWMP.

27. Revised Section 10(b) to be consistent with recent individual permit's standard conditions.
28. Added Section 10(c) to require reporting on the status of TMDL compliance.
29. Added Section 11(d) to ensure that all submittals use the forms as specified by the DOH.
30. Added Section 11(e) to comply with the Federal eReporting Rule.
31. Added Sections 13 and 14 to address requirements for the Public Notice of Permit Actions, Public Comments, the Public Comment Period and Public Hearings.

The public shall be notified of the DOH's proposal to authorize the MS4 to discharge under the general permit and, consistent with 40 CFR 124.10, make available for public review and comment and opportunity for public hearing the NOI (refer to Section 14 of the general permit), and the specific BMPs, milestones, and schedules from the NOI that the Director proposes to be incorporated into the permit as enforceable requirements. The Public Notice document will provide directions as to how the above information may be obtained. In accordance with Hawaii Revised Statutes, §1-28.5 Publication of Notice – whenever a public notice shall be given, notice shall be provided as follows:

For Oahu

Honolulu Star-Advertiser
Current contacts: Lisa Kaukani, Account Executive
Phone: (808) 529-4344
Fax: (808) 529-4829
Email: lkaukani@staradvertiser.com

Name: Rose Rosales, Account Executive
Phone: (808) 529-4825
Fax: (808) 529-4829
Email: rrosales@staradvertiser.com

For Maui

The Maui News

Current contact: Terri Yip-Komoda, Classified Advertising Sales Representative

Ph. (808) 242-6333/Fax: (808) 242-6389

Email: tykomoda@mauinews.com or e-mail: class@mauinews.com

All publication and mailing costs associated with the public notification(s) on the draft permit terms and conditions shall be paid by the Permittee. The Permittee shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the Director, is a basis to deny issuance of permit coverage. The process for submitting public comments and hearing requests, and the hearing process if a hearing is granted, must follow the procedures applicable to draft permits in 40 CFR 124.11 through 124.13. The DOH shall respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary revise the proposed BMPs and/or timelines to be included as terms of the permit.

32. Added Sections 16 and 17 for renewal and forms. The language specifies that requests for coverage under a renewed (reissued) general permit must be received within the timeframes as specified in the reissued general permit. Requests must be made on forms provided by DOH. Forms will be available on the Department's e-permitting portal.

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

Not applicable.

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

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

Refer to HAR 11-1-51 procedures for adopting rules. The comment period has yet to be determined. Comments will be received via email to the cleanwaterbranch@doh.hawaii.gov, at the various District Health Offices, and at 919 Ala Moana Blvd., Room 310, Honolulu, Hawaii 96814. The procedures for requesting a hearing shall follow 40 CFR 124.11.

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

Mr. 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 122.30 through 122.37.

40 CFR 122.34 requires Small MS4 to reduce pollutant discharge to the Maximum Extent Practicable which requires the implementation of minimum control measures.

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

Not applicable.

V. Legislative Matters

A. Discussion on the following:

- a. Senate Bill 1034, SD1, HD2, CD1 – Authorizes boards to use interactive conference technology to remotely conduct meetings under the State’s open meetings law; amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology**



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CHERYL KAKAZU PARK
DIRECTOR

WHAT'S NEW: LANDMARK LEGISLATION ALLOWING REMOTE MEETINGS BY SUNSHINE LAW BOARDS

April 27, 2021

The Office of Information Practices (OIP) would like to thank the Hawaii State Legislature for passing today landmark legislation allowing Sunshine Law boards to remotely conduct public meetings. OIP developed three draft proposals before the session, and five bills containing OIP's proposal were introduced this session, and what ultimately emerged was [Senate Bill 1034, Senate Draft 1, House Draft 2, Conference Draft 1](#). This bill adds a new option to the Sunshine Law on January 1, 2022, which would allow boards to hold remote meetings via interactive conference technology (ICT), such as online meeting platforms like Zoom or WebEx, teleconferences, videoconference, and voice over internet protocol. The bill would also amend the existing option for boards to hold a public meeting at two or more physical locations connected by ICT, would require all meeting notices to list the board's contact information for submitting testimony, and would require OIP to report on the implementation of remote meetings before the 2023 session. OIP will recommend that the bill be signed by Governor David Ige.

OIP has prepared the attached summary explaining the bill's provisions. The summary, various bill drafts, committee reports, testimony have also been posted on [OIP's legislation page](#).

For unbiased open government news, please check for What's New articles that are archived on OIP's website or emailed to you upon request. To be added to OIP's email list, please email oiip@hawaii.gov. Also, if you would like to receive What's New articles or attachments in a different format, please contact OIP at (808) 586-1400 or oiip@hawaii.gov.

SB1034 SD1 HD2 CD1

Measure Title: RELATING TO SUNSHINE LAW BOARDS.
Report Title: Sunshine Law; Interactive Conference Technology; Remote Meetings
Description: Authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law. Amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology. Requires the Office of Information Practices to assess the implementation of meetings held using interactive conference technology and submit a report of its findings to the Legislature. Effective 1/1/2022. (CD1)
Companion: [HB880](#)
Package: Governor
Current Referral: PDP, JHA
Introducer(s): KOUCHI (Introduced by request of another party)

<u>Sort by</u> <u>Date</u>		Status Text
1/27/2021	S	Introduced.
1/27/2021	S	Passed First Reading.
1/29/2021	S	Referred to JDC.
2/5/2021	S	The committee(s) on JDC has scheduled a public hearing on 02-12-21 9:15AM in conference room Via Videoconference.
2/12/2021	S	The committee(s) on JDC deferred the measure until 02-17-21 9:55AM; Via Videoconference.
2/17/2021	S	The committee(s) on JDC recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDC were as follows: 7 Aye(s): Senator(s) Rhoads, Keohokalole, Acasio, Gabbard, Kim, Lee, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
3/4/2021	S	Reported from JDC (Stand. Com. Rep. No. 753) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
3/4/2021	S	Report adopted; Passed Second Reading, as amended (SD 1).
3/4/2021	S	48 Hrs. Notice 03-09-21.
3/9/2021	S	Passed Third Reading, as amended (SD 1). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/9/2021	H	Received from Senate (Sen. Com. No. 326) in amended form (SD 1).
3/11/2021	H	Pass First Reading
3/11/2021	H	Referred to PDP, JHA, referral sheet 22
3/12/2021	H	Bill scheduled to be heard by PDP on Tuesday, 03-16-21 9:00AM in House conference room 309 Via Videoconference.
3/16/2021	H	The committees on PDP recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 9 Ayes: Representative(s) Ichiyama, Eli, Cullen, McKelvey, Mizuno, Wildberger, Woodson, Yamashita, Ward; Ayes with reservations: none; Noes: none; and Excused: none.
3/25/2021	H	Reported from PDP (Stand. Com. Rep. No. 1382) as amended in HD 1, recommending passage on Second Reading and referral to JHA.
3/25/2021	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on JHA with none voting aye with reservations; none voting no (0) and none excused (0).
3/25/2021	H	Bill scheduled to be heard by JHA on Tuesday, 03-30-21 2:00PM in House conference room 325 Via Videoconference.
3/30/2021	H	The committees on JHA recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 9 Ayes: Representative(s) Nakashima, Matayoshi, Ichiyama, Lowen, McKelvey, Nakamura, Takumi, Tokioka, Ward; Ayes with reservations: none; Noes: none; and 3 Excused: Representative(s) D. Kobayashi, LoPresti, Todd.
4/9/2021	H	Reported from JHA (Stand. Com. Rep. No. 1836) as amended in HD 2, recommending passage on Third Reading.

4/9/2021	H	Forty-eight (48) hours notice Tuesday, 04-13-21.
4/13/2021	H	Passed Third Reading as amended in HD 2 with none voting aye with reservations; none voting no (0) and Representative(s) Holt, LoPresti, Ohno excused (3). Transmitted to Senate.
4/15/2021	S	Received from House (Hse. Com. No. 539).
4/15/2021	S	Senate disagrees with House amendments.
4/15/2021	H	Received notice of disagreement (Sen. Com. No. 790).
4/15/2021	S	Senate Conferees Appointed: Rhoads Chair; Keohokalole, Fevella.
4/16/2021	H	House Conferees Appointed: Ichiyama, Nakashima Co-Chairs; Eli, Ward.
4/16/2021	H	Received notice of Senate conferees (Sen. Com. No. 808).
4/16/2021	S	Conference committee meeting scheduled for 04-19-21 3:30PM; CR 325.
4/19/2021	S	Received notice of appointment of House conferees (Hse. Com. No. 559).
4/19/2021	S	Conference committee meeting to reconvene on 04-21-21 3:30PM; CR 325.
4/21/2021	S	The Conference committee recommends that the measure be PASSED, WITH AMENDMENTS. The votes of the Senate Conference Managers were as follows: 3 Aye(s): Senator(s) Rhoads, Keohokalole, Fevella; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
4/21/2021	H	The Conference Committee recommends that the measure be Passed, with Amendments. The votes were as follows: 4 Ayes: Representative(s) Ichiyama, Nakashima, Eli, Ward; Ayes with reservations: none; 0 Noes: none; and 0 Excused: none.
4/22/2021	S	Reported from Conference Committee as amended CD 1 (Conf. Com. Rep. No. 71).
4/22/2021	S	48 Hrs. Notice (as amended CD 1) 04-27-21.
4/22/2021	H	Reported from Conference Committee (Conf Com. Rep. No. 71) as amended in (CD 1).
4/22/2021	H	Forty-eight (48) hours notice Tuesday, 04-27-21.
4/27/2021	S	Passed Final Reading, as amended (CD 1). Ayes, 25; Aye(s) with reservations: none . 0 No(es): none. 0 Excused: none.
4/27/2021	H	Passed Final Reading as amended in CD 1 with none voting aye with reservations; none voting no (0) and Representative(s) LoPresti excused (1).
4/28/2021	H	Received notice of Final Reading (Sen. Com. No. 858).
4/28/2021	S	Received notice of passage on Final Reading in House (Hse. Com. No. 634).
4/29/2021	S	Enrolled to Governor.

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.

SB1034 SD1 HD2 CD1

A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the coronavirus
2 disease 2019 (COVID-19) pandemic forced the implementation of
3 emergency measures suspending certain requirements of the
4 State's sunshine law in order to allow boards to continue
5 meeting and conducting necessary business while protecting
6 participants' health and safety and expanding public access to
7 meetings throughout the State. Due to the emergency
8 stay-at-home orders and travel restrictions, board members,
9 staff, or members of the public could not attend public meetings
10 in person. In lieu of traditional in-person meetings, remote
11 meetings connected people in different physical locations
12 through the use of interactive conference technology and thus
13 enabled and enhanced board and public participation.

14 The legislature further finds that, based on boards'
15 experiences with remote meetings during the COVID-19 pandemic,
16 the increased costs of staffing, technological equipment, and
17 resources needed to conduct remote meetings are offset by the
18 savings in time, convenience, and travel costs for board members



1 and participants, especially those from the neighbor islands.
2 During the COVID-19 pandemic, remote meetings helped to prevent
3 the spread of disease, and even when there is not an ongoing
4 pandemic, remote meetings can be a way to protect the health and
5 safety of participants, particularly those who have disabilities
6 or medical conditions that would place them at greater risks
7 during travel or attendance at in-person public meetings.

8 The legislature additionally finds that the benefits of
9 remote meetings should continue in non-emergency times,
10 requiring permanent amendments to the sunshine law. For remote
11 meetings not held during times of emergency, there is a need for
12 boards to provide for an in-person meeting location where
13 members of the public can come to observe the remote meeting or
14 testify in person using interactive conference technology
15 equipment provided by the board, without requiring board members
16 to be at the in-person location.

17 The purpose of this Act is to allow boards the option to
18 use interactive conference technology to conduct remote meetings
19 under the sunshine law, while still retaining the option to
20 conduct traditional in-person meetings at a single meeting site



1 or at multiple meeting sites connected by interactive conference
2 technology.

3 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
4 by adding a new section to part I to be appropriately designated
5 and to read as follows:

6 "§92- Remote meeting by interactive conference
7 technology; notice; quorum. (a) A board may hold a remote
8 meeting by interactive conference technology; provided that the
9 interactive conference technology used by the board allows
10 audiovisual interaction among all members of the board
11 participating in the meeting and all members of the public
12 attending the meeting, except as otherwise provided under this
13 section; provided further that there is at least one meeting
14 location that is open to the public and has an audiovisual
15 connection. A board holding a remote meeting pursuant to this
16 section shall not be required to allow members of the public to
17 join board members in person at nonpublic locations where board
18 members are physically present or to identify those locations in
19 the notice required by section 92-7; provided that at the
20 meeting, each board member shall state who, if anyone, is

1 present at the nonpublic location with the member. The notice
2 required by section 92-7 shall:

- 3 (1) List at least one meeting location that is open to the
4 public that shall have an audiovisual connection; and
5 (2) Inform members of the public how to contemporaneously:
6 (A) Remotely view the video and audio of the meeting
7 through internet streaming or other means; and
8 (B) Provide remote oral testimony in a manner that
9 allows board members and other meeting
10 participants to hear the testimony, whether
11 through an internet link, a telephone conference,
12 or other means.

13 The board may provide additional locations open for public
14 participation. The notice required by section 92-7 shall list
15 any additional locations open for public participation and
16 specify, in the event an additional location loses its
17 audiovisual connection to the remote meeting, whether the
18 meeting will continue without that location or will be
19 automatically recessed to restore communication as provided in
20 subsection (c).



1 (b) For a remote meeting held by interactive conference
2 technology pursuant to this section:

3 (1) The interactive conference technology used by the
4 board shall allow interaction among all members of the
5 board participating in the meeting and all members of
6 the public attending the meeting;

7 (2) Except as provided in subsections (c) and (d), a
8 quorum of board members participating in the meeting
9 shall be visible and audible to other members and the
10 public during the meeting; provided that no other
11 meeting participants shall be required to be visible
12 during the meeting;

13 (3) Any board member participating in a meeting by
14 interactive conference technology shall be considered
15 present at the meeting for the purpose of determining
16 compliance with the quorum and voting requirements of
17 the board;

18 (4) At the start of the meeting the presiding officer
19 shall announce the names of the participating members;

20 (5) All votes shall be conducted by roll call unless
21 unanimous; and



1 (6) When practicable, boards shall record meetings open to
2 the public and make the recording of any meeting
3 electronically available to the public as soon as
4 practicable after a meeting and until a time as the
5 minutes required by section 92-9 are electronically
6 posted on the board's website.

7 (c) A meeting held by interactive conference technology
8 shall be automatically recessed for up to thirty minutes to
9 restore communication when audiovisual communication cannot be
10 maintained with all members participating in the meeting or with
11 the public location identified in the board's notice pursuant to
12 subsection (a)(1) or with the remote public broadcast identified
13 in the board's notice pursuant to subsection (a)(2)(A). This
14 subsection shall not apply based on the inability of a member of
15 the public to maintain an audiovisual connection to the remote
16 public broadcast, unless the remote public broadcast itself is
17 not transmitting an audiovisual link to the meeting. The
18 meeting may reconvene when either audiovisual communication is
19 restored, or audio-only communication is established after an
20 unsuccessful attempt to restore audiovisual communication, but
21 only if the board has provided reasonable notice to the public



1 as to how to access the reconvened meeting after an interruption
2 to communication. If audio-only communication is established,
3 then each speaker shall be required to state their name before
4 making their remarks. Within fifteen minutes after audio-only
5 communication is established, copies of nonconfidential visual
6 aids that are required by or brought to the meeting by board
7 members or as part of a scheduled presentation shall be made
8 available either by posting on the Internet or by other means to
9 all meeting participants, including those participating
10 remotely, and those agenda items for which visual aids are not
11 available for all participants shall not be acted upon at the
12 meeting. If it is not possible to reconvene the meeting as
13 provided in this subsection within thirty minutes after an
14 interruption to communication and the board has not provided
15 reasonable notice to the public as to how the meeting will be
16 continued at an alternative date and time, then the meeting
17 shall be automatically terminated.

18 (d) During executive meetings from which the public has
19 been excluded, board members shall be audible to other
20 authorized participants but shall not be required to be visible.
21 To preserve the executive nature of any portion of a meeting



1 closed to the public, the presiding officer shall publicly state
 2 the names and titles of all authorized participants, and, upon
 3 convening the executive session, all participants shall confirm
 4 to the presiding officer that no unauthorized person is present
 5 or able to hear them at their remote locations or via another
 6 audio or audiovisual connection. The person organizing the
 7 interactive conference technology shall confirm that no
 8 unauthorized person has access to the executive meeting as
 9 indicated on the control panels of the interactive conference
 10 technology being used for the meeting, if applicable."

11 SECTION 3. Section 92-2, Hawaii Revised Statutes, is
 12 amended by amending the definition of "interactive conference
 13 technology" to read as follows:

14 "Interactive conference technology" means any form of
 15 [~~audio or~~] audio and visual conference technology, or audio
 16 conference technology where permitted under this part, including
 17 teleconference, videoconference, and voice over internet
 18 protocol, that facilitates interaction between the public and
 19 board members."



1 SECTION 4. Section 92-3.5, Hawaii Revised Statutes, is
2 amended by amending its title and subsections (a) through (c) to
3 read as follows:

4 "§92-3.5 [~~Meeting~~] In-person meeting at multiple sites by
5 interactive conference technology; notice; quorum. (a) A board
6 may hold [a] an in-person meeting at multiple meeting sites
7 connected by interactive conference technology; provided that
8 the interactive conference technology used by the board allows
9 audio or audiovisual interaction among all members of the board
10 participating in the meeting and all members of the public
11 attending the meeting, and the notice required by section 92-7
12 identifies all of the locations where participating board
13 members will be physically present and indicates that members of
14 the public may join board members at any of the identified
15 locations. The board may provide additional locations open for
16 public participation but where no participating board members
17 will be physically present. The notice required by section 92-7
18 shall list any additional locations open for public
19 participation but where no participating board members will be
20 physically present and specify, in the event one of those
21 additional locations loses its audio connection to the meeting,



1 whether the meeting will continue without that location or will
2 be automatically recessed to restore communication as provided
3 in subsection (c).

4 (b) Any board member participating in a meeting by
5 interactive conference technology under this section shall be
6 considered present at the meeting for the purpose of determining
7 compliance with the quorum and voting requirements of the board.

8 (c) A meeting held by interactive conference technology
9 under this section shall be ~~terminated~~ automatically recessed
10 for up to thirty minutes to restore communication when audio
11 communication cannot be maintained with all locations where the
12 meeting by interactive conference technology is being held, even
13 if a quorum of the board is physically present in one location.
14 ~~[If copies of visual aids required by, or brought to the meeting~~
15 ~~by board members or members of the public, are not available to~~
16 ~~all meeting participants, at all locations where audio only~~
17 ~~interactive conference technology is being used, within] The~~
18 meeting may reconvene when either audio or audiovisual
19 communication is restored. Within fifteen minutes after audio-
20 only communication is ~~used,~~ established, copies of
21 nonconfidential visual aids that are required by or brought to



1 the meeting by board members or as part of a scheduled
2 presentation shall be made available either by posting on the
3 Internet or by other means to all meeting participants, and
4 those agenda items for which visual aids are not available for
5 all participants at all meeting locations [~~eannot~~] shall not be
6 acted upon at the meeting. If it is not possible to reconvene
7 the meeting as provided in this subsection within thirty minutes
8 after an interruption to communication, and the board has not
9 provided reasonable notice to the public as to how the meeting
10 will be continued at an alternative date and time, then the
11 meeting shall be automatically terminated."

12 SECTION 5. Section 92-7, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The board shall give written public notice of any
15 regular, special, emergency, or rescheduled meeting, or any
16 executive meeting when anticipated in advance. The notice shall
17 include an agenda that lists all of the items to be considered
18 at the forthcoming meeting; the date, time, and place of the
19 meeting; the board's electronic and postal contact information
20 for submission of testimony before the meeting; instructions on
21 how to request an auxiliary aid or service or an accommodation



1 due to a disability, including a response deadline, if one is
2 provided, that is reasonable; and in the case of an executive
3 meeting, the purpose shall be stated. If an item to be
4 considered is the proposed adoption, amendment, or repeal of
5 administrative rules, an agenda meets the requirements for
6 public notice pursuant to this section if it contains a
7 statement on the topic of the proposed rules or a general
8 description of the subjects involved, as described in
9 section 91-3(a)(1)(A), and a statement of when and where the
10 proposed rules may be viewed in person and on the Internet as
11 provided in section 91-2.6. The means specified by this section
12 shall be the only means required for giving notice under this
13 part notwithstanding any law to the contrary."

14 SECTION 6. The office of information practices shall, in
15 consultation with the disability and communication access board
16 and the office of enterprise technology services, assess the
17 implementation of meetings held using interactive conference
18 technology, including participation by members of the public who
19 need an accommodation due to a disability. The office shall
20 submit a report of its assessment, including recommendations and



1 proposed legislation, to the legislature no later than forty
2 days prior to the convening of the regular session of 2023.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on January 1, 2022.



Report Title:

Sunshine Law; Interactive Conference Technology; Remote Meetings

Description:

Authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law. Amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology. Requires the Office of Information Practices to assess the implementation of meetings held using interactive conference technology and submit a report of its findings to the Legislature. Effective 1/1/2022. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



VI. Administrative Matters

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

a. Discussion of a proposed digital orientation manual for the Board